Dalrymple Bay Coal Terminal User Group

2015 Draft Amending Access Undertaking

Submission to the Queensland Competition Authority

24 November 2015

Contents

1 Background

The Dalrymple Bay Coal Terminal (the ***Terminal***) is a critical part of the Goonyella coal supply chain and, rated at 85 mtpa capacity, the largest coal export terminal in Queensland.

It remains natural monopoly infrastructure, with no economically viable alternative multi-user terminals for coal mines in the Goonyella system. An access regulation regime that ensures access is available to the Terminal on reasonable terms remains as important as ever.

With the current access undertaking in respect of the Terminal (the ***2010 AU***) due to expire on 30 June 2016, the Queensland Competition Authority (***QCA***) provided DBCT Management Pty Ltd (***DBCTM***) with an initial undertaking notice on 23 June 2015.

In response to that notice, on 12 October 2015 DBCTM lodged a draft access undertaking (the ***2015 DAU***) to replace the 2010 AU. The QCA has invited submissions on the 2015 DAU.

This is a submission on the 2015 DAU provided by all the users of the Terminal, being:

(a) Anglo American Coal;

(b) BHP Billiton Mitsui Coal;

(c) Glencore;

(d) Isaac Plains Coal Management;

(e) Peabody Energy;

(f) Rio Tinto; and

(g) Vale;

(together the ***DBCT User Group***).

This submission is also made in the context of:

(a) the draft amending access undertaking submitted by DBCTM on 3 February 2015 (the ***Differential Pricing DAAU***) and the QCA's Final Decision to refuse to approve the Differential Pricing DAAU (the ***Differential Pricing Final Decision***); and

(b) the draft amending access undertaking submitted by DBCTM on 12 October 2015, as varied by the DBCTM submission of 10 November (the ***Ringfencing DAAU***) on which a QCA decision is pending,

with differential pricing and ringfencing provisions accounting for a substantial part of the amendments being sought by DBCTM.

The DBCT User Group acknowledges the efforts made by DBCTM prior to submission of the 2015 DAU to investigate with the DBCT User Group the extent to which it was possible to present an outcome to the QCA that was supported by both DBCTM and DBCT Users. That has resulted in a number of provisions being included in the 2015 DAU which are supported by the DBCT User Group, at least in principle or with some drafting changes (as noted in this submission).

However, as will be evident from this submission, the DBCT User Group and DBCTM have significantly different positions on what constitutes an appropriate outcome in respect of pricing matters and a number of other critical issues.

2 Executive Summary

The DBCT User Group has major concerns with a number of aspects of the 2015 DAU, including in respect of:

(a) Revenue and pricing arrangements;

(b) Differential pricing of access to expansion capacity; and

(c) Ringfencing provisions to address issues arising from existing and possible future vertical integration.

On those issues, the 2015 DAU is not regarded as 'a reasonable compromise'[1] as asserted by DBCTM. Rather it is a series of significant departures from positions which the QCA has previously determined are appropriate.

The fact that DBCTM is openly stating that it will no longer invest in expansions and major sustaining capital projects[2] unless its submissions in relation to pricing are accepted is indicative of the extremely concerning position being adopted on the major issues in contention.

There are also a number of other proposed amendments which the DBCT User Group has concerns about, which are outlined in this submission.

Accordingly the DBCT User Group considers that it would be appropriate for the QCA to refuse to approve the 2015 DAU unless the amendments outlined in this submission are made.

3 Revenue and pricing

3.1 Legislative framework

DBCTM makes a number of claims about how the *Queensland Competition Authority Act 1997* (Qld) (***QCA Act***) operates in respect of revenue and pricing matters.

Enclosed as Schedule 1 of this submission is a legal advice from Allens (the ***Allens Advice***) regarding the proper interpretation of the QCA Act in this regard which supports the DBCT User Group's submissions on these issues as set out below.

(a) The relevance of section 168A(a)

The first claim by DBCTM is the asserted 'central' nature of section 168A(a) QCA Act.[3]

The DBCT User Group acknowledges that the pricing principle in that section has a place in the QCA's consideration. However, its place is merely as one of the pricing principles in section 168A(a), to which the QCA must have regard in determining whether to approve or refuse to approve the 2015 DAU (section 138(2)(g) QCA Act), with the pricing principles being in turn only one of multiple factors to be had regard to and weighed up with other factors to derive an appropriate outcome. The appropriate balancing between the factors in section 138(2) QCA Act to determine the resultant outcome is a matter for the QCA to determine on a case by case basis, without the QCA Act pre-determining which factors are to be given more importance.

The same assertions about the heightened status of section 168A(a) have been very recently considered and clearly rejected by the QCA in the Draft Decision on the Queensland Rail draft access undertaking.[4] For the reasons set out in that Draft Decision and the Allens Advice, DBCTM's interpretation should also be rejected in respect of consideration of the 2015 DAU.

(b) Interpretation of section 168A(a)

DBCTM's submission asserts that insufficient regard is given to 'uncertainty' regarding the estimation of the appropriate weighted average cost of capital (***WACC***).

The suggestion appears to be that:

[1] 9 October 2015, Letter from DBCTM to Queensland Competition Authority.

[2] 9 October 2015, Letter from DBCTM to Queensland Competition Authority.

[3] DBCT Management, 2016 DAU Submission, 6.

[4] Queensland Rail Draft Access Undertaking Draft Decision, 8 October 2015, 48.

(i) in view of the fact that the approved WACC is an estimate at a point in time, it is possible that during the term of the undertaking there will be times when the WACC would, based on a subsequent spot estimate at that future time, have been higher than the approved WACC; and

(ii) in order to be consistent with the principle in section 168A(a) that the price of access should:

> *generate expected revenue for the service that is at least enough to meet the efficient costs of providing access to the service and include a return on investment commensurate with the regulatory and commercial risks involved …*

the WACC should be set in such a way that the approved WACC is always higher than what a spot WACC estimate would produce.

However, that ignores the obvious points that:

(i) there will be periods during the regulatory term and the economic life of the infrastructure in question where the WACC would, if it was estimated at that time, have been lower than the applicable approved WACC (most relevantly that is, even in DBCTM's submissions, recognised as clearly being the case under DBCTM's current undertaking at the time of this submission);

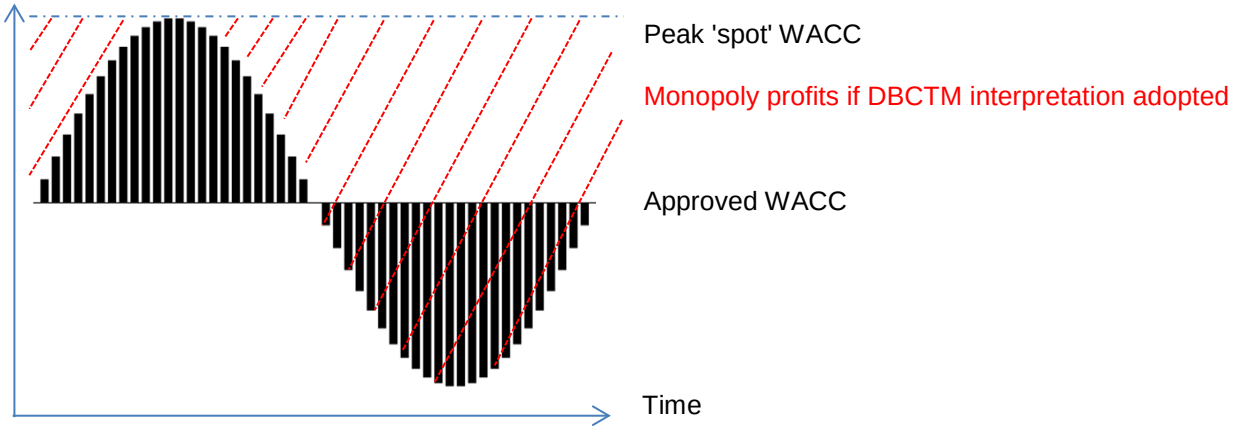
(ii) there is no evidence that the decisions of the QCA, or economic regulators more generally, in respect of WACC disadvantage regulated entities more than they advantage them. Measured over a regulatory period or the longer term it would be expected any 'uncertainty' is revenue neutral;

(iii) as shown in in Figure 1 below, setting access pricing in a way that avoids the risks of the approved WACC being less than any hypothetical spot estimate over the regulatory term would involve setting the WACC at the highest anticipated spot estimate over the term – effectively delivering substantial monopoly profits to DBCTM over the term;

(iv) there is no way of measuring with any certainty what the anticipated spot estimate over the term might be – such that any adjustment for this uncertainty would be completely arbitrary and inappropriate; and

(v) DBCTM's interpretation is clearly inconsistent with the object of Part 5 of the QCA Act (as set out in section 65E QCA Act), given that setting prices in a way that delivers substantial monopoly profits will be inconsistent with providing for efficient use of and investment in infrastructure.

Figure 1 – Simple illustration of monopoly profits produced by DBCTM interpretation



Consequently DBCTM's submissions on this point appear to be an attempt to artificially raise the approved WACC through an inappropriate interpretation of section 168A(a) of the QCA Act.

(c) Regulatory stability

In its submission, DBCTM suggests that stability of regulatory regime is important, and on this basis the QCA should be reluctant to change established parameters, such as the equity beta factor used to determine the regulatory WACC. Indeed, DBCTM suggests that leaving this parameter unchanged is some type of concession to DBCT Users' interests.

The DBCT User Group agrees that the stability and predictability of regulatory processes is a relevant consideration (and forms part of the public interest to which regard is to be had in assessing access undertakings). However, regulatory certainty is a concept that should consider the position of both the infrastructure owner and its customers. DBCTM has in fact proposed significant changes in methodology for determining many parameters (most having significant commercial benefits for DBCTM and adverse impacts on DBCT Users), in such a way as to materially change the overall "compact" established by the QCA through previous determinations.

Whilst stability of the regulatory framework is important, this should not be seen as precluding the normal reconsideration of inputs and assumptions that are applied by an economic regulator from time-to-time. Rather, regulatory certainty is about certainty of process (e.g. the principles applied to determine appropriate pricing) not the outcomes of applying that process (e.g. the equity beta, WACC or Terminal Infrastructure Charge). We comment further on individual parameters in the following sections of this submission.

