

Draft Decision

Aurizon 2014 Draft Access Undertaking — Draft Decision VOLUME II – Capacity & Expansions

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10 BASELINE CAPACITY AND SUPPLY CHAIN ALIGNMENT

We consider the efficient delivery of the capacity of the CQCN is fundamental to the object of the third-party access regime in the QCA Act.

Part 8 of the 2014 DAU contains the supply chain coordination, capacity processes and network development processes to be provided by Aurizon Network over the 2014 DAU period. However, the focus of Part 8 is principally on the CQCN expansion process. We consider there is merit in broadening the capacity focus of the 2014 DAU to deal with the provision of existing capacity, committed capacity and available capacity within the CQCN.

Our Draft Decision is to refuse to approve Aurizon Network's proposed approach to network development within Part 8 of the 2014 DAU. We require amendments to the 2014 DAU to include a new chapter on baseline capacity and supply chain alignment to:

- *provide for the efficient operation of, use of and investment in the CQCN and deliver the lowest overall supply chain logistics cost*
- *address access holders and access seekers' interests in contracting secure, reliable and sustainable tranches of capacity on the CQCN*
- *broaden Aurizon Network's scope of participation to align baseline capacity and coal supply chain coordination with the maximisation of coal throughput on the CQCN.*

The detailed drafting of a new Part 7A of the 2014 DAU accompanying this Draft Decision includes the amendments required.

10.1 Introduction

Through the provision and operation of the CQCN rail infrastructure Aurizon Network provides a 'below rail' service, which is measured in the form of train paths. Aurizon Network grants access rights to train paths to its customers, which is essentially a grant of capacity in the CQCN.

Ensuring the efficient delivery of the capacity of the CQCN is fundamental to the object of the third-party access regime in the QCA Act. Whether Aurizon Network can meet its contractual obligations and the extent to which the quantity of train paths on existing infrastructure is being maximised is of critical importance to Aurizon Network's access holders and customer base because it impacts on system volumes and the efficient cost of a train path. It is also important for having a transparent understanding of the need for infrastructure expansion. Only if these arrangements are effective can customers be confident that Aurizon Network is delivering the most efficient access service.

Despite this, there is no section in the 2014 DAU that deals explicitly with capacity provision. The 2014 DAU includes supply chain coordination, capacity reviews and a network development planning process as a subset within Part 8—Network Development and Expansions.

Given the significance of the issues related to the availability and provision of capacity, we consider that capacity should be dealt with in a separate chapter within the 2014 DAU, rather than in Part 8 of the 2014 DAU. We are proposing that this new chapter (Part 7A of our mark-up of 2014 DAU) will principally deal with Aurizon Network's

- participation in supply chain coordination
- establishment of the baseline capacity of the CQCN

- commitments to access holders for the provision of access services
- annual review of capacity and system operating parameters (SOP)
- development of a Network Development Plan (NDP).

Our approach seeks to achieve greater transparency and understanding of the capacity of the CQCN within the context of the mine–rail–port supply chain. We consider this provides more opportunity for collaboration and innovative approaches across the supply chain that can increase the productivity of the CQCN.

We believe it should also assist in alleviating potential tension between Aurizon Network and its customers regarding Aurizon Network's ability to meet contractual commitments.

10.2 Overview

10.2.1 Aurizon Network proposal

Aurizon Network addressed the following capacity related issues in Part 8 of the 2014 DAU:

- coal supply chain coordination responsibilities
- process for amending SOP
- annual capacity review process
- NDP process.

Aurizon Network's approach to each of these is discussed in more detail in subsequent sections.

10.2.2 Stakeholders position

Stakeholders did not support the coal chain coordination, capacity reviews and network planning processes within Part 8. Stakeholders provided detailed mark-ups to Part 8 of the 2014 DAU to reflect their recommended position on coal chain coordination, SOP and capacity reviews and the NDP process. Specific stakeholder concerns are outlined in subsequent sections.

10.2.3 Legislative framework and QCA assessment approach

Legislative framework

We are of the view that a transparent and robust understanding of the capacity dynamics of the CQCN in the context of the overall supply chain is necessary if the object of the third-party access regime in the QCA Act (s. 69E) is to be achieved. In its absence, we do not consider it is possible to develop a sound knowledge of the existing supply of train paths, determine whether the rail infrastructure is being used efficiently in the supply of train paths or understand the extent to which any expansion of CQCN infrastructure is warranted.

We are of the view that greater understanding of the CQCN's baseline capacity can encourage competition in upstream and downstream markets and provide confidence to potential market entrants that the CQCN is operated in an efficient and effective manner. We consider this has the potential to benefit Queensland's economy, which is in the public interest (s. 138(2)(d) of the QCA Act).

We are also of the view that weight should be given to the interests of access holders, access seekers and train operators, as well as the legitimate business interests of Aurizon Network (ss. 138(2)(b) and (e) of the QCA Act). A transparent and robust knowledge of the capacity dynamics

of the CQCN underpins the efficient cost of operating the CQCN, ensures that existing contractual commitments can be met and can provide a catalyst for operational throughput improvement across the supply chain.

We consider that less weight should be given to sections 138(2)(f) and (g) of the QCA Act. Although of some significance, they are less relevant.

QCA assessment approach

Key issues for consideration

Our assessment approach considers the following areas, all of which are to be addressed in the new chapter in the undertaking:

- network management principles (discussed separately in Chapter 13, so no further discussion is required in this chapter)
- coal supply chain coordination
- capacity reviews, underlying assumptions and methodological approaches
- contracted access rights and capacity shortfalls
- SOP amendment processes
- the NDP process.

Coal supply chain coordination

Under the existing access agreements, access rights are granted as a number of monthly train paths. The Capricornia System Rules, however, narrows this definition by reference to the supply chain capacity, which is defined as monthly train paths connected to an unloading slot at an unloading terminal.

We consider this revised definition better depicts the service being provided by Aurizon Network on the CQCN. This is because a train path can only be utilised by a train operator if its train is able to enter the network at its origin and exit the network at its destination. Given this, the interrelationship between the capacity of the CQCN, the operational capacity of each mine load point, the capacity of a train operator's rollingstock and the capacity of export coal terminals will together determine the supply chain capacity available to be contracted.

This suggests that the CQCN capacity must be considered within the dynamic context of the whole supply chain, not in isolation. It also indicates that cooperation with, and alignment of, all supply chain partners in the provision of coal logistic infrastructure is fundamental to optimising the capacity available to be contracted on the CQCN. We consider coal supply chain coordination is a necessary requirement for meeting the object of the third-party access regime in the QCA Act.

Capacity reviews, underlying assumptions and methodological approaches

In order for capacity to be measured in any meaningful way, a baseline understanding of existing capacity must be established by Aurizon Network and subject to formal review by the QCA.⁴⁴⁹

⁴⁴⁹ UT3 imposed an obligation on Aurizon Network to undertake a capacity review and confirm if existing capacity could deliver committed capacity. Aurizon Network advised the QCA that its capacity review revealed existing capacity could deliver committed capacity. This outcome was neither subject to a formal QCA review nor stakeholder consultation process.

To date, the lack of a formal review of the existing capacity of the CQCN has been raised with the QCA by stakeholders in the context of the Capricornia System Rules, Northern Bowen Basin Rules and SUFA regulatory processes.⁴⁵⁰ It is clear there is a lack of transparency and understanding amongst access holders, access seekers, coal customers and supply chain groups regarding:

- the existing capacity of each coal system
- how capacity is defined and translated into Train Service Entitlements (TSE)
- how system assumptions impact on the definition of capacity in each coal system
- the capacity impact on each coal system when cross-system coal traffic is contracted.

We consider greater transparency and accountability on all these discrete capacity elements would enable coal companies, train operators, terminal operators and infrastructure funders to determine whether to contract capacity on the CQCN and invest in aligned infrastructure within the coal supply chain.

In order to achieve this, we consider a number of discrete elements with respect to the assessment of capacity need to be brought together in a manner that provides transparency and legitimacy and ensures all interested parties have confidence in the process, underlying methodological approach and assumptions adopted. These include the:

- calculation of existing capacity⁴⁵¹ on the CQCN, including the development of SOPs and system rules to ensure rail capacity aligns to export terminal capacity
- verification that existing capacity can deliver committed capacity consistent with executed access agreements
- optimisation of existing rail infrastructure to:
 - deliver committed capacity⁴⁵² and ad hoc capacity as efficiently as possible
 - increase available capacity⁴⁵³ which can be contracted in the event an export terminal or unloading facility can upgrade and/or optimise its operations and create more available unloading capacity
- identification of rail infrastructure options to create tranches of CQCN capacity to align with expansions to unloading facilities and greenfield coal export terminal developments.

The capacity assessment should also be regularly reviewed to ensure it remains valid.

⁴⁵⁰ In UT3, Aurizon Network publicly released its system assumptions for each coal system and draft system rules for the Capricornia System and the Northern Bowen Basin. The SOP were not subject to a QCA review process. We approved the Capricornia System Rules in May 2014 and released a draft decision on SUFA in October 2014. The Northern Bowen Basin System Rules remain under consideration.

⁴⁵¹ Existing capacity is the number of train paths available from a mine load point to an unloading slot of an export terminal after taking into account assumptions regarding maintenance plans/assumptions, construction plans, track possession plans/protocols and SOP.

⁴⁵² Committed capacity is the number of train paths required to meet contracted train paths, which include contracted access rights and conditional access rights.

⁴⁵³ Available capacity is the number of train paths available for contract after all committed capacity is taken out of the CQCN.

Contracted access rights and capacity shortfalls

Aurizon Network should clearly demonstrate and assure its customers that the capacity it sells through long-term access agreements, which have a default contract length of 10 years, is guaranteed and sustainable over the life of access agreements. Renewal rights within access agreements also place an onus on Aurizon Network to maintain the CQCN to a standard that enables access rights to continue beyond the expiry of the current contract, otherwise customers' renewal rights are of limited value.

Aurizon Network should be able to demonstrate that its management, control and operation of the CQCN will ensure contracted capacity can be utilised by access holders throughout every year of their contracts. Further, in granting new access rights Aurizon Network should demonstrate that CQCN capacity exists or sufficient additional capacity will be created as the result of an expansion or other change to operating arrangements.

In this context, we consider establishing some form of performance guarantee can provide legitimacy and credibility to Aurizon Network's long-term service commitment provided to its customers through the access agreements. This requires clear performance indicators and service delivery to customers' expectations based on those service standards.

The NDP process

If the NDP is to be an effective tool it needs to be perceived as providing credible options for the future development of the CQCN. This will only be the case if it is built on solid foundations.

The approach to coal supply chain coordination, the rigour and transparency of capacity reviews and the testing/challenging of the assumptions and methodologies underpinning these reviews, as well as the confidence that Aurizon Network's customers have in its ability to meet its contractual obligations, represent these foundations.

10.3 Coal supply chain coordination

10.3.1 Aurizon Network proposal

The coal chain coordination provisions in the 2014 DAU obliges Aurizon Network to use reasonable endeavours to participate in a supply chain group to:

- assist in the coordination of the performance of that supply chain
- develop a supply chain master plan; and
- coordinate maintenance activities with that supply chain.

Given the number of supply chains across the CQCN, Aurizon Network will facilitate the maximisation of the performance of all supply chains consistent with the principles in Part 2 of the 2014 DAU. Aurizon Network is not obliged to take any action as a result of its participation in these supply chain groups (cl. 8.11 of the 2014 DAU).

10.3.2 Stakeholders' position

The QRC and Anglo American are not supportive of the supply chain provisions outlined in the 2014 DAU. Both stakeholders have provided detailed mark-ups to the supply chain provisions in the 2014 DAU. The main issues raised are that Aurizon Network must be obliged to:

- participate and comply with a decision of a supply chain group where the cost of compliance to Aurizon Network is recoverable under the undertaking⁴⁵⁴
- maximise coal throughput in each supply chain in accordance with delivery of the supply chain group and/or contracted access rights⁴⁵⁵
- prioritise contracted capacity when scheduling.⁴⁵⁶

10.3.3 QCA analysis and Draft Decision

As noted in our assessment approach we consider coal supply chain coordination a necessary requirement for meeting the object of the third-party access regime of the QCA Act and the public interest (s. 69E and ss. 138(2)(a) and (d) of the QCA Act).

We are of the view that all access holders and access seekers require confidence in the development, operation and coordination of supply chains within the CQCN. Indeed, the importance of supply chain management in central Queensland is evidenced by the number of coal chain groups⁴⁵⁷ established to coordinate and optimise coal movements in each coal system. Three coal chain coordination bodies⁴⁵⁸ have also been established to facilitate improvements in the coordination of logistics for specific supply chains within the Goonyella system.

With regard to operation and coordination, supply chain groups focus on minimising the cost of supply chain logistics in order to maintain or improve the supply chain's competitiveness in the global coal market. In particular, coal supply chains want to be confident the delivery of existing supply chain contractual entitlements represents the lowest overall supply chain logistics cost. Supply chain logistics cost also impacts on the commercial viability of large-scale expansions (e.g. GAPE, APCT, WIRP and WICET). Access seekers need assurance the lowest overall logistics solution with respect to an expansion has been studied and identified.⁴⁵⁹

We consider that Aurizon Network has a significant role to play in ensuring that supply chains in the CQCN are efficient and low-cost. While we recognise that Aurizon Network should not be held accountable for the performance of elements of the supply chain that are beyond its control, as a key service provider in the supply chain, its effective participation in issues regarding coordination is critical to ensure the effective performance of the supply chain as a whole.

In this context, we are of the view that Aurizon Network's proposals in the 2014 DAU may result in Aurizon Network having a limited or peripheral role in supply chain coordination. Accordingly, the proposals are inconsistent with section 138(2)(a) and section 69E of the QCA Act.

⁴⁵⁴ QRC, 2014 DAU, sub. no.41: 1

⁴⁵⁵ QRC, 2014 DAU, sub. no. 41: 1. Anglo American 2014 DAU sub. no. 13:1

⁴⁵⁶ Anglo American 2014 DAU Part 8(B), sub. no. 10:1

⁴⁵⁷ Examples include the Gladstone Coal Exporters Executive, Capricornia Supply Chain, Blackwater User Group, Moura User Group, DBCT Users Group, Stakeholders' Operational Monthly Meeting, Abbot Point User Group.

⁴⁵⁸ These are the Integrated Logistics Company which oversees the Dalrymple Bay Coal Chain (DBCC), the Dalrymple Bay Coal Chain Coordinator which coordinates logistics for a number of coal companies in the DBCC, and the BMACC which coordinates logistics for BHP Billiton related coal companies.

⁴⁵⁹ We are of the view that the amendments we have proposed to Part 8 of the 2014 DAU will deliver that commercial confidence and mitigate asset stranding risk. We consider this will promote competitive funding sources of capital to underpin expansions in the CQCN.

We are of the view that in order to ensure the efficient operation of the CQCN, Aurizon Network must:

- participate in supply chain groups in a non-discriminatory manner to ensure no supply chain has priority over another supply chain in the delivery of contracted capacity
- participate in the development of any supply chain master plan by supply chain groups to ensure accuracy of operational CQCN information being used by the supply chain group in a planning context
- bring to the attention of the supply chain any supply chain capacity options under investigation by the supply chain group that will impact on the Network Management Principles (NMP), SOPs and system rules for a coal system—the supply chain can then determine whether to raise the operational capacity options with other supply chains operating within or affected by the relevant coal system
- consider operational capacity enhancing improvements through a formal review of the SOPs, if requested by a coal supply chain—any review of SOPs that has an adverse impact on competing coal supply chains must be submitted to us for approval
- adopt all efficient supply chain capacity enhancing options that do not adversely impact on NMP, SOPs, and system rules—in such a scenario, Aurizon Network must then include the amended parameters in the capacity review process and update the operational capacity rating of the relevant coal system(s) in the subsequent year
- undertake, at the request of supply chain groups, a number of different capacity simulation modelling exercises to reflect a number of different supply chain capacity options to determine the efficiency and robustness of different capacity expansion options being considered by that supply chain.

We consider the above do not affect Aurizon Network's legitimate business interests (s. 138(2)(b) of the QCA Act) as the cost of participation in supply chains is recoverable via the 2014 DAU, provided Aurizon Network can justify the costs. Further, in the event there is an efficient cost in participating in a supply chain that Aurizon Network identifies as not recoverable under the 2014 DAU, Aurizon Network may consult the relevant supply chain regarding possible cost recovery options. Any disputes regarding the recoverability or otherwise of these costs can be resolved in accordance with Part 11 of the 2014 DAU.

Draft Decision

10.1 Our Draft Decision is to refuse to approve Aurizon Network's 2014 DAU proposals regarding its role in coal chain supply coordination. Instead, we consider it appropriate for Aurizon Network to amend the 2014 DAU as follows in the manner we have indicated in our proposed draft to require Aurizon Network to:

- (a) participate in supply chain groups where the cost of involvement is recoverable under the undertaking**
- (b) participate in supply chain groups in a non-discriminatory manner to ensure no supply chain has priority over another supply chain in the delivery of contracted capacity**
- (c) participate in any coal supply chain group's master plan, review coal supply chain groups' capacity options and investigate operational capacity enhancing improvements with the aim of maximising the utilisation of its existing rail infrastructure.**

10.4 Capacity reviews, contracted access rights and capacity deficits

10.4.1 Aurizon Network proposal

Aurizon Network's 2014 DAU proposes to conduct capacity assessments to determine the capacity rating of each coal system and the CQCN in total. The capacity assessment process is to be conducted annually and may be triggered within a year if there is a material variation that adversely affects capacity (cl. 8.11.3 of the 2014 DAU).

In undertaking annual capacity assessments Aurizon Network proposes to:

- consult with access holders and consider the terms of existing access agreements, SOPs and interfaces with other logistics facilities forming part of each supply chain (cl. 8.11.2 of the 2014 DAU)
- make the results of the capacity assessment available to access holders, access seekers and, if applicable, end customers (cl. 8.11.3(d) of the 2014 DAU)
- engage an independent peer review of the capacity assessment where at least 60 per cent of access holders in one coal system have requested it (cl. 8.11.3(e) of the 2014 DAU)
- provide copies of the final report by the independent engineer to all relevant access holders (cl. 8.11.3(e) of the 2014 DAU).

Aurizon Network's capacity assessment is undertaken using its Central Queensland System Capacity Model (CQSCM). This is a dynamic simulation model that is able to replicate 24 months of CQCN operations to determine the existing capacity rating of the CQCN on a monthly basis over 24 months.⁴⁶⁰

⁴⁶⁰ QCA Meeting with Aurizon Network, September 2014. The CQSCM adopts a statistical approach using Monte Carlo style probabilistic approaches. Triangular distributions comprising the maximum, minimum and average for various train performance parameters are developed from actual train performance data. For each triangular distribution developed, probabilities are assigned to each event within the distribution (three events per distribution). These distributions are then included in the CQSCM and run on a large number of times based on randomly defining which event in each triangular distribution will operate in a given run of

The CQSCM underpins the provision of a Strategic Train Plan (STP) in Schedule G of the 2014 DAU⁴⁶¹ in the network planning and operations environment consistent with the NMP. The CQSCM modelling outputs can also be used by Aurizon Network to demonstrate to access holders whether existing capacity is sufficient to deliver committed capacity.

If the CQSCM capacity review identifies a capacity deficit in existing capacity then Aurizon Network's obligations are set out in clauses 8.11.3(f-g) and summarised below.

Table 38 Aurizon Network proposed treatment of access rights for a capacity deficit

<i>Contracted Access Rights</i>	<i>Conditional Access Rights</i>
<ul style="list-style-type: none"> contracted access rights are not subject to any compression if contracted access cannot be delivered as a result of the network being unavailable due to Aurizon Network Cause then access charges cannot be levied on that path Aurizon Network will not contract any new access agreements if it results in an increase in the capacity deficit of that coal system. 	<ul style="list-style-type: none"> conditional access rights are compressed to reflect the outcome of the capacity review conditional access holders affected by the capacity deficit will be given a priority allocation of capacity in a subsequent expansion project based on the same terms and conditions of the executed conditional access agreement.

The 2014 DAU does not provide a general obligation to remedy a capacity deficit in existing capacity.⁴⁶² Instead, any expansion to address a capacity deficit in existing capacity would need to be undertaken in accordance with the expansion framework in Part 8 (cl. 8.11.3(f)) of the 2014 DAU.

10.4.2 Stakeholders' position

Specific issues raised by stakeholders are as follows.

Table 39 Issues raised by stakeholders

<i>Issue</i>	<i>Comments</i>
Capacity review	In addition to an annual capacity review, Aurizon Network must undertake another capacity review if it makes any material changes to SOPs that adversely affect the capacity rating in that coal system. ⁴⁶³
Expert determination	Aurizon Network should engage a capacity peer review expert approved by the QCA. If the expert determines the capacity review outcome should be amended then Aurizon Network should accept the amended capacity rating. ⁴⁶⁴
Transparency	Where there are commercial in confidence concerns with releasing information to the independent peer review expert, Aurizon Network must make available relevant information in an aggregated or de-identified basis in accordance with Part 3 ring fencing obligations. ⁴⁶⁵

the CQSCM. The consolidated results provide a statistical analysis and subsequent estimate of the actual number of train paths that are available in each coal system. This is defined by whichever is constraining section of the network in each coal system.

⁴⁶¹ We have addressed the issue of the STP in Chapter 13 of the Draft Decision.

⁴⁶² Aurizon Network does, however, agree it will fund an Aurizon Network shortfall under cl. 8.10.2(e)(vi).

⁴⁶³ QRC, 2014 DAU, sub. no.41: 4, Anglo American 2014 DAU Part 8(B), sub. no.10: 4-8

⁴⁶⁴ QRC, 2014 DAU, sub. no.41: 5-6, Anglo American 2014 DAU Part 8(B), sub. no.10: 4-8

⁴⁶⁵ QRC, 2014 DAU, sub. no.41: 8-9, Anglo American 2014 DAU Part 8(B), sub. no.10: 9-10

<i>Issue</i>	<i>Comments</i>
Capacity shortfall	If a capacity shortfall is identified then Aurizon Network should assess the impacts on existing access holders and identify capacity solutions to address the shortfall. ⁴⁶⁶ If Aurizon Network is obliged by the undertaking to rectify the deficit then it will do so. Where Aurizon Network is not obliged by the undertaking to rectify the deficit then it will inform relevant access seekers that an expansion is required. ⁴⁶⁷
Capacity compression	Aurizon Network cannot compress existing access holders' access rights in the event of a capacity shortfall. Any compression can only occur with conditional access holders of an expansion and where there are a number of expansions, compression should operate on a last-in first-out basis.

10.4.3 QCA analysis and Draft Decision

Our Draft Decision is considered in the following areas:

- a baseline capacity review
- annual capacity reviews
- contracted capacity deficits.

Baseline capacity review

Aurizon Network's 2014 DAU commits it to producing a CQCN capacity review (cl. 8.11.3(a) of the 2014 DAU). We commend that proposal and further propose that Aurizon Network must submit that review as a baseline capacity review to us for review and approval within six months of the approval of the 2014 DAU.

We consider a baseline capacity review meets the object of the QCA Act's third-party access regime (s. 69E of the QCA Act). The lack of understanding expressed by stakeholders regarding the existing level of baseline capacity for coal systems within the CQCN, as well as uncertainty regarding Aurizon Network's ability to meet its contractual commitments, indicates that greater transparency is in the interests of access holders, access seekers and train operators (ss. 138(2)(e) and (h) of the QCA Act). Such an approach may simultaneously assist Aurizon Network by increasing contractual certainty, improving the accuracy of forecasts and thereby enabling more effective network planning

Further, we are of the view that the development of the CQCN baseline capacity assessment and its subsequent review by the QCA should be comprehensive and rigorous. It should clearly outline all capacity related assumptions, inputs and outputs that underpin Aurizon Network's dynamic capacity assessment of each coal system. We consider these to be the:

- operation, maintenance and construction planning assumptions
- assumptions arising out of the NMP, SOP and System Rules
- outputs relating to existing capacity, committed capacity and available capacity.

Given this, we propose that all capacity related processes in clauses 8.11.2 and 8.11.3 should be combined to ensure that all relevant considerations around the supply chain assumptions being modelled are addressed concurrently in the baseline capacity review.

⁴⁶⁶ QRC, 2014 DAU, sub. no. 41: 8.

⁴⁶⁷ Anglo American 2014 DAU sub. no. 10: 8.

We also consider the baseline capacity review should be subject to stakeholder consultation and provide an opportunity for all supply chain participants to have access to the information relied on by Aurizon Network in developing its capacity assessment, on an aggregated or de-identified basis in accordance with Part 3 ring fencing obligations.

In order to ensure the process is credible and independent and to avoid any perception of conflicts of interest on the part of Aurizon Network, we consider that we should be able to:

- retain an independent expert to peer review the CQCN baseline capacity review provided by Aurizon Network
- undertake the CQCN baseline capacity review consistent with the 2014 DAU if this becomes necessary
- our decision on the CQCN baseline capacity review should bind Aurizon Network.

Annual capacity review

We agree that following the baseline capacity assessment, Aurizon Network must, at a minimum, undertake an annual capacity review to demonstrate whether existing capacity continues to deliver committed capacity. As not all changes in circumstances can be predicted, there may be significant events that warrant a capacity review being undertaken more than once a year.

Draft Decision

10.2 Our Draft Decision is to refuse to approve Aurizon Network's 2014 DAU capacity review proposal. Instead, we consider it appropriate for Aurizon Network to amend the 2014 DAU as follows in the manner we have indicated in our proposed draft:

- (a) within six months of the approval of the undertaking, Aurizon Network should undertake a baseline capacity review of the CQCN**
- (b) the review must outline:**
 - (i) operation, maintenance and construction planning assumptions**
 - (ii) NMP, SOP and System Rules assumptions**
 - (iii) existing capacity, committed capacity and available capacity.**
- (c) Aurizon Network should submit the baseline capacity review to the QCA for approval within six months of the approval of the 2014 DAU—if approval cannot be obtained, the QCA will have the ability to appoint an independent expert to undertake a baseline capacity review and Aurizon Network must accept the outcome of that review.**
- (d) at a minimum, Aurizon Network should undertake an annual capacity review to demonstrate whether existing capacity can deliver committed capacity.**

Capacity deficit

If Aurizon Network has committed to supplying more train paths than it is capable of providing, the 2014 DAU does not oblige Aurizon Network to remedy the capacity deficit in existing capacity. Instead, the 2014 DAU proposed that this would be done via an expansion in accordance with the Part 8 expansion framework; although there is no guarantee that an expansion would actually occur.

We consider that potential over-contracting has the practical effect of Aurizon Network not honouring its commitments to provide the service it has sold to its customers. This is despite

the fact Aurizon Network has control over the long-term access rights it decides to contract with its customers and, as such, we consider it would reasonable to expect Aurizon Network to ensure it is capable of delivering the access rights it is has sold.

We are of the view that Aurizon Network's ability to take this position is only possible as it is the monopoly supplier of capacity in the CQCN. Aurizon Network cannot lose market share or suffer the equivalent reputational damage that its proposed course of action could cause in a more competitive environment.

Given this, we do not consider the proposals in 2014 DAU to be consistent with section 69E and section 138(2)(a) of the QCA Act regarding the efficient operation of, use of and investment in the CQCN. We are also of the view the proposals create unnecessary uncertainty regarding Aurizon Network's commitment to supply the service it has contractually agreed to provide, and such uncertainty will increase risk for access holders and access seekers.

Against this background, we consider establishing some form of capacity/performance guarantee as a pragmatic and fair way of managing the contractual relationship between Aurizon Network and access holders. Such a guarantee would recognise that access holders have paid for access services to be provided by Aurizon Network and Aurizon Network is contractually committed to deliver the access services that access holders are paying for.

It is our view that a capacity/performance guarantee is best provided in the form of a commitment to address a capacity shortfall with respect to committed capacity. A capacity deficit is then a risk for Aurizon Network to manage given it solely operates the capacity allocation and operation of the CQCN, rather than a risk for customers to bear as they have no ability to manage it.

We consider that where CQCN existing capacity is assessed as insufficient to reliably deliver existing contractual entitlements, the capacity/performance guarantee on committed capacity should require Aurizon Network to:

- review all NMP, SOPs, system rules, asset management and maintenance plans to identify whether amendments to its operating assumptions would address the capacity deficit
- consult with access holders, coal chain groups, train operators and terminal operators about whether there are efficient supply chain capacity options to align existing capacity to the committed capacity of the CQCN
- submit a report to the QCA which identifies the outcome of the capacity review, results of coal chain consultation process and a project plan for addressing any misalignment between existing and committed capacity.

Further, our proposed amendments to the 2014 DAU propose that if the most prudent and efficient solution to addressing the capacity deficit is an expansion, Aurizon Network must promptly undertake and fund that expansion to deliver the additional capacity needed to address the capacity deficit.

We consider this to be in the interests of access holders, access seekers and train operators (ss. 138(2)(e) and (h) of the QCA Act). We are also of the view that such an approach continues to recognise Aurizon Network's legitimate business interests in ensuring the efficient use of capacity in the CQCN (s. 138(2)(b) of the QCA Act).

Draft Decision

10.3 Our Draft Decision is to refuse to approve Aurizon Network's 2014 DAU proposals for addressing capacity deficits for existing capacity. Instead, we consider it appropriate for Aurizon Network to amend the 2014 DAU as follows in the manner we have indicated in our proposed draft:

- (a) Aurizon Network should provide a capacity/performance guarantee to access holders in the form of a capacity deficit guarantee**
- (b) where a capacity assessment identifies a capacity deficit on existing contractual entitlements, Aurizon Network should:**
 - (i) review all NMP, SOPs, System Rules, asset management and maintenance plans to identify whether amendments to its operating assumptions would address the capacity shortfall**
 - (ii) consult with access holders, coal chain groups, train operators and terminal operators about whether there are efficient supply chain capacity options and/or expansion that will align existing capacity to the committed capacity of the CQCN**
 - (iii) submit a report to the QCA which identifies the outcome of the capacity review, results of coal chain consultation process and a project plan for addressing any misalignment between existing and committed capacity**
- (c) where amendments to existing practices and SOP cannot be identified and the most prudent and efficient solution to addressing the capacity deficit is an expansion, Aurizon Network should promptly undertake and fund that expansion to deliver the additional capacity needed to address the capacity deficit.**

10.5 Capacity assumptions and SOP amendment processes

10.5.1 Aurizon Network proposal

In the 2014 DAU, Aurizon Network proposed that its capacity related assumptions are detailed in its NMP, SOP and, where relevant, system rules. As noted above, the NMP and system rules are considered in Chapter 13 of this Draft Decision.

SOPs are Aurizon Network's core assumptions regarding the operation of each element of the supply chain within each coal system. SOPs identify the operational interfaces between supply chain elements, including supply chain operating modes relevant to each coal supply chain, seasonal variations, live run losses and CQCN maintenance and operational outages.

The most current SOPs are available on Aurizon Network's website (cl. 8.11.2(d) of the 2014 DAU). In the event of a SOP review (cl. 8.11.2(b) of the 2014 DAU), Aurizon Network will notify access holders and supply chain groups (if any) of the review and consider any submissions, including any proposed variations (cl. 8.11.2(b) of the 2014 DAU). Aurizon Network will respond to the submissions and release the amended SOPs (cl. 8.11.2(a) of the 2014 DAU).

10.5.2 Stakeholders' position

Stakeholders raised concerns with Aurizon Network's SOPs. In terms of establishing and amending SOPs, stakeholders indicated Aurizon Network should consult with all access holders

and supply chain groups in developing or undertaking a SOP review.⁴⁶⁸ A SOP review process should be conducted through the QCA to ensure full transparency and accountability.⁴⁶⁹

10.5.3 QCA analysis and Draft Decision

We consider that a transparent understanding of CQCN baseline capacity across all stakeholders within the coal supply chain meets the object of the QCA Act's third-party access regime (s. 69E of the QCA Act). In our view this requires stakeholders to have a clear understanding of the interaction of the:

- SOPs
- maintenance plans and assumptions
- construction plans and assumptions
- track possession plans and protocols
- TSE calculation methodology for access rights sold through access agreements.

Although the 2014 DAU ensures SOPs can be obtained via Aurizon Network's website, there is limited visibility of the maintenance, construction and track possession planning assumptions. Nor is there clarity regarding the calculation methodology, which Aurizon Network applies to determine the number of TSEs to be included in access agreements.

As noted in section 10.4 of this chapter, access holders, access seekers, coal customers and supply chains have, across a number of regulatory processes, identified that the lack of transparency can lead to misunderstandings regarding the interrelationship between the existing capacity of a coal system and the assumptions and methodological approach to calculating TSEs.

In our view this is counterproductive to the evolution of a collaborative approach to ensuring CQCN coal supply chains maintain or improve their global competitiveness.

Against this background, we are of the view that immediately following the approval of the 2014 DAU Aurizon Network must:

- consult with access holders, coal customers, supply chain groups and terminal operators regarding Aurizon Network's capacity and operating assumptions underpinning the sale and provision of access services on the network regarding:
 - maintenance plans and assumptions within a two-year timeframe
 - construction plans and assumptions within a two-year timeframe
 - SOPs underpinning the operation of the CQCN
- submit its track possession plans and protocols and TSE calculation methodology to the QCA for approval.

The intention in initiating this process is to provide an opportunity for all stakeholders to raise any issues directly with Aurizon Network prior to it submitting a CQCN baseline capacity review, inclusive of all capacity assumptions to the QCA for approval.

⁴⁶⁸ QRC, 2014 DAU, sub. no.41: 4. Anglo American 2014 DAU Part 8(B), sub. no.10: 4-8.

⁴⁶⁹ QRC, 2014 DAU, sub. no.41: 4. Anglo American 2014 DAU Part 8(B), sub. no.10: 4-8.

We consider the TSE calculation methodology and track possession planning processes underpin certainty around the contractual obligations being sold by Aurizon Network by enabling a common understanding of:

- the calculation of contracted TSEs contained within individual access agreements so they can be assessed in the context of the CQCN baseline capacity review process
- track possession protocols and the planning process undertaken by Aurizon Network in setting track possessions—in particular, obtaining clarity over the level of consultation undertaken with stakeholders regarding alignment of closure plans of interconnected coal logistics infrastructure and the level of flexibility to adjust closure patterns to address the cyclical needs of the coal industry in a global coal market.

We consider that these processes can assist in mitigating existing stakeholder concerns and - misunderstanding. We are hopeful that in combination with the CQCN baseline capacity review, it can support greater coal supply chain collaboration and assist in improving end-to-end coal supply chain efficiency. It provides the necessary information for all contracting parties, as well as the QCA, to understand the nature of contracted capacity and whether existing capacity can deliver all contracted capacity. It can provide an assessment of whether access rights have been adversely affected—either through Aurizon Network's operation of and use of the CQCN—or through mining or port operations within a coal supply chain not meeting their performance requirements.

We consider this aligns with the object of the third-party access regime in Part 5 of the QCA Act, the public interest and appropriately balances the interests of all coal supply chain participants (s. 138(2) and s. 69E of the QCA Act).

Draft Decision

10.4 Our Draft Decision is to refuse to approve Aurizon Network's 2014 DAU proposals in relation to the information provision obligations regarding the assumptions and methodological approaches underpinning the assessment of capacity. Instead, we consider it appropriate for Aurizon Network to amend the 2014 DAU as follows in the manner we have indicated in our proposed draft:

- (a) Aurizon Network should consult with all access holders, end customers and supply chain groups on all capacity and operating assumptions which will underpin Aurizon Network's baseline review of existing capacity**
- (a) Aurizon Network should include its track possession protocols and TSE calculation methodology in its baseline capacity assessment.**

10.6 Network development plan

10.6.1 Aurizon Network proposal

The 2014 DAU provides that Aurizon Network will annually publish a NDP on its website. The NDP will be updated more frequently if circumstances change and affect the NDP within that year. The NDP will contain a review of existing capacity and operational constraints, opportunities for increasing existing capacity, a comparison of expansion options for each coal system and the infrastructure studies to be undertaken in the year ahead (cl. 8.12 (a) and (b) of the 2014 DAU).

The 2014 DAU provides that in developing the NDP, Aurizon Network will have regard to coal demand, expression of interest submissions, access applications, coal terminal developments,

current and previous infrastructure studies, any current supply chain master plan, SOPs, system rules, maintenance plans and any other information considered relevant by Aurizon Network (cl. 8.12(d) of the 2014 DAU).

10.6.2 Stakeholders' position

Although stakeholders supported the concept of the NDP, they did not support the NDP provisions as outlined in the 2014 DAU. Stakeholders proposed significant amendments to better describe the purpose, content and outcomes of the NDP process.⁴⁷⁰

Table 40 Key issues raised by stakeholders

<i>Issue</i>	<i>Comments</i>
Objective	The NDP should identify a selection of medium- to long-term capacity alternatives that could deliver potential future demand for access in each coal system. It should include options for otherwise developing or improving the performance of a coal system.
Base assumptions	The NDP must align with the network management principles, SOPs, any supply chain master plan, consider all supply chain models and be based on a concept level study.
Output	The NDP should provide the following information: <ul style="list-style-type: none"> (a) nameplate capacity by track segment for each coal system (b) capacity assessment to be broken into existing, committed and available capacity (without operational constraints) (c) review of operational constraints and impact on existing and available capacity (d) SOPs (e) aggregated contracted train paths by track segments (without operational constraints) (f) any capacity planning scenarios which are relied on by Aurizon Network (g) non-below rail opportunities for increasing existing capacity, including opportunities proposed by supply chain groups (h) information on scope, standard and preliminary costs of proposed expansion projects, including, capacity analysis, volume demand, project sequencing, capacity impacts, timing and volume trigger points for expansions (i) studies and investigations to be undertaken to inform the next NDP.⁴⁷¹
Modelling capability	The capacity model underpinning the NDP must be a dynamic simulation model. A static model has some applicability but needs to be used in combination with dynamic simulation modelling. Dynamic modelling is flexible and can incorporate coal supply chain interface changes over time and provide a run-time view of the capability of the CQCN, inclusive of existing and new operational and infrastructure improvements. ⁴⁷²
Timelines	Reasons to review the NDP within the year should include a connection to a new coal basin or coal terminal, completion of a major expansion, a 30 per cent increase in system capacity, a customer vote to update and any changes to the network management principles, SOPs or NDP. ⁴⁷³
Governance	Aurizon Network will consult with access holders, access seekers, customers and interested participants make available a draft NDP to those persons and the QCA, incorporate any submissions before finalising the NDP, allow stakeholders to appoint an expert to peer review the draft NDP and cooperate with the expert and run requested scenarios in the relevant capacity model. ⁴⁷⁴

⁴⁷⁰ QRC, 2014 DAU sub. no.42: 46. Anglo American 2014 DAU Part 8(B), sub. no.10: 10-13. Asciano, 2014 DAU sub. no. 22: 122-123.

⁴⁷¹ QRC, 2014 DAU sub. no.41: 9-12. Anglo American 2014 DAU sub. no.7: 10-12.

⁴⁷² QRC meeting with the QCA, 28 August 2014. Anglo American meeting with the QCA, 4 September 2014.

⁴⁷³ QRC, 2014 DAU, sub. no.41: 9-12. Anglo American 2014 DAU Part 8(B), sub. no.10: 11.

⁴⁷⁴ QRC, 2014 DAU, sub. no.41: 12. Anglo American 2014 DAU Part 8(B), sub. no.10: 13.

10.6.3 QCA analysis and Draft Decision

We are of the view that the aim of the NDP is to provide a dynamic medium-term snapshot of the operational capacity that exists in the CQCN, the available capacity and a range of capacity options that will increase CQCN capacity to meet future demand. Assessing capacity options for individual segments along the CQCN provides an early view of the cost profiles for various rail infrastructure capacity expansions without the need for the access seeker to formally commence a separate concept study on an individual mine expansion.

We consider the NDP is the most efficient form of disseminating information relevant to investigating the likely success of taking a mine project through to a concept stage, and a comprehensive NDP should address the needs of access holders, access seekers, coal customers and third party funders.

We view the NDP as an overarching strategic tool to assist all participants in a coal supply chain in making investment decisions. We consider Aurizon Network's legitimate business interests (s. 138(2)(b) of the QCA Act) align with covering the efficient costs of producing an NDP that meets stakeholder requirements and is credible.

We note stakeholders have raised specific concerns regarding the static nature of the capacity analysis which underpins the NDP, the limited information which can be sourced from the NDP and the impact this has on the usability of the NDP for initial investigations around mine projects in their own growth pipeline.

Against this background, we are of the view that the NDP should initially be based on the most recent capacity review, with a dynamic extrapolation of the baseline modelling parameters over a five-year time horizon. We are conscious that if the NDP is to be based on dynamic rather than static capacity modelling this can create additional modelling requirements. We consider this has to be traded off against the need to establish an NDP that meets stakeholder needs in a timely manner. A credible NDP should enable access holders and access seekers to commence study investigations of mining projects and to trigger expansion projects to take through Aurizon Network's investment stage gate process. If there is merit in extending the NDP to a 10-year time horizon in the context of a dynamic modelling environment, we will consider it as part of the UT5 process.

Our amendments to the NDP are aimed at ensuring access seekers and prospective third-party financiers have a medium term view of:

- dynamic capacity over a five-year planning horizon that covers capacity planning scenarios, operational, infrastructure and supply chain interface capacity opportunities, with capacity opportunities developed to a concept study stage
- three growth scenarios within each coal system linking to a port optimisation project (up to 10 mtpa), capacity augmentation equivalent to a stockyard or existing berth expansion (10–15 mtpa) and major capacity expansion equivalent to a new berth (27 mtpa)—unless specifically requested by a customer or supply chain group, the NDP will only consider the totality of a one export terminal berth expansion in each coal system
- scope, standard and preliminary costs of proposed expansion projects under investigation through funding agreements.

Further, if any party believes their views have not been appropriately taken into account they can trigger a dispute process consistent with Part 11 of the 2014 DAU. If the matter is referred to us, we will engage an independent expert to undertake a peer review of the NDP, the capacity assessment underpinning the NDP and provide advice to us on whether the NDP

appropriately deals with the issues raised by stakeholders. Our findings on the NDP will be binding on Aurizon Network and all supply chain participants.

We consider the proposed amendments appropriately balance the interest of access holders, access seeker and train operators (s. 138(2)(e) of the QCA Act), whilst aligning with Aurizon Network's legitimate business interests (s. 138(2)(b) of the QCA Act). We are also of the view that such amendments will assist in encouraging third-party financiers, consistent with the promotion of economically efficient investment in the CQCN (s69E of the QCA Act).

Draft Decision

10.5 Our Draft Decision is to refuse to accept Aurizon Network's 2014 DAU proposals regarding the NDP. Instead, we consider it appropriate for Aurizon Network to amend the 2014 DAU as follows in the manner we have indicated in our proposed draft:

- (a) the overarching objective of the NDP should be to identify the medium-term capacity alternatives that will meet future demand for access in each coal system and include options for developing or improving the operational performance, capacity and cost of throughput on the CQCN**
- (b) an NDP should provide all supply chain participants with
 - (i) a dynamic and static capacity review in a five-year planning horizon**
 - (ii) three growth scenarios within each coal system linking to a port optimisation project**
 - (iii) scope, standard and preliminary costs of proposed expansion projects under investigation through funding agreements****
- (c) a draft NDP should be provided to all relevant supply chain participants who can then make submissions to Aurizon Network on the draft NDP**
- (d) Aurizon Network should be obliged to take the views into account in finalising the NDP**
- (e) stakeholders who consider their views have not been adequately addressed by Aurizon Network should be able to take the NDP to the QCA for dispute resolution.**

11 AVAILABLE CAPACITY ALLOCATION AND MANAGEMENT

Part 7 of the 2014 DAU contains capacity management principles relating to transfer, relinquishment and resumption of capacity. This part of the undertaking, along with the network management principles in Schedule G of the 2014 DAU, comprises Aurizon Network's guidelines for allocation and management of capacity available on the network.

We have focused our review on Aurizon Network's proposed capacity management principles, considering them as follows:

- *principles for allocation of available capacity via capacity allocation criteria—whether they are superior to use of the capacity queue which has been used to date*
- *principles for the treatment of renewals of contracted capacity—whether they provides parties with sufficient contractual certainty*
- *principles for transfer provisions, both short- and long term—whether they facilitate the transfer of access rights*
- *principles for resumptions—whether they promote the efficient use of access rights.*

Our Draft Decision is to refuse to approve Aurizon Network's proposed arrangements for the allocation and management of available capacity. We require amendments to Part 7 of the 2014 DAU to:

- *reinstate the queuing mechanism from UT3*
- *reinstate priority treatment for renewal access applications*
- *facilitate short- and long- term capacity transfers*
- *retain relinquishment provisions from UT3*
- *retain resumption provisions from UT3*

The detailed drafting of Part 7 accompanying this Draft Decision includes the amendments required.

11.1 Introduction

This chapter discusses the 2014 DAU proposals for allocation of available capacity—capacity which can be allocated to an access seeker without an expansion of the network. Chapter 12 discusses allocation of capacity where an expansion to the CQC is required to allocate requested capacity.

The management of capacity (access rights) once it has been allocated is also addressed here. Matters discussed in detail include:

- how available capacity is allocated to access seekers
- how access holders retain and renew access rights
- how access holders transfer/swap/trade available capacity.

11.2 Overview

11.2.1 Aurizon Network proposal

Aurizon Network considers there is only limited surplus available capacity on the CQCN, so available capacity should be allocated in a way that promotes the overarching objective of the access regime, namely, the efficient use of, and investment in the rail infrastructure.⁴⁷⁵

For the 2014 DAU, Aurizon Network considered capacity expansions create the most significant concerns about how capacity will be allocated, but said the approach to capacity allocation is also a significant issue for negotiation of access to existing capacity — particularly as it relates to the renewal of access agreements and negotiations for access where available capacity exists.⁴⁷⁶

Aurizon Network said it does not have all of the information necessary to judge what the highest valued use of capacity is, as the value of capacity depends on circumstances particular to the user. Given this, Aurizon Network proposed that capacity be allocated to users who are able and likely to use that capacity.⁴⁷⁷

Aurizon Network said it wanted to improve the clarity and effectiveness of the 2014 DAU in the following areas:

- the minimum requirements for gaining capacity entitlements
- rights for renewal of existing access agreements
- allocating available capacity amongst competing access seekers.⁴⁷⁸

In its 2014 DAU, Aurizon Network also discussed inclusion of a short-term capacity trading mechanism in response to stakeholder comments. In December 2014, Aurizon Network provided a discussion paper on short-term transfers, as part of its 2014 DAU.

Table 41 Aurizon Network's proposed treatment of available capacity allocation and management

<i>Provision</i>	<i>Aurizon Network's proposal</i>
Minimum requirement for capacity entitlement ⁴⁷⁹	Allows for Aurizon Network to elect not to enter into an access agreement if it determines an access seeker is unlikely to use the capacity. Aurizon Network proposed there are other factors which have a bearing on whether an access seeker can utilise the rights, comprising: <ul style="list-style-type: none"> • supply chain rights • whether the access seeker or rail operator has sufficient facilities to run train services (to fully utilise access rights sought⁴⁸⁰) • whether the anticipated output of the mine will support the access rights sought. These general requirements must be met before access rights will be allocated to an access seeker.
Rights for renewal of existing access agreements ⁴⁸¹	Aurizon Network has proposed to retain the provision that an expiring user should have the first option to negotiate for the capacity contracted for in its access agreement. It noted this is not a guaranteed ability for users to renew their access agreements under any circumstances, rather, the expiring user must continue to meet the requirements of the access undertaking, including that it is reasonably likely to use the capacity.

⁴⁷⁵ Aurizon Network, 2013 DAU, sub. no. 2: 104

⁴⁷⁶ Aurizon Network, 2013 DAU, sub. no. 2: 104

⁴⁷⁷ Aurizon Network, 2013 DAU, sub. no. 2: 104

⁴⁷⁸ Aurizon Network, 2013 DAU, sub. no. 2: 104

⁴⁷⁹ Aurizon Network, 2013 DAU, sub. no. 2: 105

⁴⁸⁰ Examples provided include rollingstock, provision facilities and storage facilities

⁴⁸¹ Aurizon Network, 2013 DAU, sub. no. 2: 105-6

<i>Provision</i>	<i>Aurizon Network's proposal</i>
Allocating available capacity amongst competing access seekers ⁴⁸²	Aurizon Network has proposed to replace the queuing framework with what it considers a more practical and flexible approach to allocating capacity (capacity allocation criteria). Aurizon Network said it is proposing removal of the queue because it considers the primary way capacity will be allocated in the future is via expansions.
Relinquishments	Aurizon Network moved relinquishment provisions from the undertaking into the Standard Access Agreements (SAAs).
Capacity transfers	<ul style="list-style-type: none"> Aurizon Network said it responded to stakeholder requests for more flexibility to manage contracted capacity through a mechanism for short-term transfers by developing a capacity trading mechanism (in conjunction with stakeholders).⁴⁸³ Subsequent to its submission of the 2014 DAU, Aurizon Network proposed drafting changes in line with a proposed transfer mechanism.⁴⁸⁴
Resumptions	Aurizon Network has proposed it may resume access rights if it considers an 'underutilisation event' has occurred — defined as any event which will, or is likely to have, a permanent impact on the user's ability to use access rights. ⁴⁸⁵

11.2.2 Stakeholders' position

Stakeholder responses to Aurizon Network's proposed changes to the allocation and management of capacity were mixed. While the majority of submissions overwhelmingly supported Aurizon Network's proposal to develop a short-term capacity trading mechanism, stakeholders offered the following comments on Aurizon Network's proposals:

Table 42 Stakeholder comments on Aurizon Network's proposed capacity management amendments

<i>Provision</i>	<i>Stakeholder comments</i>
Removal of the capacity queue	Replacement of the capacity queue with capacity allocation criteria provides Aurizon Network with too much discretion in which access seeker is allocated available capacity. ⁴⁸⁶
Capacity registers	A register is still required indicating access holders considering a transfer. This will aid in effecting a transfer by notifying other interested parties of available capacity. ⁴⁸⁷
Resumptions	The new approach for dealing with resumptions is too subjective and provides Aurizon Network with significant discretion. ⁴⁸⁸
Renewals	<ul style="list-style-type: none"> Renewal applications should continue to have priority over other access seekers (in absence of the queuing mechanism). The process for renewals should be streamlined. Negotiations should be undertaken promptly to avoid loss of priority. The replacement mine concept should be reinstated. ⁴⁸⁹
Capacity provisions moved to access agreements from access undertaking	Move provisions relating to resumptions, relinquishments and capacity transfers back into the access undertaking. ⁴⁹⁰

⁴⁸² Aurizon Network, 2013 DAU, sub. no. 1: 9

⁴⁸³ Aurizon Network, 2014 DAU, sub. no. 4: 160

⁴⁸⁴ Submission letter 18 December 2014: Aurizon Network Pty Ltd 2014 Draft Access Undertaking (2014 DAU)- Short Term Transfers

⁴⁸⁵ Aurizon Network, 2013 DAU, sub. no. 2:368

⁴⁸⁶ QRC, 2013 DAU, sub. no. 46:61; Asciano, 2013 DAU, sub. no. 43: 23-4; Anglo American, 2013 DAU, sub. no. 78: 29-30

⁴⁸⁷ QRC, 2013 DAU, sub. no. 46:58-61

⁴⁸⁸ Asciano, 2013 DAU, sub. no. 43:74; Rio Tinto, 2013 DAU, sub. no. 73:105

⁴⁸⁹ QRC, 2013 DAU, sub. no. 46: 59-60; Anglo American, 2013 DAU, sub. no.78:26-7

⁴⁹⁰ Asciano, 2013 DAU, sub. no. 43: 74

<i>Provision</i>	<i>Stakeholder comments</i>
Transfers	<ul style="list-style-type: none"> • Aurizon Network should be obliged to transfer access rights in certain circumstances. • There would be merit in Aurizon Network pre-approving some transfers. • Aurizon Network be subject to a timeframe in managing a transfer application.⁴⁹¹
Relinquishments	Amendments to the treatment of relinquishments undermines access holder's security over access rights. ⁴⁹²

11.2.3 Legislative framework and the QCA assessment approach

Legislative framework

The QCA Act describes matters we are to have regard for, but does not prescribe the weightings for each matter. Our assessment of Aurizon Network's proposal on allocation and management of available capacity has included all factors under section 138(2) of the QCA Act, as discussed in Chapter 2. We applied weightings on each of the criterion to achieve what we consider a balanced approach. The following outlines our weightings:

- Sections 138(2)(a), (b), (d), (e), (g) and (h) should be given more weight
- Sections 138(2)(c) and (f) should be given less weight, as they are not as relevant to our assessment of available capacity allocation and management.

We have also had regard for section 106 of the QCA Act which provides for a transfer of rights under an access agreement.⁴⁹³

QCA assessment approach

We have had particular regard for the object of Part 5 of the QCA Act (also s. 138(2)(a)) in our assessment of this section—specifically, the promotion of effective competition in upstream and downstream markets. In particular, the following are likely to increase competition for above-rail operators and competition between coal producers for upstream inputs to mining, as well as improving efficient use of an investment in the CQCN:

- certainty over access rights—in the context of investing in long-term assets such as mining infrastructure or train consists
- non-discrimination—in the context of access seekers gaining access to available capacity rights
- minimising barriers to participation.

In this context, we need to consider whether Aurizon Network's proposed available capacity allocation and management framework in the 2014 DAU:

- provides access holders security of use of access rights over the term of the access agreement

⁴⁹¹ QRC, 2013 DAU, sub. no. 46: 60-61

⁴⁹² Anglo American, 2013 DAU, sub. no.78: 17

⁴⁹³ This includes: i) the user of a declared service under an access agreement may transfer all or part of the user's interest in the agreement; ii) a transfer must be made by written notice given to the access provider; iii) the notice must state the interest being transferred, the name and address of the transferee and the date of the transfer; iv) the date of the transfer stated in the notice must not be earlier than the day the notice is given; and v) even if a user effects a transfer, the user's obligations under the access agreement continue, unless the transferee and other parties to the access agreement agree.

- provides access holders with security of investment, including clear and transparent processes for renewals of access agreements
- allows access seekers transparent and non-discriminatory access to the CQCN
- allows for ease of transfer of all or part of an access holders access rights under an access agreement
- allows effective management of unused capacity on the network
- provides tangible evidence of economically efficient provision of access within the CQCN
- provides tangible evidence of economically efficient outcomes across Queensland's coal supply chain.

A summary of our approach to assessing Aurizon Network's available capacity allocation and management framework for UT4 is set out in the table below.

Table 43 QCA's approach to available capacity allocation and management

<i>Assessment criterion</i>	<i>Rationale</i>
<p><i>Non-discriminatory access</i></p> <p>Does the allocation framework promote non-discriminatory access to the network?</p>	<p>Access seekers should not have to compete amongst each other for access to regulated service in a non-transparent manner. This does not encourage competition and can result in barriers to competition.</p>
<p><i>Allocation of available access rights</i></p> <ul style="list-style-type: none"> • Does the allocation method operate in a manner that aligns well with the object of the third-party access regime in the QCA Act and appropriately balance stakeholder interests? • Are access seekers provided with certainty of access to the network for the useful life of the asset (renewals)? 	<ul style="list-style-type: none"> • Allocation of available access rights should balance the interests of access seekers, access holders and the legitimate business interests of Aurizon Network. • Allocation should promote commercial certainty for the length of term of the agreement and for the level of access rights sought. • Allocation should be conducted in a transparent and objective manner to ensure certainty in negotiation and contracting. • The process for allocation should also be clear and based on information which can be easily verified.
<p><i>Identification of available capacity</i></p> <p>Is there adequate information available to stakeholders:</p> <ul style="list-style-type: none"> • on whether there is available capacity or when capacity will become available? • to facilitate a capacity trade, transfer or swap? 	<p>Information respecting the capacity available to be contracted on the network should be readily available and accurate for access seekers.</p>
<p><i>Certainty of contracting</i></p> <ul style="list-style-type: none"> • Are access seekers provided with certainty of access to the network for the useful life of their asset? • Is Aurizon Network provided with enough customer information to safeguard rail operations? 	<p>Providing contractual certainty and security of access rights will most likely promote efficient investment in the network.</p>
<p><i>Flexibility of access right use</i></p> <ul style="list-style-type: none"> • Does the access holder have the ability to transfer/trade/swap access rights easily and efficiently? Is the process user-friendly? • Do access holders have commercial incentives to manage access rights efficiently? 	<ul style="list-style-type: none"> • The efficient use of the supply chain may increase if access holders have more flexibility on when they can use and not use access rights. • The more time responsive and flexible the transfer/swap/trade mechanism, the more likely its use can respond to daily demands.

<i>Assessment criterion</i>	<i>Rationale</i>
<ul style="list-style-type: none"> • Are the fees associated with relinquishments and transfers representative of the cost? 	
<p><i>Use of access rights</i></p> <ul style="list-style-type: none"> • Do access holders have sufficient security they can use access rights as contracted? • Does Aurizon Network have security their users are using allocated access rights efficiently? 	<p>A balance should be struck between users being given confidence in the use of access rights for the term of the access agreement and for the system operator that access holders are using access rights as contracted.</p>

This assessment approach is reflected through the issues discussed below, including:

- allocation of capacity with mutually exclusive access applications
- provisions moved to the standard access agreements
- renewals
- transfers and relinquishments
- retention of contracted capacity
- short-term capacity trading mechanism.

11.3 Allocation of capacity/mutually exclusive access applications

Where there is available capacity⁴⁹⁴, UT3 provides for access rights to be allocated to the first access seeker with whom Aurizon Network can negotiate and execute an access agreement.⁴⁹⁵ If there is more than one access application for the same access rights, a queue is formed to determine which access seeker Aurizon Network is to negotiate with first.

Access applications become mutually exclusive where Aurizon Network receives more than one access application for the same access rights.

For further background on the UT3 queue, please see Appendix A.

11.3.1 Aurizon Network's proposal

For the 2014 DAU, Aurizon Network said the CQC is fully contracted, so access applications for new capacity will typically require expansions.

It proposed that the existence of a 'first come first served' queue mechanism serves no purpose in an expansion as capacity must be allocated to the parties who are able to use the capacity and be ready and willing to commit to the project at the required date.

Aurizon Network said a queue should not be included in the 2014 DAU for the following reasons:

- The circumstances that might trigger use of the queue (i.e. competing access applications for existing available capacity) are unlikely to arise during the term of the 2014 DAU, or in any foreseeable timeframe.

⁴⁹⁴ Available capacity is defined as capacity excluding all committed capacity, except committed capacity that will cease being committed capacity prior to the time where capacity is being assessed.

⁴⁹⁵ Aurizon Network 2010 AU, clause 7.3.1

- Inclusion of the queue is not benign as it creates perverse incentives which promote strategic behaviour by access seekers.⁴⁹⁶
- It adds unnecessary complexity and uncertainty to the capacity planning process.⁴⁹⁷
- In reality, there are separate queues, not only for each system, but also for different bottlenecks in each system. Even if the queues were able to be practically applied, it is not straightforward to determine with certainty which access seeker is entitled to available capacity.⁴⁹⁸
- The queuing mechanism fails to ensure capacity is allocated in a way that maximises the efficient use of the network.⁴⁹⁹

Alternative approach: capacity allocation criteria

Aurizon Network said in the unlikely event capacity is available to allocate to access seekers in the absence of major investment, it will allocate capacity according to capacity allocation criteria. It said its capacity allocation criteria had been developed to more effectively target the allocation of capacity towards high-value uses. In the event Aurizon Network is unable to distinguish between access applications using the criteria, priority will continue to be provided to the first access seeker to submit an access application.⁵⁰⁰

Aurizon Network said if it receives mutually exclusive access applications, it will enter into negotiations for access with access seekers whose access applications meet the following criteria:

- (a) the access application is for coal carrying train services
- (b) Aurizon Network is satisfied that the access seeker will be able to use the access rights at the level sought giving consideration to factors listed in clause 4.12(c), including:
 - (i) whether the access seeker has secured or is reasonably likely to secure supply chain rights
 - (ii) whether the access seeker has secured, or is reasonably likely to secure a rail haulage agreement
 - (iii) whether the access seeker or its rail operator has sufficient facilities to enable it to run train services to fully utilise the access rights sought
 - (iv) where access rights are sought to transport the output of a mine, whether the output of the mine is sufficient to support full utilisation of the access rights sought
- (c) the allocation of capacity does not relate to an expansion or a customer specific branch line

⁴⁹⁶ For instance, Aurizon Network noted that access seekers have an incentive to lodge an access application as soon as possible just to ensure a place in the queue and an option of obtaining capacity if it arises. The result being a queue stacked with applications often not fully formed, with limited likelihood of resulting in access (Aurizon Network, 2013 DAU, sub. no. 2: 107).

⁴⁹⁷ Aurizon Network, 2013 DAU, sub. no. 2: 106-107

⁴⁹⁸ Aurizon Network, 2013 DAU, sub. no. 2: 107

⁴⁹⁹ Aurizon Network, 2013 DAU, sub. no. 2: 106-107

⁵⁰⁰ Aurizon Network, 2013 DAU, sub. no. 2: 107

- (d) access rights requested could be used without adversely impacting existing access holders using their access rights
- (e) the access agreement's proposed term is at least 10 years, or the remaining life of the relevant mine
- (f) where the granting of access rights requires existing capacity that will become available capacity, Aurizon Network is reasonably satisfied that the access seeker will be able to use that capacity on the date when it becomes available.⁵⁰¹

If the application of the above factors does not help determine priority of access seekers, Aurizon Network said it will enter into negotiations with access seekers whose application for access rights best meets the following objectives (cl. 7.5.2 of the 2014 DAU):

- (a) ensures Aurizon Network's revenue adequacy
- (b) satisfies community amenity concerns or requirements
- (c) complies with and addresses environment, health or safety related matters, standards or requirements
- (d) provides commercial certainty for Aurizon Network having regard to the length of term for which access rights are sought
- (e) promotes efficient investment in and use of the rail infrastructure having regard to:
 - (i) the duration of the business of the customer
 - (ii) the quality and saleability of the product proposed to be transported
 - (iii) the capital efficiency of rail infrastructure and density of network
 - (iv) the contribution of access rights sought to the long-term demand for access
 - (v) the current and future competitiveness of the relevant supply chain.

Aurizon Network said the capacity allocation criteria still provided access seekers with a clear framework that must be followed for the allocation of capacity, while also allowing it to allocate capacity in accordance with its legitimate commercial interests and being consistent with the objectives of the access regime.

Aurizon Network said that the use of capacity allocation criteria is consistent with the capacity allocation approach used by other major rail network providers such as ARTC in the Hunter Valley and Brookfield Rail in WA.⁵⁰²

11.3.2 Stakeholders' position

The QRC disagreed with Aurizon Network's proposal of using criteria and 'unlimited objectives' by which it may choose to proceed with one access seeker over another. The QRC said that:

- the proposal is unreasonable and unfairly biased in favour of the interests of Aurizon Network
- Aurizon Network should not have such unilateral and complete discretionary control over this decision

⁵⁰¹ Aurizon Network, 2013 DAU, sub. no. 2: 110

⁵⁰² Aurizon Network, 2013 DAU, sub. no. 2: 107-108

- Aurizon Network should be obliged to make an allocation decision based only on transparent, impartial and easily verified data.⁵⁰³

Anglo American said there should be clear and (predominantly) objective criteria for whether an access seeker can truly use capacity requested.⁵⁰⁴

Asciano said as the queuing provisions have been removed from the 2014 DAU, Aurizon Network would have wide discretion over which access seekers it allocates capacity to (based on Aurizon Network's subjective assessment of an access seekers' application). In addition:

It would be difficult under the 2014 DAU approach to capacity allocation to verify that the Aurizon Network assessment of the above factors was carried out in a consistent and non-discriminatory manner as the 2014 DAU does not describe how these assessments should be undertaken nor does it require Aurizon Network to demonstrate how the assessment was conducted across access seekers.⁵⁰⁵

Asciano said there needs to be a clear and defined objective capacity assessment and allocation process that is both transparent and equitable. In the absence of any other objective process, it said the queuing provisions set out in sections 7.3.3 and 7.3.4 of UT3 should be reinstated.⁵⁰⁶

Anglo American considered the entire operation of the capacity allocation criteria to be fundamentally flawed. It said Aurizon Network will never use the allocation criteria, because as mutually exclusive access applications by their very nature cannot all be allocated available capacity, they will trigger an expansion.

Anglo American also said the entire process (detailed under cl. 7.5.2 of the 2014 DAU), should be removed and the queuing provisions, including a first-in-time presumption should be reinserted as was drafted in UT3.⁵⁰⁷

Between them, stakeholders proposed the following factors be deleted from Aurizon Network's capacity allocation criteria in its consideration of priority of access seekers (where there are mutually exclusive access applications):

Stakeholder comments on the capacity allocation criteria proposed by Aurizon Network are set out in the table below.

Table 44 Stakeholder comments on Aurizon Network's capacity allocation criteria

<i>Criteria</i>	<i>Comment</i>
Aurizon Network's revenue adequacy	Recommended deletion as Aurizon Network's revenue is assured under a revenue cap form of regulation.
Provision of commercial certainty for Aurizon Network having regard to the length of term for which access rights are sought	Recommended deletion as this is both uncertain and unnecessary in light of the change in clause 7.5(c)(ii)(E) to reflect that a renewal application will not be disadvantaged because it is for a term of less than 10 years, provided the term sought is equal to the remaining mine life.
The quality and saleability of the product proposed	Recommended deletion as both QRC and Anglo American said it should not be the access provider's role to consider the marketability of coal.
Expected duration of the facility or	It is not appropriate to consider the duration of the facility beyond

⁵⁰³ QRC, 2013 DAU, sub. no.46: 61

⁵⁰⁴ Anglo American, 2014 DAU, sub. no.7: 44

⁵⁰⁵ Asciano, 2014 DAU, sub. no. 22: 26-27

⁵⁰⁶ Asciano, 2014 DAU, sub. no. 22: 27

⁵⁰⁷ Anglo American, 2014 DAU, sub. no. 9: 8

<i>Criteria</i>	<i>Comment</i>
business	the term of the access agreement sought as this may lead to a perverse effect of disadvantaging an access seeker with less resources than another, or disadvantaging an access seeker with a quicker mine development and export program.
Capital efficiency and density of network utilisation	It is not clear how two competing access applications can materially impact on capital effectiveness nor is it clear how density of network utilisation can be utilised to make a determination between two applications.
Contribution to long-term demand for access	Recommended deletion as it is not clear why an access seeker's access application should be required to contribute, or otherwise not overly detract from, the long term demand for access in the CQCN.
Current and future competitiveness of the relevant supply chain	Recommended deletion. Anglo American does not believe that it is appropriate, or indeed possible, for Aurizon Network to accurately predict whether a particular Access Application will or will not promote the current and future competitiveness of the relevant supply chain in preference to another Access Application.

11.3.3 QCA analysis and Draft Decision

Our Draft Decision is to refuse to approve Aurizon Network's proposal that the queue for available capacity be removed and replaced with capacity allocation criteria. The reasons for our refusal are set out below.

Consistent treatment

When the queuing mechanism was initially approved for UT2, we considered a queuing mechanism was required to ensure access seekers would all be treated consistently and not be forced to compete for access to the CQCN. We concluded that if access seekers were forced to compete for access rights, Aurizon Network would have the incentive to constrain capacity to provide a return in excess of efficient costs.

We consider there is still a requirement for consistent treatment of access seekers in the allocation of capacity.

Context of the queue

Aurizon Network has provided a number of reasons why it considers the queue should be removed. Specifically, it said the queue should be removed because the circumstances that might trigger the use of the queue are unlikely to arise during the term of the 2014 DAU—or in any foreseeable timeframe.

We consider our original reasons for requiring use of a queuing mechanism have not changed — there is still a requirement for access seekers to be treated consistently. We consider Aurizon Network's potential discretionary use of the capacity allocation criteria proposed in the 2014 DAU to select access seekers contradicts the intention of ensuring access seekers are treated in a consistent, non-discriminatory manner.

We also consider:

- Aurizon Network has not provided evidence to demonstrate its proposed use of capacity allocation criteria will address the requirement of consistent treatment of access seekers
- Aurizon Network has not provided evidence that use of the capacity allocation criteria will provide a superior capacity allocation outcome to that provided by the queue
- Aurizon Network has also not provided evidence (or examples) that its use of the queue to date has resulted in misallocations of available capacity.

Further, if it is the case that a queue will see little-to-no-use into the foreseeable future it does not make practical sense to move to a new framework where it is not clear that:

- misallocations, or sub-optimal allocations have resulted from use of the queuing mechanism
- the new framework will provide a superior efficient allocation outcome
- Aurizon Network will be able to determine the 'highest valued use' via its proposed allocation criteria.

Retaining the queue

We are aware that stakeholders have had some concerns about the workings of the queuing mechanism in UT2 and UT3.

We note Aurizon Network's concern that the queue incentivises gaming behaviour and encourages 'queue sitting' by access seekers as there are no costs associated with joining a capacity queue and prolonging negotiations. It has, however, not provided evidence of how often this occurs, how many access seekers may do this, or how it determined the genuine nature of the access seeker.

Further, there are a number of existing triggers available to Aurizon Network to re-order the queue⁵⁰⁸—including evaluation criteria for Aurizon Network to determine if an access seeker is genuine:

- whether the access seeker has secured, or is likely to secure rights required to leave the network to unload at its destination
- whether the access seeker has secured a rail haulage agreement
- the speed and timeliness of the access seeker in negotiations.

We would be interested in practical evidence as to why these criteria are inadequate for Aurizon Network to determine if there are non-genuine access seekers in the queue.

We would also be interested to hear from stakeholders what, if any, other improvements could be made to the functioning of the queuing mechanism.

Overall, our decision is to refuse to approve Aurizon Network's proposed capacity allocation mechanism and maintain the queue. We are of the view that this aligns with the legitimate business interests of Aurizon Network (s. 138(2)(b)), who will continue to earn a fair return on its investments irrespective of how available capacity is allocated. We are not convinced Aurizon Network's proposal is in the interest of access seekers as it reduces transparency (s. 138(2)(e)).

It is not evident that the proposed capacity allocation criteria would result in a superior capacity allocation compared with the queue, or would be demonstrably better than the queue in meeting the object of the third-party access regime in the QCA Act (s. 69E).

⁵⁰⁸ See Appendix A.

Draft Decision

11.1 Our Draft Decision is to refuse to approve Aurizon Network's proposed capacity allocation criteria. Instead, we would approve queuing provisions based on those from UT3 being reinstated in the 2014 DAU.

Capacity registers

In line with the removal of the queue, the 2014 DAU proposes to remove both the capacity notification register and the committed capacity register.

These registers were initially developed to assist Aurizon Network to identify and coordinate the reallocation of capacity to interested parties. This included a requirement that Aurizon Network contact interested parties when capacity became available (due to relinquishments or resumptions).

Capacity notification register

In UT3, the capacity notification register is maintained by Aurizon Network in the circumstance where a request for access is received for access rights that cannot be provided in the absence of an expansion. When capacity becomes available, Aurizon Network is to notify all parties on the register and ask them to submit an access application for queuing purposes.

We consider the information that is intended to be captured by the register (identification of capacity that can only be provided via an expansion) would be valuable, not only to Aurizon Network for its planning purposes, but also to access seekers who may be looking to participate in a future expansion. However, we note the usefulness of such a register could vary depending on the accuracy of information contained in it and the level of transparency of that information.

We are interested to hear from stakeholders whether the capacity notification register serves a practical purpose in its current form. If stakeholders consider the register should be modified, we would also appreciate comments and suggestions.

Committed capacity register

Under UT3, with respect to the committed capacity register, an access holder with access rights under an access agreement will automatically be placed on the register. We note Aurizon Network said that it would address this type of register—with access holders indicating their intention to transfer their rights—through the capacity trading mechanism.⁵⁰⁹ Until such a time, we consider the committed capacity register should be retained.

We would also welcome stakeholder comments respecting the form and function of the registers. Specifically, we would be interested in the following:

- Is the register used and useful in supporting allocation of available capacity?
- Could the register be improved?
- Should the register be removed or replaced?

⁵⁰⁹ Aurizon Network, 2014 DAU, sub. no. 4: 172

Draft Decision

11.2 Our Draft Decision is to refuse to approve Aurizon Network's proposed removal of the capacity notification register and the committed capacity register. We would approve the provisions relating to the capacity registers from UT3 being reinstated in the 2014 DAU.

11.4 Provisions moved to the standard access agreements

Aurizon Network's 2014 DAU has proposed to move a number of provisions for the management of available capacity from the access undertaking into the Standard Access Agreements (SAAs).

Aurizon Network noted that the primary role of the access undertaking is to facilitate negotiation with access seekers, but once an access agreement has been negotiated the agreement should govern the relationship between it and an access holder. Aurizon Network concluded it is unnecessary to retain provisions in the access undertaking that are also addressed in the SAAs.

Given this, Aurizon Network has proposed the following provisions be removed from the access undertaking:

- capacity resumptions
- capacity relinquishments (and associated fees)
- the parts of capacity transfer which are reflected in the SAAs.⁵¹⁰

A discussion of these provisions, and our Draft Decision to include these provisions in both the access undertaking and the SAAs, are in Chapter 8 on SAAs.

11.4.1 QCA analysis and Draft Decision

We have proposed to move the provisions relating to force majeure from the SAAs into undertaking.

The force majeure clause in its 2014 DAU SAAs provides for Aurizon Network to suspend its obligations to provide a service, if it is prevented from doing so because of a force majeure event.⁵¹¹

We consider the following with respect to the force majeure provisions:

- If a force majeure event occurs and Aurizon Network is prevented from meeting its obligations to provide a train service, it is likely this will impact more than one access holder at any one time. All affected access holders should be treated in a non-discriminatory manner. Given this, we have proposed that access holders will have train services reduced on a proportional basis under a force majeure event.
- A force majeure event is analogous to what we consider to be a permitted short term resumption of capacity since under a force majeure event, Aurizon Network's inability to provide train services will impact on the availability of capacity. We consider conditions

⁵¹⁰ Aurizon Network, 2013 DAU, sub. no. 2: 99-100

⁵¹¹ Force Majeure Event defined as any cause event or circumstance, or combination of causes, events or circumstances, which: (a) is beyond the reasonable control of the affected party, and (b) by the exercise of due diligence the affected party was not reasonably able to prevent or is not able to overcome.

respecting resumptions should be transparent (and be applied in a non-discriminatory manner).

It is our view that moving the force majeure provisions into the undertaking will provide transparency and facilitate non-discriminatory treatment of all access seekers and holders (ss. 138(2)(e) and (h)). This balances against Aurizon Network's legitimate business interests to suspend its obligation to provide service should force majeure events prevent it from doing so (s.138(2)(b)).

Draft Decision

11.3 It is our Draft Decision to refuse to approve Aurizon Network's proposed treatment of force majeure as drafted in the Standard Access Agreements. We would approve moving force majeure provisions in the access undertaking as per our proposed drafting.

11.5 Renewals

Under UT3, an access holder may submit an access application to Aurizon Network to renew its access rights. The application must be for access rights:

- of the same amount as those under their existing access agreement (no higher)
- for the same mine, or a replacement mine
- for a term of at least 10 years, or the remaining life of the same mine.

A renewal will not apply where the access rights have been transferred.

A renewal application will initially be placed ahead of all other access applications in the queue, other than another renewal application. A renewal application can be pushed down the queue should there be conditional access holders in the queue as well.⁵¹²

11.5.1 Aurizon Network proposal

Aurizon Network said the position that an expiring user should have a first option to negotiate for the capacity in its existing access agreement has been a longstanding tenet of its undertaking. It said the removal of the queuing mechanism necessitated a change to how it uses this principle.

Aurizon Network said that while a user does not have a guaranteed ability to renew an access agreement under any circumstances, it does have the right to be the first party to negotiate for access to that capacity, provided the access seeker continues to meet the requirements of the access undertaking, including that the access seeker is reasonably likely to use the capacity.⁵¹³

It proposed that the first option to negotiate for renewal rights will be preserved if:

- the renewing access holder does not attempt to renew earlier than three years prior to expiry
- an access agreement is executed at least 12 months prior to expiry

⁵¹² 2010 AU, Clause 7.3.4

⁵¹³ Aurizon Network, 2013 DAU, sub. no. 2: 105-6

- the term of the agreement is for a minimum of 10 years or the remaining mine life (whichever is shorter).⁵¹⁴

Aurizon Network said a renewing access seeker must complete and submit an access application for access rights it is seeking to renew. The negotiation of those rights will be done in accordance with Part 4 of its 2014 DAU. Nothing in the renewals clause (cl. 7.3 of the 2014 DAU) obliges Aurizon Network to execute an access agreement for renewal, or enter into an access agreement for renewal on the same terms of the existing agreement.⁵¹⁵

11.5.2 Stakeholders' position

The following table summarises stakeholder comments on renewals and includes Aurizon Network's reply to stakeholder comments on a number of the matters discussed.⁵¹⁶

Table 45 Stakeholder comments on renewals

<i>Matter</i>	<i>Comment</i>
Priority	<ul style="list-style-type: none"> • The QRC proposed amended drafting which allows renewing access seekers a priority right to renew its access agreement. It said for clarity, that means that a renewing access seeker submitting a valid renewal notice on its existing access, will have a right to receive that access without resubmitting an access application or joining a queue.
Renegotiation	<p>The QRC and Anglo American said:</p> <ul style="list-style-type: none"> • a renewing customer should not be required to submit a new access application, except where the renewal is for lower access rights than contracted • there appears to be no benefit in making a renewal access seeker provide an access application • the information required by Aurizon Network should not require a full access application • Aurizon Network can recommence negotiations on substantially different terms⁵¹⁷ <p>Aurizon Network's response:</p> <ul style="list-style-type: none"> • an access application ensures that sufficient information is provided to it, so it can negotiate an access application for a renewal • a renewal access application balances the requirement for current information whilst providing greater certainty that access rights are available for the life of the mine • it is developing a 'short form' access application for renewals (including amendment to schedule B to list required information to streamline the process).
Requirement to negotiate promptly	<ul style="list-style-type: none"> • a requirement should be placed on Aurizon Network to negotiate with a renewing access seeker promptly after a valid renewal notice is provided • a renewing customer should not be at risk of losing its priority due to a failure to execute an access agreement at least 12 months prior to expiry of the access rights where that failure is due to an act, omission or delay by Aurizon Network
Replacement mine	<ul style="list-style-type: none"> • the ability for a renewal right to be used in respect of a renewal mine should be reinstated, as an access holder whose mine reserves are declining is likely to have a new mine in the same area, which may be part of the same coal seam

⁵¹⁴ Aurizon Network, 2013 DAU, sub. no. 2: 109-10

⁵¹⁵ Aurizon Network, 2014 DAU, sub. no.4: 168-170

⁵¹⁶ QRC, 2013 DAU, sub. no. 46: 58-60; QRC, 2013 DAU, sub. no. 54: 4; Anglo American, 2014 DAU, sub. no. 78: 16, 27; Aurizon Network, 2014 DAU, sub. no. 4: 16869, 294; Aurizon Network, 2013 DAU, sub. no. 77: 84; Anglo American, 2014 DAU, sub. no. 7: 44-5

⁵¹⁷ Anglo American said this result undermines the regulatory certainty for access holders who require long-term certainty and security of access rights for the life of the mine (as the basis for investment, development and financing decisions and approvals). It stressed that large mining companies make major investments considering the entire life of well up to 30+ year mine development—well in excess of the standard ten year term of the access agreements. As such, miners depend on the continuing commitment of access.

<i>Matter</i>	<i>Comment</i>
	<p>Aurizon Network's response:</p> <ul style="list-style-type: none"> Aurizon Network said it would reinstate the replacement mine concept, but would refine the definition to reflect the replacement mine must utilise the same capacity as the existing mine (same branch line and main line). It proposed inclusion of a new definition of 'track segment' to provide clarity over which sections of the infrastructure could be designated segments for the purpose of being a replacement mine in an access rights renewal. Aurizon Network intends to provide a map of locations qualifying as replacement mines. <p>Stakeholder reply:</p> <ul style="list-style-type: none"> stakeholders commented that not enough information was given to determine whether the concept of track segments is viable and whether there is enough control over the delineation of track segments to ensure that Aurizon Network's redraft of the old replacement mine concept will operate in a similar fashion

11.5.3 QCA Analysis and Draft Decision

Priority of renewal applications

As discussed previously in this chapter, our Draft Decision is that the capacity queue from UT3 be retained.

We also consider the principle that priority should be given to renewal access applications (via the queue) should be retained from UT3. For the avoidance of doubt, we are of the view that if an access application is a renewal application, it should be placed ahead of all other access applications in the queue (that are not other renewal applications).

We consider this meets the interests of access holders (s. 138(2)(h) of the QCA Act) as placing priority on renewals in the queue will provide a greater degree of certainty and security of access rights for the life of a mine (or other type of long term asset). Certainty and security of access rights for the life of a mining project provides mining investors with the confidence that access to transportation is available, even on renewal of the access agreement, on similar terms and conditions.

We also consider provision of this contractual certainty:

- promotes efficient investment in mining, thereby promoting upstream competition (s. 138(2)(a) of the QCA Act)
- is consistent with Aurizon Network's legitimate business interests (s. 138(2)(b) of the QCA Act).

Draft Decision

11.4 Our Draft Decision is to refuse to approve Aurizon Network's proposed amendments to the renewal provisions. We would approve the provisions giving renewal applications priority in the queue from UT3 being re-inserted in the 2014 DAU.

Renegotiation

Anglo American said a renewing access seeker should not be required to submit a new access application; rather, a renewal should be treated as an extension of the current access agreement. The QRC said there should be no requirement for a renewing access seeker to submit a new access application, except where renewal is for capacity below the level currently contracted.

While we agree with QRC and Anglo American that there appears to be little benefit in submitting a new access application for negotiation of existing access rights, we consider there is merit in revisiting and aligning certain aspects of the access agreements to the access undertaking in force when those agreements are up for renewal. For instance, we consider a renewed access agreement should:

- align with the undertaking in force at the time of the renewal (access agreements are not to be 'rolled over' or extended)
- capture any changes from the access holder's operations compared with the existing access agreement.

We agree Aurizon Network will require information on the future operations of the access holder, but consider that a renewal of an access agreement should not be subject to the same submission procedure as a new access seeker, unless the access rights or operation vary from the existing provisions. Rather, we consider that Aurizon Network could be provided with the information it requires (as proposed in schedule B of its 2014 DAU) via an update of the relevant schedules of the undertaking instead of entering into a negotiation of a new access agreement.

We consider this process would be in the interest of access seekers⁵¹⁸ (s. 138(2)(e) of the QCA Act) as it allows for a streamlined renewal of an access agreement under circumstances where operations and access rights volumes are fundamentally the same—providing the access holder with certainty of contracting. We also consider this process allows Aurizon Network and the access holder to discuss operational considerations should there be a need. This is consistent with Aurizon Network's legitimate business interests (s. 138(2)(b) of the QCA Act).

We propose reinstatement of Aurizon Network's UT3 renewal provisions which are:

- The access holder will give notice to Aurizon Network not less than twelve months prior to the termination date that it is seeking renewal of its access agreement
- Aurizon Network will notify an access holder no more than three years, and no less than two years prior to the expiration of an access right
- An access holder will submit a 'short form' access application to Aurizon Network within 60 days of receiving a notice from Aurizon Network
- Aurizon Network to consult in good faith to negotiate an extension or renewal of the term.

Draft Decision

11.5 Our Draft Decision is to refuse to approve Aurizon Network's proposed provisions respecting treatment of renewal applications. Instead, we would approve the 2014 DAU being amended to reinstate the provisions from UT3.

Replacement mine concept

Aurizon Network has sought to address requests from stakeholders to reinstate the replacement mine concept in the 2014 DAU. While the definition of replacement mine from UT3 has not been applied, we consider the intent of Aurizon Network's proposed amendment achieves the same result that an access holder may renew an access agreement with substantially the same terms, such as:

⁵¹⁸ An access seeker is defined as, for a service, a person who wants access, or increased access to the service.

- the origin or destination for the access rights are in a similar geographic location
- the renewed access rights require the same use of mainline paths.