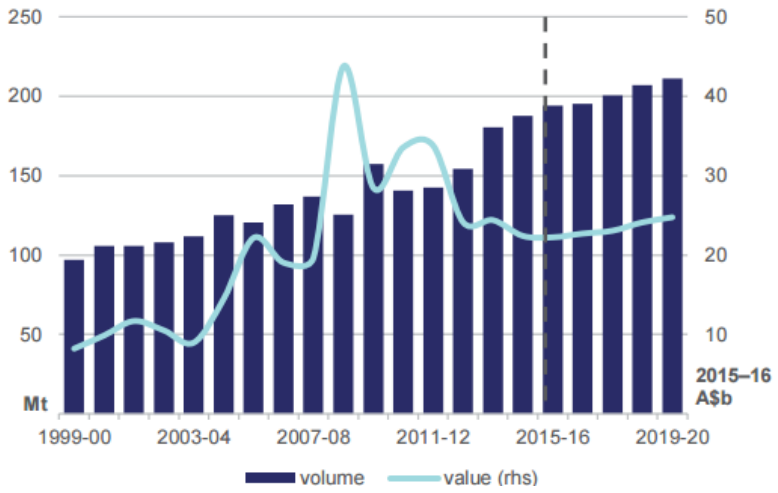
3.2 The Australian Coal Market

The DBCTM 2016 DAU submission claims the Australian coal industry outlook is considerably more uncertain and suggests that its risk exposure has significantly increased as a result. Whilst some unfavourable short-term market conditions are evident, the DBCT User Group does not agree with DBCTM's claimed increased level of risk, noting that market evidence suggests growth in the world wide coal market in the medium to long term.

Despite market conditions, coal exports are expected to continue to grow in the short term for both metallurgical and thermal coal, as evidenced by Figures 2 and 3 taken from the Resources and Energy Quarterly (September 2015), released by the Office of the Chief Economist of the Australian Government.[5] The Resource and Energy Quarterly projects Australian metallurgical coal exports to grow at 2.6% annually from 2016-17 to 2019-20, and similarly, thermal coal exports to increase at an average of 1.8% to 2019-20.

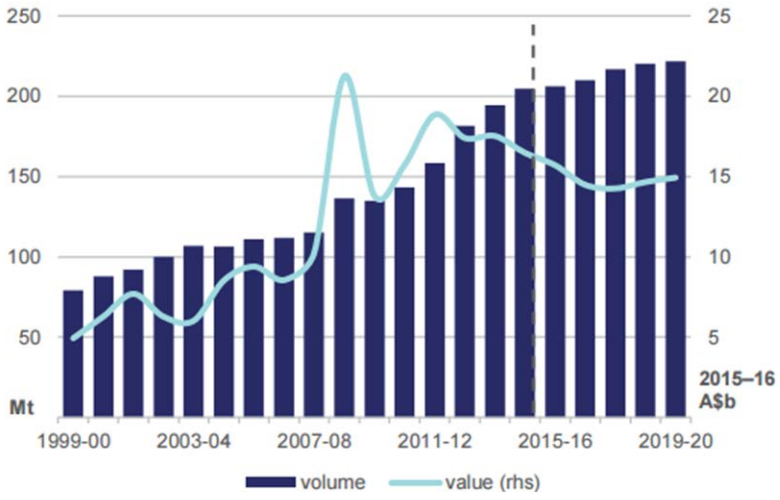
[5] Australian Government (2015), Resources and Energy Quarterly, September 2015 available at: http://www.industry.gov.au/Office-of-the-Chief-Economist/Publications/Documents/reg/Resource-and-Energy-Quarterly-September-2015.pdf

Figure 2 – Australia's metallurgical coal exports



Source: Australian Government (2015)

Figure 3 – Australia's thermal coal exports



Source: Australian Government (2015)

According to the International Energy Agency (IEA), Australian coal will significantly contribute to the world's accelerating energy requirements.[6] The IEA's World Energy Outlook 2014 forecasts the global energy demand to increase 37 % by 2040, with the world's primary energy supply expected to derive almost equally from oil, gas, coal and low-carbon sources, including uranium-fuelled nuclear energy. In 2015-16, Australian thermal coal exports are forecast to increase by 0.8% to 206 mt, and projected to increase at an annual rate of 1.8% to 222 mt in 2019-20.[7]

[6] The Australian Mining Review (2015), Strong Outlook for Australian Coal, IEA, issue 83, January 2015, available at: http://www.miningoilgas.com.au/pdf/jan_2015.pdf

[7] Australian Government (2015)

While coal is expected to be challenged by renewables as the world's largest source of electricity generation soon after 2020, it will continue to contribute about 30% of the global electricity output by 2040.[8]

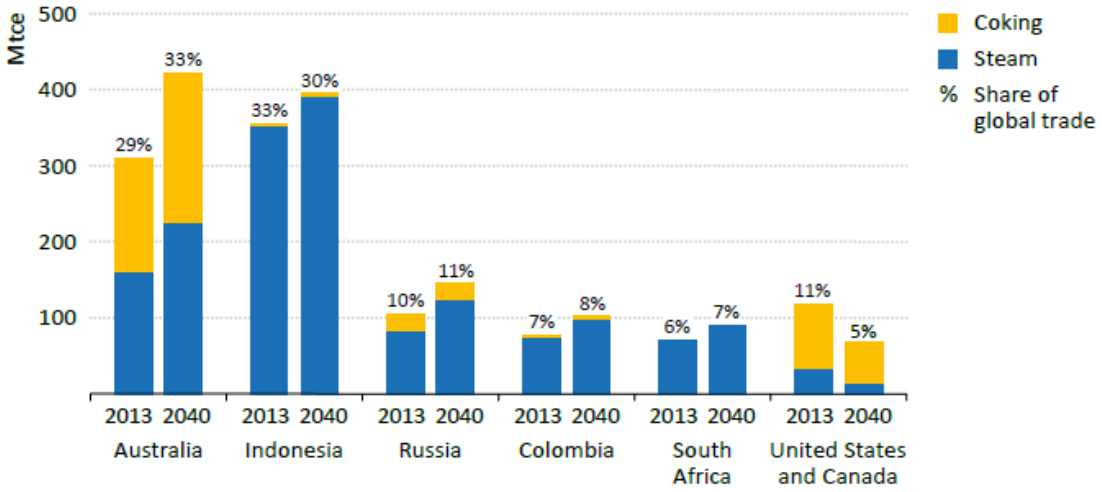
In addition, coal from the Goonyella system (and Bowen Basin more generally) is expected to be less affected by moves towards 'cleaner' power sources due to the:

(a) coal handled at the Terminal principally being metallurgical coal (discussed below); and

(b) thermal coal that is handled at the Terminal generally having lower ash and higher energy content than other global sources of coal.

The IEA's World Energy Outlook 2015[9] notes that Australia provides 55% of globally traded coking (metallurgical) coal, which is primarily used for steel making. The IEA also contends that Australia is forecast to be the largest coal exporter in the world for the outlook period 2013-2040. Taking into account both coking (metallurgical) and thermal coal, Figure 4 shows that Australia is predicted to increase its coal exports to 425 mt in 2040, up from 310 mt in 2013. There is no reason to suspect that this positive outlook will not be reflected in the Goonyella system.

Figure 4 – Major net exporters of coal by type in the New Policies Scenario



Source: World Energy Outlook 2015

Of note, 45% of the total increase between 2013 and 2040 is attributed to increased coking (metallurgical) coal exports. This of particular relevance, given that much of the coal exported through the Terminal is coking coal (the need for which will be unaffected by alternative power generation sources). The IEA also acknowledges that a projected growth of 45% in Australian coking coal exports, is a considerable achievement given the total increase in international coking coal trade is only expected to be 15% for the same period.

The IEA suggests that coal mining in the Surat and Galilee basins will be necessary to meet the increased demand whilst acknowledging the significant environmental and financial challenges that need to be resolved to ultimately enable these coal reserves to be exported. Indeed, these unresolved challenges provide more certainty for sustained coal exports from the existing coal fields, serviced from existing infrastructure, particularly in the case of the Terminal. Based on

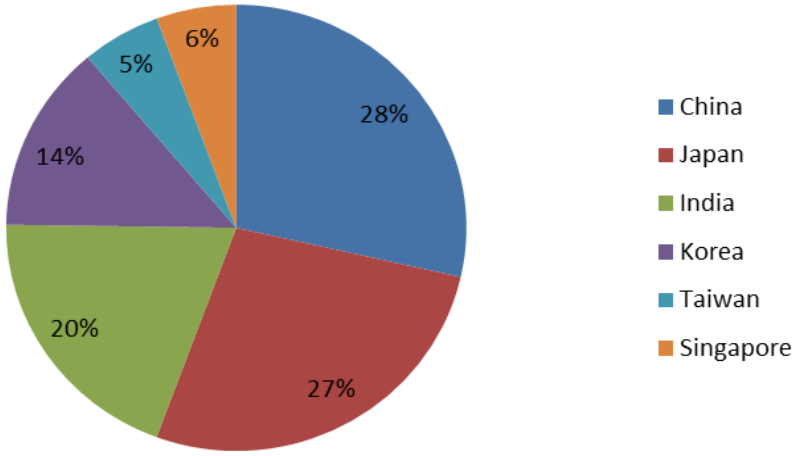
[8] International Energy Agency (IEA) (2015), World Energy Outlook 2015, available at: http://www.worldenergyoutlook.org/weo2015/#d.en.148701

[9] IEA (2015)

market analys like that noted above, the DBCT User Group believes the current throughput at DBCT will, at least, be maintained beyond 2040.

The countries with the largest Australian coal demand include China, India, Japan, Korea, Taiwan and Singapore. In total, these countries imported approximately 181 mt in 2014-15[10] from Queensland. Figure 5 shows the proportion of Queensland's sales to those destinations.

Figure 5 – Top six import destinations for Queensland coal, 2014-15



Source: Queensland Government (2015)[11]

This evidence suggests the demand for Australian coal is largely driven by the demand from the Asian economies. The outlook for Australian coal should continue to remain strong to support the expansions in these emerging markets. This view is widely held, as further evidenced below.

The Mining Review's analysis of the World Energy Outlook (2014) suggests that Asia is expected to drive demand growth, with China's coal capacity expected to increase by 420 gigawatts by 2040 (40% more than the US' entire existing coal generation capacity).[12] China currently remains the largest importer of coal. However, the importance of India for the coal sector is also predicted to increase. By 2040, India is expected to become the world's second-largest coal consumer and producer. India is forecast to overtake Japan, the European Union and China by 2020 to become the largest importer of coal.[13]

Demand for metallurgical coal will be shaped by developments in steel consumption patterns and plans for steel production[14]. Australia's metallurgical coal production increased by 6% to 193 mt in 2014-15, and is forecast to increase by 1.3% to 196 mt in 2015-16.[15] Over the medium-term, Australia's production of metallurgical coal is expected to increase at an annual rate of 2.1 % to

[10] Twelve months to March

[11] Data available at: https://data.qld.gov.au/dataset/quarterly-coal-reports/resource/5c399e1f-c142-4e4f-85b4-289905599e37

[12] The Australian Mining Review (2015)

[13] Whitehaven Coal (2015), Industry News, available at: http://www.whitehavennews.com.au/world-energy-outlook-2015-coal-will-still-account-for-30-of-global-electricity-output-by-2040/

[14] Australian Government (2015)

[15] Australian Government (2015)

215 mt in 2019-20.[16] This will be supported by a number of projects that are scheduled to be completed over the same period.[17]

Australia's metallurgical coal exports increased by 3.9% to 188 mt in 2014-15. Despite the increase in export volumes, export earnings declined by 6% to $21.8 billion due to lower prices. However, while prices are currently lower, Australian coal producers have, through cost cutting and efficiency measures, remained viable as demonstrated by the increase in production.

From 2016-17, Australia's exports of metallurgical coal are expected to increase at 2.6% to 211 mt in 2019-20. Over the same period, export earnings are projected to increase at 2.9% to 24.7 billion (in 2015-16 dollar terms). This is because of higher export volume, projected higher contract prices and a depreciating Australian dollar.[18]

As evidenced by the discussion above, it is widely accepted that there is increasing demand for Australian coal exports. Given the strong demand in metallurgical coal, which is particularly relevant to the Goonyella supply chain, the DBCT User Group contends that the outlook for coal exports through DBCT remains positive.

On that basis, the DBCT Users strongly disagrees that DBCTM's risk profile has increased or that the remaining useful life of the Terminal has decreased due to changes in coal demand or prices.

3.3 No effective competition for the services

DBCTM also asserts that the Terminal competes with existing and potential new coal terminals at the ports of Abbot Point and Gladstone,[19] as part of a submission that the risk profile of the Terminal has increased.

The DBCT User Group strongly disagrees with that view, and considers that there is no economic or practical evidence of any such competition from other coal terminals, existing or contemplated.

The extent to which other terminals provide any competition to the Terminal is severely limited by the practical constraints of a User switching to utilise other Terminals. As a result, the other coal terminals do not provide any competitive tension to DBCTM or alter the level of asset stranding risk for the Terminal from that which has prevailed during previous regulatory periods.

The practical constraints on a DBCT User from switching to an alternative coal terminal are principally:

(a) **Terminal cost differences:** the combination of access to the Terminal being regulated by the QCA and being a brownfield port with substantial economies of scale (as an 85 million tonnes per annum rated capacity terminal), has resulted in services being provided for lower prices at the Terminal compared with other Queensland coal export terminals.

(b) **Insufficient terminal capacity:** there is no guarantee that sufficient capacity will be available at other terminals at the relevant time in any case. By way of example, the existing Abbot Point terminal is understood to be fully contracted currently. While new capacity is being developed at the Wiggins Island Coal Export Terminal in Gladstone, the first stage is almost fully contracted (with 23mtpa of 27 mtpa nameplate capacity contracted) and the existing Barney Point coal terminal at the Port of Gladstone will be shut in 2016. Additionally, even in circumstances where a port expansion or additional terminal was under active consideration, it is highly unlikely that this additional capacity

[16] Australian Government (2015)

[17] Australian Government (2015)

[18] Australian Government (2015)

[19] DBCT Management, 2016 DAU Submission, 7.

would be available during the next access undertaking period, due to the long lead time of planning, obtaining approvals for and construction for these facilities (particularly in the context of the increasing litigious challenges to government approvals of new mining and mining related infrastructure government approvals).

(c) **Multi-cargo and coal blending requirements:** multi-cargo arrangements in which different coal products from different producers are loaded into different holds in the same vessel (which are desired by particular customers, principally for metallurgical coal blending) make it highly preferable from a marketing perspective for coal producers to ship through the Terminal. The Terminal has a larger volume of metallurgical coal being handled than the other coal terminals and a range of qualities (including premium hard coking coals), such that the same multi-cargo options are not available through other export terminals. In theory it would be possible for a customer to charter a vessel to undertake a 'two port' load (loading at both the Terminal and another coal terminal) to load multiple cargoes, but that involves material additional costs which are generally prohibitive. Some coal terminals (such as Wiggins Island Coal Export Terminal) have very limited throughput of metallurgical coal, making them comparatively unattractive for metallurgical coal customers because of the limited range of coal product options. In respect of thermal coal, producers frequently undertake blending of different coal products within the same cargo to produce a blended coal product which meets particular customer specifications. Blending of coal must occur at the same terminal – i.e. it is not possible to produce a blended cargo through multi-port loading. A change in export terminal for a mine would therefore adversely affect the possible blending options.

(d) **Rail cost differences:** the Terminal is the closest multi-user terminal to all of the mines in the Goonyella system. For most of the mines on the Goonyella system, the additional distance to alternative terminals (and therefore materially higher additional below rail access and above rail haulage costs), makes exporting through other terminals unviable. This is particularly the case where the recent rail expansions have to be utilised, noting:

- the Wiggins Island Rail Project (WIRP) would likely need to be utilised for Goonyella mines to access the Blackwater system and Gladstone terminals; and
- the Goonyella to Abbot Point Expansion (GAPE) would need to be utilised for Goonyella mines to access the Newlands system and Abbot Point Coal Terminal (APCT).

DBCT User Group analysis suggests there is a significant cost advantage of using DBCT relative to APCT[20] and the various Gladstone terminals. Based on Aurizon Network's current reference tariffs, we estimate below-rail tariffs for Goonyella mines[21] would increase between $2-$4/tonne if they were to export from APCT rather than DBCT, noting that this excludes any additional premiums associated with the GAPE deeds (which are confidential). Similarly, based on Aurizon Network's current reference tariffs, South Goonyella mines that currently use the Blackwater system to access the Gladstone terminals would also incur an increase in below-rail tariffs in the order of $3/tonne, noting that this excludes any additional premiums associated with the WIRP deeds (which are confidential and currently the subject of disputes). There would also be a premium in above rail costs for the increased haulage distances, further supporting the DBCT User Group position that there is little realistic competition for DBCT export tonnages.

(e) **Insufficient below rail capacity:** there is insufficient capacity on parts of the below-rail network to allow such switching to occur on a long term basis for any material volumes

[20] The APCT below-rail tariffs exclude premiums associated with the GAPE deeds.

[21] Based on mines located in different regions of Goonyella

without requiring costly expansions, and any switching is complicated by the fact that any surplus capacity that does currently exist is typically fully contracted (such that it would also require trading of access rights with a haulage operator or another producer or prior relinquishment by such entities).

The maps in Schedule 2 are from Aurizon Network's latest published Network Development Plan (2014) and show the capacity constraints Aurizon has identified in each system (and the capital projects which would be triggered by additional volumes). They identify very clear capacity constraints where infrastructure expansions would be required in order for any Goonyella coal users to switch to coal terminals at Abbot Point or Gladstone (which as described below involve substantial costs).

For the route to the Port of Abbot Point, the main constraints are the Havilah – Leichardt Range section where an intermediate passing loop would be required (to support any increase of 0-5mtpa) and the Collinsville to Birralee section where a deviation around the town of Collinsville would be required (for any increase above the current contracted capacity). The Network Development Plan provides a pre-concept estimate of $90 million for the Collinsville deviation and $10 million for the additional passing loop. In addition for Goonyella mines south of Riverside, the North Goonyella branch line provides a constraint to providing access to Abbot Point, which would require an additional passing loop between Wotonga and Riverside (to support an increase of 0-5 mtpa). The Network Development Plan provides a pre-concept estimate of $20 million for that passing loop.

For the route to the Port of Gladstone, the main constraint is the North Coast Line (between Rockhampton and Callemondah), where due to the mix of operational traffic speeds, triplication would be required to support material new capacity. The Network Development Plans provides a pre-concept estimate of $300 million for a third track from Callemondah to Mt Larcom.

(f) **Rail network differences – barriers to rail haulage switching:** the Goonyella system involves overhead electric lines allowing for both electric and diesel locomotives, whereas the Newlands system (to Abbot Point) has no overhead lines and therefore can only be operated on by diesel locomotives. Even assuming alternative below rail and port access can be obtained there may be limits to what rail haulage providers with electric rolling stock (of which Aurizon has a substantial fleet) will be able to do in terms of switching to the Newlands system without needing to pass on substantial costs to coal users.

(g) **Capital investment required in mine specific rail infrastructure:** for some mines, capital investment would be required to reconfigure the turn-out from the mine's rail loop in order for coal to be able to be hauled in a different direction. By way of illustration of the significant costs involved in overcoming this issue, one of the DBCT Users has been quoted $50 million for an angle turn-out of this nature to be developed.

(h) **Restraints on substitution arising from long term rail take or pay commitments:** rail haulage and rail access agreements are typically entered on at least a 10 year take or pay basis – such that switching terminals is a choice that can only ever arise at the point of re-contracting (and where that timing for re-contracting can be aligned with the term of the DBCT User Agreements which are also take or pay contracts and run for different terms with an 'evergreen' renewal option).

In respect of the other existing or potential terminals referred to in the DBCTM submissions at the Port of Hay Point, the DBCT User Group notes that:

(a) Hay Point Coal Terminal is not a multi-user facility and there is no evidence or indication that its operator, BHP Billiton Mitsubishi Alliance, has any intention to provide access to that terminal to third parties; and

(b) neither of the Dudgeon Point Coal Terminal proposals is proceeding and there is no indication they are likely to do so during the next regulatory term (noting there is an inherent contradiction between DBCTM's claims that coal markets are so depressed that the asset stranding risk is increasing and useful life of the Terminal is decreasing, while also suggesting that multiple greenfield coal terminals are such a realistic prospect of development that they impose competitive tension on DBCTM).