However, we agree with Anglo American, that further information is required before we can make a decision to approve the proposal—such as the proposed map of track segments, to determine whether the concept of track segments is a viable option.

We consider this will provide a greater degree of certainty and security of access rights for the life the mining investment—whether that is the original mine, or a replacement mine. We consider this aligns with section 138(2)(e) of the QCA Act as it is in the interest of access seekers.⁵¹⁹

We also consider this meets with Aurizon Network's legitimate business interests (s. 138(2)(b)) as it can be assured of long-term demand for the service in instances where an agreement can be renewed with a new origin with substantially the same characteristics.

Draft Decision

11.6 Our Draft Decision is to refuse to approve Aurizon Network's proposed amendment to the replacement mine concept. Instead, we would approve provisions from UT3 being reinstated until such time as more supporting information is provided.

11.6 Transfers and relinquishment

Aurizon Network's 2014 DAU—which reflects the framework in UT3—is built upon the concept that there are two forms of capacity transfer:

- the surrender or relinquishment of access rights to Aurizon Network
- a transfer of access rights from an access holder to an access seeker.

The proposal is also built on the principle that a transfer or a relinquishment of access rights will incur a fee.

Table 46 Transfer and Relinquishment provision in UT3

<i>Undertaking provision</i>	<i>Detail</i>
Transfers and relinquishments	Under UT3 (cl. 7.3.6), unless otherwise specified in an access holder's access agreement, an access holder may relinquish or transfer all or part of its access rights.
Customer initiated transfers	Where there is a customer of an access holder seeking to transfer some or all of its access rights to another access seeker (above rail operator), UT3 provides that the customer may initiate a transfer — a 'customer initiated transfer'.
Transfer and relinquishment fees	In Aurizon Network's UT2, the transfer fee and the relinquishment fees were separate fees. For UT3, Aurizon Network combined the transfer and relinquishment processes into one. For a short term transfer, no fees are payable if the transfer is for less than two years.

11.6.1 Aurizon Network proposal

The following table summarises Aurizon Network's 2014 DAU proposed amendments to transfer and relinquishments.

⁵¹⁹ An access seeker is defined as, for a service, a person who wants access, or increased access to the service.

Table 47 Aurizon Network's proposal for transfers and relinquishments

<i>Undertaking provision</i>	<i>Aurizon Network's proposal</i>
Transfers	Streamline the provisions to amend the access agreement to allow for the transfer of capacity (and moved much of the detail to the standard access agreements). Aurizon Network said that a transfer of access rights relates more to the relationship between itself and an access holder, than to the negotiation of access. ⁵²⁰
Short-term transfers	Reduce the timeframe for a short term capacity transfer from two years to twelve months. Aurizon Network considered this to be a more appropriate timeframe for a short term transfer. The practical impact being there will be zero relinquishment fees for capacity transfers of less than twelve months in duration. ⁵²¹
Customer initiated transfers	Move details of customer initiated capacity transfers to the SAA. It said that it proposed to streamline the provisions associated with amending access agreements to transfer capacity and as such, moved much of the detail to the standard access agreement. ⁵²²
Ancillary access rights	Ancillary access rights have been designed to facilitate transfers occurring where the transfer is for an origin further out from the existing origin. The additional corridor is deemed to be the ancillary access right. Where an access holder requests to transfer access rights (which require ancillary access rights to enable the transfer to take place) the access seeker will gain priority over those ancillary access rights, provided there are no other access seekers Aurizon Network is negotiating with needing the same access rights. ⁵²³
Transfer and relinquishment fees	Aurizon Network may make reasonable assumptions about future events that may impact the amount of the relinquishment/transfer fee, which is based on the present value of take-or-pay charges for the term of the access agreement. ⁵²⁴

11.6.2 Stakeholders' position

Transfers

The QRC noted its concern with a number of Aurizon Network's proposed changes to the transfer provisions in the 2014 DAU and proposed changes—summarised in the table below.⁵²⁵

Table 48 Transfer provisions

<i>Matter</i>	<i>QRC's Comments</i>
Obligation to transfer access rights in certain circumstances	Aurizon Network is no longer obliged to execute an access agreement with a transferee in any circumstances. The QRC suggests: <ul style="list-style-type: none"> • where a transferee demonstrates an ability to fully utilise the access rights and there is available capacity, Aurizon Network be required to facilitate the transfer • Aurizon Network should not be able to consider other access applications in its assessment of a transfer - this allows transferees to have priority over other access seekers (other than for renewals) Anglo American suggests Aurizon Network be required to transfer when the transfer is: <ul style="list-style-type: none"> • for up to the same term • submitted in the same form • for the transferred access rights • where the transferee demonstrates a reasonable likelihood of being able to use the access rights.

⁵²⁰ Aurizon Network, 2013 DAU, sub. no. 2: 113

⁵²¹ Aurizon Network, 2013 DAU, sub. no. 2: 114

⁵²² Aurizon Network, 2013 DAU, sub. no. 2: 113

⁵²³ Aurizon Network, 2013 DAU, sub. no. 2: 370

⁵²⁴ Aurizon Network, 2013 DAU, sub. no. 2: 370

⁵²⁵ QRC, 2013 DAU, sub. no. 46: 601; Anglo American, 2013 DAU, sub. no. 39: 46-7

<i>Matter</i>	<i>QRC's Comments</i>
Transfer of access rights treated the same as a new application	The timeframes imposed for the negotiation of long term transfers of access rights are excessive. The QRC suggests Aurizon Network be required to act expeditiously and complete a transfer in shorter timeframes, especially for short term transfers. As such, it recommended a more efficient and user-friendly transfer arrangement be developed, including: <ul style="list-style-type: none"> • shorter timeframes for transfers • a regime where customers within a geographic cluster have preapproved transfers⁵²⁶
Capacity registers removed	The capacity notification register and the committed capacity registers have been removed as they were associated with the queue. The QRC suggests: <ul style="list-style-type: none"> • there remains a need for a register of access holders indicating they are considering a transfer (and consent to appearing on such a register) • this will assist with effecting a transfer by notifying other interested parties of available capacity.

Relinquishment

Rio Tinto Coal Australia said it was concerned that Aurizon Network's 2014 DAU makes a number of changes that undermine access holders' security over their rights, including changing relinquishment and resumption powers. It said coal producers undertake very substantial investments across their mine, rail and port operations and that it is not appropriate or efficient for one part of the logistics chain (Aurizon Network) to have power to interfere with the security and long term certainty of this investment.⁵²⁷

Transfer and relinquishment fees

Stakeholders⁵²⁸ commented on the following aspects of transfer and relinquishment fees.

Table 49 Summary of stakeholder comments on transfer and relinquishment fees

<i>Matter</i>	<i>Comment</i>
Obligation on Aurizon Network to pursue opportunities to lessen relinquishment fee	It appears the obligation to pursue such opportunities has been removed. ⁵²⁹
Aurizon Network making assumptions about future events in the calculation relinquishment/transfer fees	Aurizon Network should be required to provide written reasons for assumptions made in relation to determining the relinquishment fee, rather than merely notifying the end user of the assumptions made. ⁵³⁰
Imposition of a relinquishment fee may cause train operators to refrain from making productivity improvements	Traditionally, if a rail operator improved the productive capacity of its contracted access rights, it could sell surplus train paths via a transfer. Where there is low demand, the opportunity to transfer reduces and there is more likelihood the surplus train paths created would be relinquished to Aurizon Network— which is subject to a large financial penalty (relinquishment fee). Subsequently, above rail operators will have no incentive to pursue efficiency improvements (where relinquishment fee is greater than any operational savings).

⁵²⁶ QRC, 2013 DAU, sub. no. 46: 10

⁵²⁷ Rio Tinto Coal Australia, 2013 DAU, sub. no. 73: 11

⁵²⁸ Asciano, 2013 DAU, sub no. 43: 90; Aurizon Operations, 2014 DAU, sub. no. 26: 2-3

⁵²⁹ Asciano noted such an obligation was provided in clause 3.3(i) of the 2010 AU Operator Access Agreement Coal.

⁵³⁰ QRC, 2014 DAU, sub. no. 42: Appendix 1: 3

<i>Matter</i>	<i>Comment</i>
	An amendment was proposed to allow Aurizon Network to waive relinquishment fees (indiscriminately) and amend the definition of Total Actual Revenue (to ensure Aurizon Network is not penalised for collecting less revenue than it is entitled to earn). The amendment would allow operators on UT2 and UT3 contracts to undertake efficiency initiatives.

Ancillary access rights

Asciano said the concept of ancillary access rights and how they are used is unclear and said this should be clarified in the 2014 DAU to ensure consistent treatment is applied to both the transferors and transferees of access rights. Further, Asciano considered the only scenario where ancillary access rights may be required is for a transfer that is cross-system.⁵³¹

Customer initiated transfers

Anglo American said clause 7.4 of the 2014 DAU does not envisage a concept similar to the concept of 'customer initiated transfers' in UT3. It said customer initiated transfers enabled a coal producer to seek to transfer its access rights to itself (as an End User) or to another access holder (sometimes another operator). Specifically, customer initiated transfers gave a coal producer the right to transfer even if the current access holder did not agree to the transfer. Anglo American said it is insufficient for these provisions to be placed in the standard access agreement, particularly where the producer is not the access holder.⁵³²

In response, Aurizon Network said it included transitional provisions in Part 12 of the 2014 DAU to clarify how pre-UT4 access agreements can undertake a customer initiated capacity transfer.⁵³³

11.6.3 QCA analysis and Draft Decision

In light of stakeholders and Aurizon Network's agreed progression towards more flexible and tradable access rights, we consider there are a number of provisions in the 2014 DAU and the SAA's which will require further consideration, specifically:

- What is the difference between a short and a long term transfer? Should there be separate mechanisms for short and long term transfers?
- What provisions should be in place to facilitate a flexible trading mechanism? Are transfer fees cost reflective—when does a transfer impose a cost?
- What is the best method to enact a transfer—via rules in the undertaking, or through access agreements?

As Aurizon Network has submitted a discussion paper to us on its proposed short term transfer mechanism, for this Draft Decision, we do not wish to make decisions about the existing and proposed transfer mechanisms that may hinder development of, or not work in unison with, a workable and credible trading/transfer mechanism.

⁵³¹ Asciano, 2014 DAU, sub. no. 22: 38, 107

⁵³² Anglo American, 2014 DAU, sub. no. 7: 47

⁵³³ Aurizon Network, 2014 DAU, sub. no. 4: 177

Transfers and relinquishments

We note stakeholders have provided extensive comments on the existing transfer process suggesting improvements to:

- provide a positive obligation on Aurizon Network to approve transfers under certain circumstances
- streamline the transfer process, including: shorter timeframes and pre-approvals
- increase the transparency of supply and demand related information
- make a transfer mechanism user friendly.

We consider these proposed amendments reflect stakeholder's desire to move towards a responsive and timely transfer mechanism—or, in our view, a move towards a transfer mechanism. We note QRC said that a short term transfer mechanism should operate in conjunction with the existing transfer provisions, but not replace them.⁵³⁴

However, it is not clear to us there is a logical delineation between what constitutes a long-term transfer and a short-term transfer, which results in a need for separate processes and separate treatments. For instance, for a given set of access rights, we are unable to see a difference between a long term transfer for a period of five years and a short term transfer which rolls-over annually for a period of five years.

Given this, we would like to hear from stakeholders on the issues listed in the table below:

Table 50 Structure of transfers

<i>Issue</i>	<i>Treatment</i>
General treatment of transfers	Should long term and short term transfers be treated under the same process under the undertaking? Should there be separate rules and procedures for: <ul style="list-style-type: none"> • transfer notices • approval/negotiation of, or pre-approval of transfers • capacity assessments • disputes
Duration	If the period of a transfer is a relevant consideration for transfer mechanisms, is 12 months the appropriate duration for a temporary/short term transfer?
Transfer fees	When should a transfer incur a transfer fee? Can any party to the transfer pay the fee?
Tariff treatment	Can the existing tariff structure accommodate the flexibility required to enable transfers of short duration?
Information flow	What information is needed, when and in what form to facilitate transfers? When is a capacity assessment required?
Ancillary Access Rights	Does the concept of ancillary access rights only work with transfers of longer duration? Would ancillary access rights form part of the queuing mechanism?
Approvals	When would Aurizon Network approve a transfer? What aspects of a transfer should require approval? What is an appropriate timeline for Aurizon Network to approve a transfer (long or short if relevant)? Are there impediments restricting Aurizon Network from pre-approving transfers? Under what circumstances should Aurizon Network not approve a transfer?

⁵³⁴ QRC, 2014 DAU, sub. no. 42: 33

We consider that amendments to the existing transfer provisions and the proposed short term transfer mechanism are substantial enough to warrant a separate process of assessment for the 2014 DAU, particularly as stakeholders have not yet had a chance to formally comment on Aurizon Network's short term trading mechanism. Consequently, we have not formed views on many aspects of transfers at this time.

Given this, our Draft Decision is to refuse to approve Aurizon Network's proposed amendments to the transfer mechanism. We would approve drafting relating to transfers from UT3, other than as discussed in the following sections.

We consider this aligns with Aurizon Network's legitimate business interests (s. 138(2)(b) of the QCA Act) and meets with interests of access seekers (s. 138(2)(e) of the QCA Act) as it will provide for consistency in the treatment of transfers until such time as a transfer mechanism is developed and implemented.

We also consider our proposal to revert to UT3 transfer provisions is consistent with section 106 of the QCA Act.⁵³⁵

Draft Decision

11.7 Our Draft Decision is to refuse to approve Aurizon Network's proposed amendments to provisions relating to transfers and relinquishments. Instead, we would approve provisions from UT3 being reinstated until such time as a transfer mechanism has been agreed.

In the following sections, we will discuss minor amendments to the UT3 transfer provisions we consider would have minimal impact on development of a transfer mechanism, including:

- increasing the transparency of transfer and relinquishment fee calculations
- Aurizon Network waiving the relinquishment fee in specific circumstances
- customer initiated transfers.

Transfer and relinquishment fees

As discussed in Chapter 8, we are of the view that all transfer and relinquishment provisions be included in the access undertaking. A primary reason for this view is concern about the potential for inconsistency arising over generations of undertakings in relation to provisions such as relinquishments.

Aurizon Network has drafted provisions relating to transfer and relinquishment fees in the 2014 access agreements. It is our Draft Decision that these provisions be moved back into the undertaking. The exception is the provision that allows Aurizon Network to make assumptions about future events in its calculation of transfer/relinquishment fees.

⁵³⁵ We consider our proposal is consistent with section 106 of the QCA Act as it provides for: i) the user of a declared service under an access agreement may transfer all or part of the user's interest in the agreement; ii) a transfer must be made by written notice given to the access provider; iii) the notice must state the interest being transferred, the name and address of the transferee and the date of the transfer; iv) the date of the transfer stated in the notice must not be earlier than the day the notice is given; and v) even if a user effects a transfer, the user's obligations under the access agreement continue, unless the transferee and other parties to the access agreement agree.

In the place of Aurizon Network's proposed ability to make assumptions in its calculation of transfer and relinquishment fees, we consider a more transparent provision for the calculation would be to require Aurizon Network to provide an access holder with information detailing:

- how it calculated the relinquishment fee, and how that meets with the relevant provisions of the access undertaking
- all assumptions used in the calculation and why those assumptions are reasonable assumptions to make.

We consider these provisions are consistent with the legitimate business interests of Aurizon Network (s. 138(2)(b) of the QCA Act) and will ensure a consistent source for the calculation of relinquishment fees for UT3 and UT4. We also consider it is in the interest of access holders (s. 138(2)(h) of the QCA Act) as it increases transparency of Aurizon Network's calculations and assumptions.

Draft Decision

11.8 Our Draft Decision is to refuse to approve Aurizon Network's proposed amendments to its calculation of transfer and relinquishment fees. We would approve of a process where Aurizon Network provides an access holder with information detailing:

- (a) how it calculated the relinquishment fee, and how that meets with the relevant provisions of the access undertaking**
- (b) all assumptions used in the calculation and why those assumptions are reasonable assumptions to make.**

Deterrent to efficiency improvements

We note Aurizon Operation's concern that relinquishment fees discourage train operators from pursuing efficiency improvements, where the cost of a relinquishment fee outweighs the benefits of any operational savings. We also note that Aurizon Operations said:

- historically, a train operator that did not need any resultant 'freed up' capacity itself would obtain the benefit of its efficiency initiative by selling surplus train paths via a transfer
- relinquishment is treated under the access agreements as akin to 'reneging' on a binding take-or-pay commitment, the effect of which is to transfer cost to the rest of the system through higher reference tariffs.⁵³⁶

Relinquishment fees are designed as an exit fee, to capture the fixed cost of providing access to an access holder. If the access holder 'exits' the network or no longer requires use of a tranche of access rights, the relinquishment fee is paid to ensure the cost of leaving the system is not transferred to other users of the system.

If capacity (that is no longer required) can be transferred to another participant, there is little to no cost imposed on the system as the fixed costs of the capacity will be covered by the new access holder.

We note Aurizon Operations said that if Aurizon Network chooses to waive collection of a relinquishment fee, it would be exposed to the prospect of financial loss through the determination of the revenue cap adjustment amount. For instance, the calculation of Total

⁵³⁶ Aurizon Operations, 2014 DAU, sub. no. 26:2-3

Actual Revenue will assume relinquishment fees have been collected, whether or not they have been. We also note Aurizon Network supports the inclusion of an exception which would allow it to exclude a relinquishment fee from the calculation of the Total Actual Revenue where there has been a reduction in train paths and no net change in the total net tonnes operated under the relevant access agreement.

We consider that where a relinquishment fee is waived, either Aurizon Network absorbs the associated fixed cost (relinquishment fee), or those costs are passed onto access holders. We are not convinced that the fixed cost of providing the service should be waived in order to encourage productivity improvements for train operators.

We note there will naturally be an incentive to pursue efficiency gains for train operators when the benefits outweigh costs.

Overall, we consider:

- any participant considering changes to its operations would examine the benefits of changing its operations versus the costs. This includes weighting the benefits of pursuing efficiency improvements against the cost of making those improvements — which includes potential relinquishment costs
- waiving relinquishment fees appears to be a concern where there is no alternative demand — which means costs would transfer to other access holders.

Against this background we consider Aurizon Operations proposal would have the effect of shifting a portion of costs of making efficiency gains on to the network at a time of low demand. We do not consider that a cost shift from a rail operator to remainder of the network would necessarily promote the efficient use of and investment in significant infrastructure. Rather, we consider the party pursuing the efficiency gains should bear the full cost of making that decision.

Customer initiated transfers

Aurizon Network has included provisions in its 2014 DAU for customer initiated transfers in the transitional provision section for use with pre-UT4 access agreements.

Given our position that all capacity management provisions must be contained within the access undertaking, rather than access agreements, we consider the same principle applies to customer initiated transfers and as such, should be from the transitional provisions to Part 7 of the 2014 DAU.

We consider this will ensure for equal treatment of all end use customers. This means, irrespective of what generation of access agreement an access holder has executed, it may still initiate a transfer (of above rail provider) on the same terms.

We consider this is in the public interest (section 138(2)(d)) as customers of access holders (train operators) will have the ability initiate a transfer of access rights to another above rail provider. We consider retaining these provisions in the undertaking allows customers the ability to change their above rail provider, thereby encouraging competition in the above rail market. We consider this aligns with the object of Part 5 of the QCA Act (section 69E).

Draft Decision

11.9 Our Draft Decision is to refuse to approve Aurizon Network's proposed change to the provisions relating to customer initiated transfers. We would approve provisions relating to customer initiated transfers being reinstated in the 2014 DAU as drafted in Part 7 of UT3.

11.7 Short-term capacity transfer mechanism

11.7.1 Aurizon Network position

After stakeholder submissions were made on its 2013 DAU, Aurizon Network acknowledged a common theme, that of stakeholders' desire for greater flexibility in the management of access rights. It acknowledged the QRC proposal of a process to facilitate short term transfers by enabling customers within a cluster (or a short geographical distance of one another) to seek preapproval of a transfer. Aurizon Network also said that enabling temporary transfers or 'capacity swaps' between access holders could provide a number of benefits, including managing variations in the utilisation of TSEs, meeting demand for surge capacity and mitigating take-or-pay liabilities.⁵³⁷

In response, Aurizon Network decided to develop a capacity trading mechanism to be incorporated in the 2014 DAU and SAAs in consultation with its stakeholders.⁵³⁸

In December 2014, Aurizon Network provided us with a discussion paper outlining a proposed short term mechanism. We published the discussion paper on our website and asked stakeholders to provide comment by 30 January 2015.

⁵³⁷ Aurizon Network, 2013 DAU, sub. no. 77: 28-9

⁵³⁸ Aurizon Network, 2014 DAU, sub. no. 48: 5

Box 4: Aurizon Network's discussion paper on a potential short-term transfer mechanism

Aurizon Network notes the objectives of the transfer mechanism are two-fold:

- (a) provide access holders with additional flexibility to manage demand variability and take-or-pay obligations (in a revenue cap environment) through timely short-term transfers of train service entitlements
- (b) provide for the transfer of access rights to occur at a time as close as possible to the operation of the proposed service—allowing for access holders to manage short-term variability within the supply chain.

The intent is that there will be two transfer processes, long-term transfers (as per the existing access agreement provisions) and short-term transfers.

Aurizon Network says it is committed to developing a short-term transfer mechanism subject to the following principles:

- it will not be exposed to any additional liability or risks as a result of facilitating the short-term transfer mechanism
- no other access holder will be adversely affected by a short-term transfer
- below rail network capacity must be available
- other elements of the supply chain (including operators) are able to accommodate the short-term transfer.

Short-term transfer features

<i>Feature</i>	<i>Proposal</i>
Two types of transfers—with and without additional capacity (requires capacity assessment). All must have a common destination.	<ul style="list-style-type: none"> • additional access rights—could occur if the capacity recipient's location is further from the destination than the capacity holder • no additional access rights—same route used and common destination
Timing of transfer notice	<ul style="list-style-type: none"> • pre-orders for transfers must occur not less than 48 hours prior and not greater than seven days prior to close of train orders • post-scheduling: once the intermediate train plan is issued, further requests can be made if the intermediate train plan shows available paths
Fees	<ul style="list-style-type: none"> • no transfer fees
Frequency of transfers	<ul style="list-style-type: none"> • a maximum of 25 percent of an access holders TSE's for the relevant origin to destination train service in a financial year
Tariff	<ul style="list-style-type: none"> • a transfer will only be approved if access charges based on the same reference tariff
Train service type	<ul style="list-style-type: none"> • a transfer will only be approved if access charges based on the same train service type
Amount limited by load out capability	<ul style="list-style-type: none"> • amount of transfer must not exceed load out capability—as agreed by Aurizon Network and operator of load out facility
Utilisation	<ul style="list-style-type: none"> • Aurizon Network may refuse a transfer if it considers the transferee does not have a genuine ability or intention to use the capacity
Contractual requirements	<ul style="list-style-type: none"> • amendments to the access undertaking and variation of the access agreements

11.7.2 Stakeholders' position

Stakeholders generally agree that increasing the flexibility in the use of access rights is needed to ensure efficiency in usage. The QRC commented that Aurizon Network's proposal would be a

significant step forward and it appreciated Aurizon Network's efforts to introduce this mechanism and to reflect the feedback of stakeholders.⁵³⁹

Table 51 Summary of stakeholder comments on short term capacity trading mechanism

<i>Principle</i>	<i>Comment</i>
Benefits of short-term capacity trading mechanism	<ul style="list-style-type: none"> • increases productivity and railings on the CQCN • reduces the need for reliance on ad hoc path scheduling • promotes overall efficiency of the network (i.e. ensures contracted capacity can be maximised, with low production periods for one industry participant compensating surges by another)⁵⁴⁰ • enables coal producers to develop 'local solutions' that improve contractual alignment and accountability⁵⁴¹ • will promote whole of coal chain coordination⁵⁴²
Structure	<ul style="list-style-type: none"> • could be modelled on the approach in the ARTC Access Holder Agreement⁵⁴³ • when approving a short-term trading mechanism, the QCA must ensure there is flexibility and no superficial restrictions that may prevent maximum utilisation of existing rail infrastructure⁵⁴⁴ • to be effective, swapping/trading must be available to all access holders/customers under their existing access agreements⁵⁴⁵
Implementation	<ul style="list-style-type: none"> • transparency can only be achieved where the trading mechanism is included in the access undertaking⁵⁴⁶ • the system rules and network management principles should be amended to allow effective and timely transfer and utilisation of access rights, thereby increasing system efficiency and system utilisation⁵⁴⁷

11.7.3 QCA analysis and Draft Decision

Aurizon Network's Discussion Paper on Potential Short Term Transfer Mechanism is out for submissions until 30 January 2015. We have not formed a view for this Draft Decision, but will address the issues raised separately and the results will be included in our Final Decision on the 2014 DAU.

11.8 Retention of contracted capacity

Aurizon Network's 2014 DAU proposed Aurizon Network resume contracted capacity where the access holder either under-utilises its contracted train paths, or where access holders do not hold supply chain rights.

11.8.1 Aurizon Network proposal

Ongoing requirement for ability to use access rights

Aurizon Network said that UT3 did not include an ongoing requirement for access holders to continue to demonstrate their ability to use their access rights—which Aurizon Network

⁵³⁹ QRC, 2014 DAU, sub. no. 42: 33

⁵⁴⁰ Anglo American, 2014 DAU, sub. no. 7: 43

⁵⁴¹ Rio Tinto Coal Australia, 2013 DAU, sub. no. 73: 106

⁵⁴² Rio Tinto Coal Australia, 2013 DAU, sub. no. 90: 2

⁵⁴³ Rio Tinto Coal Australia, 2013 DAU, sub. no. 73: 106

⁵⁴⁴ BMA, 2014 DAU, sub. no. 23: 3

⁵⁴⁵ Rio Tinto Coal Australia, 2013 DAU, sub. no. 90: 2

⁵⁴⁶ Anglo American, 2014 DAU, sub. no. 7: 43

⁵⁴⁷ Asciano, 2014 DAU, sub. no. 22: 25

considered necessary to ensure alignment in capacity entitlements across all elements of the supply chain.

Aurizon Network said this means in the event an access holder loses its port terminal capacity entitlements, the rail network will become underutilised. Further, while an underutilisation of access rights may eventually be captured through the capacity resumption provisions—that already apply in access agreements—this mechanism operates with a substantial lag, resulting in a period of inefficient network utilisation.⁵⁴⁸

To ensure there is alignment across the supply chain, Aurizon Network has proposed an ongoing requirement that access holders demonstrate they have sufficient capacity at an unloading point. If the access holder fails to demonstrate they hold the rights to unload (at the level of using their fully contracted capacity rights), a capacity resumption review could be triggered.

Aurizon Network said this provision acts to:

- ensure users are accountable for their capacity rights
- ensure alignment in capacity entitlements across the supply chain
- prevent access holders from engaging in capacity hoarding
- ensure efficient use of existing capacity.⁵⁴⁹

Resumption

Aurizon Network said that it has a legitimate business interest in protecting itself from being required to negotiate with insolvent access seekers, having an ability to resume unutilised or underutilised capacity, and

...protecting itself from the impacts of unsafe or environmentally damaging practices by access seekers and ensuring that access arrangements are offered in a way that does not disadvantage its related above rail operator in competing with third party operators.⁵⁵⁰

Aurizon Network said under the UT3 SAAs, it could only resume access rights based on past underutilisation over four consecutive quarters. This applies specifically if the access holder does not:

- operate at 85 per cent of its train service entitlement for any four consecutive quarters (cyclic traffic)
- operate a train service on a scheduled train path seven or more times out of any twelve consecutive occasions (for timetabled traffic).⁵⁵¹

Aurizon Network considered administration over four consecutive quarters to be impractical.

Consequently, under the 2014 DAU Standard Operating Access Agreement, Aurizon Network proposed it may resume the access rights for a train service type for which it considers an underutilisation event⁵⁵² has occurred.

⁵⁴⁸ Aurizon Network, 2013 DAU, sub. no. 2: 112

⁵⁴⁹ Aurizon Network, 2013 DAU, sub. no. 2: 112

⁵⁵⁰ Aurizon Network, 2013 DAU, sub. no. 2: 49

⁵⁵¹ Under UT3, if an access holder is not able to demonstrate to Aurizon Network's reasonable satisfaction that it has a sustained requirement for the access rights and Aurizon Network is satisfied it can demonstrate that it has an expectation of: (a) a sustained alternative demand for the access rights in question, and (b) it receiving a commercial benefit sufficiently material to justify the resumption of the access rights in question, then it may proceed with a resumption.

If after an underutilisation event has occurred, and the access holder fails to demonstrate to Aurizon Network that it has the ability and need to use the 'underutilised rights', and Aurizon Network has a reasonable expectation of:

- (a) sustained alternative demand
- (b) receiving a commercial benefit which it considers is sufficiently material to justify the resumption;

then Aurizon Network may resume the access rights.

Aurizon Network noted its resumption proposal promotes efficient use of access rights and allows for Aurizon Network to better manage and allocate capacity on the network.⁵⁵³

11.8.2 Stakeholders' position

The following table summarises stakeholder comments on supply chain rights and resumptions.

Table 52 Stakeholder comments on access rights retention⁵⁵⁴

<i>Matter</i>	<i>Comment</i>
Supply chain rights	<ul style="list-style-type: none"> • resumption, termination or suspension of access rights is an unreasonable outcome if an access holder cannot demonstrate supply chain rights • an access holder is put in an untenable position if other facility providers also impose similar pre-conditions or if supply chain rights are for a lesser term • an access holder should only be required to demonstrate it holds, or has reasonably likelihood of obtaining supply chain rights • appears to be introduced to give Aurizon Network an ability to withdraw or vary rail access rights in the event that it forms the view that the access holder does not continue to hold matching port or other coal chain rights • the need for Aurizon Network to modify system rights would also not be as relevant if access holders had a short term transfer framework which they could use to manage their own contractual alignment - as is done in the Hunter Valley.
Resumption	<ul style="list-style-type: none"> • the resumption provisions in the access holder access agreement are unreasonably harsh. A more balanced approach would include: <ul style="list-style-type: none"> – a narrowed definition of 'underutilisation event' – Aurizon Network should have an obligation of reasonableness in its assessment of an access holder's ability to use of access rights – specifying the periods under which Aurizon Network must utilise resumption rights • it is an access seeker's concern to ensure that it is fully utilising its access rights in order to ensure that it is not subject to: take-or-pay obligations, or resumption of its access rights.

11.8.3 QCA Analysis and Draft Decision

Supply chain rights

Supply chain rights are also discussed in Chapter 8—Access agreements. This section discusses supply chain rights in the context of proposed resumptions.

⁵⁵² An underutilisation event is defined as any cause or event which will, or will likely have a sustained or permanent impact on the operator's (or end user's) ability to utilise its access rights, or ceasing to hold, or have the benefit of, supply chain rights.

⁵⁵³ Aurizon Network, 2013 DAU, sub. no. 2: 368

⁵⁵⁴ QRC, 2013 DAU, sub. no. 46: 468; Rio Tinto Coal Australia, 2013 DAU, sub. no. 73: 105

Aurizon Network has proposed to use the absence of supply chain rights as a trigger to initiate a resumption process if an access holder no longer holds entry or exit rights to the CQCN, or if there is misalignment between rail and port contracts.

As seen in Chapter 8, we proposed to accept supply chain rights in principle, but proposed amendments to ensure it is not too burdensome for access holders to satisfy.

We agree Aurizon Network should have the ability to request an access holder to demonstrate it will continue (or is likely to continue) to have the relevant rights over the term of the agreement. However, we do not consider that a failure of an access holder to demonstrate it holds supply chain rights should trigger an immediate resumption process. We consider an access holder should have the opportunity to demonstrate that it is using reasonable endeavours to rectify as:

- it is in the end user's commercial interest to maintain entry and exit rights on the CQCN
- where the end user's operations have permanently changed, it should have the opportunity to determine the most cost effective measure to modify its contractual obligations, whether that be a permanent transfer or relinquishment of some or all of its access rights.

We consider this balances the legitimate interests of Aurizon Network (s. 138(2)(b) of the QCA Act) as it will be informed of access holders having possession of supply chain rights against the interests of access holders (s. 138(2)(h) of the QCA Act) to have the ability to commercially manage its access rights.

Resumptions

We note the existing resumption provisions are designed to apply only where there is alternate demand. Under UT3, resumption will only occur provided: the access holder has not demonstrated to Aurizon Network's satisfaction that it will be able to use the capacity and Aurizon Network can benefit commercially by reallocating the capacity to an alternate access seeker.

We note that if there is alternative demand, the access holder would likely have the opportunity to enter into a transfer of the non-required access rights. We consider access holders should be given the opportunity to transfer access rights, thereby minimising its transfer/relinquishment fees, before a resumption is triggered by Aurizon Network.

Further, we are not convinced that resumption provisions require strengthening for the following reasons:

- It is not clear that a change in Aurizon Network's resumption provisions will result in an alignment with similar provisions at ports.
- No evidence has been provided that users have contracted for train paths in excess of their capability of use.

On the first point, where Aurizon Network makes the assessment that a resumption of access rights should occur due to underutilisation, it is likely to result in a mis-match between rail and port access rights, unless or until access rights to the port are also modified to reflect underutilisation.

We consider that re-alignment of capacity entitlements across the supply chain, if required, should not be undertaken at the discretion of one service provider (Aurizon Network) on supply chains with multiple users and multiple service providers. We believe this detracts from the

likelihood of reaching effective supply chain coordination and therefore the efficient use of the network infrastructure (s. 69E of the QCA Act).

On the second point, we note that the resumption provisions were originally put into in place, in part, to allow Aurizon Network to prevent the abuse of market power by an access holder holding surplus capacity. At that time, an access holder only referred to a railway operator.⁵⁵⁵ While we understand use of resumption to ensure a level playing field for above rail providers (to facilitate the development of a competitive market), we are unsure end users (miners) have the same motivation to hold un-required train paths. In this respect, we have not been provided with evidence that Aurizon Network has determined it necessary to resume paths from an access holder it considers is holding un-required train paths.

We consider retention of the UT3 resumption provisions will not hinder Aurizon Network's ability to resume unutilised or underutilised capacity. Rather, we consider retention of the UT3 resumption provisions provides a greater balance between access holder's requirement of certainty over contracted access rights and Aurizon Network's legitimate business interests (s. 138(2)(b) of the QCA Act).

Given the discussion above, our Draft Decision is that the existing resumption provisions from UT3 be retained.

Draft Decision

11.10 Our Draft Decision is to refuse to approve Aurizon Network's proposed resumption provisions. We would approve retention of existing 2010 AU resumption provisions.

⁵⁵⁵ Draft Decision 1999, pg.9

12 NETWORK DEVELOPMENT AND EXPANSION PROCESS

Part 8 of the 2014 DAU contains the network development and expansion processes underpinning the CQCN. All coal based CQCN expansions, whether single customer, small scale, network resilience or large multi-user based, are covered under the network development and expansion process.

Aurizon Network has proposed a formal stage gate investment process which outlines its legitimate business requirements, customer information and demand requirements, funding options, funding agreements and dispute resolution processes.

We consider that Aurizon Network's approach to expansions in the 2014 DAU significantly changes the role played by prospective users and third parties in funding expansions. As such, due weight needs to be given to the interests of prospective users and of third parties to ensure they can take on an expansion role within the 2014 DAU.

Our Draft Decision is to not approve Aurizon Network's proposed network development and expansion process. We require amendments to Part 8 to align with section 69E and 138(2) of the QCA Act to:

- *address Aurizon Network's legitimate business interests*
- *implement an efficient investment and expansion process*
- *address access seekers' and financiers' needs within the expansion process*
- *broaden the scope of participation in the expansion process.*

The detailed drafting of Part 8 accompanying this Draft Decision includes the amendments required.

12.1 Introduction

Over recent years there has been significant expansion of the CQCN.

Aurizon Network's RAB is growing. At the beginning of UT3, Aurizon Network's RAB was around \$3.4 billion with contracted capacity of around \$184.7 million tonnes per annum (mtpa). By the end of UT4, Aurizon Network estimates that its RAB will be around \$6.2 billion, with an infrastructure capacity of around 310 mtpa.⁵⁵⁶

This has taken place without there being an explicit, formal process for developing CQCN expansions. Accordingly, transparency and accountability in the process for assessing the costs and benefits of different CQCN expansions have largely been absent.

Stakeholders have raised concerns that the lack of transparency and accountability has allowed Aurizon Network to control information flows, restrict access to expansion studies and dictate the scope and outcome of any studies sought. Stakeholders considered this has resulted in unnecessary delays in progressing investment studies of coal mine and terminal projects. Many stakeholders said, in the absence of regulatory discipline around stage-gating CQCN investment

⁵⁵⁶ QCA, Draft Decision, Aurizon Network 2014 Draft Access Undertaking—Maximum Allowable Revenue, p.158.

projects and user funding arrangements, they were left no choice in UT3 but to accept access conditions⁵⁵⁷ imposed by Aurizon Network to avoid unnecessary delays.⁵⁵⁸

One of the most significant changes in the 2014 DAU is the introduction of a formal expansion stage-gate process. Aurizon Network's 2014 DAU consolidates, into chapter eight, all the information required by an access seeker who requires an expansion in order to gain access to the CQC. Chapter 8 also consolidates the capacity assessment process to provide access holders certainty that Aurizon Network can reliably deliver contracted capacity through the term of their access agreements. It replaces and codifies the Coal Rail Infrastructure Master Plan process in UT3 which comprised the following:

- a network expansion process to initiate and progress expansion projects
- a capital cost pre-approval process for investors funding expansion projects
- capacity reviews
- the NDP.

The network expansion process proposed in the 2014 DAU includes the SUFA under which expansion funding negotiations may run in parallel. The objective of the SUFA is to provide a workable, bankable and credible alternative for financing an expansion compared to Aurizon Network financing the expansion. The SUFA is triggered in circumstances where Aurizon Network decides not to fund an expansion at the regulated rate of return. We released a Draft Decision for the SUFA on 31 October 2014.

The network expansion process has to respond to both a SUFA funded expansion and an Aurizon Network funded expansion. This chapter focuses on these elements, with chapter 10 of our draft decision concentrating on baseline capacity, capacity reviews and the NDP.

12.2 Overview

12.2.1 Aurizon Network proposal

The network expansion framework proposed in Aurizon Network's 2014 DAU was developed in consultation with industry stakeholders, primarily the QRC. Aurizon Network's proposals in the 2013 DAU were the starting point for this consultative process.

The proposed framework represents a standard 'stage-gate' investment process. This type of approach is adopted across many industries globally. In practice, the type of roles the parties involved in the expansion process take on and the risk/liability regime underpinning an expansion depends on how it is applied.

The following diagram broadly summarises the process set out in the 2014 DAU.

⁵⁵⁷ Defined in UT3 to be provisions to mitigate Aurizon Network's exposure to the financial risks associated with providing access to an access seeker (UT3 cl. 6.5.2)

⁵⁵⁸ QRC, 2014 DAU, sub. no. 42: 35, 2013 DAU, sub. no.46: 64–65; Anglo American, 2013 DAU sub. no. 39:10–11, 2014 DAU sub.,. no. 7: 55; Vale, 2014 DAU, sub. no. 24: 1

Figure 8 Stages in the 2014 DAU expansion process set out in clause 8.2–8.9 of the 2014 DAU

Step 1 Demand assessment	Is there sufficient demand to warrant an expansion? <ul style="list-style-type: none"> • Network development plan (medium to long term planning) • Capacity reviews (assessment of existing capacity and need for expansions)
Step 2(a) Concept studies	High level conceptual studies of potential expansion(s) <ul style="list-style-type: none"> • Undertaken and funded by Aurizon Network
Step 2(b) Pre-feasibility studies	Focused studies of specific expansion options <ul style="list-style-type: none"> • Funded by chosen study funders (subject to study funding agreement) or Aurizon Network (by unanimous agreement of study proponents) • Aurizon Network to generally undertake study
Step 2(c) Feasibility studies Funding options	Detailed studies of specific expansion option(s) taken forward <ul style="list-style-type: none"> • Funded by chosen study funders (subject to study funding agreement) • Study funders provided with an provisional capacity allocation (PCA)⁽¹⁾ • Aurizon Network to undertake study and identify on what terms, if any, it would fund
Step 3 Finalise expansion parameters	Complete and execute schedules for expansion <ul style="list-style-type: none"> • Potential re-engineering if required to reduce cost • Have relevant documents, including SUFA if necessary, executed prior to starting construction
Step 4 Construct expansion	Construction <ul style="list-style-type: none"> • Construct relevant infrastructure in accordance with the executed agreements

(1) A PCA represents the expected access rights that a funder may receive, subject to the final capacity outcome of the expansion.

The 2014 DAU proposes that this process:

- only applies to coal-based expansions (cl. 8.2.1(p) of the 2014 DAU)
- is subject to Aurizon Network's legitimate business interests, as defined by Aurizon Network (cl. 8.2.1(f) of the 2014 DAU)

The following sections include a detailed review of the various stages within the proposed process.

The 2014 DAU also:

- removes any voluntary obligation to invest in an expansion project⁵⁵⁹

⁵⁵⁹ In UT3 this was set at up to \$300 million.

- provides for the amendment of the user funding provisions to be consistent with any outcome in the current SUFA process being undertaken in accordance with the UT3.⁵⁶⁰

The key implication is that all expansions, whether single customer, small scale, network resilience based or large multi-user based are covered under the network investment framework within the 2014 DAU. Such an approach brings into focus the role of competitive funding options for all expansion projects and not just the large multi-user expansions seen in recent years.

12.2.2 Stakeholders' position

Commendably, various changes in the 2014 DAU were to incorporate some the QRC's views.⁵⁶¹ Stakeholders' 2014 DAU submissions recommended further changes to the network development and expansion process proposed by Aurizon Network in the 2014 DAU.⁵⁶² In particular:

- the QRC and Anglo American provided detailed mark ups to the 2013 and 2014 DAUs to address their concerns
- the QRC submission included its recommended Study Funding Agreement (SFA).

Asciano advised it had not been consulted on the network expansion framework, nor involved in any discussions between Aurizon Network and coal customers with respect to specific amendments.⁵⁶³ In its submission, Asciano also outlined proposed amendments to the network expansion framework.