The Australian Competition and Consumer Commission (the ***ACCC***) has recently considered these exact issues in its assessment of Brookfield's proposed acquisition of Asciano and, consistently with the views of the DBCT User Group, the ACCC's Statement of Issues provided the ACCC's preliminary view that the relevant market was the supply of coal handling services at the Terminal (not a wider market involving other coal terminals).[22]

3.4 Pricing Parameters

DBCTM has proposed a number of significant changes in methodology with respect to pricing, as compared with the 2010 AU. DBCTM has proposed various methodological changes in determining its applicable nominal post-tax WACC rate of 7.46% and also proposed changes to several other pricing parameters. These include:

(a) reducing the maximum assumed remaining useful life (RUL) for depreciation purposes;

(b) introducing a significant remediation premium;

(c) reducing its gamma assumption;

(d) increasing its working capital allowance;

(e) including the depreciation of spares; and

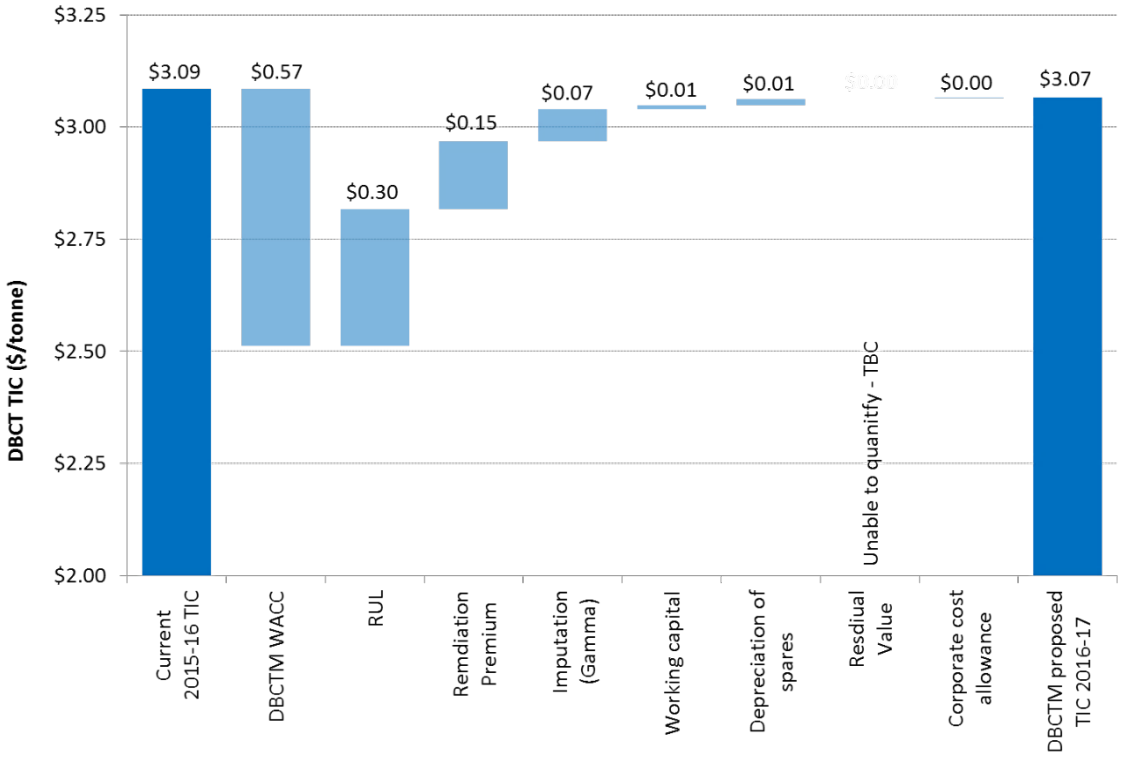
(f) applying an updated and increased corporate overhead benchmark cost.

This section seeks to comment and address each of the proposed changes. The DBCT User Group has observed that as a result of submitting a WACC of 7.46% (lower than the existing WACC, due entirely to broader market conditions), DBCTM has proposed offsetting changes to other pricing and calculation parameters such that the level of DBCTM’s revenue is protected, at the expense of the DBCT Users. The DBCT User Group is also concerned by the precedent that would be set (in respect of future access undertaking periods when financial market conditions improve), by adopting some of these changes.

The DBCT User Group has analysed the limited available information to assess the impact of each change proposed by DBCTM, as compared to the relevant existing pricing parameter in the current 2010 Access Undertaking. Figure 5 illustrates the impact of the changes that the DBCT User Group has been able to quantify.

[22] ACCC Statement of Issues, Brookfield Consortium – proposed acquisition of Asciano Limited, 15 October 2015, 14.

Figure 5 – Indicative TIC Impacts of the DBCTM proposed offsetting pricing parameter changes



The DBCT User Group is concerned that the WACC and other pricing parameters proposed by DBCTM do not reflect the reasonable and efficient cost of providing Terminal services, as required by the QCA Act. This section of the submission considers each of DBCTM's proposed changes and provides an alternative view such that the interests of the DBCT Users and DBCTM are balanced, and the charges Users pay for DBCTM's services reflect reasonable and efficient costs of operating the Terminal.

(a) WACC

The DBCT User Group believes that the nominal post-tax cost of capital of 7.46% as submitted by DBCTM, represents a view based on selectively choosing regulatory precedents for the various WACC parameters to provide the largest benefit to DBCTM.

The DBCT User Group could have pursued a similar approach and selected the most aggressive WACC parameters from various regulatory precedents to calculate a very low WACC for the QCA to consider. For example, the DBCT User Group could have argued for the lower end of the accepted range for various WACC parameters and ignored the QCA's current established WACC methodology.[23]

Instead, the DBCT User group commissioned, from independent consultants PwC, a report on the most appropriate WACC to apply to DBCTM based on established DBCTM precedents, the QCA's current WACC methodology and updating for current market parameters and other relevant evidence. PwC estimated a nominal post-tax cost of capital for DBCTM of 5.84%. The

[23] QCA (2014), Final Decision- Cost of Capital: Market Parameters, available at http://www.qca.org.au/getattachment/820a4f29-2878-4641-b445-dcf8af7f75ed/QCA-Final-Decision-Cost-of-Capital-Market-Paramete.aspx

basis for each of the WACC parameters applied is provided in PwC's detailed report at Schedule 3.[24]

Table 1 provides direct comparison of each parameter and the resulting WACC for the DBCTM proposal, the PwC-proposed WACC and a lower bound that industry could have argued for if it applied the same "ambit claim" approach as DBCTM.

Table 1: Post-tax nominal WACC parameters for DBCTM as estimated by PwC

Parameter	DBCTM Proposal	PwC	Lower Bound
Risk free rate	2.80%	2.17%*	2.17%*
Credit rating	BBB	BBB	BBB
Debt risk premium	2.32%	2.32%*	2.32%*
Interest rate swap costs	0.00%	0.15%**	0.15%**
Debt issuance costs	0.108%	0.108%	0.108%
Pre and post-tax cost of debt	*5.23%*	*4.75%*	4.75%
Asset beta	0.53	0.43	0.35
Gearing	60%	60%	35%
Equity beta	1.00	0.81	0.45
Equity market risk premium	8.00%	6.50%	6.00%
Tax rate	30%	30%	30%
Gamma	0.25	0.47	0.47
Cost of equity	*10.80%*	*7.47%*	4.89%
Post-tax nominal WACC	**7.46%**	**5.84%**	**4.84%**
Equivalent pre-tax nominal WACC	**10.65%**	**8.34%**	**6.92%**

* Based on the average of 20 trading days to 21 August 2015.

** Indicative value adopted with reference to the QCA Draft Determination for Queensland Rail

The DBCT User Group has presented the lower bound post-tax nominal WACC of 4.84% to further illustrate the reasonableness of the WACC determined by PwC. However we note that the lower bound is still based on parameter values than can be referenced to established precedents and includes:

- a market risk premium of 6% by reference to the current QCA assumption for DBCT and Aurizon Network under current regulatory arrangements;[25]
- an asset beta of 0.35 as recently acknowledged by the QCA[26] as the benchmark asset beta for DBCTM in arriving at an asset beta for Aurizon Network, and
- gearing of 35% based on the market evidence presented by PwC in its WACC report at Schedule 3.

[24] The WACC-related discussion in the PwC report and this submission relates only to the WACC as it applies to the return on asset calculation for existing assets. The DBCT User Group has not considered in detail the financing costs for future NECAP and reserves its right to comment on these costs.

[25] QCA (September 2014), Draft Decision - Aurizon Network 2014 Draft Access Undertaking - Maximum Allowable Revenue, p.185, available at http://www.qca.org.au/getattachment/9e1f80ed-7c00-446d-8043-bf6a3c1d8f22/QCA-Draft-decision.aspx

[26] QCA (September 2014), Draft Decision – Aurizon Network 2014 Draft Access Undertaking – Maximum Allowable Revenue, available at: http://www.qca.org.au/getattachment/9e1f80ed-7c00-446d-8043-bf6a3c1d8f22/QCA-Draft-decision.aspx

(b) Remediation cost

As part of the long term lease from the Queensland State Government, DBCTM has an obligation to rehabilitate the DBCT site at some time in the future. In its submission, DBCTM calculated its Annual Revenue Requirement (***ARR***) including an annual 'Remediation Premium' of $12.8 million. DBCTM argues that the site remediation allowance previously approved by the QCA, a fixed annuity amount of $952,710, will not provide sufficient funds for it to meet its remediation obligations.

To support its proposed increase in remediation costs DBTCM commissioned:

- Hatch to assess the remediation cost for the facility; and
- Finity to take the cost estimate established by Hatch and translate it into an annual remediation charge to be included for Terminal pricing purposes.

Likely cost of remediation

The DBCT User Group accepts the need to periodically review the remediation cost for the Terminal and the associated annual allowance. The DBCT User Group also acknowledges the QCA's current process[27] to engage a consultant to review DBCTM's proposed site rehabilitation costs and supports this independent cost assessment. As an extension to this review, the DBCT User Group suggests the QCA also needs to consider the following issues in detail:

(i) significant uncertainty that currently exists regarding the standard of the remediation obligation, which obviously impacts on the cost that would be incurred (whereas the Finity report simply assumes the highest estimate from the Hatch report);

(ii) given remediation costs are not going to be incurred during the next 35 years (at a minimum), there is the potential for large technological advances that could provide alternative remediation options at a reduced cost; and

(iii) the analysis presented in the Hatch report is largely based on arbitrary and unsubstantiated remediation cost assumptions, and these assumptions need to be carefully scrutinised and challenged as part of the QCA review of remediation costs.