Despite extensive consultation, Aurizon Network and the stakeholders have yet to agree on the expansion framework. It is also evident that the incorporation of the SUFA into the framework in an effective manner is likely to require further consideration.

12.2.3 Legislative framework and QCA assessment approach

Legislative framework

Under sections 118 and 119 of the QCA Act, the QCA is permitted to make an access determination in certain circumstances to require Aurizon Network to extend, or permit the extension of, a facility.

Any expansion of the CQCN should meet the object of the QCA Act to promote the economically efficient operation of, use of, and investment in, infrastructure by which services are provided, with the effect of promoting competition in upstream and downstream markets (s.69E of the QCA Act). Section 119 of the QCA Act also provides some guidance that extensions should be technically and economically feasible and consistent with the safe and reliable operation of the facility.

Section 138(2)(b) of the QCA Act requires that we have regard to the legitimate business interests of Aurizon Network, while sections 138(2)(d) and 138(2)(e) require us to have regard

⁵⁶⁰ The SUFA DAAU process is at the draft decision stage and we envisage incorporating the outcomes of this process in our Final Decision on the 2014 DAU.

⁵⁶¹ Aurizon Network has been credited for consulting on the amendments outlined in the 2014 DAU. The QRC believe the amendments deliver a better balancing of the respective commercial interests of Aurizon Network, access holders and access seekers. QRC, 2014 DAU, sub. no.42:34, Anglo American 2014 DAU, sub. no.7: 54–62

⁵⁶² QRC, 2014 DAU, sub. no.42:34, Anglo American 2014 DAU, sub. no.7: 54–62.

⁵⁶³ Asciano, 2014 DAU, sub. no.22: 23

to the public interest and the interests of access seekers. We also consider the interests of existing access holders, train operators, terminal operators and supply chain groups are relevant under section 138(2)(h), to the extent they are not already 'access seekers' under section 138(2)(e). Given the role of the SUFA, we are also of the view that the interests of prospective third-party financiers are relevant under section 138(2)(h) of the QCA Act, particularly as their involvement is critical in promoting efficient investment in the CQCN consistent with the object of Part 5 of the QCA Act as set out in section 69E.

Sections 138(2)(g) and 168A of the QCA Act require that we have regard to certain pricing principles, including that the price of access to the declared services should generate expected revenue for the service that is at least enough to meet the efficient costs of providing access to the service, including a return on investment commensurate with the regulatory and commercial risks involved.

QCA assessment approach

In the 2014 DAU, Aurizon Network has adopted the following approach to expanding the CQCN. It will:

- only fund expansions at the regulated rate of return, if it chooses to
- provide no voluntary funding obligation for small/medium sized expansions
- only adopt the expansion process for coal related projects.

We consider Aurizon Network's stated position fundamentally changes the dynamics of expanding the CQCN. It creates uncertainty as to when, and on what terms, Aurizon Network will invest. It shifts the risks of investment appraisal and project financing for CQCN expansion to access seekers and potential funders of the rail expansion. This changes the roles various parties play in expanding the CQCN.

The following overarching issues and principles have informed our Draft Decision on the proposed expansion process, and are considered in detail below:

- Aurizon Network's legitimate business interests
- efficient investment and the expansion process
- meeting access seekers' and financiers needs within the expansion process
- stakeholders' involvement in the expansion process.

Volume III of our Draft Decision deals specifically with the pricing principles underpinning expansions consistent with Aurizon Network's obligations under sections 138(2)(g) and 168A of the QCA Act.

Aurizon Network's legitimate business interests

Chapter 2 of the Draft Decision considers that the term 'legitimate business interests' of an owner or operator of a facility are those commercial interests that, if catered for, would allow the owner or operator to recover its costs in providing the relevant service and to earn a normal return on its invested capital. This excludes monopoly rents.

In circumstances where the interests of an access provider, access seeker and the public are not aligned, the protection of the 'legitimate business interests' of the access provider need not necessarily be given priority. Section 138(2) of the QCA Act requires us to undertake a balancing exercise having regard to all factors listed in paragraphs (a)–(h) of section 138(2). The legitimate

business interests of the access provider must necessarily be weighed against the other relevant considerations in section 138(2), including those of access seekers.

Considering the QCA Act in the context of the expansion process, we consider Aurizon Network's legitimate business interests are appropriately satisfied through the provision of the regulated rate of return and any relevant incremental operating and maintenance costs when it chooses to invest.^{564 565}

We are also of the view Aurizon Network's approach to expansions in the 2014 DAU significantly affects the role played by prospective users and third parties in funding expansions. As such, due weight has to be given to their needs and requirements in the expansion process when taking on that role.

Efficient investment and the expansion process

We consider there to be four key components with respect to the interaction of the expansion process and obtaining funding:

- understanding the need for an expansion
- characteristics of an efficient expansion
- access to efficient financing
- obligation to fund.

Understanding the need for an expansion

The expansion process can only be effective and efficient if it starts from a clear, transparent and common understanding of the existing capacity of the CQCN. This defines by how much and when systems within the CQCN should be expanded.

We consider such transparency is necessary if the 2014 DAU is to comply with sections 69(E) and 138(2)(a) of the QCA Act which require us to have regard to the efficient operation of, use of and investment in CQCN infrastructure. We are also of the view that a greater understanding of existing capacity is in the interests of all stakeholders and underpins the effective application of the pricing principles in the QCA Act (s 138(2) of the QCA Act).

Characteristics of an efficient expansion

When the practical requirements for an expansion are considered in light of the weighting of the factors in section 138(2) of the QCA Act we have adopted in this Draft Decision, we believe that the criteria that any expansion should fulfil are that it:

- aligns with supply chain investments of customer, rail and terminal facilities
- does not adversely impact on the use of existing rail infrastructure by access holders
- is scoped and constructed to deliver the minimum additional supply chain capacity required
- delivers the lowest cost expansion growth pipeline for supply chain capacity
- does not favour one coal chain over another coal chain in the provision of capacity.

⁵⁶⁴ The precise definition and treatment of operating cost, maintenance expenditure, depreciation and tax is specific to a regulatory regime, as is the approach to calculating revenue requirements. They are not underlying principles and have to be considered relative to the regulatory regime on a case-by-case basis.

⁵⁶⁵ If the investment is undertaken via the SUFA then, subject to the previous footnote, Aurizon Network's legitimate business interests are satisfied through retaining any relevant incremental operating and maintenance costs associated with operating the SUFA infrastructure.

We also specifically note that ensuring expansions of the CQCN account for end-to-end supply chain developments is consistent with section 69E and 138(2)(a) of the QCA Act, as well as the public interest (s 138(2)(d) of the QCA Act). Limiting discriminatory behaviour and ensuring existing access holders are made no worse off from an expansion with respect to contractual rights is a means of appropriately balancing the interests of access seekers and holders (s 138(2)(e) of the QCA Act) with Aurizon Network's legitimate business interests (s 138(2)(b) of the QCA Act).

Access to efficient financing and obligation to fund

Although it is in Aurizon Network's interest to attain as high a return as possible on its investments, we have previously expressed the view that the obtaining of a monopoly rent by Aurizon Network does not appropriately balance the legitimate business interests of Aurizon Network with the other statutory factors. We covered this issue in detail, for example, in our Draft Decision on the MAR released in December 2014.

The SUFA has been developed to provide an alternative financing option if Aurizon Network decides not to fund an expansion at the regulated rate of return. This, theoretically, provides competition in the financing of expansions. However, the SUFA is still untested and may only be useful for larger scale expansion projects.

The current limited applicability of the SUFA, coupled with there being no mandatory funding obligation in Aurizon Network's 2014 DAU, results in competitive tension for the financing of small/medium scale expansions being extremely limited.

We are of the view that Aurizon Network's position on expansions in the 2014 DAU means that it may have an incentive to require commercial terms. In our view, if the application of commercial terms results in returns greater than the regulated rate of return; this reflects more than efficient cost and is not consistent with section 168A(a) of the QCA Act.⁵⁶⁶ How the actual return received is measured in the context of commercial terms will depend on the structure of those terms.

Meeting users' and financiers' needs in the expansion process

We consider the expansion process should be structured to reflect the role that access seekers and prospective third-party financiers may be required to undertake. The process should provide an opportunity for the development of a credible alternative to an Aurizon Network funding proposal to be developed.

This means access seekers and prospective third-party financiers will require the ability to provide their Boards with a comprehensive appraisal of the costs and benefits of any proposed CQCN infrastructure investment. Any investment proposal will be competing with alternatives for scarce capital and will need to be of high quality. In this context, if the expansion process is to be effective it should:

- provide reliable transparent outputs with respect to standard, scope, cost, time to complete and capacity for all projects that go through it
- accurately describe the risks, their allocation and the mitigation strategies.

⁵⁶⁶ QCA, Draft Decision, Aurizon Network 2014 Draft Access Undertaking - Maximum Allowable Revenue, September 2014, pp.26–27

Furthermore, if the SUFA is to be a workable, bankable and credible alternative to Aurizon Network funding, up-front commitments on standard, scope, cost, time to complete and capacity are needed, as well as a capital pre-approval regulatory process.

This places significant demands on the expansion process from an output perspective. An effective expansion has to ensure:

- Aurizon Network is subject to a timeframe within which it must advise whether it is willing to fund at the regulated return
- negotiations undertaken include all stakeholders to ensure full transparency and accountability on the terms, conditions and capacity impacts of the expansion proposals
- standardised contracting frameworks in a form acceptable to funding parties underpin the expansion
- adoption of appropriate processes through the investigation and study process underpin the expansion
- approval and governance processes align with those adopted by access seekers and prospective third-party financiers when taking investment proposals to their Boards
- effective simple and transparent dispute resolution mechanisms are available.

It is also necessary to consider whether, in the absence of a voluntary funding obligation from Aurizon Network, all proposed CQCN expansions should go through the expansion process. It may be that alternative approaches to financing projects can be developed once they are understood or that the SUFA will prove more flexible than anticipated.

We consider an expansion process that accounts for the above will be consistent with the QCA Act. Based on Aurizon Network's position regarding CQCN infrastructure expansion, it will appropriately balance the interests of all stakeholders (ss. 138(2) of the QCA Act). It will also provide a transparent approach to assessing whether alternative financing options can be developed and reduce incentives for monopoly behaviour, thereby complying with the object of the access regime in the QCA Act (s. 69E of the QCA Act).

Ability for participation

We consider that the ability to participate in the expansion process should only be constrained when practically necessary. The greater the level of input into the development of the CQCN, the more potential there is for innovation and improvement. It is therefore important to consider who can participate in the expansion process and who can undertake expansion studies.

With respect to participation in the expansion process we are of the view that coal companies, train operators, terminal operators and other freight commodities all require access to the declared service in order to compete in their own markets. Any expansion or entry into these markets could require the expansion of the CQCN. For this reason, the expansion process should be available to all access holders, access seekers and customers of the declared service regardless of commodity type (rather than just coal expansions on the CQCN as proposed in the 2014 DAU).

In relation to expansion studies, the 2014 DAU only obliges Aurizon Network to undertake rail infrastructure studies for access seekers. We consider that a third party who wishes to investigate new business opportunities in the upstream and downstream markets should not be precluded from funding a study simply because they are not an access seeker.

Our approach to applying this position with respect to our Draft Decision on Part 8 of the 2014 DAU is considered further in Sections 12.3, 12.4, 12.6 and 12.7.

Key issues for consideration

The remainder of this chapter provides the background to our Draft Decision on the following key areas of the 2014 DAU expansion process:

- general principles underpinning the expansion process
- infrastructure investment study processes
- funding an expansion
- expansion capacity commitments and contractual entitlements.

Our Draft Decision for each of these areas is detailed in the marked drafting of Part 8 and associated schedules contained in the 2014 DAU.

12.3 General principles underpinning the expansion process

12.3.1 Aurizon Network proposal

The general expansion⁵⁶⁷ process principles included in the 2014 DAU cover Aurizon Network's obligations with respect to funding, constructing and permitting the construction of any expansion to its network. They are outlined in the table below.

Table 53 Aurizon Network's general expansion process principles

<i>Area</i>	<i>Principle</i>
Aurizon Network's legitimate business interests	
Definition	What constitutes Aurizon Network's specific legitimate business interests is defined to include what Aurizon Network considers relevant. The definition is applicable where an access dispute has been referred to the QCA for arbitration.
Efficient investment and the expansion process: Understanding need and characteristics of efficient expansion	
Demand assessment	Aurizon Network will commence a demand assessment for an expansion of its own volition or where requested by an existing or proposed coal terminal and an access seeker. Aurizon Network may undertake a demand assessment with reference to current access applications and interested customers, its own market intelligence, any expression-of-interest process, liaison and consultation with supply chain groups and analysis from expert advisors. Aurizon Network is obliged to notify all interested customers to participate in the demand assessment.
Efficient investment and the expansion process: access to efficient financing and obligation to fund	
Funding options	Aurizon Network has first option to fund a capacity expansion at the regulatory rate of return and must notify all access seekers of its decision with respect to funding during the study stages of the project. An Aurizon Network funding notification is enforceable by access seekers and the QCA.

⁵⁶⁷ The definition of expansion excludes customer specific branch lines, connecting infrastructure and any capital expenditure which involves asset replacement and renewal expenditure.

Area	Principle
Funding obligations	<p>Aurizon Network must permit the expansion of the network where the project is fully funded consistent with the access undertaking.</p> <p>Aurizon Network must undertake asset replacement works consistent with the terms of its access agreements.</p> <p>Aurizon Network is not obliged to construct private rail infrastructure, except where it is required to connect private rail infrastructure to its network.</p>
Meeting users and financiers needs in the expansion process	
Concept studies	<p>Aurizon Network will undertake and fund all concept studies of an expansion project following completion of a demand assessment process.</p> <p>Access seekers retain the right to fund a concept study so long as it does not provide an unfair advantage to the funding access seeker compared to the non-funding access seekers.</p>
Study funding agreements	<p>A Standard Study Funding Agreement (SFA) is included in the 2014 DAU to allow access seekers and funders to fund the cost of expansion studies.</p> <p>Aurizon Network has a right to negotiate a funding agreement with an access seeker outside the terms of the access undertaking so long as it does not unfairly discriminate against other access seekers seeking capacity from an expansion and does not alter the capacity allocation process contained in the access undertaking.</p>
Capacity allocation	<p>Aurizon Network is permitted to reallocate capacity in specified circumstances. Any disputes over a proposed reallocation of capacity can be referred to the QCA.</p>
Dispute resolution	<p>Key decision points in the expansion process are subject to regulatory oversight via specific dispute resolution provisions.</p>
Scope for participation	
Coal and non-coal traffic	<p>The expansion process does not apply to non-coal traffics requiring an expansion in order to gain access to the network</p> <p>The expansion process only allows for the involvement of rail operators if nominated by a coal customer.</p>

12.3.2 Stakeholders' position

The expansion principles largely reflect Aurizon Network's consultation process with the QRC. Although the QRC considered the 2014 DAU an improvement on the 2013 DAU, it outlined further amendments it considered were needed to clarify and balance the rights and obligations of Aurizon Network and end customers to fund and construct an expansion to the CQCN.

The QRC objected to Aurizon Network's SFA considering it passed all study risks and liabilities to the access seeker and funder, while giving no ability for an access seeker to manage those risks in the study scope, report and capacity deliverables. The QRC submitted its own SFA to replace Aurizon Network's SFA.

Asciano and non-coal traffic stakeholders did not have a similar opportunity to provide input into the drafting of Part 8. Asciano said the proposed Part 8 is overly prescriptive with limited flexibility; requires excessive reliance on the QCA to step in to resolve disputes at every decision point; and fails to take account of non-coal expansions to the CQCN.⁵⁶⁸

The key issues raised by stakeholders regarding the general principles underpinning the expansion process in the 2014 DAU are outlined in the table below.

⁵⁶⁸ QCA meeting with Asciano, QCA Office, 4 September 2014

Table 54 Stakeholder concerns with the general expansion process principles

<i>Issue</i>	<i>Comments</i>
Aurizon Network's legitimate business interests	
Definition	Delete the definition of Aurizon Network's legitimate business interests for the purposes of the expansion process. ⁵⁶⁹
Efficient investment and the expansion process—understanding need and characteristics of efficient expansion	
Demand assessment	It is not clear why Aurizon Network is requesting information which customers and access seekers are under no obligation to provide. ⁵⁷⁰
Non-discrimination	Inclusion of protections to ensure the expansion process does not unduly disadvantage or favour one train operator or end user over another. ⁵⁷¹
Efficient investment and the expansion process—access to efficient financing and obligation to fund	
Funding obligation	Aurizon Network should be subject to a minimum funding obligation for small to medium capital projects. ⁵⁷² Aurizon Network must be liable to fund all asset replacement, ballast replacement and infrastructure expansions to deliver shortfall capacity. ⁵⁷³
Commercial terms	The SUFA is only suited to funding large scale infrastructure expansions. Customers requiring small scale capacity expansions remain subject to Aurizon Network's monopoly power in the provision of access services. The inclusion of Commercial Terms removes any incentive for Aurizon Network to genuinely develop a third party funding framework for all types of expansion projects. ⁵⁷⁴ Inclusion of an access conditions regime similar (but not identical) to the Part 7 provisions in UT3 which were overseen by the QCA. ⁵⁷⁵
Meeting users and financiers needs in the expansion process	
Study funding agreements	The QRC has submitted its own SFA which it considers reflects market practice. ⁵⁷⁶
Aurizon Network's decision to fund	Aurizon Network should be subject to a timeframe within which it must advise it is willing to fund at the regulatory rate to avoid investment hold-up. ⁵⁷⁷ Retention of UT3 provisions requiring Aurizon Network to formally advise the QCA of its decision to fund or not to fund an expansion. ⁵⁷⁸
Scope for participation	
Coal and non-coal traffic	Application of the expansion process and SUFA arrangements to expansions driven by non-coal traffics. ⁵⁷⁹

⁵⁶⁹ Anglo American 2014 DAU Part 8(A), sub. no. 10: 5

⁵⁷⁰ Asciano, 2014 DAU, sub. no. 22: 117–118

⁵⁷¹ Asciano, 2014 DAU, sub. no. 22: 23

⁵⁷² QRC does not specify a required capital value for small expansions, however Anglo American suggest a mandatory obligation for capital projects valued up to \$400 million. Anglo American 2014 DAU, sub. no.7: 55-56; QRC, 2014 DAU, sub. no.42: 35

⁵⁷³ Anglo American 2014 DAU, sub. no.7: 55-56; QRC, 2014 DAU, sub. no.42: 35; Asciano, 2014 DAU, sub. no. 22: 112–121

⁵⁷⁴ QRC, 2014 DAU, sub. no.42: 35–36

⁵⁷⁵ Anglo American 2014 DAU, sub. no.7: 57

⁵⁷⁶ QRC, 2013 DAU, sub. no.46: 66

⁵⁷⁷ Anglo American 2014 DAU Part 8(A), sub. no.10: 2

⁵⁷⁸ Asciano, 2014 DAU, sub. no. 22: 112–113.

⁵⁷⁹ Asciano, 2014 DAU, sub. no. 22: 35–36.

<i>Issue</i>	<i>Comments</i>
Non-discrimination	Allow train operators to fund a study regardless of whether they are nominated by an end customer. ⁵⁸⁰

12.3.3 QCA analysis and Draft Decision

Our Draft Decision is considered in the following sections on:

- Aurizon Network's legitimate business interests
- efficient investment and the expansion process
- meeting users and financiers needs in the expansion process
- scope of participation.

Aurizon Network's legitimate business interests

As noted in our assessment approach, we consider that Aurizon Network's legitimate business interests must be balanced against those of other stakeholders in a manner consistent with section 138(2) of the QCA Act. Bearing this in mind, we consider that Aurizon Network's legitimate business interests would be appropriately satisfied through the provision of the regulated rate of return and any relevant incremental operating and maintenance costs when it chooses to invest.

We consider there is no justification for the 2014 DAU to define further what constitutes Aurizon Network's legitimate business interests, particularly as Aurizon Network has not sought to balance those interests in a manner consistent with section 138(2) of the QCA Act. We are of the view Aurizon Network can make submissions with respect to its view of its legitimate business at the appropriate time in the expansion process and we may consider such submissions on a case-by-case basis.

Draft Decision

12.1 Our Draft Decision is to refuse to approve Aurizon Network's 2014 DAU proposal in respect of its legitimate business interests. Instead, we consider it appropriate for Aurizon Network to amend the 2014 DAU in the manner we have indicated in our proposed draft to remove all references, direct or indirect, to Aurizon Network's legitimate business interests from the expansion process in Part 8 of the 2014 DAU.

Efficient investment and the expansion process

Our Draft Decision is split into the following:

- understand the need and the characteristics of efficient expansion
- access to efficient financing and obligation to fund.

Understanding the needs and characteristics of efficient expansion

We have focused on the demand assessment process and considered:⁵⁸¹

⁵⁸⁰ Asciano, 2014 DAU, sub. no. 22: 117.

- What information is used and who is involved in the demand assessment?
- What is included in a demand assessment report?
- What information is reasonable for Aurizon Network to request?

What information is used and who is involved in the demand assessment?

In our view one of the main characteristics of an efficient expansion of the CQCN is that it aligns with other supply chain investments. We consider this important to ensure that the object of the QCA Act is met, namely to promote economically efficient investment in the CQCN (s. 69E).

We have removed any expressions-of-interest process conducted by Aurizon Network from the list of relevant information that can be used when undertaking a demand assessment. It is not clear to us that this represents an objective evidence source upon which to base a demand assessment. We do not consider the use of such evidence to be in the interests of stakeholders given it could inadvertently lead to investment distortions (ss. 138(2)(b), (d), (e) and (h) of the QCA Act).

What is included in a demand assessment report?

The demand assessment report in the 2014 DAU does not identify access seekers or potential access seekers by name or, as practicable, by origin–destination pairs for train services. Our Draft Decision has strengthened the confidentiality provisions so that information can be released at an aggregated level sufficient to ensure that it cannot be associated with specific companies. We consider this appropriately balances the interests of access seekers and access holders with Aurizon Network's legitimate business interests (ss. 138(2)(b) and (e) of the QCA Act).

We have also included specific provisions to allow the demand assessment report to consider differing capacity options along the geographically dispersed branch lines. Additionally, the demand assessment report has been restricted to ensure that it does not cover the possibility of a demand assessment on the mainline which exceeds the out-loading capacity being sought at a terminal. We consider that these provisions align with the objective of achieving efficient investment and meet the object of the third-party access regime in the QCA Act (s. 69E).

What information is it reasonable for Aurizon Network to request?

The 2014 DAU allows Aurizon Network to request information from access seekers including the status of coal reserves/coal resources, mining tenure and key approvals. Our Draft Decision is that such information is commercially sensitive and not needed to develop a demand assessment for a concept level study. We consider the regulatory regime is sufficiently flexible to deal with any legitimate concerns regarding future asset stranding risks.

Overall, we do not consider it in Aurizon Network's legitimate business interests to have a right to access this information (s. 138(2)(b) of the QCA Act) at the demand assessment stage of the process. We are also of the view that it is not in the interests of access seekers to provide this information (s. 138(2)(e) of the QCA Act).

⁵⁸¹ This presupposes that there is a clear and transparent understanding of the capability of the existing infrastructure. This is considered in more depth in relation to Part 7 of the 2014 DAU which relates to the allocation and management of existing capacity.

Draft Decision

12.2 Our Draft Decision is to refuse to approve Aurizon Network's 2014 DAU proposal in respect of its demand assessment included in the expansion process. Instead, we consider it appropriate for Aurizon Network to amend the 2014 DAU as follows in the manner we have indicated in our proposed draft:

- (a) strengthen the role that information regarding supply chain dynamics plays in the demand assessment process, with Aurizon Network obliged to account for this**
- (b) exclude any expressions of interest process conducted by Aurizon Network from the list of relevant information for undertaking a demand assessment**
- (c) strengthen the confidentiality provisions, so that information is aggregated to a level sufficient to ensure that it cannot be associated with specific companies**
- (d) include specific provisions to allow the demand assessment report to consider differing capacity options in the branch lines**
- (e) restrict the demand assessment report to ensure that it does not cover the possibility of a demand assessment on the mainline exceeding the out-loading capacity being sought at a coal terminal**
- (f) exclude information regarding the status of coal reserves/coal resources, mining tenure and key approvals from the demand assessment process.**

Access to efficient financing and obligation to fund

In coming to our Draft Decision we have considered the following matters:

- Aurizon Network's decision to fund an expansion
- commercial terms.

Aurizon Network's decision to fund an expansion

The 2014 DAU requires Aurizon Network to notify feasibility study funders of its funding decision 40 business days after a feasibility SFA becomes unconditional. Aurizon Network's funding decision can either be to fund at the regulated rate of return or require commercial terms for funding the expansion.

We consider that due weight should be given to the requirements of access seekers and third-party financiers who may be required to fund expansions in order to promote efficient investment in expansions. Given this, and accounting for the practicalities of using the SUFA or an alternative user funding agreement, our Draft Decision is that Aurizon Network must notify access seekers and funders of the likelihood of it funding the project, or otherwise, at the commencement of the pre-feasibility study. Final notification to access seekers as to whether Aurizon Network will fund the project should then occur at the commencement of the feasibility study.

By requiring notification to occur at an early stage, financiers can be engaged and financing issues addressed at an earlier stage in the study process. An early notification will also ensure that access seekers and financiers have sufficient countervailing negotiating power and control to align project timelines to their growth path and associated port terminal developments. We also consider such an approach provides access seekers and potential financiers with the necessary flexibility to decide whether to user fund the project, even where Aurizon Network

subsequently indicates a willingness to fund the project at the regulated rate of return. Ultimately, our proposed requirement will provide certainty to access seekers and customers (e.g. coal producers), that network expansions will occur. Such certainty is vital to underpin complementary investment in new mines or ports and expansions of mines and ports.

We are of the view that our proposed approach achieves an appropriate balance between the interests of access seekers, prospective third-party financiers and the legitimate business interests of Aurizon Network (ss. 138(2)(b), (e) and (h) of the QCA Act).

Commercial terms

Aurizon Network introduced the concept of commercial terms into the expansion process in the 2014 DAU. This has replaced the role of access conditions included in UT3.

Our Draft Decision is to refuse to approve the concept of commercial terms in the 2014 DAU, to reintroduce a form of access conditions and to require that access conditions be accepted by us before they can be included within the regulatory regime.⁵⁸²

We are of the view that the inclusion of commercial terms as defined by Aurizon Network creates a potential distortion in the efficient allocation of resources in investment decisions. Such commercial terms would not be subject to effective accountability and hence would be at risk of inconsistency with the factors set out in section 138(2) of the QCA Act. In such circumstances, we believe we cannot accept the use of commercial terms in their current formulation by Aurizon Network.

However, we consider commercial terms may provide incentives for Aurizon Network to scope capacity increments on criteria other than coal chain efficiency. In particular, they may create or increase an existing bias towards capacity orientated rail infrastructure projects when alternative operational solutions exist and can provide an appropriate and lower cost capacity increase. A concept analogous to commercial terms may therefore have some benefits.

We consider the reintroduction of a form of access conditions appropriately balances the legitimate business interests of Aurizon Network, with the interests of access seekers (ss. 138(2)(b) and (e) of the QCA Act). It does not preclude Aurizon Network or financiers proposing access conditions on a case-by-case basis. Any proposal can be objectively assessed to ascertain whether it is legitimate. We consider this has greater alignment with ensuring efficient investment than 'commercial terms' and is consistent with the object of the third party access regime in the QCA Act (s. 69E).

We are of the view that the SFA included in the 2014 DAU is not suitable. It lacks commercial balance, particularly with regard to risk allocation. It is only fair that the party best positioned to control and manage a risk, bears that risk.

⁵⁸² This is discussed in more detail in relation to pricing principles in Chapter 16 of this Draft Decision.

Draft Decision

12.3 Our Draft Decision is to refuse to approve Aurizon Network's 2014 DAU proposal in respect of efficient financing and its obligation to fund. Instead, we consider it appropriate for Aurizon Network to amend the 2014 DAU as follows in the manner we have indicated in our proposed draft:

- (b) Aurizon Network should notify access seekers and funders of its decision to fund the project, or otherwise, at the regulated rate of return at the commencement of the pre-feasibility study.**
- (a) Aurizon Network should remove the concept of 'commercial terms' from the 2014 DAU, reintroduce a form of access conditions and require that access conditions be approved by the QCA.**

Meeting users' and financiers' needs in the expansion process

Our Draft Decision takes into account the:

- role of concept studies
- risk allocation in study funding agreements
- outputs of study funding agreements
- dispute resolution.

We are of the view that our Draft Decision with respect to dispute resolution, concept studies and the risk allocation and outputs associated with a SFA appropriately balance the interests of access seekers and third-party financiers, with Aurizon Network's legitimate business interests (ss. 138(2)(b), (e) and (h) of the QCA Act).

Role of concept studies

The expansion process in the 2014 DAU requires Aurizon Network to provide relevant access seekers with general details of the concept studies undertaken.

Our Draft Decision is that a concept study report should be provided to all stakeholders and included in the subsequent updated network development plan (which is dealt with in 12.4 and 12.7 of this Draft Decision).

Risk allocation in the study funding agreements

The SFA and associated risk allocation are critical to securing funding for the study and subsequent finance for the project itself. A simplified SFA can balance risk allocation and ensure risks are borne by the party best positioned to control and manage the risk. We have adopted this principle in considering the SFA.

Our Draft Decision is to develop an alternative SFA based on the principles that provide for:

- the lowest overall cost for construction and access
- neither party being required to include cost contingencies for possible losses caused by another party's actions
- a clear assignment of accountabilities between the parties
- alignment of contracting parties to the contractual obligations and entitlements
- open and transparent communication channels in the delivery of contracted access services

- a reduced risk of disputes between the contracting parties.

Outputs of study funding agreements

As discussed in our assessment approach, given the role access seekers and third-party financiers are being required to adopt in the expansion process, the outputs of SFAs must be able to meet their requirements, as well as that of Aurizon Network. In particular, they have to be sufficiently robust to ensure a workable, bankable and credible SUFA and an effective expansion pricing process. They also have to address scope, standard, cost, time-to-complete and capacity. In this context, we are of the view that the 2014 DAU does not fully account for the needs of the SUFA or the expansion pricing process.

Whilst we have accepted Aurizon Network's position that it be given first option to conduct investment studies on the CQCN, our Draft Decision is to strengthen the study scope criteria, timelines and outputs and, if those are not met access seekers and third party funders may exercise their step-in rights.

Furthermore, concerns regarding the provision of confidential information to third-party study proponents can be addressed by requiring study proponents to execute confidentiality agreements with Aurizon Network and relevant stakeholders. Third-party study proponents are also required to comply with the undertaking as if they are Aurizon Network.

Dispute resolution

The expansion process in the 2014 DAU is subject to numerous dispute resolution processes. This is complex and unnecessary and ignores the processes already incorporated in Part 11 of the 2014 DAU. For simplicity, any dispute with respect to Part 8 should be subject to the dispute resolution mechanism in Part 11 of the 2014 DAU.

Draft Decision

12.4 Our Draft Decision is to refuse to approve Aurizon Network's 2014 DAU proposal in respect of addressing users and financiers' needs in the expansion process. Instead, we consider it appropriate for Aurizon Network to amend the 2014 DAU as follows in the manner we have indicated in our proposed draft:

- (a) ensure concept study reports are provided to all stakeholders by being included in the next updated network development plan**
- (b) propose an alternative SFA that reflects a more appropriate allocation of risk as attached to this Draft Decision**
- (c) strengthen the study scope criteria, timelines and outputs requirements**
- (d) provide that step-in rights can be activated by access seekers and third party funders if an executable SFA, study scope criteria, timelines and outputs are not delivered**
- (e) ensure study proponents execute confidentiality agreements with Aurizon Network and relevant stakeholders**
- (f) require third-party study proponents to comply with the undertaking as if they are Aurizon Network**
- (g) require that all processes and decisions made with respect to the expansion process are subject to our Draft Decision regarding the dispute resolution mechanism in Part 11 of the 2014 DAU.**

Scope of participation

The expansion process proposed in Aurizon Network's 2014 DAU only applies to coal-related access. We consider this is unduly restrictive and discriminatory.

While section 250 of the QCA Act defines the declared service in terms of use of a coal system, this is descriptive of the railway infrastructure and is not intended to limit the declared service only to the carriage of coal.

We therefore consider that coal companies, train operators, terminal operators and other freight commodities can all seek to acquire the declared service in order to compete in their own respective markets. Any expansion or entry into these markets could require the expansion of the CQCN. Consequently, Part 8 of the 2014 DAU should apply and be available to:

- all access holders, access seekers and customers of the declared service regardless of commodity type
- new entrants and all supply chain participants in the relevant coal system.

Third parties may want to investigate new business opportunities within upstream and downstream markets. We are of the view that they should not be precluded from funding an Aurizon Network study simply because they are not access seekers as defined in Part 2 of the 2014 DAU. Indeed, we consider any such preclusion to be contrary to the object of the third party access regime in the QCA Act (s. 69E of the QCA Act).

Our Draft Decision is that Aurizon Network must cooperate with any rail expansion study for a third party who is willing to fund such a study.⁵⁸³ We have proposed audit rights to all study funding agreements to ensure that Aurizon Network is not able to double dip in the provision of study manager services in a regulated and non-regulated context.

Draft Decision

12.5 Our Draft Decision is to refuse to approve Aurizon Network’s 2014 DAU proposal in respect of the scope of participation in the expansion process. Instead, we consider it appropriate for Aurizon Network to amend the 2014 DAU as follows in the manner we have indicated in our proposed draft so that Aurizon Network cooperates with any rail expansion study for a third party who is willing to fund such a study.

12.4 Infrastructure investment study process

12.4.1 Aurizon Network proposal

Aurizon Network’s 2014 DAU obliges it to promptly undertake pre-feasibility and feasibility studies where funded by customers. The staged progression of studies from pre-feasibility to feasibility is accompanied by the following conditions:

Table 55 Aurizon Network’s infrastructure investment study process

<i>Area</i>	<i>Conditions</i>
Eligibility to participate in investment study process	<p>Study funders must be access seekers and/or end customers. Aurizon Network and train operators can only fund as an access seeker where they have been specifically nominated by a coal customer (cl. 8.2.4 and 8.6 of the 2014 DAU).</p> <p>Study funders have to meet eligibility criteria to participate in funding the study. Eligibility criteria get more detailed as the project progresses through each stage (cl. 8.4 and 8.5 of the 2014 DAU).</p> <p>The exception is Aurizon Network can fund a pre-feasibility study, provided Aurizon Network and all access seekers and/or coal customers are in agreement (cl. 8.4(a)(iii) of the 2014 DAU). In contrast there is no right for Aurizon Network to fund feasibility studies.</p>
Aurizon Network’s performance of an SFA	<p>If Aurizon Network fails to enter into or complete a SFA the matter can be referred to the QCA to trigger step in rights (cl. 8.7 of the 2014 DAU).</p> <p>The QCA may determine the relevant study be undertaken by another party and Aurizon Network must comply with the determination, subject to confidentiality requirements (cl. 8.7(b)–(d) of the 2014 DAU).</p>
Funding of SFAs (cl. 8.4 and cl. 8.5 of the 2014 DAU)	<p>Study funders cover all study costs in each successive stage of the project.</p> <p>Study funders are reimbursed by Aurizon Network as a study progresses from the pre-feasibility to feasibility to execution stage.</p> <p>This process culminates in the study costs being included within either a SUFA or an Aurizon Network funding package (with or without commercial terms).</p>
Study funder rights (cl. 8.4 and 8.5 of the 2014 DAU)	<p>Study funders from a previous study phase will be given the opportunity to fund the next stage of the expansion project.</p> <p>Study funders can provide input into the terms and conditions of Aurizon Network’s study (e.g. study scope) and will receive a copy of the study report.</p>

⁵⁸³ The regulatory process through which an access seeker can trigger an efficient expansion process, obtain conditional access rights and have the costs included in the RAB for the purposes of developing reference tariffs consistent with the undertaking.

<i>Area</i>	<i>Conditions</i>
	<p>Feasibility SFA funding customers are given a provisional capacity allocation for the capacity created from the expansion. Each customer's allocation will be in direct proportion to their study funding obligation.</p> <p>Aurizon Network retains a right to withdraw and re-allocate the provisional capacity allocation if a customer's circumstances change.</p>
Arbitration and dispute processes (cl. 8.2–8.7 and 8.8 of the 2014 DAU)	The QCA arbitration is available to customers seeking to dispute key Aurizon Network decisions through the study process and/or to trigger customer step in rights.

12.4.2 Stakeholders' position

The QRC was generally supportive of Aurizon Network's staged development of expansion projects and the capacity allocation process.

By contrast, Anglo American raised specific concerns with the stage-gate process and the level of discretion retained by Aurizon Network in allocating capacity to be created from an expansion. Anglo American provided a detailed mark-up of Part 8.

Asciano also raised concerns about the complex and prescriptive drafting of these provisions which creates a cumbersome and time-consuming stage-gate process. Asciano said this outcome was not commercial and would not facilitate the timely completion of expansion studies.

Table 56 Stakeholders' concern with the infrastructure investment study process

<i>Issue</i>	<i>Comments</i>
Information requirements	The information requirements outlined to qualify as a funder of a pre-feasibility study appear cumbersome and onerous. ⁵⁸⁴
Target capacity	<p>Following the completion of a pre-feasibility study, Aurizon Network should be required to notify all relevant access seekers it is proposing to commence a feasibility study and identify the target capacity to be studied.</p> <p>Any disputes on the target capacity and selection of feasibility funders should be resolved via a QCA determination of target capacity.⁵⁸⁵</p>
Identity of a study funder	Studies should be able to be funded by any participant, including train operators, regardless of whether they have a customer nomination. ⁵⁸⁶
Discretion ⁵⁸⁷	<p>Remove Aurizon Network's discretion to pick feasibility funders where target capacity is insufficient to meet all access requests. Aurizon Network must allocate capacity having regard to:</p> <ul style="list-style-type: none"> (a) pre-feasibility funders (b) ability to meet contracted access rights when compressed pro rata across conditional access holders (c) access seekers who meet the access requirements to a greater extent than other access seekers. <p>There should be no ability for Aurizon Network to discriminate between short- and long-haul coal traffics.</p>
Failure to enter into a SFA ⁵⁸⁸	If the QCA finds Aurizon Network has failed to enter into or complete a SFA then the QCA should determine any cost or scope detriment caused by Aurizon

⁵⁸⁴ Asciano 2014 DAU, sub. no.22: 118–119.

⁵⁸⁵ Anglo American 2014 DAU Part 8(A), sub. no.10: 21.

⁵⁸⁶ Asciano, 2014 DAU sub. no. 22: 120.

⁵⁸⁷ Anglo American 2014 DAU Part 8(A), sub. no.10: 21–30

<i>Issue</i>	<i>Comments</i>
	Network's delay. Aurizon Network should then be held liable to fund the SFA to the extent of the QCA ruling on the cost detriment and not be able to seek reimbursement of those costs or roll those costs into the RAB on successful completion of the project.
Study funding costs	Where study funders terminate a study prior to its completion and Aurizon Network elects to complete the study, then any study costs incurred after customer termination must be funded by Aurizon Network. ⁵⁸⁹

12.4.3 QCA's analysis and Draft Decision

Our Draft Decision takes into account:

- Aurizon Network's legitimate business interests
- efficient investment, users and financiers needs, and the scope of participation.

Aurizon Network's legitimate business interests

In the context of the steps in the expansion process, we consider Aurizon Network's approach to its roles as principal consultant for studies and study manager need to appropriately align with the role prospective users and third-party financiers have to play.

With respect to Aurizon Network's role as principal consultant for studies, the stage-gate study process ensures Aurizon Network designs and undertakes all regulatory expansion studies at the cost of access holders, access seekers and other potential funders. We consider Aurizon Network's principal role is reasonable given the need for capacity expansion studies to consider operational and technical issues concerning the CQCN and the delivery of existing contractual entitlements.

In providing the services of a study manager, we are of the view that Aurizon Network's study deliverables must be timely and to the standard required to address the business interests of access seekers, access holders, relevant supply chain participants and prospective third-party financiers. We have amended the study timeframes and deliverables for each study phase (outlined further below) to ensure study outputs are of a commercial standard and provided in a timely manner. If Aurizon Network does not deliver against these outputs then study funders can trigger step-in rights under section 8.7 of the 2014 DAU.

We have made amendments to remove what we consider to be onerous information requirements which Aurizon Network can require from study funders and required Aurizon Network to identify target capacity for each study.

We do not consider information requirements are reasonable and appropriately balance Aurizon Network's legitimate business interests, particularly as the study funders are the parties bearing the costs of the study. Establishing a target capacity is in the interests of all study funders to provide confidence their capacity needs will be addressed in the study process.

We consider our Draft Decision balances the legitimate business interests of Aurizon Network, with the interests of access seekers, access holders, train operators, relevant supply chain participants and prospective third-party financiers (ss. 138(b), (e) and (h) of the QCA Act).

⁵⁸⁸ Anglo American 2014 DAU, Part 8(A), sub. no. 10: 30

⁵⁸⁹ Anglo American 2014 DAU Part 8(A), sub. no. 10: 16.

Overall our Draft Decision is to refuse to accept Aurizon Network's proposals in the 2014 DAU for its role as principal consultant for studies and study manager in the expansion process and to require the following amendments.

Draft Decision

12.6 Our Draft Decision is to refuse to approve Aurizon Network's 2014 DAU proposal in respect of addressing infrastructure investment studies. Instead, we consider it appropriate for Aurizon Network to amend the 2014 DAU as follows in the manner we have indicated in our proposed draft:

- (c) Aurizon Network should manage studies and deliver scope and output within the study scope and timeframes**
- (a) study funders should be able to trigger the study step-in rights if a studies scope or timeframes are not met by Aurizon Network.**

Efficient investment, users' and financiers' needs, and the scope of participation

Our Draft Decision is split into the following:

- supply chain coordination and options assessment
- deliverables and access to efficient financing
- identifying study funders.