Timing of remediation

As recognised by the Finity report, the annual remediation charge is very sensitive to the assumed term.[28] In considering the timing in which any remediation cost may be incurred, the DBCT User Group strongly disagrees with the assessment of DBCTM, which places a material probability on the remediation cost occurring before the end of the current lease. The DBCT User Group considers it almost certain that DBCTM will exercise its option to extend the lease by another 49 years, and therefore would put no weighting on any scenario which considers an early termination of the Lease.

Even in the unlikely event the coal market is challenged in the very long term:

(i) there is a likelihood of a potential alternative use of the Terminal during the term of the lease (including option) and beyond. Due to environmental constraints on both new port developments and capital dredging at existing ports, an existing deep water port has a significant option value. Therefore the DBCT User Group

[27] Link to the QCA Terms of Reference http://www.qca.org.au/getattachment/7e55b741-7ba8-46e3-8cbc-81b4eabcb1fb/TOR-Rehabilitation-DBCT.aspx.

[28] Finity Consulting Pty Ltd, Review of Dalrymple Bay Coal Terminal Remediation Charge, September 2015 at 8.

believes that there is a need to contemplate the likelihood that a remediation cost may never actually be incurred, or at least that the liability to DBCTM will not eventuate; and

(ii) at worst, it would be in DBCTM's best interest to hold off remediating the site until the end of the lease period to afford scope for any new alternative use opportunities emerging during this time. Based on the provisions of the Port Services Agreement referred to in the Hatch Report, DBCTM would have another 3 years from that point to conduct rehabilitation. In this case, the remediation contribution paid by the existing customers would continue to accrue interest.

The DBCT User Group questions the 'plausible scenarios' outlined in the Finity report and the probabilities assigned to each of those scenarios in determining the annual remediation charge. The DBCT Users reject any scenario that assumes the remediation cost is incurred before the end of the current lease term, for reasons outlined above. Therefore the 'Economic Life' and the 'Environmental Intervention' scenarios that are currently assigned a combined probability of 55% should be reduced to zero. To illustrate the materiality of those arbitrary assumptions, applying an equal weighting to the three remaining scenarios - 'QCA Assessment', 'End of Lease' and 'End of Lease + Extension Period' results in a mean number of years to remediation of approximately 52 years, an annual remediation charge of $3.8[29] million and as a result has a TIC impact of $0.11/tonne, as compared to DBCTM's proposal. This scenario is not presented as the DBCT User Group's view; rather, to highlight the materiality of timing assumptions.

(c) Remaining useful life

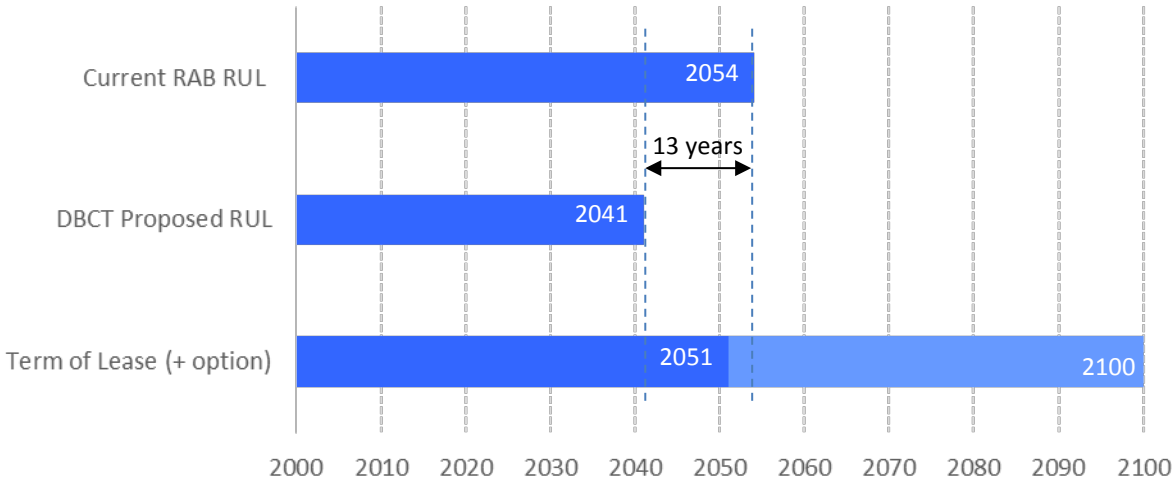
DBCTM has proposed to change the maximum remaining useful life (***RUL***) of its assets to 25 years based on its assessment of a weighted average mine life (***WAML***). DBCTM's proposed change in the RUL has a significant impact on the TIC, increasing it by approximately $0.31/tonne for FY2017.

DBCTM's key claim to support this change in methodology is that its risk profile has increased. The DBCT User Group disputes this claim given the evidence provided in Section 3.2 suggests the outlook for the Australian coal export market remains strong and continues to grow, despite short term market conditions.

The DBCT User Group also notes that previous QCA decisions provide a clear precedent for determining the RUL. The end of the economic life of the terminal, 50 years from 1 July 2004, was considered by the QCA to be appropriate for the maximum depreciation life of the terminal assets. Figure 6, shown below, illustrates that DBCTM is proposing to reduce that maximum RUL by 13 years.

[29] This is an estimate based on replicating Finity's work and assuming a remediation cost of $847 million. We were unable to exactly replicate Finity's results with the information available. However, we consider our calculations provide a reasonable approximation of the annual remediation charges under the scenario we tested.

Figure 6 –Timeline of current and DBCTM proposed RUL



DBCTM argues that WAML (which matches the depreciation profile of the RAB with the weighted average life of the existing mines that the Terminal services), is the most appropriate approach to set the depreciation profile of its terminal assets. According to DBCTM, the WAML approach will provide it with a stable depreciation profile that assists in reducing its stranding risk.

The DBCT User Group does not agree that applying WAML is appropriate or reasonable because:

(i) coal companies progressively prove up resources on a rolling program only to the extent required for their mine planning. Therefore adopting a WAML based on reserves (as opposed to resources) as the methodology used to determine the RUL means this calculation will always be based on relatively short term assumptions (that are not appropriate for determining the long term economic life of an infrastructure asset).

(ii) the nature of the proposed WAML of 25 years, determined by Wood Mackenzie[30] and as adopted by DBCTM, is based on marketable reserves only. Wood Mackenzie produced an additional scenario that incorporated both proven and probable reserves resulting in a longer WAML of 35 years. However, the Wood Mackenzie analysis specifically excluded from the analysis all future mining projects forecast to open beyond the 2016-2021 access period. The DBCT User group note this inherently impacts the weighted mine life that is determined and unnecessarily skews the result to a reduced number of years. Determining the RUL for a terminal should not only consider existing reserves as reported by coal companies. It should be extended to include resources to develop a reasonable view of the economic life of a catchment-based infrastructure asset. In fact, the DBCT User Group's own analysis shows that, considering future/probable projects in the mine-life analysis results in an economic life that is well in excess of the current remaining life assumption applied under the 2010 AU regulatory arrangements.

(iii) The DBCT User Group does not share the same view as DBCTM that long-term market outlook for coal is such that DBCTM will have to shorten its assets economic life to avoid asset stranding. Over the long term, demand for coal, and

[30] Wood Mackenzie, Shipper Mine Life Analysis, available at http://www.qca.org.au/getattachment/d34bdb2a-bbbe-45c5-aa58-cb9a8873f0f3/Attachment-A-Shipper-Mine-Life-Analysis.aspx

therefore, the terminal's services, appears robust. Over the longer term, international demand for coal products shipped through DBCT is secure. The US Energy Information Administration (EIA) anticipates Australia will be the largest individual exporter of coal by 2035, and supply over 30% of total international coal exports annually between 2035 and 2040.[31] Such reports suggest the risk of asset stranding is significantly less than that inferred by DBCTM.

(iv) Using the WAML that estimates an economic life of 25 years for terminal assets does not appropriately balance risks between DBCTM and the DBCT Users. It effectively front loads depreciation charges to the benefit of DBCTM and detriment of DBCT Users. While the long-term outlook is strong, coal companies are currently facing significant short-term challenges. Setting a 25-year asset life at this stage is not in the best interests of the DBCT Users who may have to incur a higher TIC (if a shorter asset life of 25 years is approved), while DBCTM remains protected because of the revenue-cap regulation and take-or-pay arrangements.

The DBCT User Group expects this proposed change in methodology would be something that the QCA would consider in detail given the magnitude of price impact and the precedent a change in methodology would set for future undertakings, including for Aurizon.

Further, the equity beta determined and applied by PwC is based on the risk profile of DBCTM as the regulatory framework currently stands. Should the QCA reduce the RUL for pricing purposes, DBCTM's risk profile would be reduced and, therefore, the DBCT User Group would expect an adjustment in the asset/equity beta, beyond that suggested by PwC, to reflect the reduced risk profile of the Terminal.

(d) Corporate overhead cost allowance

In its submission, DBCTM has proposed an increase in the level of the corporate overhead cost allowance from $7.6 million to $8.2 million. The DBCT User group does not consider that an increase in corporate overheads cost allowance is justified or warranted, particularly given current market conditions.

DBCTM engaged Mr Stephen Meyrick to provide estimates of corporate costs for DBCTM for the 2015 DAU. His estimate of $8.2 million per annum for DBCTM is based on an 'efficient benchmark firm' analysis. In its final decision on DBCTM's 2010 access undertaking, the QCA approved $7.6 million allowance for corporate overheads. Escalated by CPI (2.5%) equates to $7.8 million in 2016—17. We note that the QCA approved amount also includes remediation charges and on-going regulatory costs. To draw a direct comparison, the remediation cost of $952,710 per annum was excluded as applies under the current arrangement.

The QCA has historically applied efficient benchmark firm analysis to determine estimates for corporate overhead cost allowances for regulated entities, including DBCTM. We note DBCTM's current corporate overhead allowance is based on this method.