Supply chain coordination and options assessment

As noted in Chapter 10 on baseline capacity we consider supply chain coordination critical to meeting the requirements of the object of the third party access regime in the QCA Act and in the public interest (s. 69E and ss. 138(2)(a), (b) and (d) of the QCA Act). This view was reiterated in our approach to assessing the 2014 DAU expansion process which noted that the criteria any expansion should fulfil are that it:

- aligns to supply chain investments in customer, rail and terminal facilities
- does not adversely impact on the use of existing rail infrastructure by access holders
- is scoped and constructed to deliver the lowest cost for additional supply chain capacity
- does not favour one coal chain over another coal chain in the provision of capacity
- delivers the lowest cost expansion growth pipeline for supply chain capacity.

Against this background, our proposed drafting for the 2014 DAU strengthens the requirement for Aurizon Network to cooperate with study funders, relevant supply chain participants and terminal operators to identify the range of supply chain capacity increments available to increase CQCN capacity.

We consider that Aurizon Network can sub-contract elements of the study to relevant supply chain participants to allow a suite of capacity options to be investigated to the scope and standard required for inclusion in a study report. We are of the view that the greater the level of input into the study process the more potential there is for innovation and a challenging of whether existing practices can be improved or changed to increase available capacity in the CQCN (e.g., by allowing additional trains to be scheduled). This assists in ensuring that expansions take place from an efficient baseline.

This process will allow final study reports to rank the rail expansion options and supply chain capacity alternatives in terms of reliability and certainty of delivered supply chain capacity.⁵⁹⁰ This will enable study funders to identify rail and supply chain capacity projects to take through to the next study stage or to take to execution in an informed manner that allows the trade-offs between options to be clearly understood in the decision making process. In adopting this process we are of the view that confidentiality concerns can be accommodated through the use of confidentiality agreements and redacting aspects of the study reports as and if necessary.

In addition to meeting the object of the third-party access regime in the QCA Act and the public interest, we consider this to be in the interests of access holders, access seekers, train operators, relevant supply chain participants and prospective third party financiers and aligns with Aurizon Network's legitimate business interests (ss. 138(a), (b), (d), (e) and (h) and s. 69E of the QCA Act).

Overall, our Draft Decision is to refuse to accept Aurizon Network's 2014 DAU proposals regarding the role of supply chain coordination and the options assessment approach in the expansion process and to require the amendments as set out below.

Draft Decision

12.7 Our Draft Decision is to refuse to approve Aurizon Network's 2014 DAU proposal in respect of the participation of parties in the expansion process. Instead, we consider it appropriate for Aurizon Network to amend the 2014 DAU as follows in the manner we have indicated in our proposed draft so that Aurizon Network:

- (a) cooperate with study funders, relevant supply chain participants and terminal operators to reduce the scope of the rail expansion and attain a lower overall cost of delivery for new capacity increments to the CQCN**
- (b) cooperate with study funders, access seekers, rail operators, access holders, supply chain groups and terminal operators in undertaking each study stage and provide copies of the final report at each stage in the expansion process**
- (c) investigate a number of alternative supply chain capacity enhancements to reduce the scope of the rail expansion in each study process**
- (d) execute confidentiality agreements with all study participants.**

Deliverables and access to efficient financing

We consider that not only do the study reports delivered via the expansion process have to outline the options available; the study outputs must meet an appropriately high quality standard⁵⁹¹ and should be provided in a timely manner. This is necessary to allow access seekers and prospective third-party financiers to take the project to their corporate board as part of their wider business investment stage gate process.

If study reports fail to meet this quality standard, we consider the effectiveness of the expansion process will be severely impaired. We are of the view the timely production of quality study outputs is critical to driving the ability of third parties to source competitive third-party

⁵⁹⁰ This is considered further in the section on capacity commitments and contractual entitlements in this chapter. This covers also our proposed approach to target capacity.

⁵⁹¹ Mining companies and financiers each have internal engineering, financial and commercial standards which an investment project must meet before it can be submitted to its Board for approval.

financing. Without this, we do not consider there is a credible alternative to Aurizon Network's financing proposals for a given expansion.

Given this we consider the expansion process must provide clarity, transparency and precision around study scope and deliverables. We have developed clear, comprehensive and precise definitions of the study scope and deliverables for concept, pre-feasibility and feasibility studies. We consider this will facilitate the timely execution of SFAs and remove the need for a costly dispute process around scope and outputs.

It does not, however, guarantee that Aurizon Network, acting as both principal study consultant and study manager, delivers quality outputs, to the timeframe required across the scope of the study. Where Aurizon Network fails to deliver either an executable SFA or study outputs of the required quality within an agreed time frame, step-in rights can be triggered. If step-in rights are triggered, both parties should make submissions to us and all relevant considerations will be taken into account in these deliberations.

Step-in rights, however, do not provide any assurance that Aurizon Network is undertaking the study at an efficient cost. In this context, we consider allowing study funders to audit study costs will, to some extent, incentivise Aurizon Network to efficiently manage the costs of each study process. In order to ensure these rights can be used effectively and are perceived as credible, we have clarified processes regarding SFA termination and the obligation on Aurizon Network to mitigate damages.

We consider these measures suitably emphasise the criticality of timely, high-quality study outputs to the credibility of the expansion process. We are of the view this is in the interests of access holders, access seekers, train operators, relevant supply chain participants and prospective third party finances, as well as aligning with Aurizon Network's legitimate business interests (ss. 138(2)(b), (e) and (h) of the QCA Act).

Overall, our Draft Decision is to refuse to accept Aurizon Networks 2014 DAU proposals regarding the process for developing study outputs and to require the amendments as set out below.

Draft Decision

12.8 Our Draft Decision is to refuse to approve Aurizon Network's 2014 DAU proposal in respect of study funding arrangements in the expansion process. Instead, we consider it appropriate for Aurizon Network to amend the 2014 DAU as follows in the manner we have indicated in our proposed draft to:

- (a) include a clear, comprehensive and precise definition of study scope and deliverables for concept, pre-feasibility and feasibility studies**
- (b) enable step-in rights to be activated by access holders, access seekers or study funders if Aurizon Network delays execution of a SFA or release of a final report**
 - (i) SFA rights to audit study costs to ensure Aurizon Network efficiently manages the costs of each study process**
 - (ii) SFA rights to include termination clauses with the obligation on Aurizon Network to mitigate damages.**

Identifying study funders

We consider the 2014 DAU must apply objective allocation principles in the identification of study funders to fund a study process. Given study funding leads to priority in subsequent study stages and the allocation of provisional capacity, it is important that information requirements and funding allocation principles are objective, transparent and accountable.

In particular, we consider decisions regarding provisional capacity allocation can have competitive implications between competing mine projects. In such circumstance, we are of the view that Aurizon Network should not be left with discretion to effectively choose between competing mine projects by reference to its own view on the maximisation of the allocation of CQCN capacity. Such unfettered discretion may place individuals in positions where conflicts of interests arise. This may, through circumstance, result in discriminatory actions that can be avoided with a more objective allocation approach.

Given this, we have amended the information requirements and allocation rules with the aim of removing Aurizon Network's discretion in the selection of study funders. We are of the view that our proposed allocation principles are sufficient to determine the eligibility of study funders. In the event that the allocation principles do not resolve study funding eligibility then the matter should be referred to us, with all parties given an opportunity to make a submission on their eligibility rights to fund a study.

We are of the view that an objective set of information requirements and allocation criteria is in the interests of access holders, access seekers, train operators, relevant supply chain participants and aligns with the legitimate business interests of Aurizon Network (ss. 138(2)(b), (d), (e) and (h) of the QCA Act). We also consider a set of objective allocation criteria encourages efficient operation of the CQCN and provides potential upstream and downstream market entrants with greater assurance of equitable treatment. This meets the object of the third-party access regime in the QCA Act (s. 69E and 138(2)(a) of the QCA Act).

Overall, our Draft Decision is to refuse to approve Aurizon Network's 2014 DAU proposals regarding the allocation principles used to identify eligible study funders and to require the amendments as set out below.

Draft Decision

12.9 Our Draft Decision is to refuse to approve Aurizon Network's 2014 DAU proposal in respect of the allocation principles used to identify eligible study funders. Instead, we consider it appropriate for Aurizon Network to amend the 2014 DAU as follows in the manner we have indicated in our proposed draft:

- (a) Aurizon Network to identify eligible SFA funders with reference to objective allocation criteria**
- (b) the QCA dispute mechanism in Part 11 to be available for the querying of the application of allocation rules for determining eligible SFA funders.**

12.5 Funding an expansion and pre-approval

12.5.1 Aurizon Network proposal

Aurizon Network has first right to fund an expansion project at the regulated rate of return. Where Aurizon Network decides not to fund on this basis, or is only willing to do so subject to commercial terms, then access seekers and customers are entitled to fund the cost of an

expansion directly via user funding. If user funding is adopted, funding costs are allocated to each customer in proportion to the capacity sought (cl. 8.2.1(a)-(b), 8.8 of the 2014 DAU).

Under the 2014 DAU, Aurizon Network must notify access seekers and customers that it is willing to fund the expansion project at the regulated rate of return within 40 business days of a SFA becoming unconditional. If such a notice is forthcoming, it imposes an obligation on Aurizon Network to fund the relevant expansion project and is enforceable by the QCA. In the absence of a funding notice, Aurizon Network is taken to require commercial terms or user funding in order to construct or permit the construction of the expansion project.

This process does not preclude Aurizon Network from subsequently offering to fund the project at the regulated rate of return and neither does it prevent an access seeker or customer from exercising its right to fund the project (cl. 8.8(g) of the 2014 DAU).

Funding users are required to provide Aurizon Network with written notice of their intention to fund an expansion project. Upon receipt of this notice Aurizon Network will commence negotiations on a funding agreement, with any disputes being determined through a binding QCA dispute resolution process. A funding agreement must be in the form of the SUFA⁵⁹² unless otherwise agreed by Aurizon Network and funding users (cl. 8.9.1 of the 2014 DAU).

The 2014 DAU provides that failure of Aurizon Network and funding users to negotiate a SUFA within 60 business days triggers a review of the SUFA documents. Aurizon Network will consult with industry stakeholders based on a set of principles developed by Aurizon Network. Following industry consultation, Aurizon Network will submit to the QCA on whether any SUFA amendments are required to improve the workability of the SUFA (cl.8.9.9 of the 2014 DAU).

Aurizon Network and funding users will have access to the regulatory pre-approval of scope process to provide regulatory certainty on the inclusion of the expansion asset in the RAB. To trigger the process, funding users must request Aurizon Network to undertake the pre-approval process and funding users can lodge submissions in support of the application (cl. 8.9.6 and 8.9.7 of the 2014 DAU).

Further, given an expansion may be funded by Aurizon Network and/or access seekers/customers, Aurizon Network is obliged to negotiate with all parties to an expansion on a non-discriminatory basis (cl. 8.2.1 of the 2014 DAU).

12.5.2 Stakeholders' position

The QRC supports the funding provisions in the 2014 DAU pending the inclusion of any outcome from the UT3 SUFA DAAU. Anglo American and Asciano have raised specific issues with discrete elements of the expansion funding provisions.

Table 57 Stakeholders' concerns regarding funding an expansion and pre-approval

<i>Issue</i>	<i>Comments</i>
UT3 SUFA DAAU	The outcome of the UT3 SUFA DAAU should be incorporated, without change, into the 2014 DAU. ⁵⁹³
Discrimination	The definition of funding user needs to include a train operator. The term customer also seems contrary to the term access holder and access seeker. ⁵⁹⁴

⁵⁹² The form and content of the SUFA will be as approved by the QCA through the UT3 DAAU process which is currently underway.

⁵⁹³ QRC, 2014 DAU sub. no.42:44.

⁵⁹⁴ Asciano, 2014 DAU sub. no. 22:120.

<i>Issue</i>	<i>Comments</i>
Negotiating priority	Where Aurizon Network is obliged to fund an expansion project, it should first negotiate with the project's feasibility and pre-feasibility funders before any new access seekers. ⁵⁹⁵
Mandatory funding cap	Where an expansion is not fully funded and is not asset replacement or a shortfall capacity expansion, Aurizon Network should fund the expansion where the gap in funding is less than \$400 million. ⁵⁹⁶

12.5.3 QCA's analysis and Draft Decision

Our Draft Decision is considered in the following sections on:

- Aurizon Network's legitimate business interests
- efficient investment, users' and financiers' needs, and
- the scope of participation.

Aurizon Network's legitimate business interests

Voluntary funding obligation

Aurizon Network has not included a funding obligation in the 2014 DAU. Although stakeholders have expressed concern regarding the lack of a funding obligation, as the QCA Act stands, we consider that there are complications in imposing any obligation upon Aurizon Network. Removal of such complications would require amendment of the QCA Act.

Ultimately it is a decision for the Queensland Parliament to amend the QCA Act if necessary. However, we are of the view that a preferable outcome would be voluntary funding from Aurizon Network. We consider this would be welcomed by stakeholders and would provide a signal of Aurizon Network's commitment to work collaboratively in seeking economic gain for the QCCN coal supply chain.

Draft Decision

12.10 Our Draft Decision is to refuse to approve Aurizon Network's 2014 DAU proposal in respect to commercial terms for funding an expansion. Instead, we consider it appropriate for Aurizon Network to amend the 2014 DAU as follows in the manner we have indicated in our proposed draft so that Aurizon Network makes a voluntary funding commitment.

Efficient investment, users' and financiers' needs, and scope for participation

Our Draft Decision is split into the following:

- application of the expansion process
- application of SUFA
- SUFA and pre-approval
- SUFA and small/medium sized expansions.

⁵⁹⁵ Anglo American 2014 DAU Part 8(A), sub. no. 10: 35.

⁵⁹⁶ Anglo American 2014 DAU Part 8(A), sub. no. 10: 35.

Application of the expansion process

Although Aurizon Network may not necessarily be obliged under the QCA Act to provide a funding commitment, section 118 of the QCA Act requires Aurizon Network to give effect to its obligation to provide sufficient certainty and clarity around how expansions to the network can be implemented.

In our view this requires a robust and accountable investment stage-gate process to underpin all expansions to the CQCN. Unlike Aurizon Network's 2014 DAU proposals, this would include all Aurizon Network funded expansions. As Aurizon Network's access holders ultimately cover the cost of all CQCN expansions via access charges, it is not unreasonable for them to be assured that all expansions funded by Aurizon Network are subjected to the same investment stage-gate process as expansions funded by user funders.

We consider this appropriately balances the legitimate business interests of Aurizon Network with interests of access holders, access seekers, train operators and relevant supply chain participants (ss. 138(2)(b), (e) and (h) of the QCA Act).

Overall our Draft Decision is to refuse to approve Aurizon Network's proposals in the 2014 DAU regarding the application of the expansion process and to require the following amendments.

Draft Decision

12.11 Our Draft Decision is to refuse to approve Aurizon Network's 2014 DAU proposal in respect of the application of the expansion process. Instead, we consider it appropriate for Aurizon Network to amend the 2014 DAU as follows in the manner we have indicated in our proposed draft:

- (a) Aurizon Network should be required to extend or permit the extension of the CQCN**
- (b) all Aurizon Network funded expansion projects should be required to go through the same investment stage-gate process as user funded expansion projects.**

Application of the SUFA

A workable SUFA arrangement provides an alternative financing option to Aurizon Network's financing proposal for any applicable expansion. A credible choice between financing packages means the pricing of expansions provides less opportunity for monopoly behaviour. This assists in providing access to the CQCN on terms which reflect efficient cost, as envisaged by section 168(A)(a) of the QCA Act and section 69E of the QCA Act.

Against this background, we consider that the SUFA documents being developed as part of the 2013 SUFA DAAU process provide a 'stand-alone' suite of legal documents that can be included in the 2014 DAU.⁵⁹⁷ This in itself, however, does not create a credible, workable and bankable SUFA framework. This requires, as a minimum, the expansion process to operate effectively, providing timely study outputs of the quality needed to attract third party financing. This has already been discussed in this chapter.

⁵⁹⁷ For the avoidance of doubt the SUFA framework does not prohibit the participation of train operators as a funder.

The effectiveness, or otherwise, of the SUFA can only be realised when it is practically tested. It is possible the actual use of the SUFA framework and a functioning expansion process will bring to light areas that require further amendments to the SUFA framework and process.

Given this, we have included provisions to ensure Aurizon Network and stakeholders can bring the SUFA structure back to us for further review and refinement.

We consider this appropriately balances the interests of access holders, access seekers, train operators and prospective third-party financiers with the legitimate business interests of Aurizon Network (ss. 138(2)(b), (e) and (h) of the QCA Act).

Overall our Draft Decision is to refuse to accept Aurizon Network's proposals in the 2014 DAU regarding the application of the SUFA framework and to require the amendments as set out below.

Draft Decision

12.12 Our Draft Decision is to refuse to approve Aurizon Network's 2014 DAU proposal in respect of the application of the SUFA framework. Instead, we consider it appropriate for Aurizon Network to amend the 2014 DAU as follows in the manner we have indicated in our proposed draft:

- (a) replace the suite of SUFA agreements included in the 2014 DAU by those applicable to the 2013 SUFA DAAU process**
- (b) include a QCA review process to ensure the SUFA structure can be amended over time should specific concerns be raised with respect to its credibility, workability and bankability.**

SUFA and regulatory pre-approval

In addition to a credible, workable and bankable SUFA framework and an effective expansion process, prospective funders of a CQCN expansion project require a reasonable degree of certainty regarding the likely range of their capital funding exposure and the regulatory return achievable over the life of the new assets.

We are of the view that Aurizon Network and SUFA funders should have the benefit of accessing the regulatory pre-approval processes contained in Schedule E. Such regulatory pre-approval can only be sought after receipt of the feasibility study report for the proposed expansion (whether a single project for a small increment of capacity or a package of expansion projects generating a large increment of capacity).

We have dealt with this issue in Chapter 14 of this Draft Decision and included the regulatory pre-approval process for SUFA funders within our mark-up to Schedule E of the 2014 DAU. We have therefore removed the regulatory pre-approval process from Part 8 of the 2014 DAU.

SUFA and small/medium sized expansions

The potential transaction costs involved with a SUFA transaction may mean that it can only be cost effective to use for large-scale expansions at least while the SUFA framework is being tested. Given this, SUFAs competitive financing benefits may not be available for small/medium sized expansions and there is no Aurizon Network funding obligation to cover these projects. From this perspective, Aurizon Network appears to have a monopoly position in the financing/pricing of expansion projects of this scale. This presents an opportunity for, and therefore risk of, monopoly behaviour.

In part, we consider the removal of commercial terms from Part 8 of the 2014 DAU will partly alleviate this risk. We do, however, acknowledge that in the absence of a voluntary funding obligation by Aurizon Network, the risk remains. In our view this is a further reason why Aurizon Network providing a genuine voluntary funding obligation is beneficial to the CQCN coal supply chain. It represents a tangible action on Aurizon Network's behalf to circumvent its own monopoly power and thereby signals a willingness to work with the CQCN coal supply chain for its collective economic benefit.

In the absence of a voluntary funding commitment we consider it appropriate for Aurizon Network to develop a range of tax efficient financing arrangements for user and third-party financing of small/medium-sized expansions. Further, we will monitor financing developments with regard to small/medium rail expansions.

We consider this appropriately balances the interests of access holders, access seekers and train operators with the legitimate business interests of Aurizon Network (ss. 138(2)(b) (e) and (h) of the QCA Act).

Overall, our Draft Decision is to require that Aurizon Network include in the 2014 DAU a commitment to develop a range of tax efficient financing arrangements for user and third-party financing for small/medium sized expansions in the CQCN.

Draft Decision

12.13 We consider it appropriate for Aurizon Network to amend the 2014 DAU to require Aurizon Network to commit to developing a suite of tax efficient financing options to be made available to access seekers and third-party financiers for small/medium expansion projects, as set out in our proposed draft.

12.6 Capacity commitments and contractual entitlements

12.6.1 Aurizon Network proposal

Access rights for capacity created from an expansion are subject to a capacity review following the commissioning of an expansion. The capacity review, to be conducted within six months of commissioning, will identify the change in capacity arising as a result of the expansion. The outcome of this review will determine the translation of provisional access rights into contracted access rights (cl. 8.10 of the 2014 DAU).

Aurizon Network's 2014 DAU sets out how it will manage any optimisation risk⁵⁹⁸ and capacity shortfall arising out of a commissioned expansion project. The regulatory principles underpinning the treatment of capacity shortfall from a commissioned expansion project are as follows:

- Scenario 1—expansion project funded by Aurizon Network at the regulatory rate of return (cl. 8.10.2 (a)–(c) of the 2014 DAU
 - (i) Where the expansion scope of works is pre-approved by the QCA, Aurizon Network is obliged to undertake a review to determine the reasoning why the scope of work failed to deliver the required capacity:

⁵⁹⁸ Whilst Aurizon Network include a reference to optimisation risk in Part 8.10.2, the relevant section deals only with capacity shortfalls. We have maintained the reference in Aurizon Network's proposal to be consistent with its own sections.

- (1) If the approved scope of work was in accordance with the original scope recommended by Aurizon Network then Aurizon Network is obliged to fund the shortfall expansion following another pre-approval process.
 - (2) If the approved scope of work was amended by customers and the QCA, then Aurizon Network will identify the difference between the capacity shortfall that would have existed with its original scope compared to the revised scope. Aurizon Network is only obliged to fund the shortfall expansion to the extent a shortfall would have arisen from its original scope.
 - (ii) Where the scope of work is not pre-approved by the QCA, Aurizon Network has no obligation to fund shortfall capacity in the absence of user funding.
- Scenario 2— the expansion project is funded by commercial terms or user funding (cl. 8.10.2(v)-(vii) of the 2014 DAU)
 - (i) If funded by Aurizon Network and the shortfall is due to Aurizon Network⁵⁹⁹, then Aurizon Network will fund the cost of any shortfall expansion.
 - (ii) If partly funded by Aurizon Network, then Aurizon Network will bear the proportion of the shortfall that it funded.
 - (iii) If partly funded by users, then funding users will bear the proportion of the shortfall they funded.
 - (iv) If fully funded by users then funding users will bear the cost of a shortfall expansion.

Conditional access holders affected by the capacity shortfall will be given a priority allocation of capacity in a subsequent expansion project based on the same terms and conditions of the executed conditional access agreement (cl. 8.10(v) of the 2014 DAU).

12.6.2 Stakeholders' position

The QRC supports the capacity contracting provisions in the 2014 DAU.

Anglo American has raised two issues with these provisions comprising:

- Aurizon Network must be required to build an expansion project according to the agreed scope in the relevant user funding agreement. Changes to the scope can only be made with unanimous agreement of all funding customers⁶⁰⁰
- Aurizon Network must fund any capacity shortfall where it is the result of Aurizon Network Cause.⁶⁰¹

Asciano has raised a specific issue with the treatment of provisional access rights arising as a result of a capacity shortfall. Aurizon Network's 2014 DAU specifies provisional access rights will be reduced in accordance with the access agreements underpinning the expansion. Asciano said such treatment should be specified in the 2014 DAU to ensure consistency and non-discriminatory treatment of conditional access holders.⁶⁰²

⁵⁹⁹ Due to Aurizon Network default, negligent acts or omissions.

⁶⁰⁰ Anglo American 2014 DAU Part 8(A), sub. no. 21: 4

⁶⁰¹ Anglo American 2014 DAU, sub. no. 21: 5

⁶⁰² Asciano, 2014 DAU, sub. no. 22: 117 and 2013 DAU, sub. no. 43: 77

12.6.3 QCA's analysis and Draft Decision

In our view Aurizon Network's 2014 DAU expansion process proposals shift the risks of investment appraisal and project financing for CQCN expansion to access seekers and prospective third-party funders. This means we must ensure that the expansion process and SUFA framework meet the needs of these parties.

As discussed previously we consider study outputs pivotal to this. They are the currency of the expansion process and have to be timely, of a high standard and cover the various expansion options available and permutations associated with these. Further, in its role as principal study consultant and study manager, Aurizon Network is responsible for delivering study outputs that meet these requirements.

Given the nature of the study outputs required, we see no reason why it is not possible to provide a capacity guarantee with respect to an expansion and consider this a key element of for pre-approval. In our view the core issue with respect to this relates to developing a practical way of dealing with the uncertainty around a capital project's scope and cost, how this translates to the expected capacity it will deliver, and how this relates to the desired/contracted level of capacity that stakeholders may want delivered.

Study outputs allow an expansion to be considered as a set of various scopes that will deliver an expected capacity at different cost and reliability levels. These scopes represent a set of choices. The trade-off between specific project scopes, the reliability that scope will deliver, and the cost associated with that scope/reliability can be made explicit and transparent at the feasibility stage of the expansion process via the study outputs.

This allows those parties considering funding the expansion to make informed decisions regarding the expansion option they wish to take through to execution. The expected capacity of the option chosen is guaranteed. Expected capacity depends on reliability which, in turn, is reflective of the scope and the cost of the expansion option chosen. An example of this is provided in Box 5.

The treatment of a capacity shortfall then becomes the joint responsibility of Aurizon Network, access seekers and financiers, and is dependent on the expansion selected to be taken through to execution, as follows:

- Aurizon Network will fund a shortfall expansion where it is required to bring the expansion to the agreed level of reliability; this occurs when actual capacity delivered is less than the capacity guarantee
- Access seekers and financiers will fund a shortfall expansion where it wishes to bring the expansion to a higher level of reliability; this can occur if the reliability option chosen by them is not sufficient to meet the capacity contracted as a result of the expansion.

As a general principle, we consider that compression in the event of a capacity shortfall must be proportionally applied across all provisional access holders relative to funding contribution. This does not prevent provisional access holders from agreeing to a different compression principle in their access agreements. However, if amending the compression principle in a provisional access agreement adversely impacts on the rights of another provisional access holder, the consent of the adversely affected provisional access holder must be obtained.

We are of the view that this approach appropriately balances the interests of access seekers, prospective third-party funders and the legitimate business interests of Aurizon Network (ss. 138(2)(b), (e) and (h) of the QCA Act).

We also consider that the provision of a capacity guarantee from Aurizon Network aligns with section 138(2)(a) and section 69E of the QCA Act that requires we have regard to promoting the

economically efficient operation, use of, and investment in the CQCN. It provides certainty that a particularly level of capacity will be delivered for a defined scope/reliability/cost combination, whilst also requiring access seekers and third-party funders to make an explicit choice with respect to reliability.

Box 5: Capacity reliability versus cost options example

The desired/contracted capacity for a project is 100 mtpa. A project scope designed to deliver 100 mtpa with a 100 per cent capacity guarantee will cost \$500 million (scope A). If, however, there is a reluctance to incur a cost of \$500 million, there are potentially two alternative options that have been assessed:

- (a) Scope B: has a 90% reliability of providing 100 mtpa and can be built at a reduced cost of \$300 million. This translates to a capacity guarantee of 90 mtpa.
- (b) Scope C: has a 75% reliability of providing 100 mtpa and can be built at a reduced cost of \$200 million. This translates to a capacity guarantee of 75 mtpa.

This provides a 'menu' of infrastructure configurations comprising a set of scopes/costs/capacity reliability levels. This does not mean that contracted capacity will not be delivered; it simply means that for certain scopes the reliability of achieving contracted capacity varies to some degree. Potential funders will then be offered a set of choices by Aurizon Network. For example:

Scope/Capacity trade-off matrix

<i>Scope</i>	<i>Contracted Capacity</i>	<i>Capacity Guarantee</i>	<i>Cost</i>
Scope A	100 mtpa	100%	\$500 million
Scope B	100 mtpa	90%	\$300 million
Scope C	100 mtpa	75%	\$200 million

We consider scope and capacity reliability options can be defined in the feasibility study. We expect each option to be accompanied by relevant cost build-up information, scope and justification for the expected capacity reliability outcome. An independent assessment of options can be obtained if deemed necessary.

Funding parties are free to select and/or negotiate on the options. Once the preferred option is determined, Aurizon Network will guarantee the capacity reliability threshold selected by funders, but not necessarily guarantee 100 per cent of contracted capacity.

In this way, potential funders can make explicit and transparent decisions regarding the value of capacity certainty relative to the potential scope/cost infrastructure combination on offer. This process will place a value on the level of capacity uncertainty funders are prepared to accept in executing both funding and access agreements.

Under these circumstances, we consider it equitable Aurizon Network guarantees the capacity reliability of the expansion scope chosen. The following outcomes with respect to the actual resulting capacity would apply:

<i>Outcome</i>	<i>Approach</i>
Actual capacity = capacity guarantee	The project has delivered as required—no further action by Aurizon Network required
Capacity guarantee < contracted capacity	Funders are required to rectify any capacity shortfall between the capacity guarantee and contracted capacity. Funding of the capacity shortfall is on same terms and conditions as the original funding and access agreements.
Actual capacity < capacity guarantee	Aurizon Network is required to rectify/compensate any capacity shortfall below the capacity guarantee at its cost.
Actual capacity > capacity guarantee	Funding users have first call on any capacity delivered by the expansion which results in above contracted capacity.

Overall, our Draft Decision is to refuse to approve Aurizon Network's proposals in the 2014 DAU regarding the capacity shortfall process associated with an expansion and to require the following amendments:

Draft Decision

12.14 Our Draft Decision is to refuse to approve Aurizon Network's 2014 DAU proposal in respect to managing a shortfall in capacity following an expansion. Instead, we consider it appropriate for Aurizon Network to amend the 2014 DAU as follows in the manner we have indicated in our proposed draft:

- (a) Aurizon Network to provide access holders with an expansion capacity guarantee**
 - (i) Aurizon Network will fund a shortfall expansion where it is required to bring the expansion to the agreed level of reliability**
 - (ii) Access seekers and financiers will fund a shortfall expansion where it wishes to bring the expansion to a higher level of reliability**
 - (iii) Any capacity shortfall attributable to Aurizon Cause will be funded by Aurizon Network**
- (b) compression of provisional access rights to be proportional according to funding contribution unless otherwise agreed in access agreements.**

13 NETWORK MANAGEMENT PRINCIPLES

The network management principles (NMP) are a set of train-planning and train-control rules which impact on Train Service Entitlements (TSEs) and therefore access rights. A TSE is the fundamental service that Aurizon Network provides.

A clear and transparent set of NMP can assist in optimising the use of available capacity and improving productivity. It can also allow for informed decision-making, improve information symmetry among access holders and increase Aurizon Network's accountability.

Our Draft Decision is to refuse to approve Aurizon Network's proposed NMP. We require amendments to clause 7.6 and Schedule G of the 2014 DAU to:

- *increase transparency and availability of train plans and TSE reconciliation reports*
- *provide additional detail in the content of train plans and TSE reconciliation reports*
- *set timelines for Aurizon Network to submit train plans, aggregate TSE reconciliation reports and initial system rules*
- *subject all system rules to the QCA approval*
- *ensure system rules are reviewed at least once per year.*

The detailed drafting of clause 7.6 and Schedule G attached to this Draft Decision is consistent with our approach and shows the amendments we consider necessary in order to approve the 2014 DAU. This includes moving clause 7.6 into clause 7A.2 which consolidates the undertaking obligations for determining and optimising the management of CQCN capacity.

13.1 Introduction

The NMP are a set of train-planning and train-control rules Aurizon Network must abide by to fulfil its duties as the below-rail network manager in train scheduling and train control. The NMP also set out the process for the development and maintenance of more specific system rules.

- Clause 7.6 of the 2014 DAU outlines the governance arrangements underpinning the NMP and the development of system rules. It details Aurizon Network's compliance requirements and describes the approval and amendment processes for establishing system rules within the NMP.
- Schedule G of the 2014 DAU sets out the purpose and form of the four train plans used by Aurizon Network to schedule train services and maintenance on the CQCN. It establishes the rules for altering or cancelling train services once scheduled and deciding who might get a specific path in the event of a contest. Schedule G includes rules for managing traffic on the network once the trains are running, as some might be running ahead or late, while others are on time.

The NMP affect how Aurizon Network delivers the capacity it has contracted. They establish how Aurizon Network will share capacity information and how it will perform the planning, scheduling and traffic management of train services on the CQCN. Clear NMP allow access

seekers and access holders to understand their access rights and determine if their access rights have been delivered.⁶⁰³

System rules provide additional detail to the NMP on how the network will be managed. They provide supply chain flexibility by allowing different arrangements to apply according to the circumstances arising in specific systems and over time. The NMP will prevail in the absence of approved system rules.

13.2 Overview

13.2.1 Aurizon Network proposal

The proposed NMP in the 2014 DAU retain many elements of the 2010 AU NMP but also include the following changes:

- system rules, where they do not already exist, are only to be developed by Aurizon Network if requested by at least 60 per cent of access holders (in terms of relevant train paths)
- a review process for system rules
- a clause limiting the provision of information (to access holders or on the website)
- a new Strategic Train Plan (STP) to provide more transparency and accountability on Aurizon Network's ability to deliver contracted access entitlements, with the indication of anticipated capacity for a one-year to two-year period
- a monthly TSE notice to report on TSE consumption, including causes for non-performance.

13.2.2 Stakeholders' position

Stakeholders acknowledged there had been some positive changes between the 2013 DAU and 2014 DAU but still did not support Aurizon Network's proposed NMP. The general view was that some changes did not go far enough or did not achieve what stakeholders had proposed in the consultation process.⁶⁰⁴ For example, stakeholders wanted:

- Aurizon Network to be obliged to develop the initial system rules for each system, rather than where requested by at least 60 per cent of customers (in terms of train paths)⁶⁰⁵
- the review and amendment processes for system rules to be overseen by the QCA⁶⁰⁶
- greater information and prescription around the information to be featured in the STP.⁶⁰⁷

There are specific areas of the NMP where stakeholders did not accept the overall position of Aurizon Network, including the:

- discretionary power and perceived lack of objectivity provided to Aurizon Network in the drafting of the NMP⁶⁰⁸
- limitations on the provision of information⁶⁰⁹

⁶⁰³ The QCA Act provides that Aurizon Network must not engage in conduct for the purpose of preventing or hindering a user's access to the declared service under an access agreement (s.104(1)).

⁶⁰⁴ Anglo American, 2014 DAU sub. no. 7: 50

⁶⁰⁵ QRC, 2014 DAU, sub. no. 42: 32; Anglo American, 2014 DAU, sub. no. 7: 51

⁶⁰⁶ QRC, 2014 DAU, sub. no. 42: 32-33; Anglo American, 2014 DAU, sub. no. 7: 52; Asciano, 2014 DAU, sub. no.22: 38

⁶⁰⁷ Asciano, 2014 DAU, sub. no. 22: 50–51

⁶⁰⁸ QRC, 2014 DAU, sub. no. 42: 36

- provisions⁶¹⁰ which limit Aurizon Network's liability provided it has used reasonable endeavours to comply with the relevant provisions of Schedule G⁶¹¹
- lack of clarity in relation to the pooling of TSEs.⁶¹²

Stakeholders recommended further changes to the NMP. Asciano called for Aurizon Network to include system rules for each system within the 2014 DAU. The QRC and Anglo American provided detailed mark-ups to the NMP and Schedule G to show how their concerns might be addressed.

13.2.3 Legislative framework and QCA assessment approach

Legislative framework

In assessing Aurizon Network's proposed NMP, we have had regard to all the factors in section 138(2) of the QCA Act, as set out in Chapter 2. In doing so, we have applied a weighting of each factor we consider appropriate based on the practical relevance of that factor.

Against this background, we consider that, in our assessment of Aurizon Network's NMP:

- sections 138(2)(a), (b), (d), (e) and (h) should be given more weight
- sections 138(2)(c), (f) and (g) should be given less weight, as they are less practically relevant to our assessment.

Transparency of train plans

Sections 69E and 138(2)(a) require us to have regard to the object of Part 5 of the QCA Act, namely to promote the economically efficient operation of, use of, and investment in, the CQCN. Section 138(2)(d) of the QCA Act requires us to have regard to the public interest in having competition in markets.

We consider train plans being made available to be viewed by access holders, access seekers and end users is critical to the efficient allocation of capacity in the CQCN. This in turn promotes more efficient operation of, use of, and investment in the CQCN, which then allow users of the CQCN to use the network in a more cost-effective way. Thereby supply chain participants are allowed to compete more effectively in related markets.

Section 138(2)(b) of the QCA Act requires we have regard to the legitimate business interests of Aurizon Network. We consider transparent train plans to be consistent with Aurizon Network's legitimate business interests as transparency increases accountability of other supply chain participants.

We consider the interests of access holders, access seekers and end users are met when they can view transparent train plans and use these tools to make informed decisions (s. 138(2)(e) and (h)).

Effective TSE reconciliation reporting

We also consider the objectives under sections 138(2)(a) and (h) are best met where access holders and end users benefit from effective TSE reconciliation reporting and transparent TSE

⁶⁰⁹ QRC, 2014 DAU, sub. no. 42: 35

⁶¹⁰ Clause 7.4(b)(iv) of Schedule G

⁶¹¹ QRC, 2014 DAU, sub. no. 42: 36; Asciano, 2014 DAU, sub. no. 22: 51

⁶¹² Asciano, 2014 DAU, sub. no. 22: 51

calculation. This permits more economically efficient optimisation of the CQC as the significant infrastructure through which the declared services are provided.

System rules governance

Section 138(2)(b) of the QCA Act requires that we have regard to the legitimate business interests of Aurizon Network. At the same time, sections 138(2)(d), (e) and (h) require us to have regard to the public interest, and the interests of access seekers and access holders. We also consider the interests of access holders and infrastructure service providers are relevant under section 138(2)(h).

In broad terms, we consider these various interests are best balanced when the governance of system rules provides clarity and certainty around the development, approval, review and amendment processes.

QCA assessment approach

Our approach to assessing Aurizon Network's proposed NMP is set out in the table below. We consider that, taken as a whole, this assessment approach for assessing Aurizon Network's NMP allows us to have regard to an appropriate weighing of factors set out section 138(2) of the QCA Act, as outlined earlier in this chapter.

Table 58 QCA approach to NMP

<i>Assessment criterion</i>	<i>Rationale</i>
Transparency and accountability	<p>We consider the NMP should provide transparent information to access holders and access seekers to:</p> <ul style="list-style-type: none"> • allow for informed decision-making • improve information symmetry among access holders and stimulate competition in the above-rail market • increase Aurizon Network's accountability in treating every access holder equitably • provide sufficient information to assist with supply chain coordination • reveal where there may be spare capacity on the network which can be used, thus promoting a more efficient use of the network • reveal which branch lines may be bottlenecks • demonstrate that Aurizon Network has sufficient capacity in each system to meet contracted entitlements • enable communication between train operators to find optimal solutions in train planning • indicate which systems are most at risk of triggering take-or-pay obligations.
Clarity and confidence about access entitlements	<p>We consider the NMP should establish the principles for calculation and consumption of TSEs to ensure train operators, access holders and customers can monitor productive use of the network capacity and make informed decisions.</p> <p>Provision of an effective and useful TSE reconciliation report to each access holder and end user will:</p> <ul style="list-style-type: none"> • allow access holders to make informed decisions • enable access holders to monitor their TSE consumption • enable access holders to better manage their take-or-pay risk (especially in conjunction with a good short term capacity transfers mechanism) • inform access holders and end users of the effectiveness of operations and use of the network.

Assessment criterion	Rationale
Governance	<p>Provision of a clear and certain process for the development, approval, review and amendment of system rules will:</p> <ul style="list-style-type: none"> • increase transparency of the process • increase Aurizon Network's accountability • increase the certainty that a set of system rules which have been consulted about is in effect • ultimately lead to the implementation of 'better' system rules.

For the purpose of the Draft Decision, we consider the NMP must provide a consultative process to develop and modify the four train plans— STP, MTP, ITP and DTP (each of which is described in the diagram below).

Key issues for consideration

This chapter deals with the following key issues for the NMP:

- transparency of train plans
- effective TSE reconciliation reporting
- system rules governance (development, approval, review, amendments).

We have also proposed drafting amendments that are not discussed in detail in this chapter, but are nonetheless consistent with our broad approach and meet our assessment criteria. These include amendments:

- to improve clarity and certainty
- to improve transparency and accountability
- made in the interest of simplifying the access undertaking more broadly.

Our more detailed considerations are reflected in the marked drafting of clause 7.6 (now cl. 7A.2) and Schedule G of the undertaking.

13.3 Transparency of train plans

13.3.1 Aurizon Network proposal

The 2014 DAU provides for four train plans (Schedule G) as well processes to modify them. Aurizon Network said it has simplified the drafting from the 2010 AU and has made its obligations clearer in relation to consultation.⁶¹³

⁶¹³ Aurizon Network, 2013 DAU, sub. no. 2: 297

Figure 8 Summary of Aurizon's proposed Train Plans

<p>Strategic Train Plan</p> <ul style="list-style-type: none"> • Up to 2 years • It outlines the existing capacity that Aurizon Network anticipates is necessary to meet its TSE obligations. • Includes any assumptions made. • Takes into account: <ul style="list-style-type: none"> • the known and reasonably anticipated track maintenance requirements/ impacts of the construction of expansions • relevant System Operating Parameters • any other known or reasonably anticipated factors that may materially impact on the existing capacity.
<p>Master Train Plan</p> <ul style="list-style-type: none"> • Up to 3 months • It demonstrates how Aurizon Network plans to deliver TSEs (by coal system), taking into account planned possessions, existing capacity and other relevant characteristics. • In a table form with particular requirements for: cyclic traffics; timetabled traffics; time allocated for planned possessions; other factors that may materially impact on existing capacity. • Available on request to access holders, subject to confidentiality and contractual obligations. • Modifications allowed where agreed include <ul style="list-style-type: none"> • consultation with infrastructure service providers, and any railway manager for private infrastructure that is directly connected to the rail infrastructure the MTP that is proposed to be agreed. • consultation not required in four specific cases. • Aurizon Network to use reasonable endeavours to mitigate impacts from long-term train service change for the purpose of carrying out major periodic maintenance on access holders.
<p>Intermediate Train Plan</p> <ul style="list-style-type: none"> • Usually one week • The scheduling horizon is to be consistent with the relevant System Rules. • Train orders submitted according to the relevant system rules or before 1200 on the Wednesday immediately prior to the ITP period.
<p>Daily Train Plan</p> <ul style="list-style-type: none"> • 24 hours • It shows all scheduled Train Services and Planned Possessions, for that period. • In a form that indicates the time/distance (location) relationship. • Scheduled at least 24 hours prior to the day of operation. Copy of the DTP provided to all relevant access holders and infrastructure service providers by 1400 hour prior the day of ops. • Can be scheduled in variation to the ITP in accordance with the timeframes in the system rules. • An access holder can request scheduling the DTP in variation to the ITP. • Request in the form and be provided in accordance with Aurizon Network's requirements. Aurizon Network to advise its requirements in advance.

13.3.2 Stakeholders' position

A key theme raised by stakeholders was a need for more information provided more frequently to aid decision-making and to provide increased certainty around the planning for delivery of entitlements.

Specific stakeholder concerns regarding the four train plans proposed by Aurizon Network in the NMP are summarised in the table below.

Table 59 Key stakeholder issues

<i>Issue</i>	<i>Comments</i>
Content of the STP	More prescription, with information to be set out by branch line in each system. Indicate anticipated available capacity, what TSEs can be met and what TSEs cannot be delivered. ⁶¹⁴
Updates to the MTP	More frequent updates (no less than annually). Advise access holders and infrastructure service providers as soon as possible of any modifications Issue all access holders and infrastructure services providers with MTP ⁶¹⁵
Transparency through the MTP	Transparency around: <ul style="list-style-type: none"> contractual obligations (annual and monthly) peaking capacity available in monthly period where another period has insufficient capacity the whole supply chain having sufficient capacity to meet all contractual obligations on an annual and monthly basis. ⁶¹⁶
Content of the MTP	<i>The MTP should</i> <ul style="list-style-type: none"> ensure train paths shown are practically achievable on an origin-destination and round trip basis, taking into account required headways between successive trains arriving at unloading or loading facilities limit the number of usable round trip paths to the practical utilisation ceiling of any track section forming part of the origin-destination Include: <ul style="list-style-type: none"> the maximum number of round trip paths available for each loading and unloading location contracted TSE train paths on a round trip basis train paths available for make-up of expected loss train paths that are not practically able to be utilised or to be sterilised (due to resourcing, variability or track utilisation issues) the System Operating Assumptions and planned network availability and capability for the period key assumptions forming the MTP are to be documented in the System Operating Assumptions. ⁶¹⁷
MTP Governance	Disputes should be subject to dispute resolution in Part 11, notwithstanding other provisions in Schedule G, the undertaking or an access agreement. ⁶¹⁸ Aurizon Network should be prevented from making unilateral amendments to the MTP where there is a possibility those amendments will materially disadvantage another access holder. ⁶¹⁹
Nature and notification of the ITP	The ITP is to be aligned to the Coal System it is developed for, and is to be based upon the planning process and System Rules for each Coal System and

⁶¹⁴ Asciano, 2014 DAU, sub. no.22: 50–51

⁶¹⁵ QRC, 2014 DAU, sub. no. 42: 36; QRC, 2014 DAU sub. no. 46 Sch. G mark-up: 2; Anglo American, 2014 DAU sub. no. 15: 318

⁶¹⁶ Peabody, 2013 DAU, sub. no. 37: 4

⁶¹⁷ Anglo American, 2014 DAU, sub. no. 15: 318; Anglo American, 2013 DAU, sub. no. 39: 17

⁶¹⁸ Anglo American, 2014 DAU, sub. no. 15: 321

⁶¹⁹ Anglo American, 2014 DAU, sub. no. 15: 321

<i>Issue</i>	<i>Comments</i>
	Aurizon Network must also notify Infrastructure Services Providers of the ITP once it is finalised. ⁶²⁰
Use of the DTP in performance monitoring	Report DTP to performance targets ⁶²¹
Liability for changes to the DTP	Making Aurizon Network liable for non-compliance with Schedule G. ⁶²²

To get a better understanding of the train plans Aurizon Network was making available to access holders, we met with train planners. Our main findings from those meetings are summarised in Appendix B.

13.3.3 QCA's analysis and Draft Decision

Our interim position, as set out in this Draft Decision, is to refuse to approve Aurizon Network's NMP.

While we have accepted Aurizon Network's general approach to preparing four train plans, we have proposed a number of amendments to improve transparency and accountability, and increase the information generally available to improve supply chain coordination. If these amendments are made, it would allow us to accept the NMP.

Transparency of train services in train plans

We have proposed amendments to increase transparency and accountability to all four train plans.

For all four train plans, we have amended the drafting to require provision of a complete and transparent train plan by Aurizon Network. These amendments will:

- reveal where there may be some spare capacity which can be used, thus promoting a more efficient use of the network
- improve information symmetry among access holders and stimulate competition in above-rail markets
- provide sufficient information to assist with supply chain coordination and
- demonstrate Aurizon Network has sufficient capacity in each system to meet contracted entitlements.

We consider the achievement of these outcomes should take precedence over the preservation of commercially sensitive operational/tonnage information of individual access holders (if any). Any confidentiality agreement modelled in UT1, UT2 or UT3 standard agreements will already permit such disclosures to be made by Aurizon Network.⁶²³ In any event, with regard to the ITP

⁶²⁰ Anglo American, 2014 DAU, sub. no. 15: 321–322

⁶²¹ QRC, 2014 DAU, sub. no. 42: 36; QRC, 2014 DAU, sub. no. 46: 10; Anglo American, 2014 DAU, sub. no. 15: 323–27.

⁶²² QRC, 2014 DAU, sub. no. 42: 36; QRC, 2014 DAU, sub. no. 46: 9; Anglo American, 2014 DAU, sub. no. 15: 326–327; Asciano, 2014 DAU, sub. no.22: 51.

⁶²³ Our drafting requires Aurizon Network to provide complete and transparent train plans, unless there is an absolute confidentiality obligations owed by Aurizon Network to a third party that it cannot disclose this information. The Confidentiality Deeds under previous undertakings permit confidential information to be

and the DTP, we consider the commercial downside of sharing the identity and train service number with all other access holders will be minimal, given the ITP typically only reflects a seven-day planning horizon, which can substantially differ from contracted tonnages. The same applies to the DTP. In addition, we note access holders currently view train services numbers of live run operations in the RTOA software.

More detail is given in the mark-up of Schedule G.

We believe these amendments will promote the economically efficient operation and use of the network. The additional information and transparency are in the public, the access seekers' and the access holders' interests, as well as in the legitimate business interest of Aurizon Network (ss. 138(2)(b), (d), (e), and (h) of the QCA Act).

Draft Decision

13.1 Our Draft Decision is to refuse to approve Aurizon Network's NMP included in Schedule G of the 2014 DAU. We would approve NMP with amendments to increase transparency and availability of train plans as set out in the marked changes to this Draft Decision.

Strategic Train Plan

Aurizon Network has proposed to include a STP in the 2014 DAU for the first time. Aurizon Network has advised the STP is to form part of the output from its annual capacity review.⁶²⁴

We consider the STP forms part of the baseline capacity assessment Aurizon Network will undertake as part of its provision of a capacity guarantee, as described in Chapter 10 (Baseline Capacity). The STP is one medium to demonstrate Aurizon Network provides the capacity to deliver existing access entitlements, in addition to static and dynamic simulation modelling. We consider the STP would be an effective tool to provide baseline capacity information to stakeholders. This includes information about:

- how much capacity has been contracted (in TSE)
- how much is available to be contracted or to be used for running ad hoc train services.

However, we consider Aurizon Network's STP proposal requires amendments to increase certainty and clarity about:

- what the STP will include
- when it will be available
- who it will be available to.

We consider it should also identify appropriate and relevant constraints (including infrastructure, operational and logistical) in the system, thus informing supply chain

disclosed by Aurizon Network if required by the undertaking. Most confidentiality agreements and clauses will be modelled upon this standard form. There is a similar provision in the new standard access agreements proposed by Aurizon Network in the 2014 DAU. Therefore, we consider the requirements under UT4 obliging Aurizon Network to provide train plans containing confidential information outweigh the confidentiality obligations Aurizon Network owes to an Access Holder.

⁶²⁴ Document presented by Aurizon Network to QCA in meeting on 14 August 2014 entitled "Capacity Verification Process - Routine", commercial-in-confidence.

coordination. We are interested in stakeholders' views on what information in this respect would be useful to them and what should be included in the STP.

Given the STP's horizon of up to two years, we consider it to be a strategic planning tool for supply chain coordination. By indicating the number of train paths which can be delivered in upcoming months, the STP should inform supply chain participants' discussions on how to best use the available infrastructure. For example, if the number of train paths available will be limited in a given month due to planned maintenance and capital works, supply chain participants can organise coal production and vessel arrivals to use more capacity in previous or later months.

We consider a useful and effective STP should be developed for each coal system and for the CQCN in aggregate. This would ensure the baseline capacity information is available each year for planning and supply chain coordination purposes.

To ensure the baseline capacity information is available in a timely manner for planning and supply chain coordination purposes, we think the first STP should be produced within three months after the approval of the 2014 DAU.

To be effective, we consider the STP must be available in full to all access holders and the QCA as well as to all access seekers who request it.

In addition to Aurizon Network stating the assumptions made in the development of the STP, we consider the methodology should be subject to expert review and audit to provide stakeholders with certainty of independent verification. Following expert review, the STP could be amended to adopt the expert's recommendation if necessary. This will increase Aurizon Network's accountability in developing a robust STP, which will enable it to become a tool for capacity planning.

We agree with Asciano's proposal to specify the output and format of the STP. We do not consider Aurizon Network's proposal provided sufficient detail on the level of information to be included in the STP. We consider it important to make transparent how much capacity is available and how much has been contracted on the shared infrastructure. We consider having the information in the STP set out by system and by branch line, expressed in TSEs and in million tonnes per annum should enable informed decision making by access holders and greater supply chain cooperation.

As a consequence, we consider there would be benefit in several amendments to the STP, including:

- a deadline to submit initial STP—to ensure the improvement to information is available to stakeholders in a timely manner
- specify to whom the STP will be submitted each year—for clarity and to allow access seekers and access holders to plan
- additional details in the contents of the STP, in particular monthly and annual capacity that can be provided, that cannot be provided and that is available, in million tonnes per annum and train paths on a system per system and branch line basis—to provide sufficient information to allow for decision-making, assist with supply chain coordination, reveal which branch lines may be bottlenecks, identify any capacity misalignment in the supply chain and outline where there may be spare capacity on the network which can be used, thus promoting a more efficient use of the network

- annual preparation of the STP by coal system and in aggregate—to demonstrate Aurizon Network has sufficient capacity in each system to meet contracted entitlements
- provide for the QCA to require the STP be reviewed by an independent expert and audited—to increase Aurizon Network's accountability in preparing the STP.

We believe these amendments will promote the economically efficient operation and use of the network (ss. 69E and 138(2)(a) of the QCA Act). The additional information and transparency are in the public, the access seekers and the access holders interests, as well as in the legitimate business interest of Aurizon Network (ss. 138(2)(b), (d), (e) and (h) of the QCA Act).

More detail is given in the mark up of clause 2 of schedule G.

Draft Decision

13.2 Our Draft Decision is to refuse to approve Aurizon Network's NMP included in Schedule G of the 2014 DAU. We would approve NMP with amendments to the STP to:

- (a) include a deadline to submit initial STP**
 - (b) specify to whom the STP will be submitted each year**
 - (c) include additional details in the contents of the STP**
 - (d) include an obligation for an annual preparation of the STP by coal system and in aggregate**
 - (e) to provide for the QCA to require the STP be reviewed by an independent expert and audited**
- as set out in the marked changes attached to this Draft Decision.**

Master Train Plan

We consider an effective and transparent MTP can perform three functions:

- Demonstrate sufficient and equitably allocated capacity to access holders, access seekers and their customers (to a more detailed extent than the STP).
- Show the effects of forecast maintenance and other planned possessions on capacity.
- Serve as a template which forms the base of train scheduling for the ITP and the DTP.

Aurizon Network's proposal with regard to the MTP is similar to the UT3 arrangements and limits access to the MTP to access holders who request it.

We consider a MTP which covers a period of at least one month and up to three months would provide sufficient information to access holders to assist with operations planning and supply chain coordination. We understand planned possessions are currently communicated through long-term calendars. However, we consider scheduling possessions in the MTP will allow access holders to view the impact on the delivery of TSEs for the period and provide more useable information. We understand the confidence of planned maintenance activity is higher in this one- to three-month horizon than in longer terms, which will also make the MTP more effective.

We consider Aurizon Network should consider factors such as planned maintenance and outages, construction and each coal system's SOPs in preparing the MTP. This will ensure the usefulness of MTPs produced, as it will reflect the forecast situation for the period and be up-to-date.

We consider the MTP should identify the paths allocated not only to coal cyclic traffic and timetabled traffic, but also to non-coal traffic and cross-system traffic. In addition, a transparent MTP would identify each access holder's TSEs and allocated train paths.

We consider Aurizon Network should disclose the assumptions it has used in preparing the MTP. This ensures the information is usable to access holders, but also ensures Aurizon Network is accountable for its assumptions.

Consistent with our final decision on the Capricornia System Rules, we consider Aurizon Network should publish the MTP on its website, as does the ARTC in the HVCN. Given Aurizon Network's proposal for the MTP to cover a period up to three months, updating the MTP and publishing it on a monthly basis will ensure up-to-date information is available to supply chain participants at all times.

Consequently we consider there would be benefits in several amendments to the MTP, including:

- the time period covered—to provide sufficient information to assist with supply chain coordination
- the factors to be considered—to provide sufficient information to assist with supply chain coordination
- the train paths to be identified—to allow for informed decision-making, improve information symmetry among access holders and reveal where there may be spare capacity on the network which can be used
- the assumptions to be specified—to allow for informed decision-making and increase Aurizon Network's accountability
- the frequency of publication—to allow for informed decision-making and provide sufficient information to assist with supply chain coordination.

In addition, we have made some amendments to the process to modify the MTP—some in the interests of clarity, some having regard to the interests of access holders.

We believe these amendments will promote the economically efficient operation and use of the CQCN (ss. 69E and 138(2)(a) of the QCA Act). The additional information and transparency are in the public interest, the access seekers and the access holders' interests, as well as in the legitimate business interest of Aurizon Network (ss. 138(2)(b), (d), (e) and (h) of the QCA Act).

More detail is given in the mark-up of clause 3 of schedule G.

Draft Decision

13.3 Our Draft Decision is to refuse to approve Aurizon Network's NMP included in Schedule G of the 2014 DAU. We would approve NMP with to the MTP, to:

- (a) require the MTP to cover a period of at least one month
- (b) include the factors considered in preparing the MTP
- (c) specify all types of traffics and train paths to be identified on the MTP
- (d) set out which assumptions were made by Aurizon Network in preparing the MTP
- (e) publish the MTP on Aurizon's website every month as set out in the marked changes to Schedule G (cl. 3) attached to this Draft Decision.

Intermediate Train Plan

We do not consider Aurizon Network's proposed ITP clearly sets out what information would be provided and what access holders would see when being 'notified' of the ITP.

Consistent with our views on transparency of train plans, we consider an effective ITP would be fully transparent, with all train paths identified (allocated, available system paths, maintenance).

We have made amendments to specify the train paths to be identified in the ITP and to whom copies should be provided and when, to:

- allow for informed decision-making
- reveal if there is spare capacity which can be used, thus promoting a more efficient use of the network
- improve information symmetry among access holders and stimulate competition in above-rail markets
- provide sufficient information to assist with supply chain coordination
- enable communication between train operators to find optimal solutions
- allow train operators to identify ad hoc opportunities to run extra train services, shunt a train on part of a train path or check with Aurizon Network if the maintenance crew may be able to let a train service run by.

Draft Decision

13.4 Our Draft Decision is to refuse to approve Aurizon Network's NMP included in Schedule G of the 2014 DAU. We would approve NMP with amendments to the ITP to specify the train paths to be identified and to whom copies should be provided, as set out in the marked changes to this Draft Decision.

Transparency of maintenance paths

Following our meetings with train planners, we do not consider there is a clear reason why the network maintenance paths are being redacted in the electronic⁶²⁵ ITP and DTP, especially given that long term forecast maintenance is shared across the supply chains in the Critical Asset

⁶²⁵ Via the Network Operations Pathing Planner (NOPP).

Alignment Calendar (CAAC) and Critical Asset Constraint Summary (CACS). Our view is that there is little commercial risk in sharing this information with all access holders, infrastructure service providers and the access seekers who request it.

We consider full transparency of maintenance paths in the electronic ITP and DTP will allow train operators to:

- know that there may be a possibility of shunting a train on part of the path
- check with Aurizon Network if the maintenance crew may be able to let a train run by
- find optimal solutions.

We consider this will promote the economically efficient operation and use of the CQCN (ss. 69E and 138(2)(a) of the QCA Act). We note Schedule G already specifies the DTP will indicate all scheduled planned possessions. More detailed consideration is given in our mark up of Schedule G.

Draft Decision

13.5 Our Draft Decision is to refuse to approve Aurizon Network's proposed NMP included in Schedule G of the 2014 DAU. We would approve NMP with amendments to provide full transparency of train paths allocated to maintenance as set out in the marked changes to this Draft Decision.

The table below summarises our rationale in making amendments to each train plan.

Table 60 Rationale for amendments to train plans

<i>Rationale</i>	<i>STP</i>	<i>MTP</i>	<i>ITP</i>	<i>DTP</i>
Allow for more informed decision-making	x	x	x	x
Reveal if there is spare capacity which can be used, promoting a more efficient use of the network	x	x	x	x
Improve information symmetry among access holders and stimulate competition in above-rail markets	x	x	x	x
Provide sufficient information to assist with supply chain coordination	x	x	x	x
Demonstrate Aurizon Network has sufficient capacity in each system to meet contracted entitlements	x	x	x	x
Reveal which branch lines may be bottlenecks and misalignments in the supply chain	x			
Enable communication between train operators to find optimal logistical solutions, to the extent that it would not be contrary to competition laws			x	x
Identify maintenance periods to allow train operators to know that there may be a possibility of shunting a train on part of the path or check with Aurizon Network if the maintenance crew may be able to let one train run by			x	x

More detailed consideration is given in our mark-up of schedule G.⁶²⁶

We consider these amendments will promote the economically efficient operation and use of the CQCN. The additional information and transparency are in the public, the access seekers'

⁶²⁶ Consequential amendments were also made in Parts 2, 3, 5, schedules A and I and the access agreement.

and the access holders' interests, as well as in the legitimate business interest of Aurizon Network.

13.4 Effective TSE reconciliation reports

TSE reconciliation reports are produced by Aurizon Network to track the delivery of an access holder's access rights on a monthly and year-to-date basis. Specifically, for each origin-destination pair they indicate the contracted amount of train paths, the number of train cancellations (and their cause) and the number of trains which actually arrived at destination.

The tracking of TSE consumption is important for two purposes:

- take-or-pay obligations
- train scheduling priority waterfall (contested train path decision-making process).

However, Aurizon Network said its weekly TSE reconciliation reports are made for the purpose of establishing priority in the planning and scheduling of train orders (in the context of a contested train path decision-making process in Schedule G) and do not affect or apply to the calculation of take-or-pay.

13.4.1 Aurizon Network proposal

Clause 3 of Schedule G specifies TSEs for the same types of traffic will be defined using consistent terminology and expressed in terms that can be interpreted for the development of a STP, MTP, ITP (where necessary) and DTP.

Aurizon Network proposes in clause 9.6 of Schedule G to provide a monthly train service entitlement notice to each access holder at the end of each calendar month, which will identify for each origin-destination pair:

- the number of train paths that the Access Holder was entitled to under the Access Holder's Train Service Entitlement
- the number of train paths planned in the MTP in relation to that TSE
- the number of train paths in respect of which Train Services were operated for the Access Holder under the relevant TSE
- the extent to which the Access Holder's TSE was used, for that calendar month.

Aurizon Network proposes this monthly report in response to stakeholder submissions on the 2013 DAU.⁶²⁷

Clause 10.2 of Schedule G includes arrangements for Aurizon Network to provide a report to each access holder at the end of the 'relevant period' on their TSE consumption. The 'relevant period' being defined as follows.

*The relevant seven day period commencing at 12:00 am on Monday and immediately prior to 12:00 am on the following Sunday or such other period as expressly specified in the relevant System Rules.*⁶²⁸

Clause 10.2 also details the calculation of TSE consumption for the purposes of train planning.

⁶²⁷ Aurizon Network, 2013 DAU, sub. no. 77: 89

⁶²⁸ Clause 12.1 of the 2014 DAU..

13.4.2 Stakeholders' position

There Stakeholders appear confused about how Aurizon Network calculates TSE and there is a strong preference for additional transparent reporting. Specific stakeholders' views are presented in the table below.

Table 61 Key stakeholder issues

<i>Issue</i>	<i>Comments</i>
Transparency of TSE calculations	<ul style="list-style-type: none"> • Transparency of TSE consumption or TSE determination is necessary⁶²⁹ so that producers can have contractual certainty that annual tonnages can, and will, be delivered given the variability in the day of operation.⁶³⁰ • Aurizon Network controls how the producers' annual tonnage allocation translated into TSEs. BMA said the identification of the calculation methodology through the development of Capricornia system rules raised issues whether the parameters are appropriate given Aurizon Network's operational variability and delivery of its maintenance and capital programs.⁶³¹
Transparency of TSE reporting	<ul style="list-style-type: none"> • Anglo American proposed transparent reporting in respect of the consumption of TSEs⁶³² • Anglo American also said the aggregated and individual information should be readily available to all access holders and end users⁶³³
Additional information in monthly TSE notice	<p>Asciano and Anglo American proposed additional information being included in the monthly TSE notice, including:</p> <ul style="list-style-type: none"> • the number of train paths cancelled⁶³⁴ • the reasons for these cancellations⁶³⁵ • cause for non-performance⁶³⁶ • TSE allocation and consumption, including non-performance, individually and in aggregate.⁶³⁷
Impact of maintenance and capital programs on TSE	<p>The calculation of monthly and weekly TSEs in access agreements needs to consider a reduction in the days available for running trains commensurate with the impact of capital programs and maintenance activity on the network.⁶³⁸</p>
Definition of TSE	<ul style="list-style-type: none"> • TSEs will be expressed in terms that can be interpreted for the development of a MTP, ITP, DTP. • TSEs are to be calculated, allocated and managed to ensure the contracted TSEs of all users are deliverable. • TSE must take into account the expected availability and capability of the network for planned and unplanned maintenance, outages, variability

⁶²⁹ BMA, 2014 DAU, sub. no.23: 3–4

⁶³⁰ BMA, 2013: 2

⁶³¹ BMA, 2013: 2

⁶³² Anglo American, 2013 DAU, sub. no. 39: 19

⁶³³ Anglo American, 2013 DAU, sub. no. 39: 19

⁶³⁴ Asciano, 2014 DAU, sub. no.22: 51

⁶³⁵ Asciano, 2014 DAU, sub. no.22: 51

⁶³⁶ Anglo American, 2013 DAU, sub. no. 39: 19

⁶³⁷ Anglo American, 2014 DAU, sub. no. 15: 314

⁶³⁸ BMA, 2014 DAU, sub. no.23: 3–4

<i>Issue</i>	<i>Comments</i>
	and network conditions (e.g. speed restrictions and transit time allowances). ⁶³⁹

13.4.3 QCA's analysis and Draft Decision

Our interim position, as set out in this Draft Decision, is to refuse to approve Aurizon Network's proposed reporting arrangements for TSEs. Instead we consider Aurizon Network should provide effective and useful TSE reconciliation reports to access holders and end users. In addition, we consider the NMP should clearly set out the principles to calculate TSEs and their consumption. Therefore, we propose to require amendments to Aurizon Network's proposed NMP to increase transparency and accountability of TSE reconciliation reports.

We have generally accepted Aurizon Network's general approach to TSE reconciliation noting it provides more information to access holders than UT3. However, we consider providing more information and broader distribution would be beneficial and we have proposed a number of amendments to improve transparency and accountability. Examples of the amendments we made include the requirements for Aurizon Network to:

- provide each access holder and each end user with a copy of the relevant monthly TSE entitlement notice —to enable end users to make informed decisions and hold their train operators accountable
- provide additional information in monthly TSE entitlement notices, including the number of train paths planned in the ITP and DTP, the number of train paths cancelled, the reason for cancellation and year-to-date TSE position and projections to year-end, both for the access holder and each coal system—to enable access holders to monitor productive use of the network capacity, better manage their take-or-pay risk and inform them of the effectiveness of operations and use of the network
- publish a monthly aggregate TSE reconciliation report by coal system—enable access holders to monitor productive use of the network capacity and better manage their take-or-pay risk and inform access holders, access seekers and end users of the effectiveness of operations and use of the network
- provide weekly TSE reconciliation report to the access holders' customers—to enable end users to hold their train operators accountable.

More detail is given in the attached mark-up of Schedule G.

More effective TSE reconciliation reports will promote economically efficient operation and use of the network and be in the interest of all access holders (ss. 69E and 138(2)(a) of the QCA Act). In addition, they are not inconsistent with Aurizon Network's legitimate business interests (s. 138(2)(b) of the QCA Act).

⁶³⁹ Anglo American, 2014 DAU, sub. no. 15: 314

Draft Decision

13.6 Our Draft Decision is to refuse to approve Aurizon Network's NMP included in Schedule G of the 2014 DAU. We would approve NMP with amendments to:

- (a) increase availability of information to end users and access holders' customers**
 - (b) publish a monthly aggregate TSE reconciliation report by system**
 - (c) provide additional information in TSE reconciliation report**
- as set out in the marked changes attached to this Draft Decision.**

13.5 System rules governance

System rules provide additional detail on how the network will be managed and provide flexibility to allow for different arrangements to apply in different circumstances arising in specific systems over time. Our assessment of the Capricornia System Rules highlighted the need for a clear and defined governance process on how system rules are submitted and approved, subsequently reviewed and amended over time.

13.5.1 Aurizon Network proposal

Under UT3, Aurizon Network had an obligation to develop system rules for the Goonyella system and had the option of developing system rules for other coal systems.⁶⁴⁰

In the 2014 DAU Aurizon Network has maintained the possibility of developing system rules, however the governance process for their approval, review and amendment is different to the 2010 AU.

Table 62 Summary of clause 7.6 related to system rules governance

<i>Issue</i>	<i>Aurizon Network Proposal</i>
Initial system rules (clause 7.6.3 (a))	Each system (or combination of systems) will have system rules developed where at least 60% of access holders for a coal system (based on train paths) have requested them be developed.
Approval process for system rules (clause 7.6.3)	Aurizon Network will submit the draft system rules to the QCA for approval, having regard to consultation with stakeholders, equitable operation, NMP, the undertaking and Access Agreements. Subclauses (c) to (g) describe the process for submission, consultation, resubmission and approval of system rules.
Annual review of System Rules (clause 7.6.4(a) and (b))	Aurizon Network will review the system rules: <ul style="list-style-type: none"> • at least annually; or • if at least 60% of access holders for a coal system (based on train paths) has requested a review.
Proposed amendments to system rules (clause 7.6.4)	The 2014 DAU sets out a process to amend the system rules following a review that: <ul style="list-style-type: none"> • if Aurizon Network wishes to amend system rules it will notify affected parties of its intention and provide proposed amendments to parties involved (including QCA and stakeholders) • provides for parties to make a submission on the amendments (dealing with equitable operation, consistency with the undertaking)

⁶⁴⁰ The Capricornia System Rules were approved on 21 May 2014. Aurizon Network submitted the draft Northern Bowen Basin System Rules on 5 August 2013. They are under consideration.

<i>Issue</i>	<i>Aurizon Network Proposal</i>
	<ul style="list-style-type: none"> • provides for the amendments to be undertaken if no submissions are made • refers the amendments to the QCA if submissions are received (including the information Aurizon Network will provide) • sets out how the QCA will consider the proposed amendments (including decision) • makes the QCA decision (but also provides for Aurizon Network to seek subsequent amendments even if the QCA has previously rejected) • considers replacing or removing system rules as an amendment.

13.5.2 Stakeholders' position

Stakeholders generally expressed a desire to improve the governance process for system rules, as summarised in the table below.

Table 63 Key stakeholder issues

<i>Issue</i>	<i>Comments</i>
System rules as part of the 2014 DAU	<p>Asciano said system rules need to be part of the 2014 DAU to ensure regulatory oversight of this major operational document.⁶⁴¹</p> <p>RTCA said the system rules should explicitly form part of the 2014 DAU and any failure by Aurizon Network to comply with them should be enforceable under the standard dispute process in the 2014 DAU, as well as by the QCA under the QCA Act.⁶⁴²</p>
Mandatory initial system rules	<p>The QRC and Anglo American said Aurizon Network should ensure approved system rules exist, at all times, for each coal system (either individually or together with other coal systems).⁶⁴³</p> <p>Anglo American said Aurizon Network should be required to develop and implement system rules for the relevant system(s) within six months of becoming aware that it is required to develop System Rules.⁶⁴⁴</p>
Qualification for initial system rules	<p>Anglo American said Aurizon Network should be required to develop system rules where they do not exist, due to the important position that system rules have in governing capacity use and allocation within a relevant system.⁶⁴⁵</p>
Development of System Rules	<p>RTCA said the development of system rules for each system should be a task which is undertaken by Aurizon Network in conjunction with the rail capacity group for that system.⁶⁴⁶</p> <p>Anglo American said Aurizon Network should have to develop and implement system rules within six months and if it does not comply with that timeframe, the QCA should determine and implement (with the assistance of experts at Aurizon Network's own costs) system rules it believes appropriate.⁶⁴⁷</p>
Approval of system rules	<p>Asciano and Anglo American said Clauses 7.6.3 (d) and (e) restrict the oversight and approval powers of the QCA. These clauses imply if system rules are equally disadvantageous for all users they should be acceptable to the QCA. While system rules should treat all users equitably, the rules should be aimed to be advantageous</p>

⁶⁴¹ Asciano, 2014 DAU, sub. no. 22: 37–38

⁶⁴² RTCA, 2013 DAU, sub. no. 73: 65

⁶⁴³ QRC, 2014 DAU, sub.no.39 : 13; Anglo American, 2014 DAU, sub. no. 9: 13

⁶⁴⁴ Anglo American, 2014 DAU, sub. no. 7: 51

⁶⁴⁵ Anglo American, 2014 DAU, sub. no. 7: 51

⁶⁴⁶ RTCA, 2013 DAU, sub. no. 73: 65

⁶⁴⁷ Anglo American, 2014 DAU, sub.no.7: 51–52

<i>Issue</i>	<i>Comments</i>
	to all users by providing frameworks that encourage increased supply chain capacity. ⁶⁴⁸
Annual review of System Rules	<p>The QRC and Anglo American said to delete the 60% criteria and leaving only a yearly review.⁶⁴⁹</p> <p>Anglo American disagreed that the scope of the QCA's consideration should be removed and the topics that access holders can make submissions on, should be narrowed.⁶⁵⁰</p> <p>Peabody said system rules must be reviewed by access holders and end users with oversight from the QCA.⁶⁵¹</p> <p>Anglo American said reviews should be triggered by:</p> <ul style="list-style-type: none"> • connection of new coal basins, • connection of new port terminals, • connection of unloading facilities, or • material changes to the system operating parameters NMP.⁶⁵²
Proposed amendments to system rules	<p>RTCA said a voting process should be used to support adoption of amendments to system rules—in which all coal chain stakeholders are able to participate (including service providers and producers).⁶⁵³</p> <p>Asciano said the QCA should have a formal approval process for any future amendments to system rules which may be made by Aurizon Network.⁶⁵⁴</p> <p>The QRC suggested a requirement for any amendment to the system rules to be approved by the QCA.⁶⁵⁵</p> <p>The QRC and Anglo American suggested changing the process (cl. (c) to (m)) to the effect that:</p> <ul style="list-style-type: none"> • Aurizon Network will notify the QCA in writing of the amendments it proposes to make to system rules or that it does not intend to amend the system rules, including reasons for that decision • the QCA will publish Aurizon Network's proposal and undertake public consultation • Aurizon Network must amend system rules in accordance with QCA decision.⁶⁵⁶ <p>Asciano said Aurizon Network should be required to submit system rules proposals or amendments suggested by access holders to the QCA for formal consultation, with the amendments being subject to the QCA approval process. Aurizon Network should not have full discretion as to what changes are (or are not) put forward to the QCA for approval.⁶⁵⁷</p> <p>Asciano said any amendment of system rules should be subject to a regulatory approval process overseen by the QCA regardless of whether submissions are received. Submissions made by parties should also be submitted to the QCA, not Aurizon Network, consistent with other approval processes.⁶⁵⁸</p> <p>Asciano said clause 7.6.4(f)(ii)(A)(2) is too restrictive and subjective as it is based on</p>

⁶⁴⁸ Anglo American, 2014 DAU, sub.no.7: 52; Asciano, 2014 DAU, sub. no. 22: 37

⁶⁴⁹ QRC, 2014 DAU, sub. no. 39: 14; Anglo American, 2014 DAU, sub. no. 9: 14

⁶⁵⁰ Anglo American, 2014 DAU, sub. no. 7: 53

⁶⁵¹ Peabody, 2013 DAU, sub. no. 37: 4

⁶⁵² Anglo American, 2013 DAU, sub. no. 78: 33

⁶⁵³ RTCA, 2013 DAU, sub. no. 73: 65

⁶⁵⁴ Asciano, 2013 DAU, sub. no. 43: 75

⁶⁵⁵ QRC, 2013 DAU, sub. no. 46: 61

⁶⁵⁶ QRC, 2014 DAU, sub. no. 39: 15; Anglo American, 2014 DAU, sub. no. 9: 15

⁶⁵⁷ Asciano, 2014 DAU, sub. no. 22: 38

⁶⁵⁸ Asciano, 2014 DAU, sub. no. 22: 38

<i>Issue</i>	<i>Comments</i>
	Aurizon Network's assessment of whether access holders and access seekers are affected by the amendments. All users of the relevant system rules should be considered as affected persons and notified of any amendments and given the opportunity to make submissions in response to any amendment of system rules directly to the QCA. System users should include customers, access holders, access seekers, train operators, parties with rail interfaces and parties which own or operate loading or unloading terminals. ⁶⁵⁹

13.5.3 QCA's analysis and Draft Decision

Our interim position, as set out in this Draft Decision, is to refuse to approve clause 7.6 of the 2014 DAU.

We would approve clause 7.6 if it provided a clear and certain process for the development, approval, review and amendment of system rules. We consider it is important:

- to have a consultative process for the development of the initial system rules and subsequent amendments—we agree with stakeholders that a consultative process will lead to a better outcome
- to have a uniform approval process for all system rules, whether initial or amended
- to have system rules reviewed at least annually with the resulting amendments taking into consideration stakeholders' views
- to have certainty that system rules are implemented promptly after the approval date and remain in place at all times.

We consider Aurizon Network's drafting has failed to meet these criteria in most aspects. Therefore, we have proposed amendments to clause 7A.2 of the 2014 DAU to improve clarity and certainty around the system rules governance.

Examples of the amendments we have made are:

- mandatory development of initial system rules with timeframes— to increase certainty that agreed system rules are in effect at all time
- a process for the QCA's approval of initial, amended, varied and replacement system rules— to increase transparency of the process and the certainty that agreed system rules are in effect
- obligation to review system rules at least annually or when some system triggers are met— to lead to continual improvement of system rules
- obligation to notify access holders and the QCA of the review outcomes and mandatory amendments—to make Aurizon Network more accountable.

More detailed consideration is given in clause 7A.2. in our mark up to the 2014 DAU.

We consider our suggested amendments will, together, lead to the implementation of consultative and dynamic system rules, ultimately promoting the economically efficient operation and use of the network.

⁶⁵⁹ Asciano, 2014 DAU, sub. no. 22: 38

We believe a clear and defined governance process for system rules is in the public interest, in the interest of access seekers and access holders and ultimately to be in Aurizon Network's legitimate business interest (ss. 138(2)(b), (d), (e) and (h) of the QCA Act).

Draft Decision

13.7 Our Draft Decision is to refuse to approve clause 7.6 of the 2014 DAU. We would approve a clause 7A.2 with amendments to:

- (a) require Aurizon Network to develop initial system rules within set timelines**
 - (b) set out a process for the QCA's approval of system rules**
 - (c) require Aurizon Network to review system rules at least annually or if certain triggers are met**
 - (d) require Aurizon Network to notify access holders and the QCA of the outcomes of a system rules review**
- as set out in the marked changes attached to this Draft Decision.**

14 REGULATORY ASSET BASE AND CUSTOMER VOTING

The return on, and return of, capital relating to the RAB is a significant component of the reference tariffs for each system in the CQCN. It is important for Aurizon Network that it has confidence it will be able to generate expected revenue that is at least enough to meet the efficient costs of providing access to the CQCN, including a return on investment commensurate with the regulatory and commercial risks involved. It is also important for access seekers and access holders to have confidence they will be paying no more than such efficient costs and that the costs of capital expenditure projects are efficient and have been prudently incurred.

Our Draft Decision is to refuse to accept Aurizon Network's 2014 DAU proposals for the RAB and customer voting process. We are of the view that they do not provide sufficient certainty that only prudent and efficient capital expenditure will be included in the RAB.

In particular, we are of the view that Aurizon Network's proposals do not adequately account for the fact that any prudent and efficient capital project encompasses a trade-off across scope, standard and cost.

Further, we consider the arrangements for assessing the prudence of capital expenditure projects for the 2014 DAU have become too complex and difficult to administer. We are proposing to significantly simplify the capital expenditure approval process and include a clearer process for regulatory pre-approval of projects, which we consider will improve regulatory confidence for Aurizon Network, as well as future expansion funders and financiers.

We have accepted Aurizon Network's proposal that equity raising costs should be recognised and included in the RAB, but will require Aurizon Network to show that its equity raising costs are efficient and necessary to support investment in the CQCN.

For customer voting, we are proposing customers should vote on a package of measures (i.e. scope, standard, and cost) not simply scope (as has been the case previously). This would enable the voters to make a more informed assessment of the project.

14.1 Introduction

The RAB reflects the asset value of the CQCN infrastructure used when calculating maximum allowable revenue (MAR) under the building blocks methodology. Aurizon Network recovers, through time, the value of the RAB (as indexed and adjusted) through the payment of access charges, including payments pursuant to take-or-pay obligations. The revenue cap approach adopted for the CQCN provides Aurizon Network with a degree of certainty that the asset value of the RAB should ultimately be recovered and a reasonable commercial return achieved consistent with the approved WACC. Further, the RAB is often used by investors to assess the value of a regulated business, taking account of the likely future revenue stream.

Against this background, it is important that only prudent and efficient investment in infrastructure should be included in the RAB. Further, material adjustments to the established RAB should only be made in a manner consistent with the established RAB roll-forward process under the building block methodology (involving indexation, depreciation, disposal adjustments and capital expenditure carryover).

Given this, the regulatory framework should provide the correct incentives and credible sanctions so there is neither over-, nor under- investment in assets by Aurizon Network, expansion funders or third-party financiers. Otherwise, access holders pay higher tariffs than is

economically efficient or there is insufficient investment in infrastructure to provide necessary below-rail services.

The process for obtaining acceptance of capital expenditure into the RAB is important for all investors in CQCN infrastructure, whether they be Aurizon Network, access seekers, train operators or third-party financiers. In this context, we consider the 2014 DAU should:

- provide a transparent and accountable process for regulatory assessment of the prudence and efficiency of all capital expenditure eligible for inclusion in the RAB
- provide all potential investors in the CQCN with an appropriate level of confidence that they will receive any prudent and efficient investment back through time
- ensure that the exclusion of imprudent and inefficient capital expenditure from the RAB is perceived as a credible, evidence-based regulatory outcome for all participants and investors in the CQCN
- account for the fact that capital projects are a trade-off across scope, standard, cost and time to complete, as well as having implications for capacity.

14.2 Overview

14.2.1 Aurizon Network proposal

Aurizon Network's 2014 DAU sets out the prudency assessment for rail infrastructure projects in Schedule E of the 2014 DAU, with the QCA undertaking a prudency review and/or via Part 8 using the customer approval (voting) process.⁶⁶⁰

Schedule E

Aurizon Network said the purpose of Schedule E of the 2014 DAU is to achieve the objectives of timeliness, transparency, improved clarity and ease of understanding.⁶⁶¹ In relation to the capital expenditure assessment process it included the following principles:

- If capital expenditure is assessed by the QCA as prudent in scope, standard and cost, it is then included in the RAB on an annual basis, thereby increasing the RAB value.⁶⁶²
- Approval of capital expenditure may be sought at any time, including prior to the infrastructure being constructed.
- A procurement strategy process can be adopted for projects where the scope has been approved by customers and/or the QCA.⁶⁶³

Aurizon Network's 2014 DAU also included the following arrangements:

- deemed acceptance of Aurizon Network's request (for example, for acceptance of capital expenditure as prudent) due to QCA's non-compliance with timeframes⁶⁶⁴

⁶⁶⁰ The customer approval (voting) process is included as a component of the expansion framework in part 8 of the 2014 DAU. The 2010 AU includes this process as part of Schedule A, which outlines the processes associated with approving the inclusion of capital expenditure into the RAB.

⁶⁶¹ Aurizon Network, 2013 DAU, sub. no. 2: 279-290

⁶⁶² Under the 2010 AU, Aurizon Network submits its annual capital expenditure to us for a prudency assessment, and each year of the regulatory period, the RAB is rolled forward. The reference tariffs are adjusted at the start of each regulatory period to reflect the movements in the RAB value.

⁶⁶³ A procurement strategy provides an entity with the strategies for implementing a program of procurement (for example, for materials and equipment).

- limiting the circumstances under which the QCA can adjust the RAB value⁶⁶⁵
- automatic approval of the scope and standard of asset renewals if they accord with a QCA approved AMP⁶⁶⁶
- defining the approach to determine the value due to asset disposals⁶⁶⁷
- defining the approach to capitalisation of equity raising costs.⁶⁶⁸

Part 8 – Customer Voting Process

Part 8 of the 2014 DAU as originally proposed provides for Aurizon Network to seek approval for the prudence of scope for a capital expenditure project, via a vote of the relevant access seekers, access holders and customers (cl. 8.13.1(a) of the 2014 DAU).

The 2014 DAU does not oblige Aurizon Network to undertake a voting process. Further, an unsuccessful vote does not stop Aurizon Network from seeking the QCA's acceptance on the same matter or having a future vote (cl. 8.13.1(b) of the 2014 DAU).