The DBCT User Group does not question the merit of the efficient benchmark analysis as is applied in the current undertaking and sets the DBCTM QCA precedent. It does, however, expect that corporate and management functions should become more efficient over time, at least reflecting gains generally in economy-wide productivity trends. In particular, we would expect an efficient firm would be considering cost-reduction and efficiency improvement programs in line with the coal market in which it is operating.

[31] US Energy Information Administration, Annual Energy Outlook 2015, table 72 available at: http://www.eia.gov/forecasts/aeo/tables_ref.cfm

As it stands, DBCTM is seeking a significant increase in the allowance, implying that 'efficient' costs have increased by more than inflation over the period. That is counter-intuitive and directly contrary to the experience of each of the DBCT Users.

A final consideration is whether DBCTM has actually achieved a reduction in its *actual* costs – the DBCT User Group understands that DBCTM has itself been through a process of reorganisation and corporate cost reduction, including some reduction in headcount - and how this should be reconciled to a proposed increase the corporate overhead allowance for pricing purposes.

We request the QCA to investigate whether the proposed $8.2 million allowance, for DBCTM, is efficient and satisfies the criteria in the QCA Act.

Reverting to the current corporate cost allowance, as indexed, reduces the allowance to $6.9[32] million for 2016-17, reducing the TIC by approximately $0.01/tonne.

(e) Inflation rate

DBCTM has proposed to change the way that forecast and actual inflation are applied in the building block calculation, specifically to introduce consistency in determining the Regulated Asset Base (***RAB***) and depreciation during an access undertaking period.

In principle, the DBCT User Group supports consistency between the approaches for calculating the return of and on capital. Due to limited detailed information available, the DBCT User Group is unable to fully test how DBCTM's proposed RAB roll-forward mechanism affects the ARR and TIC for the duration of the 2016-2021 access undertaking. However, it does note that the inflation approach currently applied by the QCA for rolling forward the DBCT asset base is consistent with the approach applied for Aurizon Network.

The DBCT User Group expects this proposed change in methodology would be something that the QCA would need to consider and ultimately decide on, as the information required to analyse the impacts is unlikely to be provided publicly.

(f) Residual value

Under the current access undertaking, all new Terminal assets included in the RAB are assigned a zero residual value, while some of the original Terminal assets had a residual value of 2.5% of the DORC assigned to them. In the 2015 DAU, DBCTM has proposed to update the depreciation profile, for these original assets, to reflect a zero residual value.

As discussed above, there could be an alternative future use for the Terminal, which perhaps was the original motivation for the QCA in retaining a residual value. Applying a zero residual value discounts this completely, and also all ignores any potential scrap value for disposal of those assets.

Alternatively, the QCA could consider DBCTM's proposal of assigning zero residual value to existing assets at a time closer to when the future use or application of the terminal is known with more certainty. Assuming that happens, it would result in a $0.01 reduction in TIC for 2016-17.[33]

(g) Working capital

[32] This reflects the $7.8 million 2016-17 less the remediation charge and our analysis also excludes the $0.3 million credit for 2016-17 for the QCA Levy as identified in DBCTM's submission.

[33] To reverse the effect of zero residual value, we re-calculated the existing asset values based on the 2.5% of the DORC value approach as it applies under the current undertaking. Effectively, we took 97.5% of the 2015-16 asset values for assets added on 2004-05. This gives a nominal depreciation of $107.9 million. In the absence of further information, we assumed all assets added on 2004-05 are existing assets, with the exception of spares as they are not treated as conventional assets for depreciation. See page 8, http://www.qca.org.au/getattachment/4891b780-32f2-4f60-9ab2-9d46fe21bb4a/2010-DBCT-Draft-Access-Undertaking.aspx

Working capital is a measure of operating liquidity. The need for working capital arises due to a timing difference between accounts receivables (payments received from customers) and accounts payables (payments made to suppliers).

DBCTM has proposed a 45-day collection or receivable period to determine its working capital allowance. Under the current arrangement, DBCTM applies a 30-day collection period.

There are various ways in which a regulator may establish a benchmark proxy for the cost incurred in holding necessary working capital benefits. Indeed, the DBCT User Group considers that, absent a clear basis for any difference, there ideally should be regulatory consistency between the regulatory working capital calculations for the rail and port entities that the QCA regulates.

The QCA recently released a draft decision on Queensland Rail's 2015 DAU. According to the QCA, a working capital allowance of 0.3 % of the ARR is reasonable for determining a reference tariff for coal services for the next undertaking period.[34]

For Aurizon's central Queensland coal network, in the past the QCA had accepted an allowance for working capital for Aurizon Network/QR Network that was calculated as 0.75% of direct maintenance labour costs.[35] We do not consider this to be a reasonable measure for DBCTM given the terminal operations are undertaken by a separate entity, DBCT P/L. Indeed, in its recent decision on Aurizon Network's 2014 DAU, the QCA considered there is no need to account for an allowance for working capital because Aurizon Network had proposed an end-of-year rather than middle-of-year revenue-modelling approach. The QCA said an end-of-year modelling approach already addresses mismatches in cash-flow timings.[36]

Given the above, we consider DBCTM's approach for calculating working capital should be aligned with the approach proposed for Queensland Rail, and an allowance for working capital set at 0.3% of the ARR instead of the approach proposed in DBCTM's 2015 DAU.

Determining the working capital allowance based on a 0.3% of ARR approach reduces the TIC by approximately $0.02/tonne.

(h) Depreciation of spares

In its 2015 DAU submission, DBCTM is proposing to depreciate spares. Under the current access undertaking, and since the original 2006 AU, spares are not depreciated.[37] Based on the DBCT User Group's high level analysis, we estimate that depreciation of spares has a minimal, $0.01/tonne impact on TIC. It is noted that DBCTM currently earns a return on the value of spares, with the capital value indexed to maintain the value of these spares in nominal terms. Only the depreciation or return of capital component is delayed until the spares are actually in use.

[34] QCA (2015), Queensland Rail's 2015 DAU, October 2015, p. 157, available at: http://www.qca.org.au/getattachment/dfcf0cda-40c6-4a8e-b945-930a97a4f135/QCA-QR-2015-DAU-Draft-Decision.aspx

[35] QCA (2010) Draft Decision – QR Network 2010 DAU: Tariffs and Schedule F, June 2010 p.72-76. QCA retained this position in its final decision

[36] QCA (2014), Draft Decision: Aurizon Network 2014 DAU – Maximum Allowable Revenue, September 2014, p.118.

[37] p.158, available at: http://www.qca.org.au/getattachment/dd6f9368-3c28-44e5-9350-7549981b461e/2004-Draft-Decision-re-DBCT-Draft-Access-Undertaki.aspx

The QCA originally determined the treatment of spares based on Maunsell's[38] analysis that spares should remain undepreciated because they are considered to be held and used as new.[39] The User Group contends this principle still holds and suggests the existing treatment of spares be retained for the upcoming regulatory period.

(i) Gamma

The gamma value currently applied under the 2010 AU is 0.50.[40] This is consistent with the QCA's historical gamma estimate of 0.5, which is based on a distribution rate of 0.8 and a utilisation rate of 0.625.[41] In its recent submission, DBCTM proposes to change the gamma parameter to 0.25. DBCTM's proposed change in gamma would have a significant impact on the TIC, increasing it by approximately $0.07/tonne.[42]

As part of a comprehensive review of its WACC methodology in 2014, the QCA reviewed and revised its gamma estimate. The QCA adopted a gamma of 0.47[43] as a result of this review, and more recently has applied this revised estimate in both the Queensland Rail and Aurizon Draft Decisions.

The DBCT User Group believes DBCTM's proposed value of 0.25 is clearly inconsistent with recent regulatory precedent. Regulators across the country in recent decisions have applied a gamma within the range of 0.4-0.46. Notably, the AER and ERA both applied a parameter of 0.4 in recent decisions, which is more consistent with the 0.47 applied by the QCA as opposed to the 0.25 rate claimed by DBCTM.

The DBCT User Group expects the QCA will reject DBCTM's revised gamma proposal on the basis of its own and broader regulatory precedents and instead adopt a gamma of 0.47.

(j) Combined impact TIC impact of User Group pricing parameters

The DBCT User Group has assessed the combined impact of all of the preceding adjustments, with this analysis shown in the figure below. It includes:

(i) the DBCT User Group-determined pricing parameters as advised by PwC (i.e. WACC);

(ii) adjustments to the DBCTM proposed parameter where the QCA position is clearly established; and

(iii) excluding/reversing pricing parameters adopted by DBCTM in its submission that require the QCA to approve a DBCT-specific change in methodology for the 2016-2021 access undertaking period.

[38] QCA's consultant

[39] P.158, available at: http://www.qca.org.au/getattachment/dd6f9368-3c28-44e5-9350-7549981b461e/2004-Draft-Decision-re-DBCT-Draft-Access-Undertaki.aspx

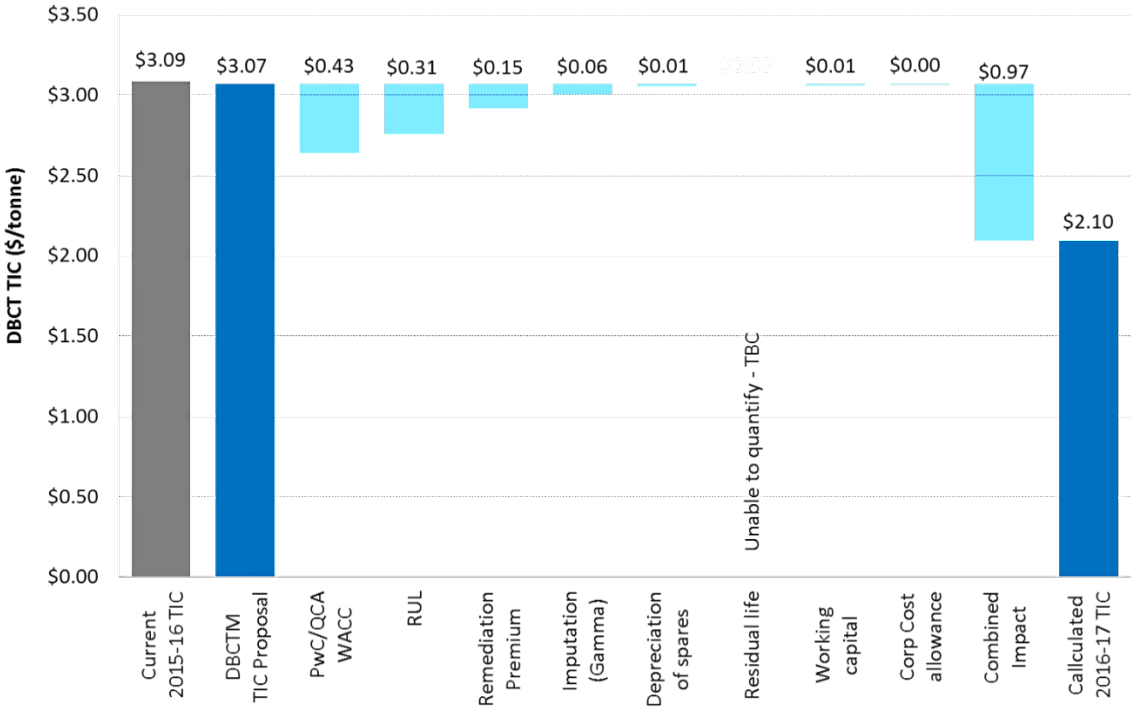
[40] QCA (2010), Final Decision: DBCT 2010 DAU, p. 8, available at: http://www.qca.org.au/getattachment/4891b780-32f2-4f60-9ab2-9d46fe21bb4a/2010-DBCT-Draft-Access-Undertaking.aspx

[41] QCA (2015), p. 254, available at: http://www.qca.org.au/getattachment/9e1f80ed-7c00-446d-8043-bf6a3c1d8f22/QCA-Draft-decision.aspx

[42] We have estimated this by grossing up DBCTM's proposed net tax payable applying its 0.25 gamma and then revising the net tax payable by applying a gamma of 0.50 (per the current access undertaking).

[43] QCA (2014), Final Decision- Cost of Capital: Market Parameters, available at http://www.qca.org.au/getattachment/820a4f29-2878-4641-b445-dcf8af7f75ed/QCA-Final-Decision-Cost-of-Capital-Market-Paramete.aspx

Figure 7 – DBCT User Group view of indicative 2016-17 TIC



The WACC parameter has the largest single effect on DBCTM's allowable revenue and resulting TIC. Since DBCTM does not have a significant operational or maintenance role at DBCT, the return on assets component of the building block calculation accounts for more than two-thirds (based on DBCTM's submission) of the total allowable revenue. In contrast, Aurizon's allowable revenue includes significant operations and maintenance costs and as such the return on assets component accounts for less than 40%[44] of the total allowable revenue. This means that the impact of a reduction in WACC for DBCTM is amplified when presented as a percentage change in allowable revenue and/or TIC, as compared to other regulated infrastructure providers.

Given the expected reduction in WACC, due to current market returns, the DBCT User Group was anticipating a significant reduction in TIC for this next access undertaking period. The lower WACC essentially reflects the reduction in DBCTM's actual financing costs (ignoring any changes in WACC parameter methodology) and the DBCT User Group expected that this cost reduction would be passed through to DBCT Users.It should also be remembered that DBCTM has effectively benefited from its current higher WACC in connection with the 2010AU when for much of the current regulatory period its costs of financing have been more reflective of the WACC that DBCT User Group is now proposing.

The DBCT User Group does not accept as reasonable any outcome where this expected reduction in capital financing costs is 'paid for' by DBCTM making offsetting adjustments to cost and other parameters.

[44] QCA (2014), Draft Decision on Aurizon Network MAR, September 2014, page: 24, available at: http://www.qca.org.au/getattachment/9e1f80ed-7c00-446d-8043-bf6a3c1d8f22/QCA-Draft-decision.aspx

4 Differential Pricing (Section 11 / Schedule C / various other sections)

4.1 Socialise down / incremental up as the appropriate approach

The Terminal has expanded numerous times since its initial construction, having expanded from 14.55 mtpa capacity in 1983 to the current 85 mtpa rated capacity. As previously recognised by the QCA,[45] the Terminal has expanded to the point where it is now on the increasing part of its long run average cost curve.

As a result it is anticipated by the DBCT Users that, if costs of expansions were socialised, future expansions are likely to result in substantially higher charges for existing DBCT Users.

The anticipated increase in costs would be well past the point to which the parties would have been reasonably expected to agree for existing DBCT Users to bear the costs of future expansions in a hypothetical contract entered before sunk costs were incurred.

The appropriate approach to this issue has been very recently considered by the QCA, both:

(a) specifically in respect of the Terminal, in the Differential Pricing Final Decision on the Differential Pricing DAAU; and

(b) prior to that, in principle, in the QCA's Discussion Paper on Capacity Expansions and Access Pricing for Rail and Ports in April 2013 (the ***Discussion Paper***).

The DBCT User Group has also made extensive submissions on this issue during the process for consideration of the Differential Pricing DAAU. Those submissions remain directly relevant. They are enclosed as Schedule 4 of this submission (and should be treated as part of this submission).

Without repeating the DBCT User Group's submissions on the Differential Pricing DAAU in their entirety, the DBCT User Group continues to strongly support the approach adopted in the Differential Pricing Final Decision and the Discussion Paper of socialising expansion costs where that would reduce tariffs for existing users and applying differential pricing for an expansion where it would otherwise increase tariffs for existing users (which the QCA refers to as 'socialise down/incremental up').

However, consistently with the DBCT User Group's previous submission and the Differential Pricing Final Decision, the DBCT User Group recognises that there may be exceptional circumstances in which an expansion which would modestly increase tariffs should nevertheless be socialised.

Accordingly, the DBCT User Group proposes that the Differential Pricing DAAU be amended to reflect the following principles:

(a) where socialisation of expansion costs would result in a decrease in tariffs for existing users, the costs should be socialised (retaining a single regulatory asset base, annual revenue requirement and reference tariff);

(b) where socialisation of expansion costs would result in an increase in tariffs for existing users, differential pricing should apply to the expansion (via a separate regulatory asset base, annual revenue requirement and reference tariff) except where the QCA considers there are special circumstances that make it appropriate for the costs to be socialised;

(c) in determining whether special circumstances exist, such that it is appropriate for differential pricing to apply to an expansion (for which socialisation would increase tariffs for existing users), the QCA must have regard to the following factors:

    (i) the extent to which the additional capacity provided by the Capacity Expansion is:

[45] Queensland Competition Authority, *Discussion Paper Capacity Expansion and Access Pricing for Rail and Ports*, April 2013 at 20.

(A) an incremental expansion which involves common usage of many parts of the existing Terminal; or

(B) a stand-alone development which involves common usage of none or limited parts of the existing Terminal;

(ii) the extent to which the expansion benefits existing users (such as through higher efficiency, robustness or flexibility);

(iii) the extent of the increase in costs which would be caused by socialisation; and

(iv) any differences in the risks of providing access to the Access Holders in respect of Terminal Capacity created by the Terminal Capacity Expansion.

The DBCT User Group proposed in its previous submissions on the Differential Pricing DAAU that the QCA should also have regard to the following two additional factors:

(i) the position that best reflects what would reasonably be expected to have been agreed in a hypothetical negotiated contract entered prior to sunk costs being incurred by DBCTM or the existing Access Holders; and

(ii) the objects of Part 5 of the *Queensland Competition Authority Act 1997* (Qld).

The DBCT User Group continues to consider those factors are appropriate. However, noting the rejection of those factors in the Differential Pricing Final Decision and that these factors are effectively reflected in the general 'socialise down / incremental up' approach described above in any case, the DBCT User Group would be willing to support an approach that did not specifically reference these factors.

It is critically important that the assessment of whether an expansion should be differentially priced is made by the QCA independently, not by DBCTM (as DBCTM will have a vested interest in a particular outcome).

4.2 Separability

DBCTM continues to propose 'separability' as the test for when differential pricing should apply.[46]

The DBCT User Group's position continues to be that the appropriate principal test is whether socialising the expansion costs would result in an increased tariff, but that separability is one factor to be considered in determining whether special circumstances exist which may justify socialisation even if that causes a pricing increase for existing DBCT Users.

The DBCT User Group support the QCA's previous conclusions in the Discussion Paper:[47]

> *When access is sold to access buyers according to long-term capacity contracts and the new facilities are functionally the same as the established facilities, such that access buyers are indifferent as to which facilities they use, the issue of physical separability has no bearing on the capacity expansion pricing issue. This is because the cost of the expansion can be recovered from new access capacity contractors, as it is clear that they have 'caused' the need for capacity expansion and the costs can be identified. Which capacity is used in practice to satisfy new access demand has no bearing on the access seller's ability to charge new access customers for the new capacity*

and the Differential Pricing Final Decision:[48]

[46] DBCT Management, 2016 DAU Submission, 69

[47] Discussion Paper, 8.

[48] Differential Pricing Final Decision, iv.

> *we do not consider that separability should be the primary determinative factor. We also do not consider that physical separability necessarily precludes differential pricing because new expansion costs can be clearly identified, and attributed to the users who are causing the expansion, and therefore receiving the benefits of that expansion, regardless of which capacity (old or new) is used to meet their demand.*

Given the approach to be adopted is intended to reflect the hypothetical agreement that would have been reached by the parties prior to sunk costs being incurred – it is difficult to see how separability would have been a major factors (as prior to sunk costs being incurred the parties would not be able to predict with any accuracy how future expansions of the Terminal might proceed). Rather parties in that situation would have given thought to what would occur in the event of a Terminal expansion (however designed) that resulted in a material increase in costs.

4.3 Relevance of the Port Services Agreement

DBCTM seeks to make much of the terms of the Port Services Agreement entered with the State (the ***PSA***).

The DBCT User Group agrees with the QCA's views as expressed in the Differential Pricing Final Decision that:[49]

> *contractual arrangements, such as the PSA, cannot bind or constrain us [the QCA] in exercising our discretion to approve or refuse to approve the DAAU, in accordance with the QCA Act*

There are clear difficulties with DBCTM's assertions that contractual arrangements can constrain the QCA's discretion, most obviously being that contractual obligations could then be entered by any regulated entity with third parties to defeat appropriate regulatory decisions.