14.2.2 Stakeholders' Position

Schedule E

Stakeholders raised a number of concerns in relation to the capital expenditure prudence assessment, adjusting the value of the RAB and asset maintenance related matters. Stakeholders also considered the provisions should be extended to the SUFA assets/funders.⁶⁶⁹

Part 8 – Customer Voting Process

Stakeholders proposed a number of amendments to the 2014 DAU customer voting provisions to improve the accountability and transparency of the process.

14.2.3 Legislative Framework and QCA Assessment Approach

Legislative framework

We are required to assess Aurizon Network's proposals, having regard to the criteria in section 138(2) of the QCA Act. Section 138(2) does not prescribe the weightings for each matter and also provides that we can have regard to any other issue(s) we consider relevant. Against this background, we consider:

- sections 138(2)(a), (b), (d), (e), (f), (g) and (h) should be given more weight
- section 138(2)(g) refers to the pricing principles mentioned in section 168A, of which we consider sections 168A(a) and 168A(d) should be given more weight
- sections 138(2)(c), 168A(b) and 168A(c) should be given less weight, as they are less practically relevant to our assessment.

⁶⁶⁴ See for example, Aurizon Network, 2014 DAU, Schedule E, cl. 1.2(e), 2.3(e).

⁶⁶⁵ Aurizon Network, 2013 DAU, sub. no. 2: 247

⁶⁶⁶ Asset Management Plan (AMP) describes the standards that Aurizon Network will apply in determining whether to incur capital expenditure by replacing assets or maintaining those assets.

⁶⁶⁷ Aurizon Network, 2013 DAU, sub. no. 2: 247

⁶⁶⁸ Aurizon Network, 2013 DAU, sub. no. 2: 247

⁶⁶⁹ SUFA is a suite of standard pro-forma agreements designed to facilitate alternative options to Aurizon Network funding rail infrastructure expansions on the CQCN. See QCA, 2014(c) and QCA, 2014(i) for details.

We note that we gave extensive consideration to the application of these statutory factors in the context of the RAB in our MAR Draft Decision. Our analysis from the MAR Draft Decision is equally applicable to this Draft Decision.

Efficient cost and competition in relevant markets

In deciding whether or not to approve a draft access undertaking, we are required by section 138(2)(a) of the QCA Act to have regard for the object of Part 5 as set out in Section 69E, which is whether the draft access undertaking will promote the economically efficient operation of, use of and investment in the CQCN with the effect of promoting effective competition in upstream and downstream markets.

Consistent with the MAR Draft Decision, this context leads us to consider that the RAB should only include the capital costs associated with prudent and efficient investment.

We are also of the view that this approach aligns with Aurizon Network's legitimate business interests as it will assist Aurizon Network to generate expected revenue that is at least enough to meet the efficient costs of providing access to the CQCN (s. 138(2)(a) and (b), and 168A of the QCA Act). We consider that it is in the interests of access seekers, access holders and train operators because it results in reference tariffs being set at a level no higher than is necessary to enable Aurizon Network to recover its efficient investment costs. For the same reason, we are also of the view that it also balances the interests of potential third party financiers (ss. 138(2)(e) and (h) of the QCA Act).

Further, efficient investment costs provide appropriate pricing signals regarding rail transportation costs in the CQCN. This can act to promote effective competition in upstream and downstream markets. We consider this is in the public interest and that of Queensland's economy (s. 138(d) of the QCA Act).

Pricing principles

As noted in the introduction, we consider it important that material adjustments to the established RAB are only made when completely necessary. For avoidance of doubt, this does not preclude excluding assets from the RAB.

In our view this approach provides balance between the need to have regard for the effect of excluding assets for pricing purposes (s. 138(2)(f) of the QCA Act), with the pricing requirements under section 168A of the QCA Act and maintaining Queensland's competitive position in the global coal market (s. 138(2)(d) of the QCA Act).

QCA assessment approach

The table below outlines the assessment criteria to which we have had regard when developing our Draft Decision for Schedule E and the customer voting process included in Aurizon Network's 2014 DAU. We have adopted assessment criteria as a means to give practical effect and application to the various statutory factors to which we must have regard in section 138(2) of the QCA Act. For example, issues of transparency and workability are fundamental to the effectiveness of the regime, hence the extent to which it is consistent with those factors.

Table 64 QCA assessment criteria for the RAB and customer voting

<i>Assessment criterion</i>	<i>Rationale</i>
Is the process for the regulatory assessment of the prudence and efficiency of all capital expenditure eligible for inclusion in the RAB transparent and workable?	The process for including capital expenditure into the RAB should be: <ul style="list-style-type: none"> • transparent and concise • appropriately assign roles and responsibilities • ensure roles and responsibilities can be undertaken effectively.
Does the process provide all potential investors in the CQCN with an appropriate level of confidence that they will receive any prudent and efficient investment back through time?	Subject to the CQCN being a declared service, does the approach to the RAB : <ul style="list-style-type: none"> • provide an appropriate level of assurance to investors that they will receive their investment back through time • balance this with ensuring the competitiveness of the CQCN coal supply chain in the global coal market through time.
Does the exclusion of imprudent and inefficient capital expenditure from the RAB represent a credible regulatory outcome for all participants and investors in the CQCN?	Incentives to ensure capital expenditure is efficient are strengthened if Aurizon Network, users and investors in the CQCN perceive the exclusion of capital investment from the RAB as a credible regulatory response. This requires: <ul style="list-style-type: none"> • the processes adopted to not unduly constrain the regulatory process • reliable and robust information regarding the capital investment to be available • responsibility for ensuring efficient capital investment to sit with those parties managing, constructing and investing in the capital project.
Does the approach adopted account for the fact that capital projects comprise a set of trade-offs across scope, standard, cost and time to complete?	Capital projects represent a set of interlinked compromises across scope, standard, cost and time to complete, as well as impacting on the capacity conditions of the CQCN. The capital costs that are proposed for inclusion in the RAB have to be considered holistically with scope, standard and time to complete. This requires: <ul style="list-style-type: none"> • processes that do not look at individual elements discreetly or sequentially • any decisions regarding the inclusion of capital expenditure into the RAB to be made in the context of a complete set of information regarding the trade-offs associated with the capital project. <p>This allows both the prudence (the scope/standard) and cost efficiency (is the scope/standard delivered at the lowest overall cost) of the capital project to be considered together, along with the capacity impacts of the capital project.</p>

The remainder of this chapter is split into the following sections:

- capital expenditure assessment and approval process
- adjusting the value of assets in the RAB
- Asset Management Plan (AMP)
- equity raising costs
- asset disposals
- customer voting process.⁶⁷⁰

⁶⁷⁰ Contained in Part 8 of the 2014 DAU

14.3 Capital expenditure assessment and approval process

14.3.1 Aurizon Network proposal

We have split Aurizon Network's proposed capital expenditure assessment and acceptance processes in the 2014 DAU into the following elements:

- overarching QCA approval process for capital expenditure
- voting and the scope of an infrastructure project
- seeking submissions from stakeholders
- pre-approval of expansions
- deemed approvals.

Overarching QCA approval process for capital expenditure

The 2014 DAU allows Aurizon Network to seek the QCA's acceptance of capital expenditure (for prudence of scope, standard and/or cost) at any time, including prior to the capital expenditure project being constructed.⁶⁷¹

The proposed prudence assessment approach in Schedule E of the 2014 DAU is not significantly different from the approach in the 2010 AU. Aurizon Network has largely retained the provisions relating to the factors we should have regard to when assessing capital expenditure for scope, standard and cost. The 2014 DAU also retains the process for excluded capital expenditure and the approval process for a procurement strategy.

For its procurement strategy, Aurizon Network has proposed that if a project obtains acceptance of scope, then it could submit a procurement strategy to us for acceptance for all or part of that capital expenditure project. If we accepted the procurement strategy, then Aurizon Network could request our acceptance of the costs of that capital expenditure as prudent if it complied with certain conditions in the strategy (including the tender being conducted as per the accepted procurement strategy).⁶⁷²

Voting and the scope of an infrastructure project

Aurizon Network's 2014 DAU allows two options for obtaining approval of project scope:

- a customer vote on scope by Interested Participants; or
- directly seeking our assessment and acceptance of the scope, standard and cost of a capital expenditure project.

Aurizon Network proposed that if a vote is successful, we must accept the outcome of that vote.⁶⁷³

Seeking submissions from stakeholders

Aurizon Network's 2014 DAU proposed that we consult and seek submissions from persons to assist us in our assessment of the prudence of scope, cost and standard. However, Aurizon Network proposed this would not extend to circumstances where the scope has been accepted

⁶⁷¹ Aurizon Network, 2014 DAU, Schedule E, cl 3.1(b), 4.1(b), 5.1(b)

⁶⁷² Aurizon Network, 2014 DAU, Schedule E, cl. 6

⁶⁷³ Aurizon Network, 2014 DAU, Schedule E, cl. 2.1(c)

as prudent by customers and an audit certificate (on the conduct of the vote) has been obtained.⁶⁷⁴

Pre-approval of expansion projects

The 2014 DAU includes the pre-approval of expansion projects, following QCA determination of scope and standard of works for expansions. Where Aurizon Network is funding all or part of the cost of an expansion at the regulated rate of return, then Aurizon Network, following the determination on scope and standard of work, would seek our pre-approval of the prudence of scope, standard and proposed cost.⁶⁷⁵ If these projects are pre-approved, the actual cost of the expansion up to the total of the pre-approved cost would be automatically included in the RAB. If the actual costs were greater than the pre-approved amount, then the difference would require our approval to be included in the RAB.⁶⁷⁶

Deemed approvals

Aurizon Network's 2014 DAU proposed imposing timeframes on us for our consideration of capital expenditure. If the timeframes proposed in the 2014 DAU are not met, we would be deemed to have approved the capital expenditure project.⁶⁷⁷ Aurizon Network said the QCA timeframes were in the interest of timeliness and transparency.⁶⁷⁸

Aurizon Network's 2014 DAU also proposed the scope, standard and cost of a capital expenditure project be deemed to be accepted as prudent, where there was a dispute which was determined by an expert and that determination directly or indirectly involved a determination or acceptance of scope, standard or cost of a capital expenditure project.⁶⁷⁹

⁶⁷⁴ Aurizon Network, 2014 DAU, Schedule E, cl. 2.2(c)(iv)

⁶⁷⁵ Aurizon Network, 2014 DAU, Part 8, cl. 8.10.2

⁶⁷⁶ Aurizon Network, 2014 DAU, Part 8, cl. 8.10.2

⁶⁷⁷ See, for example, Aurizon Network, 2014 DAU, cl. 1.2(e)

⁶⁷⁸ Aurizon Network, 2013 DAU, sub. no. 2:288. Aurizon Network, 2014DAU, sub. no. 4:128-129

⁶⁷⁹ Aurizon Network, 2014 DAU, Schedule E, cl. 2.4

14.3.2 Stakeholders' comments

A summary of stakeholders' key issues is outlined in the table below.

Table 65 Stakeholders' issues

<i>Issue</i>	<i>Description</i>
Prudency tests not sufficiently strong	<p>Asciano commented that a number of prudency tests needed to be strengthened. It was concerned with the following provisions:</p> <ul style="list-style-type: none"> • where the QCA has accepted a project to be included in the RAB, if capital was invested in that project but part way through a decision was made to not proceed with the project • concept, pre-feasibility and feasibility studies and other studies to be capitalised into the RAB.⁶⁸⁰ <p>Asciano said that these provisions could result in Aurizon Network inflating the RAB if they undertook studies into marginal projects or actually invested in these projects and then decided not to proceed with the project prior to completion.⁶⁸¹</p> <p>Asciano also proposed a requirement for Aurizon Network to maintain a RAB register - this would contain opening values, depreciation, escalation, disposals, new capital from effective use date and closing value. It proposed we should also review the RAB register to ensure accuracy and prudency.⁶⁸²</p>
Lack of clarity on seeking our approval of prudency	<p>According to the QRC, industry response was that Aurizon Network must seek our approval of prudency of scope, standard and cost, in order to make it clear that the QCA's approval must be sought even if a user vote was undertaken.⁶⁸³</p>
Timeframes on the QCA	<p>The QRC noted a number of timeframes were imposed on the QCA, which if not complied with, would result in a deemed approval. The QRC did not support this approach.⁶⁸⁴ The QRC said a deemed approval would circumvent the QCA's true role.⁶⁸⁵</p> <p>Asciano shared a similar view, saying the QCA should not be bound in this manner.⁶⁸⁶</p>
Restricting what the QCA can consider for assessing prudency	<p>Asciano said the QCA should not be held to only making a decision based on information available to Aurizon Network at a certain time.⁶⁸⁷ Asciano said the QCA should always have a right to seek consultation submissions.⁶⁸⁸ It said the QCA should be allowed to consider submissions from Interested Participants in the voting process.</p> <p>The QRC also said the QCA should be able to invite stakeholder input when assessing prudency.⁶⁸⁹</p>
Scope acceptance by customer/ access holder should not be the sole consideration	<p>The QRC said that a project could impact on other access holders or customers. It was therefore not appropriate to accept the scope of that customer/access holder specific project as prudent just because it was accepted by that customer or access holder.⁶⁹⁰</p>

⁶⁸⁰ Asciano, 2014 DAU, sub. no. 22:47-48

⁶⁸¹ Asciano, 2014 DAU, sub. no. 22:47-48

⁶⁸² Asciano, 2013 DAU, sub. no. 44:42-43

⁶⁸³ QRC, 2013 DAU, sub. no. 84: 64:65

⁶⁸⁴ QRC, 2013 DAU, sub. no. 62:9

⁶⁸⁵ QRC, 2013 DAU, sub. no. 85:66

⁶⁸⁶ Asciano, 2013 DAU, sub. no. 44:43

⁶⁸⁷ Asciano, 2013 DAU, sub. no. 44:44

⁶⁸⁸ Asciano, 2014 DAU, sub. no. 22:143

⁶⁸⁹ QRC, 2014 DAU, sub. no. 42: 61

⁶⁹⁰ QRC, 2014 DAU, sub. no. 42: 62

14.3.3 QCA analysis and Draft Decision

We consider the amendments Aurizon Network proposed in the 2014 DAU build upon the existing 2010 AU capital expenditure approval process in a manner that:

- widens the potential options available to Aurizon Network to obtain acceptance of the scope of a capital project – without reference to efficient cost
- unduly constrains the regulatory process for assessing whether capital expenditure should be included in the RAB.

Given this, our own experience in completing capital expenditure approvals and taking into consideration stakeholder comments on Aurizon Network's 2014 DAU, we consider the capital expenditure approval process requires simplification.

We also consider there needs to be greater emphasis on assessing standard, scope, cost, and the capacity implications of any capital project, as a whole. This allows prudence of scope and efficiency of cost to be considered together. Our proposed approach is outlined in the following table:

Table 66 QCA's proposed approach to the capital expenditure assessment process

<i>Proposed approach</i>	<i>Rationale</i>
A single approach for assessing prudence and efficiency of capital projects	One process should apply to all forms of capital project. The type of project is not directly relevant to the assessment of whether it is prudent and efficient.
Prudence and efficiency of a capital project will be assessed from the perspective of scope, standard, cost and the capacity implications it has. Any customer vote that does not relate to all these aspects of a capital project will be considered null and void.	A capital project is a package of interlinked trade-offs between scope, standard, cost. Further, all capital projects have some form of implication for CQC capacity. The prudent and efficient capital costs that are proposed for inclusion in the RAB should be considered holistically in this context.
Aurizon Network, users and third party financiers are responsible for providing sufficient objective, robust, transparent evidence of the prudence and efficiency of a capital project they are involved in.	The QCA's role is to decide, based on the case provided by the relevant parties, the capital expenditure associated with a capital project is prudent and efficient and should be included in the RAB. How this task is fulfilled and the elapsed time it takes to form a view is dependent on the quality, completeness, objectivity and comprehensibility of the information provided by the relevant parties. It is the responsibility of the relevant parties to provide a complete set of information regarding the capital project. This is because they have the relevant expertise and access to all the information.
The pre-approval of prudent and efficient capital expenditure to be included in the RAB is available for all capital projects. As is the option of seeking to include prudent and efficient capital expenditure in the RAB after the capital expenditure has been incurred. Pre-approval, however, will be time limited, such that if the capital project is not complete within the time frame proposed, the pre-approval of the capital expenditure to be included in the RAB may cease to have effect.	The option of having prudent and efficient capital expenditure pre-approved and included in the RAB should be available for all capital projects, as our proposed process for assessing the prudence and efficiency of capital projects does not depend on project type. In order for pre-approval to operate effectively there needs to be a binding constraint that ensures incentives to complete the capital project to schedule and cost are maintained. This has been incorporated through having pre-approval time dependent.
Any submission to include capital expenditure in the RAB or to gain pre-approval for the inclusion in the RAB can be subject to consultation.	The regulatory process should be open and transparent, taking into account the views of all interested stakeholders.

The main implications of our proposal are:

- all capital projects will be viewed holistically as a set of trade-offs between scope, standard and cost. This allows prudence of scope and efficiency of cost to be assessed together, along with the capacity implications the project has for the CQCN
- simplification of the language and provisions regarding the regulatory assessment process for scope, standard and cost. Greater emphasis and responsibility placed on those participating in the capital project to justify their proposals as they have the expertise, knowledge and information
- no time constraints on the QCA's decision making process as this is dependent on the information that is provided by the interested parties to a capital project
- no constraints on the QCA's ability to consult on any proposal to include capital expenditure in the RAB because all stakeholders should be afforded the opportunity to provide input into the decision making process
- removal of the provisions with respect to procurement strategies because it will not be possible to gain acceptance of the scope of a capital project separately from considerations of the capital costs of that project
- removal of the excluded capital expenditure provisions because the proposed process does not preclude interested parties to a capital project that has had a proportion of capital costs excluded from the RAB submitting subsequent proposals for its inclusion into the RAB
- removal of the intangible asset provisions because our proposed capital expenditure process does not preclude interested parties to a capital project from proposing that study costs or additional Rail Infrastructure be included as part of the prudent and efficient capital expenditure that should be included in the RAB.⁶⁹¹

We consider our proposed approach provides greater assurance that the RAB only includes the capital costs associated with efficient investment. We consider that this is consistent with the object of Part 5 of the QCA Act (ss. 69E and 138(2)(a) of the QCA Act).

As identified above, we consider our approach consistent with Aurizon Network's legitimate business interests as it allows for the recovery of its efficient investment costs to the extent contemplated by the pricing principles (ss. 138(2)(b) and 168(a) of the QCA Act). We are also of the view that our approach is in the interests of access seekers, access holders and train operators, as well as accounting for the interests of potential financiers (ss. 138(2)(e) and (h) of the QCA Act). This is because financiers should recover efficient investment costs, whilst access seekers, access holders and train operators should be subject to reference tariffs that only cover efficient investment costs.

Overall, our interim position, as reflected in this Draft Decision, is to refuse to approve Aurizon Network's 2014 DAU proposals for the capital expenditure approval process.

⁶⁹¹ During our assessment of Aurizon Network's 2009 and 2010 DAU, Aurizon Network proposed that capital expenditure associated with feasibility studies be recognised as an intangible asset (QCA, 2010(a), pp.58-59; QCA, 2009, p.29). Under the 2010 AU, the value for intangible assets and additional Rail Infrastructure may be included in the RAB (2010 AU, Schedule A, cl. 1.3). In the 2014 DAU Aurizon Network has proposed that concept, pre-feasibility and feasibility studies be considered as capital expenditure (Aurizon Network, 2014 DAU, Schedule E, cl. 2.2(b)(i)).

Draft Decision

14.1 Our Draft Decision is to refuse to approve Aurizon Network’s proposal in respect of capital expenditure approval process for the 2014 DAU. Instead, we consider it appropriate for Aurizon Network to amend the 2014 DAU in the manner indicated in our proposed draft to be consistent with the proposals outlined in Table 66 and as set up in our amended drafting of the 2014 DAU’s Schedule F.

14.4 Adjusting the value of assets in the RAB

14.4.1 Aurizon Network proposal

Aurizon Network’s 2014 DAU has proposed the RAB could be reduced if the following two criteria were satisfied:

- The QCA has accepted capital expenditure into the RAB based on false or misleading information Aurizon Network provided (or ought to have known it provided).
- False or misleading information resulted in a materially different outcome.⁶⁹²

In the 2010 AU, there are other provisions that provide for a reduction in the RAB. Aurizon Network’s 2014 DAU has removed these provisions. They are:

- circumstances in the future where demand has deteriorated to an extent that regulated prices on an un-optimised asset would result in a future decline in demand
- it becomes clear that there is a possibility of actual bypass
- a condition-based assessment identifies that assets have deteriorated due to Aurizon Network’s maintenance and operating practices.

Aurizon Network said that (a) and (b) could – and should – be addressed through pricing, via the annual review of reference tariffs and review event provisions.⁶⁹³ Aurizon Network also noted there were no provisions in the 2010 AU that describe what would happen to the assets once removed, when they could be reinstated and at what value.⁶⁹⁴ Aurizon Network said if we reject its proposal, then we should address these concerns in a timely manner,⁶⁹⁵ and for it to consider reinstating the drafting included in the 2010 AU additional process drafting would be required to clarify the process for reinstating an asset in the RAB where demand recovers.⁶⁹⁶

Regarding (c), Aurizon Network said it would provide transparency on the asset condition provided it was not linked to the RAB value (or has any other financial impact on the business).⁶⁹⁷

14.4.2 Stakeholders' comments

Stakeholders proposed that the provision related to RAB optimisation due to demand deterioration and actual bypass should be reinstated in the undertaking.⁶⁹⁸ Asciano said

⁶⁹² Aurizon Network, 2013 DAU, sub. no. 2: 236-237

⁶⁹³ Aurizon Network, 2013 DAU, sub. no. 2: 280-281

⁶⁹⁴ Aurizon Network, 2013 DAU, sub. no. 77:70-71

⁶⁹⁵ Aurizon Network, 2013 DAU, sub. no. 2: 281

⁶⁹⁶ Aurizon Network, 2014 DAU, sub. no. 4: 119

⁶⁹⁷ Aurizon Network, 2013 DAU, sub. no. 77:32-33 and 71

⁶⁹⁸ QRC, 2014 DAU, sub. no. 42:61-62; QRC, 2013 DAU, sub. no. 62:5; Asciano, 2013 DAU, sub. no. 44:43

reinstating these would ensure the users were not paying for assets not used or required in the provision of access services.⁶⁹⁹

The QRC said the condition-based assessment, with a link to the RAB, was a means to ensure Aurizon Network was incentivised to adequately maintain the network and did not earn excess returns by underspending the maintenance budget reflected in the tariffs.⁷⁰⁰

14.4.3 QCA analysis and Draft Decision

Our Draft Decision considers RAB adjustments in the context of demand deterioration, threat of actual bypass and the condition based assessment, as well as the process for re-setting the RAB after it has been adjusted.

Demand deterioration

Contrary to Aurizon Network's view, we consider it appropriate to maintain the ability to adjust the value of the RAB in circumstances where we determine demand deterioration is long-term and sustained. We consider this to be in the medium- to long-term interests of any participant or investor in the CQCN coal supply chain, as well as being in the interests of Queensland's economy (s. 138(2) of the QCA Act).

We do, however, intend to clarify that adjustment of the RAB should only be considered if we are of the view that the demand deterioration is long-term and sustained. Any proposal to adjust the RAB would be accompanied by full consultation and section 138(2)(f) of the QCA Act very clearly requires us to have regard to the effect of excluding existing assets for pricing purposes.

Further, we do not consider annual tariff review mechanisms aimed at addressing short-term issues sufficient to deal with a long-term sustained fall in demand.

Our interim position, as set out in this Draft Decision, is to refuse to approve Aurizon Network's proposal to remove demand deterioration as a reason for adjusting the RAB.

Draft Decision

14.2 Our Draft Decision is to refuse to approve Aurizon Network's proposal to remove demand deterioration in the 2014 DAU as a reason for adjusting the RAB. Instead, we consider it appropriate for Aurizon Network to amend the 2014 DAU as follows, in the manner we have indicated in our proposed draft to require Aurizon Network to:

- (a) reinstate demand deterioration as a reason for adjusting the RAB**
- (b) clarify that this only applies when the QCA determines that demand deterioration is long-term and sustained.**

Threat of actual bypass

We are of the view that Aurizon Network's position that the threat of actual bypass does not constitute a reason for adjusting the RAB should be considered further. In our view the threat of actual bypass requires there to be a credible competitive alternative to Aurizon Network's transportation service within the CQCN.

⁶⁹⁹ Asciano, 2013 DAU, sub. no. 44:43

⁷⁰⁰ QRC, 2013 DAU, sub. no. 85:61

If such an alternative exists it is not clear why users of Aurizon Network's service could not renegotiate better overall terms and conditions within their access agreements for the service obtained, given there is an alternative supply option. In such circumstances, it would appear to be at Aurizon Network's discretion to consider how it maintains, or otherwise, its competitiveness and customer base. It is not, however, immediately clear why this would require the RAB value to be reduced.

Against this background our interim position, as set out in this Draft Decision, is to accept Aurizon Network's proposal to remove the threat of actual bypass as a reason for reducing the RAB.

Draft Decision

14.3 Our Draft Decision is to approve Aurizon Network's proposal to remove threat of actual bypass as a reason for adjusting the RAB.

Condition-based assessment

Aurizon Network has proposed that it will not undertake a condition based assessment if the outcome of that assessment is linked to the RAB value or any other financial impact.

In our view, as Aurizon Network is responsible for the operation and maintenance of all CQCN infrastructure (including SUFA assets) it is unclear why it does not expect to be held accountable for its performance in this regard. If the CQCN infrastructure deteriorates at a faster rate than would have been anticipated and this position is not rectified within a reasonable time frame, we consider adjusting the RAB to reflect this represents a reasonable response. Indeed, we note that it is entirely within the control of Aurizon Network to avoid such an outcome.

Overall, we do not consider that there has been a change in circumstances that warrants removing the ability to adjust the RAB value based on the outcome of the condition-based assessment of the rail infrastructure. In our view, it provides an incentive for Aurizon Network to maintain the assets appropriately.

We consider this aligns with the object of the third party access regime in the QCA Act, the public interest, the interests of access holders, access seekers, train operators and prospective third party financiers. We are also of the view that it appropriately balances these concerns with Aurizon Network's legitimate business interests (ss.69E and 138(2) of the QCA Act).

Our interim position, as set out in this Draft Decision, is to refuse to approve Aurizon Network's proposal to remove the link between condition-based assessments and adjusting the RAB.

Draft Decision

14.4 Our Draft Decision is to refuse to approve Aurizon Network's proposal to remove the link between condition based assessment and the RAB in the 2014 DAU. Instead, we consider it appropriate for Aurizon Network to amend the 2014 DAU as follows in the manner we have indicated in our proposed draft to the effect that:

- (a) if the rail infrastructure has deteriorated by more than would have been the case had good operating practice and prudent and effective maintenance and asset replacement policies had been pursued; and**
- (b) the QCA determines that deterioration is long term and sustained the RAB may be reduced.**

Re-setting the RAB

Aurizon Network has proposed there is a need for a process for re-setting of the RAB at some date after it has been adjusted.

We are of the view that providing prescriptive rules and procedures for re-setting the RAB after it has been adjusted is unlikely to be of benefit. RAB adjustments for demand deterioration or because of sustained poor performance in maintaining the CQCN infrastructure are likely to be in response to specific events. As such, we consider it preferable to review these on a case-by-case given the relevant circumstances at the time.

In this context we note that in the event that the RAB is adjusted Aurizon Network can, at any time, provide a submission if it is of the view that that RAB should be re-set.

We are of the view this approach appropriately balances the interest of all stakeholders in the CQCN (s. 138(2) of the QCA Act).

Our interim position, as set out in this Draft Decision, is not to include a process regarding the subsequent re-setting of RAB after it has been adjusted.

Draft Decision

14.5 Our Draft Decision is not to include in the 2014 DAU a process regarding the subsequent re-setting of the RAB after it has been adjusted.

14.5 Asset Management Plan (AMP)

14.5.1 Aurizon Network proposal

Aurizon Network said it should have the discretion to submit an AMP to us for approval.⁷⁰¹ Aurizon Network said an AMP would describe the standards Aurizon Network will apply in determining whether to incur capital expenditure by replacing assets within the RAB, rather than maintaining those assets.

Where an AMP has been submitted to us for approval, and we have accepted it, Aurizon Network proposed that we would be required to accept the scopes and standards of asset replacements or renewals as prudent, if consistent with the AMP.

⁷⁰¹ Aurizon Network, 2014 DAU, Schedule E, cl. 2.5

14.5.2 Stakeholders' comments

Stakeholders said Aurizon Network should be obligated to submit an AMP.⁷⁰² In addition, stakeholders raised the following concerns about the AMP.

Table 67 Stakeholders' issues

<i>Issue</i>	<i>Description</i>
Lack of detail	The QRC was concerned the AMP was a high level document and therefore not sufficiently detailed to determine whether the scope and standard of capital expenditure was prudent. It said an AMP should only be one of the factors for the QCA to consider in determining prudence of those aspects. ⁷⁰³ Stakeholders said we should not be automatically required to accept the scope and standard of asset replacement and renewal as prudent. The AMP should be obligatory for Aurizon Network to submit ⁷⁰⁴ and periodically updated. ⁷⁰⁵
Lack of user-involvement	Prior to the approval of the AMP, the users should be given the opportunity to comment on it. ⁷⁰⁶

14.5.3 QCA analysis and Draft Decision

We are of the view that Aurizon Network can, at its discretion, provide an AMP to us. We also consider it can request our acceptance of the capital expenditure for asset replacement and renewal included in the AMP as prudent and efficient. However, any submission provided will be subject to the capital expenditure approval process discussed in earlier in the chapter.

This results in all capital expenditure proposals being subject to the same level of scrutiny and seeks to ensure that only the costs associated with efficient and prudent capital expenditure will be included in access charges.

We consider that this appropriately balances the interests of access seekers, access holders and train operators, with the legitimate business interests of Aurizon Network (ss. 138(2)(b),(e) and (h) of the QCA Act). We are also of the view that it aligns with the object of the third-party access regime in the QCA Act (ss. 69E and 138(2)(a) of the QCA Act).

Our interim position, as set out in this Draft Decision, is to refuse to approve Aurizon Network's AMP proposals.

⁷⁰² QRC, 2013 DAU, sub. n. 85:67; Asciano, 2013DAU, sub. no. 44:44

⁷⁰³ QRC, 2013 DAU, sub. no. 46:85

⁷⁰⁴ Asciano, 2013 DAU, sub. no. 44:44

⁷⁰⁵ QRC, 2014 DAU, sub. no. 42:62

⁷⁰⁶ Asciano, 2013 DAU, sub. no. 44: 44

Draft Decision

14.6 Our Draft Decision is to refuse to approve Aurizon Network’s AMP proposals in the 2014 DAU. Instead, we consider it appropriate for Aurizon Network to amend the 2014 DAU as follows in a manner we have indicated in our proposed draft, to allow Aurizon Network to:

- (a) provide the QCA with an AMP**
- (b) request that the QCA accept the capital expenditure for asset replacement and renewal in the AMP as prudent and efficient. Any such request will be subject to the capital expenditure approval process set out in the undertaking.**

14.6 Equity raising costs

14.6.1 Aurizon Network proposal

In Schedule E of the 2014 DAU, Aurizon Network proposed we approve future equity raising costs, with these costs to be included in the RAB at the end of a regulatory period. Aurizon Network pointed out we had previously rejected its claim for initial equity raising costs because we were not convinced Aurizon Network demonstrated it was necessary to raise external equity.⁷⁰⁷

Aurizon Network said there was a need to include a process for equity raising costs and have the cost rolled into the RAB. Aurizon Network agreed that it should be required to demonstrate its business needed to raise additional equity and that the allowance for equity raising costs was efficient.⁷⁰⁸

Aurizon Network said the need to raise equity could be demonstrated by cash flow analysis, applying the pecking order theory (where internal reserves and debt funding assumed at the benchmark gearing level are insufficient to meet the capital requirements).⁷⁰⁹ It said this approach was consistent with that applied by the AER⁷¹⁰ and proposed the following assumptions based on the AER’s approach:

- dividend reinvestment of 30%
- dividend reinvestment plan cost of 1% of the total dividends reinvested
- dividend imputation payout ratio of 70%
- seasoned equity raising costs of 3% of total external equity requirements.⁷¹¹

Aurizon Network said that, provided it could clearly demonstrate it has calculated a claim for equity raising costs on this basis, these costs should be included in the RAB, in addition to the relevant project capital expenditure.⁷¹²

⁷⁰⁷ Aurizon Network, 2013 DAU, sub. no. 2:282-283

⁷⁰⁸ Aurizon Network, 2013 DAU, sub. no. 2:282-283

⁷⁰⁹ Aurizon Network, 2013 DAU, sub. no. 2:282-283

⁷¹⁰ AER, 2012, pp.107-108

⁷¹¹ Aurizon Network, 2013 DAU, sub. no. 2:282-283

⁷¹² Aurizon Network, 2013 DAU, sub. no. 2:282-283

14.6.2 Stakeholders' comments

Stakeholders agreed, in principle, on the recovery of equity raising costs in the RAB, but raised some issues for our consideration (presented in the table below).

Table 68 Stakeholders' concerns

<i>Issue</i>	<i>Description</i>
Reasonableness and double counting	The QRC said it relied on us to determine whether the addition of equity raising costs and the proposed approach of determining the amounts are reasonable, ⁷¹³ and there was no double counting between equity raising costs allowances and corporate costs. ⁷¹⁴ Anglo American said that equity raising costs should be limited to equity raising costs that are directly related to the actions required under the Undertaking. ⁷¹⁵ If not, then users could face subsidising or fully funding equity raising activities for the benefit of Aurizon Holdings. ⁷¹⁶
Lack of clarity	The QRC said that it was not clear whether Aurizon Network's intent was to add the equity raising costs to future allowable revenues or capitalise these against the relevant capital expenditure. The QRC supports the second option, including for the user funded assets. ⁷¹⁷
Limiting equity raising costs to Aurizon Network funded assets	The QRC said equity raising costs should apply to SUFA-funded assets. ⁷¹⁸ It said that Aurizon Network limiting the provision of equity raising costs incurred by 'Aurizon Network', seemed to place user funding at a disadvantage to Aurizon Network funded projects. ⁷¹⁹

14.6.3 QCA analysis and Draft Decision

We accept that equity raising costs can, in certain instances, represent a prudent and efficient cost that could be included in the RAB. We also agree that any approach to equity raising costs adopted should apply to both Aurizon Network and other parties funding investments in the CQCN. We do not, however, agree with Aurizon Network's proposals regarding the process for an automatic inclusion of equity raising costs.

In our view a mechanistic approach to calculate equity raising costs provides insufficient scope to assess whether the equity raising costs were actually needed to finance prudent and efficient investment in the CQCN.

In particular, we would have concerns if cash reserves or debt generated via the CQCN were used to finance the investment interests of the Aurizon Group, with the subsequent implication that equity was unnecessarily raised to cover investment needs in the CQCN. In our view, such a scenario would have the effect of Aurizon Network's customers subsidising Aurizon Group investments.

Accordingly, we consider that the assessment of equity raising costs should occur at the end of a regulatory period and adopt a case-by-case approach.

⁷¹³ QRC, 2013 DAU, sub. no. 46:83, 85; QRC, 2014DAU, sub. no. 42: 61

⁷¹⁴ QRC, 2013 DAU, sub. no. 46:83, 85

⁷¹⁵ Anglo American, 2013 DAU, sub. no. 78: 44

⁷¹⁶ Anglo American, 2013 DAU, sub. no. 78: 44

⁷¹⁷ QRC, 2014 DAU, sub. no. 42:62

⁷¹⁸ QRC, 2013 DAU, sub. no. 46:83; QRC, 2014 DAU, sub. no. 42:62

⁷¹⁹ QRC, 2014 DAU, sub. no. 42:62

In this respect if either Aurizon Network and/or other parties funding an investment in the CQCN can demonstrate the following with respect to equity raising costs, those equity raising costs may be approved for inclusion in the RAB:

- They are incurred up-front costs with little or no ongoing costs over the life of the assets.
- They are prudent and efficient for investment in the CQCN.

This approach does not preclude equity raising costs from being included in the RAB, but it aims to ensure that each case can be assessed on its merits and that there is sufficient justification that the relevant equity raising costs represent a prudent and efficient way of financing investment in the CQCN. We are also of the view that any equity raising costs included in the RAB for a given regulatory period should be apportioned across the coal systems of the CQCN in proportion to the capital expenditure incurred in each coal system for the regulatory period.

We are of the view that this approach aligns with the object of the third-party access regime in the QCA Act, is consistent with Aurizon Network's legitimate business interest, as well as the interests of access seekers, access holders, train operators and third-party financiers (ss. 69E and 138(2) of the QCA Act).

Our interim position, as set out in this Draft Decision, is to refuse to approve Aurizon Network's methodology for calculating equity raising costs. We would accept consideration on a case-by-case basis.

Draft Decision

14.7 Our Draft Decision is to refuse to approve Aurizon Network's proposals for equity raising costs in the 2014 DAU. Instead, we consider it appropriate for Aurizon Network to amend the 2014 DAU as follows in a manner we have indicated in our draft to require:

- (a) equity raising costs to be incurred up-front costs with little or no ongoing cost over the life of the asset
- (b) equity raising costs to be prudent and efficient in terms of investment in the Rail Infrastructure
- (c) the assessment of whether equity raising costs should be included in the RAB to be undertaken on an historic basis, to take place at the end of a regulatory period and to adopt a case-by-case approach
- (d) the assessment to apply to both Aurizon Network and other investors in Rail Infrastructure
- (e) any equity raising costs included in the RAB for a given regulatory period to be apportioned across the coal systems of the CQCN, in proportion to the capital expenditure incurred in each coal system for the regulatory period.

14.7 Asset disposals

14.7.1 Aurizon Network proposal

Aurizon Network's 2014 DAU proposes a 'net proceeds' approach for determining the amount to be subtracted from the RAB due to asset disposals.⁷²⁰

⁷²⁰ Aurizon Network, 2014 DAU, cl. 1.1(a)(iii)

Aurizon Network said that where the sale proceeds are less than the RAB value, the value of the disposed asset should be set equal to the net proceeds from the sale (presuming that sale has been done on an arm's length basis); with the residual RAB value remaining in the RAB. Aurizon Network said it was appropriate to incentivise it to maximise the sale proceeds where the sale proceeds were below the residual RAB value.⁷²¹

Aurizon Network also proposed retaining some benefit where net proceeds were greater than the disposed asset's RAB value. Aurizon Network said the balance of that gain should be shared equally between it and users.⁷²²

14.7.2 Stakeholders' comments

Stakeholders generally disagreed on Aurizon Network's proposed net proceed approach, and suggested other approaches. They were also not convinced the 2014 DAU provided sufficient clarity on the treatment of asset disposals, with concerns set out in the table below.

Table 69 Stakeholders' concerns

<i>Issue</i>	<i>Description</i>
Possibility of the RAB value reflecting assets no longer used	The QRC did not find Aurizon Network's justification for retaining a portion of the profit to be reasonable. ⁷²³ QRC suggested the 'written-down' value be deducted from the RAB so it would not reflect values of assets no longer used. ⁷²⁴ The QRC said it would still accept Aurizon Network's net proceed approach if the deducted amount was not below the asset's 'market value', arising from a prudent sales process. ⁷²⁵ The QRC also disagreed with Aurizon Network's approach for user-funding-related assets, saying the RAB should be reduced by the SUFA asset's net proceeds. ⁷²⁶ Anglo American suggested the entire book value ⁷²⁷ be reduced to prevent access holders from paying a WACC calculated on the remaining value of the RAB if the disposed asset was sold at less than the book value. ⁷²⁸
Lack of clarity	On what the disposal process would not cover (i.e. assets that are replaced)-the QRC said it would accept that proposal if Aurizon Network's intention was to credit the sale proceeds against the cost of the replacement asset. ⁷²⁹ The QRC required clarity on this matter. ⁷³⁰ The QRC said the 2014 DAU should also be clear that the portion of the proceeds up to the RAB value must be deducted from the value of the relevant (disposed) assets. ⁷³¹

14.7.3 QCA analysis and Draft Decision

We do not agree with Aurizon Network's 2014 DAU proposals for asset disposals associated with the RAB.

⁷²¹ Aurizon Network, 2013 DAU, sub. no. 2:280

⁷²² Aurizon Network, 2013 DAU, sub. no. 2:280

⁷²³ QRC, 2013 DAU, sub. no. 46:83

⁷²⁴ QRC, 2013 DAU, sub. no. 46:83

⁷²⁵ QRC, 2013 DAU, sub. no. 46:83

⁷²⁶ QRC, 2014 DAU, sub. no. 42:61

⁷²⁷ We understand that by 'book value' Anglo American means the 'remaining' value of the asset in the RAB.

See Anglo American, 2013 DAU, sub no. 78: 43.

⁷²⁸ Anglo American, 2013 DAU, sub. no. 78:43

⁷²⁹ QRC, 2014 DAU, sub. no. 42:61

⁷³⁰ QRC, 2014 DAU, sub. no. 42:61

⁷³¹ QRC, 2014 DAU, sub. no. 42:61

We are of the view that if Aurizon Network disposes of an asset in the RAB, the baseline position is that the RAB value of the asset should be removed from the RAB. This is because we do not consider that access charges should include the RAB value of disposed assets unless there is an objectively justified reason for such value to be included.

Aurizon Network can, on a case-by-case basis, provide us the QCA with a submission regarding why any of the RAB value of a disposed asset should remain in the RAB. If we approve Aurizon Network's submission the RAB value will be adjusted accordingly. For avoidance of doubt, our assessment of any submission from Aurizon Network can include public consultation on Aurizon Network's proposals.

We are of the view that this approach appropriately balances the interests of access holders, access seekers and train operators, with the legitimate business interests of Aurizon Network (ss. 138(2)(b),(e) and (h) of the QCA Act).

Our interim position, as set out in this Draft Decision, is to refuse to approve Aurizon Network's proposed approach to asset disposals.

Draft Decision

14.8 Our Draft Decision is to refuse to approve Aurizon Network's proposed approach to asset disposals in the 2014 DAU. Instead, we consider it appropriate for Aurizon Network to amend the 2014 DAU as follows in the manner we have indicated in our proposed draft to require that if Aurizon Network disposes of an asset:

- (a) **during a year of the regulatory period, the value of the asset recorded in the RAB will be removed from the RAB, unless Aurizon Network can demonstrate to the QCA's satisfaction that less than that amount should be removed from the regulatory asset base; in which case the amount approved by the QCA will be removed from the RAB.**

14.8 Customer voting process

14.8.1 Aurizon Network proposal

Aurizon Network's customer voting process incorporates a number of elements comprising:

- purpose and application
- identification and voting rights of Interested Participants
- voting and acceptance process
- information provided to Interested Participants
- compliance and audit provisions.

Purpose and application

Aurizon Network's 2014 DAU proposed that voting should relate to scope of works and any vote undertaken should be in the form of a voting proposal. A voting proposal can comprise:

- the scope of a capital expenditure project

- a material change to the scope of a capital expenditure project that has previously been accepted via a vote.⁷³²

An unsuccessful vote does not prevent Aurizon Network from seeking the QCA's acceptance on a matter voted upon or Aurizon Network voting on the matter again in the future.⁷³³

The 2014 DAU does not oblige Aurizon Network to fund or construct a capital expenditure project as a result of seeking or obtaining customer acceptance of the scope of a capital expenditure project.⁷³⁴

Identification and voting rights of Interested Participants

The 2014 DAU provides that only Interested Participants can vote for a given voting proposal. Interested Participants are customers, access seekers without customers and access holders, where the access charges or likely access charges:

(i) are (or will be) determined by reference to a Reference Tariff; and

(ii) would be affected by including the amount of capital expenditure for a capital expenditure project into the Regulatory Asset Base.⁷³⁵

The number of votes attributable to each Interested Participant is based on the number of Affected Train Paths. An Affected Train Path is a train path where the reference tariff for a train service using that path would be affected by including the relevant capital expenditure of the capital project into the RAB.⁷³⁶ The determination of the number of Affected Train Paths applicable to an Interested Participant depends on the voting right principles.⁷³⁷ These are outlined in the table below.

Table 70 Principles underpinning voting rights

<i>Principle</i>	<i>Voting rights</i>
<p>If the access agreement in relation to the Interested Participant:</p> <ul style="list-style-type: none"> • will be in force five years after acceptance of the voting proposal is sought • is subject to a legally binding commitment. 	<p>Affected Train Paths must be determined based on the access rights specified in that access agreement for a twelve month period starting five years after the first day of the month in which acceptance is sought for the voting proposal.</p>
<p>If the access agreement is due to expire within five years after acceptance of the voting proposal is sought and:</p> <ul style="list-style-type: none"> • Aurizon Network reasonably expects that a renewal will occur in relation to the relevant access rights under that access agreement. 	<p>Affected Train Paths must be determined based on the access rights specified in that access agreement for the last period of twelve months of that access agreement.</p>
<p>To the extent that an Interested Participant is (or is also) an access seeker or an access seekers customer:</p> <ul style="list-style-type: none"> • where the available capacity, plus the capacity expected to be created by the capital expenditure project, that may potentially be used for Affected Train Paths (Total Available Capacity); 	<p>Affected Train Paths must be calculated as the access seekers proportion of the Total Available Capacity on a pro rated basis by reference to the access seekers proportion of the Requested Capacity.</p> <p>They must be calculated for a twelve month period starting five years after the first day of the month in</p>

⁷³² Aurizon Network, 2014 DAU, cl. 8.13.2(a), Part 8

⁷³³ Aurizon Network, 2014 DAU, cl. 8.13.1(a), Part 8

⁷³⁴ Aurizon Network, 2014 DAU, cl. 8.13.2(d), Part 8

⁷³⁵ Aurizon Network, 2014 DAU, cl. 8.13.3(a), Part 8

⁷³⁶ Aurizon Network, 2014 DAU, cl. 8.13.3(a), Part 8

⁷³⁷ Aurizon Network, 2014 DAU, cl. 8.13.4, Part 8

Principle	Voting rights
<ul style="list-style-type: none"> is less than that needed by Aurizon Network to provide all of the access rights sought by access seekers for Affected Train Paths (Requested Capacity). 	which acceptance is sought for the voting proposal.
<p>To the extent that an Interested Participant is (or is also) an access seeker or an access seekers customer:</p> <ul style="list-style-type: none"> where the Total Available Capacity is greater than the Requested Capacity 	<p>Affected Train Paths are those sought by the access seeker.</p> <p>They must be calculated for a twelve month period starting five years after the first day of the month in which acceptance is sought for the voting proposal.</p>
If more than one of the above apply to an Interested Participant.	Affected Train Paths will be the aggregate calculated for the Interested Participant.

Voting and acceptance process

If at least 60 per cent of the eligible votes are in favour of the voting proposal upon which the vote was sought, Interested Participants are deemed to have accepted the voting proposal.⁷³⁸ Eligible votes are the number of votes remaining after any excluded votes have been discounted.

In determining whether a vote is eligible, Aurizon Network's 2014 DAU includes the following proposals:

- if a 'no' vote does not accord with Aurizon Network's proposed acceptance criteria for 'no' votes, then Aurizon Network may exclude that 'no' vote from the voting⁷³⁹. Aurizon Network can request that the QCA approves the exclusion of an Interested Participant's vote in these circumstances⁷⁴⁰
- a vote will be deemed a 'yes' vote if it is not clear to Aurizon Network whether a vote was 'yes' or 'no'.⁷⁴¹

If a proposal is deemed to have been accepted by Interested Participants, the 2014 DAU proposes that the QCA should deem the scope prudent.⁷⁴²

Information provided to Interested Participants

In undertaking a vote Aurizon Network said that it must provide robust and detailed information on projects to ensure Interested Participants are sufficiently informed to make decisions on capacity expansions consistent with their best interests.⁷⁴³

In this context, Aurizon Network will make available to Interested Participants that have been asked to vote on the scope of project the following information in the form of a working paper developed from the feasibility study for the project:⁷⁴⁴

⁷³⁸ Aurizon Network, 2014 DAU, cl. 8.13.5(h), Part 8

⁷³⁹ Aurizon Network, 2014 DAU, cl. 8.13.5(f), Part 8

⁷⁴⁰ Aurizon Network, 2014 DAU, cl. 8.13.5(g), Part 8

⁷⁴¹ Aurizon Network, 2014 DAU, cl. 8.13.5(e), Part 8

⁷⁴² Aurizon Network, 2014 DAU, cl. 2.2(a)(i)(A)(1), Schedule E

⁷⁴³ Aurizon Network, 2013 DAU, sub. no. 2:153

⁷⁴⁴ Aurizon Network, 2014 DAU, cl. 8.13.6(d), Part 8

Table 71 Information provided in a working paper

<i>Information provided in a working paper</i>
<p>Information is provided on:</p> <ul style="list-style-type: none"> • reason for the project including relevant capacity planning information • project scope and general standard of works • additional capacity expected to be delivered by the project • preliminary cost of the project • potential impact of project construction on existing capacity • relevant system operation assumptions • aggregated contracted train paths for train services on the relevant rail infrastructure • rationale for the choice of scope for the project with reference to the pre-feasibility study and Network Development Plan (where relevant) <p>Where the project scope has materially varied since a vote of Interested Participants accepting the scope, information is provided on:</p> <ul style="list-style-type: none"> • scope variations and the reasons for them • relevant changes in the working paper compared to the working paper made available to Interested Participants for the previous vote

Further, if the scope being voted upon by Interested Participants is for a general expansion capital expenditure project⁷⁴⁵, Aurizon Network will use reasonable endeavours to cooperate with a consultant appointed by Interested Participants to conduct a peer review of Aurizon Network's capacity planning inputs, processes and modelling outputs in relation to the project. The 2014 DAU also commits Aurizon Network to run a range of scenarios in the capacity model used, as requested by the consultant (acting reasonably).⁷⁴⁶

Compliance and audit provisions

Aurizon Network's 2014 DAU proposals include a number of compliance and audit processes with respect to the voting process, as set out in the table below.

Table 72 Summary of compliance and audit process

<i>Area</i>	<i>Process</i>
Addressing concerns of Interested Participants	<p>An Interested Participant or a person entitled to be an Interested Participant can express any concern it has about Aurizon Network's compliance with the voting process in writing prior to the end of the voting period.</p> <p>In order to achieve substantial compliance with the voting process, Aurizon Network can take whatever action it considers is reasonably required to address any concerns notified to it.</p> <p>Aurizon Network is not obliged to repeat a vote where a valid concern is raised:</p> <ul style="list-style-type: none"> • if remedying the concern would not be expected to change the outcome of the vote • if Aurizon Network can remedy the concern in a way that achieves substantial compliance.
Audit process	<p>Prior to Aurizon Network relying on a vote to obtain QCA acceptance of the prudence of scope of a capital project, Aurizon Network will procure an audit of its compliance with the voting process.</p>

⁷⁴⁵ Such an expansion will be utilised by more than one customer or access holder.

⁷⁴⁶ Aurizon Network, 2014 DAU, cl. 8.13.6, Part 8

<i>Area</i>	<i>Process</i>
	<p>If the auditor identifies flaws in the calculation of Affected Train Paths then:</p> <ul style="list-style-type: none"> • Aurizon Network may recalculate the Affected Train Paths and recount the votes in a manner consistent with the auditors findings • the auditor will take that recalculation and recount into account in preparing the audit certificate • if Aurizon Network has already notified Interested Participants of the outcome of the vote, it will notify them of the recounted vote as soon as reasonably practical. <p>If the auditor identifies a flaw in the vote of Interested Participants and</p> <ul style="list-style-type: none"> • Aurizon Network cannot remedy the flaw in a way that achieved substantial compliance with the voting process • the flaw would be expected to change the outcome of the vote. <p>Aurizon Network may, but is not obliged to, redo the voting process.</p>

14.8.2 Stakeholders' comments

The comments from stakeholders are summarised in the table below.

Table 73 Stakeholders' comments

<i>Issue</i>	<i>Discussion</i>
Scope of voting	<p>RTCA suggested votes must cover all of project scope, standard and cost allocation, and the Rail Capacity Groups (RCGs)⁷⁴⁷ should be used for this purpose, as occurs in the Hunter Valley.⁷⁴⁸ RTCA said that it was not appropriate for Aurizon Network to 'cherry pick'. RTCA proposed an outline of the voting approach (via the RCGs).⁷⁴⁹</p> <p>Other stakeholders considered voting should be on 'scope' only, because of concerns over insufficient information⁷⁵⁰ from Aurizon Network for prudency assessment by users and familiarity of the 2010 AU voting process to the industry.⁷⁵¹</p>
Treatment of votes	<p>Stakeholders were concerned the proposed treatment of votes did not provide sufficient protection to voters and appropriately balance the interests of the relevant parties. Given that, stakeholders provided a number of suggestions, including:</p> <ul style="list-style-type: none"> • tightening the process around 'no' votes and abstention (from voting), including having no limitations for reasons for 'no' votes and any uncertainty (over voting) to be deemed as a 'no' vote⁷⁵²

⁷⁴⁷ RCGs, for each coal system, would comprise coal producers using the system, and with Aurizon Network and rail operators in observer roles. RCGs can then perform the critical 'transparency' role that has been missing under the Queensland regime to date of developing and approving capacity and demand assumptions, undertaking customer votes and reviewing and endorsing annual maintenance plans and spending (RTCA, 2013 DAU sub. no. 73:37).

⁷⁴⁸ RTCA, 2013 DAU, sub. no. 73: 6, 16

⁷⁴⁹ RTCA, 2013 DAU, sub. no. 73:16-17

⁷⁵⁰ QRC said information through the CRIMP process (as in UT3) failed to ensure the provision of sufficient information to allow users to make informed decisions. The QRC, in its submission on the 2013 DAU said it supported the concept of providing users with working papers to address specific criteria (QRC, 2013DAU, sub. no. 46:70).

⁷⁵¹ QRC, 2013 DAU, sub. no. 85:53-54; Anglo America, 2013 DAU, sub. no. 39: 12; QRC, 2013 DAU, sub. no. 46: 10, 69, 70; Anglo American, 2013 DAU, sub. no. 80:34

⁷⁵² QRC, 2013DAU, sub. no. 85: 117; QRC, 2014DAU, sub. no. 42: 49; Anglo American, 2013DAU, sub. no. 78: 36; Anglo American, 2014 DAU, sub. no. 10:20

<i>Issue</i>	<i>Discussion</i>
	<ul style="list-style-type: none"> • obliging Aurizon Network to provide information and providing users with the ability to request additional information during the voting process⁷⁵³ • removing any restriction on Aurizon Network's obligation to provide information based on confidentiality obligations⁷⁵⁴ • involving the QCA in matters such as whether a user was entitled to vote in case of disagreements and whether to exclude a 'no'.⁷⁵⁵
Interested Participants and voting rights	<p>Stakeholders considered train operators should be part of the voting process and that the QCA should determine whether a person was an Interested Participant.⁷⁵⁶ Clarification was sought as to whether existing access holders would have voting rights.⁷⁵⁷</p> <p>According to stakeholders, identification of Interested Participants should also consider parties whose (contracted) capacity or train paths would be impacted due to the capital expenditure project, besides Aurizon Network's proposal to only consider impacts on reference tariffs.⁷⁵⁸</p> <p>It was also recommended that 'tonnes', rather than Affected Train Paths, be used to determine voting rights.⁷⁵⁹</p>
Audit process and compliance	<p>Stakeholders were not convinced the auditing process was truly transparent or independent. Although the audit was stated to be 'independent', Aurizon Network has a significant involvement. For instance, where a user was concerned regarding the voting process, the concern was to be reported to Aurizon Network who would communicate it to the auditor.⁷⁶⁰</p> <p>Asciano considered Aurizon Network's proposed approach (as to when a non-compliance would be considered (substantial) compliance), was an indication of a culture where regulatory compliance was viewed as optional rather than compulsory.⁷⁶¹</p> <p>Stakeholders proposed a number of changes including the following:</p> <ul style="list-style-type: none"> • QCA approval should be reinstated to provide an effective safeguard of the user voting process. • Interested Participants should be allowed to inform the QCA if they believed Aurizon Network failed to comply with the voting process. • any vote should be deemed as invalid and ineffective where that vote did not substantially comply with the voting process (based on an objective assessment).⁷⁶²

14.8.3 QCA analysis and Draft Decision

Our Draft Decision is considered in the following sections:

- schedule E and the voting process
- purpose and application

⁷⁵³ Anglo American, 2014 DAU, sub. no. 10:19; QRC, 2013 DAU, sub. no. 46:70; RTCA, 2013 DAU, sub. no. 73:16-17

⁷⁵⁴ QRC, 2014 DAU, sub. no. 42: 49

⁷⁵⁵ Asciano, 2013 DAU, sub. no. 44:33

⁷⁵⁶ Asciano, 2013 DAU, sub. no. 43:123; Asciano, 2013 DAU, sub. no. 44:21-22; QRC, 2013 DAU, sub. no. 85:54

⁷⁵⁷ Asciano, 2013 DAU, sub. no. 44:32

⁷⁵⁸ Asciano, 2014 DAU, sub. no. 22:124; Anglo American, 2014 DAU, sub. no. 10: 15, 17

⁷⁵⁹ Asciano, 2013 DAU, sub. no. 44:32

⁷⁶⁰ QRC, 2013 DAU, sub. no.46:71

⁷⁶¹ Asciano, 2014 DAU, sub. no. 22:41

⁷⁶² QRC, 2013 DAU, sub. no. 85:113-114; QRC, 2014 DAU, sub. no. 42:49; Anglo American, 2014 DAU, sub. no. 10:22-23

- identification and voting rights of Interested Participants
- voting and acceptance process
- information provided to Interested Participants
- compliance and audit provisions

Schedule E and the voting process

We consider the voting process should be included in Schedule E rather than being included as a subset of the expansion process in Part 8 of the 2014 DAU. This is because Schedule E contains the provisions associated with the RAB and acceptance of capital expenditure into the RAB. We consider the move will clarify the process.

Our interim position, as set out in this Draft Decision, is to include the voting process in Schedule E rather than in Part 8—Network Development and Expansions of the 2014 DAU.

Draft Decision

14.9 Our Draft Decision is to include the voting process in Schedule E.

Purpose and application

We do not share Aurizon Network's view about the purpose and application of the customer voting process.

As discussed for the capital expenditure approval process, we do not consider it appropriate to review project scope in isolation of other factors when assessing a capital project. We are of the view that standard, scope, cost and the capacity implications of any capital project should be reviewed as a package. This allows prudence of scope and efficiency of cost to be considered together.

As such, we are of the view that a customer vote should consider these elements as a package. This ensures consistency of approach with the other options available for assessing whether capital expenditure should be included in the RAB. Given this, any voting proposal that Aurizon Network puts to Interested Participants must be in relation to either:

- the prudence and efficiency of the scope, standard and cost, and identify the capacity implications of the capital project
- a material change to scope, standard, cost or capacity implications of a capital project previously accepted by Interested Participants.

Further, in order for any customer vote to be meaningful in this context, we consider that it has to be based on robust information.

Accordingly, we consider Aurizon Network should only be able to seek a vote on a capital project where a feasibility study has been completed for that capital project and the results of the feasibility study have been provided to us and Interested Participants. We also consider it appropriate that Aurizon Network should inform us when it seeks a customer vote and of the outcome of that vote.

These measures ensure customer voting takes place when capital projects have reached an appropriate stage in their development and provides us with transparency regarding the effectiveness of the customer voting process.

Further, while Aurizon Network should not be obliged to undertake a customer vote, we are of the view that for any capital project for which a feasibility study has been completed, an access seeker (or its customer), an expansion funder or an Interested Participant should be able to require Aurizon Network to undertake a voting process. We consider this provides an appropriate balance because customer votes are not solely at the discretion of Aurizon Network.

If Interested Participants accept a voting proposal based on an assessment of the scope, standard, cost, and capacity implications of a capital project for which a feasibility study exists, we see no reason why Aurizon Network should not promptly seek our approval to include the capital expenditure into the RAB. Indeed, it is unclear to us why, for a capital project that had reached this point, there would be any benefit in holding off from seeking approval. We are of the view that this is particularly pertinent in an environment where the option of user funding and/or third-party financing for capital projects is present.

Finally, it is unclear to us how the customer voting process can be interpreted as providing Aurizon Network with an obligation to construct or fund a capital project. As such we have removed clause 8.13.2(d) of the 2014 DAU.

We are of the view that these measures align with Aurizon Network's legitimate business interests as they allow for the recovery of its efficient investment costs (s.138(2)(b) of the QCA Act). We consider that it is in the interests of access seekers, access holders and train operators, as well as accounting for the interests of potential financiers (ss.138(2)(e) and (h) of the QCA Act). We are also of the view that they are consistent with the object of the third-party access regime in the QCA Act (ss. 69E and 138(2)(a) of the QCA Act).

Our interim position, as set out in this Draft Decision, is to refuse to approve Aurizon Network's proposed approach with respect to the purpose and application of the customer voting process.

Draft Decision

14.10 Our Draft Decision is to refuse to approve Aurizon Network's proposed approach with respect to the purpose and application of the customer voting process in the 2014 DAU. Instead, we consider it appropriate for Aurizon Network to amend the 2014 DAU as follows in the manner we have in our proposed draft:

- (a) Aurizon Network must include a process that encompasses standard, scope, cost and the capacity implications of any capital project, rather than just scope**
- (d) the voting proposal must be in relation to either:**
 - (i) the prudence and efficiency of the scope, standard and cost, and identify the capacity implications of the capital project**
 - (ii) a material change to scope, standard, cost or capacity implications of a capital project previously accepted by Interested Participants.**
- (e) there should be a requirement that a customer vote can only take place for a capital project for which there is a completed feasibility study, the results of which have been provided to the QCA and Interested Participants**
- (f) Aurizon Network should promptly notify the QCA if it is seeking a vote and inform the QCA of the outcome of that vote**
- (b) an access seeker (or its customer), an expansion funder or Interested Participant should have the ability to require Aurizon Network to undertake a vote for a capital project for which a feasibility study exists**
- (c) if Interested Participants accept a voting proposal, Aurizon Network should promptly seek the approval of the QCA to include the relevant capital expenditure into the RAB**
- (d) Aurizon Network should remove clause 8.13.2(d) of the 2014 DAU.**

Identification and voting rights of Interested Participants

Our Draft Decision is separated into our view the on the identification of Interested Participants and their voting rights.

Identification of Interested Participants

We do not share RTCA's view that there is a need to formally involve an RCG in the customer voting process. We consider that a number of industry groups already exist⁷⁶³ to assess operational improvements and potential capital projects to maximise coal throughput. It is likely that such industry groups can make their views known to Interested Participants. We are, however, of the view that some amendments are required to the Aurizon Network proposals.

We consider that the definition of Interested Participants should be widened to include customers, access holders and access seekers without customers for whom the proposed capital project will impact on their contracted capacity or train paths.

We are of the view it is reasonable for any such person to be an Interested Participant. This accords with our proposal that capital projects should be treated as a package of measures encompassing standard, scope, cost and the capacity implications of the capital project. It also reflects the fact that we consider a customer vote should only be undertaken for a capital

⁷⁶³ Examples include the Gladstone Coal Exporters Executive, Dalrymple Bay Coal Terminal Users Group, BMA Coal Chain, Integrated Logistics Company, Abbot Point Users Group.

project for which a feasibility study exists. As a matter of best practise, any robust, objective feasibility study should identify the impact that a capital project may have on existing contractual rights and be able to identify any affected persons.

We are also of the view that persons who believe they are entitled to be an Interested Participant for a given customer vote but have not been classified as such should notify us, as well as Aurizon Network. Further, Aurizon Network should promptly notify each party and us as to whether or not it will be treated as an Interested Participant. We consider that this provides us with an appropriate level of transparency in relation to the identification of Interested Participants. We are of the view that this is beneficial if Aurizon Network uses the outcome of a customer vote to support a proposal for the inclusion of capital expenditure into the RAB.

We are of the view that these measures appropriately balance Aurizon Network's legitimate business interests (s. 138(2)(b) of the QCA Act), with the interests of access seekers, access holders and train operators (ss. 138(2)(e) and (h) of the QCA Act).

Our interim position, as set out in this Draft Decision, is to refuse to approve Aurizon Network's proposed approach to the identification of Interested Participants.

Draft Decision

14.11 Our Draft Decision is to refuse to approve Aurizon Network's proposed approach to the identification of Interested Participants in the 2014 DAU. Instead, we consider it appropriate for Aurizon Network to amend the 2014 DAU as follows in the manner we have indicated in our proposed draft to require that Aurizon Network:

- (a) should include in the definition of 'Interested Participants' customers, access holders and access seekers without customers where the proposed capital expenditure will impact on the person's contracted capacity or train paths**
- (b) require any person who believes they are entitled to be an Interested Participant but has not been classified as such, to notify the QCA as well as Aurizon Network**
- (c) require Aurizon Network should promptly notify the person and the QCA as to whether or not they will be treated as an Interested Participant.**

Voting rights of Interested Participants

We note some stakeholders have suggested that voting rights should be determined by reference to tonnes rather than Affected Train Paths. We are not convinced this is necessary and consider Affected Train Paths a reasonable approach to identifying voting rights, given that train paths are a proxy for the service provided.

Overall we are of the view that the approach to identifying voting rights in Aurizon Network's 2014 DAU is reasonable. Consequently, our interim position, as set out in this Draft Decision, is to accept Aurizon Network's proposed approach to the identification of Interested Participants voting rights, subject to minor amendments.

Draft Decision

14.12 Our Draft Decision is to accept Aurizon Network's proposed approach to the identification of Interested Participants voting rights, subject to minor amendments.

Voting and acceptance process

In our view clauses 8.13.5(d), (f) and (g) in the 2014 DAU provide Aurizon Network with the potential to exclude 'no' votes. We are concerned this may provide Aurizon Network with an incentive to assess the reasons given for a 'no' vote in a manner, either knowingly or unknowingly, that could bias a vote to Aurizon Network's preferred outcome.

In our view this has the potential to be discriminatory. We consider including such a process in an undertaking inappropriate and not in the interests of Interested Participants. Against this background we have deleted clauses 8.13.5(d), (f) and (g) from the 2014 DAU.

This should not be taken to mean that we do not consider it reasonable for Interested Participants to provide reasons for voting 'no'. We are of the view that they should provide sufficient detail of their position to ensure we are able to understand the Interested Participants rationale, if that became necessary. We do not, however, consider that this accords with Aurizon Network taking a view on the extent to which an Interested Participant's reasoning is acceptable to it and subsequently judging the validity of the Interested Participant's 'no' vote.

We do, however, agree with Aurizon Network's view that if an Interested Participant does not respond within the voting period, they should be deemed to have voted 'yes'. In our view, if abstaining was deemed a 'no' vote, an Interested Participant who did not want the capital project to go ahead but did not want to provide reasons why would simply abstain. We consider that this would severely limit the value of the customer voting process because the ability to gain an understanding of why Interested Participants were voting 'no' would be undermined.

Finally, we consider that when providing information, conducting forums and engaging in discussions with Interested Participants in relation to a voting proposal at the request of Interested Participants, Aurizon Network should adopt a 'best endeavours' approach, rather than 'reasonable endeavours'. In our view this would give all Interested Participants greater assurance of an equitable, effective response from Aurizon Network with regard to any questions they may have regarding the capital project they are voting on.

We are of the view that these measures appropriately balance Aurizon Network's legitimate business interests (s.138 (2)(b) of the QCA Act), with the interests of access seekers, access holders and train operators (ss.138(2)(e) and (h) of the QCA Act).

Our interim position, as set out in this Draft Decision, is to refuse to approve Aurizon Network's proposed approach to the voting acceptance process.

Draft Decision

14.13 Our Draft Decision is to refuse to approve Aurizon Network's proposed approach to the voting acceptance process in the 2014 DAU. Instead, we consider it appropriate for Aurizon Network to amend the 2014 DAU as follows in the manner we have indicated in our proposed draft to:

- (a) delete of clauses 8.13.5(d),(f) and (g) of the 2014 DAU**
- (b) require that if an Interested Participant votes 'no' it must provide reasons for that vote in sufficient detail that the QCA may understand its reasons**
- (c) require Aurizon Network, when providing information, conducting forums and engaging in discussions with Interested Participants in relation to a voting proposal at the request of Interested Participants, to adopt a 'best endeavours' approach.**

Information provided to Interested Participants

We consider Aurizon Network's proposals in the 2014 DAU regarding information provision to Interested Participants unduly prescriptive. As such, we have adopted a more streamlined, responsive approach.

In our view, if Interested Participants are expected to vote on whether they consider a capital project should go ahead, they should be able to flexibly access a level of information on a case-by-case basis necessary to undertake that task. Moreover, there are likely to be different informational demands depending on the capital project being voted upon, the circumstances prevailing at the time and the composition of the Interested Participants.

Further, as we will have to take into account a voting proposal accepted by Interested Participants when considering whether to include the relevant capital expenditure into the RAB, it will be necessary for us to have confidence that information used by Interested Participants is robust and complete. Given this, we consider that we will also need to have access to the information provided to Interested Participants.

We note that such an approach will, in some instances, require Interested Participants to sign a confidentiality agreement prior to Aurizon Network providing certain information.

Our interim position, as set out in this Draft Decision, is to refuse to approve Aurizon Network's proposed approach to information provision to Interested Participants.

Draft Decision

14.14 Our Draft Decision is to refuse to approve Aurizon Network's proposed approach to information provision for Interested Participants in the 2014 DAU. Instead, we consider it appropriate for Aurizon Network to amend the 2014 DAU as follows in the manner we have indicated in our proposed draft:

- (a) Aurizon Network must make available to Interested Participants and the QCA information on the relevant capital expenditure project, including the report prepared as a result of the feasibility study for the relevant capital expenditure project**
- (b) Aurizon Network may require an Interested Participant to sign a confidentiality agreement substantially in the form set out in Schedule I prior to providing information in relation to a customer vote on a voting proposal.**

Compliance and audit provisions

We do not agree with the use of the concept 'substantial compliance' in relation to the customer voting process in the 2014 DAU. In our view it is within Aurizon Network's control to ensure that it complies with the customer voting process and there should be an overarching expectation of compliance. Against this background we have removed clauses 8.13.7(b),(f) and (g) from the 2014 DAU.

Aurizon Network would be required to take whatever action is reasonably required to comply with the customer voting process in response to concerns regarding possible non-compliance, received in writing, from Interested Participants.

We have also stipulated that an Interested Participant also notifies us, in writing, of its concerns. We consider that this ensures transparency and that we have a record of any concerns notified

to Aurizon Network, in the event that the customer vote is used by Aurizon Network to support the inclusion of capital expenditure into the RAB.

In addition to this, we are of the view that if the auditor identifies a flaw in a vote of Interested Participants, Aurizon Network must redo the voting process. This was optional in the 2014 DAU.

Finally, in order to avoid doubt, we have clarified that an accepted voting proposal that successfully passes an audit, forms part of the information we use when considering whether to accept the prudence and efficiency of a capital expenditure project. It does not infer our 'acceptance' that the capital expenditure project is prudent and efficient.

We are of the view that these measures appropriately balance Aurizon Network's legitimate business interests (s. 138(2)(b) of the QCA Act), with the interests of access seekers, access holders and train operators (ss. 138(2)(e) and (h) of the QCA Act).

Overall, our interim position, as set out in this Draft Decision, is to refuse to approve Aurizon Network's proposed approach for compliance with, and audit of, the customer voting process.

Draft Decision

14.15 Our Draft Decision is to refuse to approve Aurizon Network's proposed approach for compliance with, and audit of, the customer voting process in the 2014 DAU. Instead, we consider it appropriate for Aurizon Network to amend the 2014 DAU as follows in the manner we have indicated in our proposed draft:

- (a) removal of clauses 8.13.7(b),(f) and (g) from the 2014 DAU**
- (b) requirement for Interested Participants to notify Aurizon Network and the QCA , in writing, of any concerns regarding non-compliance with the voting process including providing reasons or other information in support of those concerns prior to the end of the voting period**
- (c) requirement for Aurizon Network to take whatever action is reasonably required to comply with the customer voting process in response to such concerns**
- (d) requirement for Aurizon Network to redo the voting process if the auditor identifies a flaw in the vote of Interested Participants**
- (e) clarification that an accepted voting proposal that successfully passes an audit does not infer QCA "acceptance" that a capital expenditure project is prudent and efficient.**

APPENDIX A: AVAILABLE CAPACITY ALLOCATION AND MANAGEMENT

Allocation of capacity/mutually exclusive access applications

The following is a background summary of Aurizon Network's UT3 respecting allocation of capacity when there are mutually exclusive access applications.

Background

Under the 2010 AU, where Aurizon Network receives access applications for mutually exclusive access rights, it will form a queue to determine which access seeker will be allocated those access rights. This means that — in a circumstance where Aurizon Network receives more than one access application, Aurizon Network can only grant access rights to one access seeker and no others. In other words, according to Aurizon Network this means access seekers are effectively competing for access where there is insufficient capacity to satisfy all access applications.⁷⁶⁴

The order of the queue is based on the time when Aurizon Network receives an access seeker's access application. If there are competing applications⁷⁶⁵, both access applications will be positioned in the queue as though they were a single application based on the time of the earliest of the competing applications.

The following table summarises Aurizon Network's 2010 procedures for re-ordering the queue.

Table 74 Re-ordering the queue

<i>When Aurizon Network can re-order the queue</i>	<i>Triggers and evaluation criteria for re-ordering</i>
The negotiation period for an access seeker has ceased (clause 7.3.4(c)(i))	Triggers for negotiation cessation: <ul style="list-style-type: none"> • Aurizon Network issues a negotiation cessation notice • the negotiation period of nine months expires, unless parties dispute, or agree to extend • Aurizon can no longer offer the access (under the terms of the indicative access proposal) because of: <ul style="list-style-type: none"> • - a reduction in the available capacity • - infrastructure enhancements adversely impact Aurizon Network's ability to develop further infrastructure enhancements (as contemplated in the indicative access proposal)
Aurizon Network reasonably considers the access seeker has no genuine intention of obtaining access rights, or is unlikely to be able to utilise access at the level sought (clause 7.3.4(c)(ii))	Evaluation criteria to determine if access seeker is genuine including: <ul style="list-style-type: none"> • whether the access seeker has secured, or is likely to secure rights required to leave the network to unload at its destination • whether the access seeker has secured a rail haulage agreement • the speed and timeliness of the access seeker in negotiations
Aurizon Network reasonably considers that its commercial performance is better served by allocating access to an access	Evaluation criteria for commercial performance: <ul style="list-style-type: none"> • an access seeker's application has an NPV value that is 2% (or more)

⁷⁶⁴ Aurizon Network 2010 AU, clause 7.3.3

⁷⁶⁵ Competing Applications means where two access seekers are competing in order to provide train service under a haulage agreement with the same customer for the same train service. Or it can also mean an access seeker looking to provide train services under a haulage agreement with a customer, and that same customer is also an access seeker for that train service.

When Aurizon Network can re-order the queue	Triggers and evaluation criteria for re-ordering
seeker in the queue, but not first in the queue (clause 7.3.4(c)(iii))	<p>higher than the earlier application (the higher NPV application is moved above the lower NPV application)</p> <ul style="list-style-type: none"> the application is for a term of at least 10 years and the access seeker is willing to execute a standard access agreement the access seeker is seeking access rights for a term less than 10 years, but that term is longer than one or more of the other access applications higher in the queue
Aurizon Network receives a notification of intent from an access seeker in relation to a further access application which is added to the queue (clause 7.3.4(c)(iv))	An access seeker notifies Aurizon Network it intends to progress its access application on the basis of the arrangements outlined in the indicative access proposal.
Aurizon Network has notified relevant access holders in accordance with clause 11.3(c)(v) of an access rights reduction (clause 7.3.4(c)(v))	<p>Trigger for conditional access holders being placed in queue:</p> <p>Where conditional access holders are not provided with planned capacity resulting from an expansion, they will be placed back in the queue based on the date of their original access application. Will be placed at the front of the queue behind renewal applications.</p>

Transfers and Relinquishments

The following tables summarise conditions on transfers and relinquishments under Aurizon Network's UT3.

Table 75 Conditions for access holder to relinquish/transfer access rights

Condition	Action of access holder for relinquishment	Action of access holder for transfer
Notice given to Aurizon Network	Notice must be provided not more than two years before the intended transfer date. ⁷⁶⁶	
Information to be provided	<ul style="list-style-type: none"> access rights to be relinquished date of relinquishment 	<ul style="list-style-type: none"> access rights to be transferred transfer date identity of the transferee
Relinquishment/Transfer fee	Payment of the relinquishment fee (relinquishment is conditional on payment).	Payment of the transfer fee (transfer is conditional on payment).

The following table outlines Aurizon Network's responsibilities for a transfer.

Table 76 Aurizon Network's required actions for relinquishments/transfers

Condition	Aurizon Network action
Calculation of the relinquishment/transfer fee	When requested to do so (by the access holder), Aurizon Network must calculate the relinquishment/transfer fee.
Transfer the access rights	<p>Aurizon Network must transfer the access rights provided:</p> <ul style="list-style-type: none"> the access rights are for the same type of train service (ie cyclic or timetabled traffic) the access rights are included in a new or varied access agreement with the transferee

⁷⁶⁶ Provided the access rights are for coal carrying train services on the CQCN and are under an access agreement executed on or after 30 June 2006. Otherwise the notice period must not exceed six months.

Condition	Aurizon Network action
	<ul style="list-style-type: none"> • the transfer fee has been paid • existing access holders are not adversely impacted • Aurizon Network will continue to be able to satisfy its obligations
Lessening of relinquishment fee	If Aurizon Network identifies an opportunity for it to enter into an access agreement with an access seeker that would result in a lessening of a relinquishment fee, it must not unreasonably delay negotiation and execution of that agreement.

Transfer and relinquishment fees

The following diagram details how transfer and relinquishment fees are interrelated and how they apply across the generations of undertakings.

Table 77 Transfer and relinquishment calculations across undertakings⁷⁶⁷

	UT1	UT2	UT3	UT4 Proposal
Transfer Fee	Relinquishment Fee - (Relinquishment Fee x Reduction Factor)			
Relinquishment Fee	40% of Access Charges that would have been payable for the lesser of the term of the transfer or 2 years	50% of the Present value of the payment of the take-or-pay amount that would have been payable for the term of the transfer		Present value of the payment of the take-or-pay amount that would have been payable for the term of the transfer
Reduction Factor	Annual Train Kilometres over the Common Corridor attributable to the New Railway Operator's Trains / Annual Train Kilometres over the Nominated Network attributable to the Train Services being transferred and [where new Operators CCC < Old Operators CCC] Red. Factor x (CCC Old / CCC New)		TOP (Original Haul)/TOP (New Haul) [If the nominated unloading system is within the same Individual Coal System as the Access Rights being transferred] Or: Annual Train Kilometers over the Common Corridor attributable to the New Railway Operator's Trains/Annual Train Kilometers over the Nominated Network attributable to the Train Services being transferred and: [where new Operators CCC < Old Operators CCC] Reduction Factor x (CCC Old/CCC New)	
Short Term Transfers			If the access rights to be relinquished are for coal carrying Train Services operating in the CQCN and are to be transferred for a period of less than two years, the transfer fee is deemed to be zero (0)	If the sum of the periods of all previous transfers within a three year timeframe is less than two years, no fee will be payable

⁷⁶⁷ Source: "Relinquishment Fees —Worked Examples". Available on Aurizon Network's website (<http://www.aurizon.com.au/Network-site/Pages/Reports-and-QCA.aspx>)

APPENDIX B: MAIN FINDINGS FROM INTERVIEW WITH TRAIN PLANNERS

Main findings from interview with train planners

To get a better understanding of the train plans Aurizon Network was making available to access holders and to what extent they might be redacted, we met with train planners from:

- Aurizon Network
- Aurizon Operations
- BMA Rail
- Dalrymple Bay Coal Chain Coordinator (DCCC)
- DBCT PL and
- Pacific National.

No version of the MTP was provided, but we viewed the ITP and the DTP provided to each of the planners above.

In practice, Aurizon Network uses the NOPP (Network Operations Pathing Planner) software to schedule and release the ITP and the DTP (a list of scheduled services is also emailed to each access holder, but updates are made in the NOPP) (Example A). Access holders (as at 18 Sept. 2014) can only view their own scheduled path while all maintenance paths and other access holders' paths are blacked out (Example B).

Table 78 Network Operations Pathing Planner

Example A

Goonyella Empty Indicative Example only																	
Path Name	JC01	Time	00:01	22 Sep 2014	Monday	23 Sep 2014	Tuesday	24 Sep 2014	Wednesday	25 Sep 2014	Thursday	26 Sep 2014	Friday	27 Sep 2014	Saturday	28 Sep 2014	Sunday
JC02	JC03	00:2000:40													Operator B	Operator C	
JC04	JC05	01:0001:20	Operator A							Operator A Shunt	Operator A						
JC06	JC07	01:4002:00	Operator B		Operator A		Operator A		Operator C					Operator C Shunt	Operator A		
JC08	JC09	02:2002:40												Operator C			
JC10	JC11	03:0003:20	Operator A Shunt							Operator A	Operator A			Operator A		Operator B	
JC12	JC13	03:4004:00	Operator A					Operator B									
JC14	JC15	04:2004:40	MTCE		MTCE				Operator B			MTCE		Operator C		Operator A	
JC16	JC17	05:0005:20			Operator A		Operator A			Operator A Shunt	MTCE			Operator A			
JC18	JC19	05:4006:00	Operator B		Operator B		MTCE				MTCE					Operator B	
JC20	JC21	06:2006:40	Operator A		Operator A Shunt		MTCE		Operator B		MTCE			Operator B		Operator C	
JC22	JC23	07:0007:20	Operator A		Operator A		Operator B		Operator A							Operator A	
JC24	JC25	07:4008:00	MTCE									Operator B			Operator A Shunt		
JC26		08:20	MTCE		Operator C		MTCE		Operator C					Operator A			
JC27	JC28	08:4009:00	MTCE				Operator A		Operator A Shunt	Operator A						MTCE	
JC29		09:20					MTCE							Operator A		MTCE	
JC30	JC31	09:4010:00	Operator C		Operator A				Operator B		Operator A						
JC32	JC33	10:2010:40					MTCE							Operator C		Operator B	

In the actual Network Operation Pathing Planner (NOPP), where an operator has taken a path, the Unique Service and Train Identifiers will be displayed.

Example B

Goonyella Empty Indicative Example only																	
Path Name	JC01	Time	00:01	22 Sep 2014	Monday	23 Sep 2014	Tuesday	24 Sep 2014	Wednesday	25 Sep 2014	Thursday	26 Sep 2014	Friday	27 Sep 2014	Saturday	28 Sep 2014	Sunday
JC02	JC03	00:2000:40															
JC04	JC05	01:0001:20	Operator A							Operator A Shunt	Operator A						
JC06	JC07	01:4002:00			Operator A		Operator A										Operator A
JC08	JC09	02:2002:40															
JC10	JC11	03:0003:20	Operator A Shunt							Operator A	Operator A			Operator A			
JC12	JC13	03:4004:00	Operator A														
JC14	JC15	04:2004:40	MTCE		MTCE								MTCE				Operator A
JC16	JC17	05:0005:20			Operator A		Operator A			Operator A Shunt	MTCE			Operator A			
JC18	JC19	05:4006:00					MTCE				MTCE						
JC20	JC21	06:2006:40	Operator A		Operator A Shunt		MTCE				MTCE						
JC22	JC23	07:0007:20	Operator A		Operator A				Operator A								Operator A
JC24	JC25	07:4008:00	MTCE												Operator A Shunt		
JC26		08:20	MTCE				MTCE							Operator A			
JC27	JC28	08:4009:00	MTCE				Operator A		Operator A Shunt	Operator A							MTCE
JC29		09:20					MTCE							Operator A		MTCE	
JC30	JC31	09:4010:00			Operator A								Operator A				
JC32	JC33	10:2010:40					MTCE										

For Indicative purposes only
In the actual Network Operation Pathing Planner, where an operator has taken a path, the Unique Service and Train Identifiers will be displayed.