In addition, the DBCT User Group also does not agree that differential pricing would result in DBCTM being in breach of the PSA. The DBCT User Group's understanding of the PSA is that it contains provisions relating to the terms which DBCTM can submit in a draft access undertaking – not the terms which the QCA can approve or to which the provision of services by DBCTM can be made subject.

4.4 Alleged uncertainty

DBCTM asserts that the position proposed by the QCA in its Differential Pricing Final Decision should be revised, due to the uncertainty caused by needing to balance a list of factors which may be in conflict.[50]

That purported concern does not stand up to scrutiny. In particular:

(a) this sort of balancing exercise is a very common task in access and economic regulatory decisions and represents a type of decision making with which the QCA has substantial experience;

(b) the concern is materially overstated, given that the primary test (whether socialisation would increase tariffs) can be applied with a reasonably high degree of certainty and the list of other factors to be balanced is only relevant in determining whether there are special circumstances which justify a departure (such that the factors would have to overwhelming point towards a departure before that would be appropriate).

[49] Differential Pricing Final Decision, vi.

[50] DBCT Management, 2016 DAU Submission, 62.

4.5 Application of QCA Act criteria to Differential Pricing

DBCTM's submissions provide its views on how the factors to be had regard to (in section 138(2) QCA Act) apply in relation to differential pricing. The DBCT User Group considers that, when properly interpreted, those factors weigh in favour of adopting the position proposed by the QCA (and supported by the DBCT User Group) for the reasons set out below:

(a) **Object of the Act** – to promote efficient investment in infrastructure, it is appropriate that new users pay the incremental costs of expansions they cause. If such expansions are effectively cross-subsidised by other users, that has the potential to result in inefficient investment and distortion of competition in other markets through circumstances like development of a Goonyella coal mine utilising that subsidised capacity instead of a more efficient mine that would utilise another terminal. The DBCT User Group notes the inherent contradictions between DBCTM's submissions about the prospects of future expansions to meet coal demand being damaged by differential pricing at the same time as making submissions asserting asset stranding risks arising from low coal prices.

(b) **Legitimate business interest of the owner or operator** – the DBCT User Group considers that differential pricing is not materially adverse to the owner or operator of the Terminal. As set out earlier in this submission, DBCTM faces no effective competition from any other coal terminal.

(c) **Interests of new and existing users** – it is clearly not in the interests of existing Users to be paying higher prices (where they receive no benefit from the incremental expansion that caused the pricing rise), which would be the outcome in many cases of DBCTM's approach to differential pricing.

(d) **Effect of excluding certain assets for pricing purposes** – differential pricing does not involve any assets being excluding from pricing from the perspective of DBCTM. DBCTM continues to earn a return on all capital invested.

(e) **Section 168A pricing principles** – there is nothing in differential pricing which changes the principles that DBCTM is entitled to earn revenue to meet its efficient cost of providing access and a return on investments commensurate with the risks involved. To the extent that differential pricing is regarded as 'price discrimination' it clearly aids efficiency by removing the potential for cross-subsidisation of expensive and inefficient expansions.

(f) **Public interest** – the public has a substantial interest in the economic success of the existing DBCT Users (through employment, royalties and indirect flow-on effects). The DBCT User Group endorses the QCA's previously expressed views that the public interest is consistent with the need for an efficient and competitive coal industry in Queensland and the need for costs to be minimised.[51]

4.6 Allocation of Operation and Maintenance Charges (and NECAP)

Section 11.9 of the 2015 DAU provides for an allocation methodology that is dependent upon differential pricing only being based on separability. As noted earlier in section 4 of this submission, that is not an appropriate basis upon which to make a decision about differential pricing, such that section 11.9 would require amendments.

The DBCT User Group is concerned about DBCTM's proposed role in relation to allocation of operating and maintenance costs between the 'Base Terminal' and any 'Expansion Components'

[51] Queensland Competition Authority, Draft Decision on Aurizon Network's 2014 DAU – Reference Tariffs for Wiggins Island Rail Project Train Services, July 2015, 9; Queensland Competition Authority, Draft Decision on Aurizon Network's 2014 DAU – Maximum Allowable Revenue, September 2014, 46.

that are differentially priced, in the absence of the 2015 DAU and the existing "evergreen" Access Agreements specifying clear principles about how that allocation is to occur. DBCTM has a vested interest in a particular result (allocating a greater proportion of the costs to the Base Terminal so that they are socialised among a greater number of users, i.e. having existing users cross-subsidise expansion users, to encourage expansion and greater regulatory asset base being used to determine revenue).

In the QCA's Differential Pricing Final Decision, the QCA proposed the following allocation principles for operation and maintenance costs and NECAP:

(a) if an expansion has been uniformly priced, the other, non-expansion terminal costs should also be uniformly priced;

(b) if an expansion has not been uniformly priced and a separate access price applies to the expansion, the other non-expansion terminal costs should be assigned based on the following principles:

(i) if a terminal cost is uniquely identified or directly incurred in relation to a particular asset or infrastructure, it should be assigned to that component ('identifiable cost')

(ii) if a terminal cost is not explicitly identified but there is a reasonable causal relationship between that cost and a particular asset or infrastructure, it should be assigned based on an appropriate allocation factor reflecting the underlying drivers of that cost ('attributable' cost)

(iii) if a terminal cost is neither identifiable nor attributable to a particular asset or infrastructure, it should be allocated on a reasonable basis among terminal users

(c) if an expansion has not been universally priced and a separate access price applies to the expansion, DBCT Management will develop and submit a cost allocation manual for the QCA's approval within a reasonable time, in order to provide a transparent basis for assigning costs to separate capacity components under different circumstances, having regard to the principles in in Final Decisions 9.3(a) and (b). The manual should provide guidelines for allocation costs, with the final decision to be made by the QCA.

Following consideration of the Differential Pricing Final Decision, the DBCT User Group consider those principles are appropriate and that, as shown in the proposed mark-up in Schedule 6, the 2015 DAU should be amended to provide for that position.

The allocation principles may ultimately need to be more detailed in relation to what constitutes a reasonable basis for allocation (for the type of costs referred to in (b)(iii) above), but that is the role of the costing manual, and the DBCT User Group considers it is likely to be preferable to prepare the more detailed allocation principles with a specific differentially priced expansion under contemplation rather than in the abstract. The DBCT Users suggest that the operator's involvement in preparation of the initial costing manual would be of benefit in ensuring that it properly dealt with the actual operation, maintenance and NECAP costs which are likely to be incurred.

Given DBCT PL's familiarity with the operation and maintenance and NECAP costs and what they relate to, or the causes for them being incurred, the DBCT User Group considers that it remains appropriate for the operator to propose the initial allocation (consistent with the allocation principles to be specified in the 2015 DAU) as part of submitting the annual budget to DBCTM. DBCTM should then be required to have the allocation approved by the QCA on an annual basis (and would indicate to the QCA the operator's proposed allocation and the costs, if any, it thought had not been allocated in accordance with the pricing principles).

5 Ringfencing (Section 9)

The DBCT User Group continue to believe that no amount of ringfencing provisions, even if observed meticulously, solve the adverse impacts which will arise from the vertical integration of DBCTM and other supply chain businesses. However, as noted in the DBCT User Group's submission on the initial Ringfencing DAAU, the DBCT User Group appreciates that preventing the vertical integration is more a matter for the ACCC, and have therefore provided submissions to the QCA on how to strengthen as much as possible the Ringfencing DAAU.

Since the submission of the 2015 DAU, DBCTM has submitted a revised Ringfencing DAAU which incorporates variations to the Ringfencing section of the 2015 DAU.

The DBCT User Group remains supportive of the amendments it sought on its submissions in response to the initial Ringfencing DAAU, for the reasons set out those submissions (see Schedule 5) and therefore to the extent they have been reflected in the revised Ringfencing DAAU considers they should also be reflected in the 2015 DAU.

Accordingly this submission focuses on those issues which the revised Ringfencing DAAU does not seem to address. The DBCT User Group particularly notes the following:

(a) there is no requirement for the majority of DBCTM directors to be independent – which the DBCT User Group continues to consider is appropriate as part of a proper ringfencing regime with a view to enhancing the prospects of DBCTM being able to make its decisions independently rather than in the interests of the Brookfield Group;

(b) the User Group continues to consider that the definition of Brookfield Group, which is relevant to the scope of the ring-fencing obligations, should be extended as set out in the User Group submission on the initial Ringfencing DAAU (covering all entities in which Brookfield has an interest, or of which it is the manager or financier). The Brookfield Group's structure and investment strategy is such that it may well not be the ultimate holding company in a legal sense of many of the entities over which it nevertheless has practical control; and

(c) There is no prohibition on a Trading SCB trading in terminal capacity as a principal (i.e. holding access rights directly). The DBCT User Group is concerned that this will completely undermine some of the intended operation of the access undertaking. To give some obvious examples:

    (i) if the Trading SCB holds capacity as principal, the Trading SCB permitting a third party to use that capacity is unlikely to be covered by the undertaking (such that the price it offers for that right could be well in excess of the price determined appropriate by the QCA). Taken to its extreme, this create the potential to allow Brookfield to over time de-regulate the pricing of the service by having the Trading SCB signing up for capacity immediately upon expiry of an access agreement;

    (ii) the Trading SCB holding capacity as principal will have an anti-competitive impact on the above rail haulage market through creating the potential for the bundling of above rail services and port capacity following any acquisition of Asciano Limited by Brookfield (which is something that other existing or potential rail haulage providers cannot do), and being likely to give rise to an exchange of confidential information about parties that need infrastructure capacity that will be difficult to discover even if technically prevented by the ringfencing provisions; and

    (iii) a Trading SCB holding capacity as principal is likely to impact on DBCTM's economic incentives, including on:

(A) investing in expansions (e.g. it may determine not to invest in an expansion with a view to trying to increase the value of the capacity held by the Trading SCB);

(B) investing in NECAP (e.g. it may determine to keep NECAP investment to a minimum until the Trading SCB has a buyer for its capacity, with a view to reducing the costs of holding the capacity); and

(C) determining whether to consent to assignments of user agreements or use of capacity by a third party (both of which required DBCTM's consent under the Standard Access Agreement) (e.g. it may determine not to provide consent with a view to the proposed assignee instead being provided the capacity by Trading SCB).

6 Other Access Undertaking Concerns

6.1 Overview

DBCTM has made extensive changes in the 2015 DAU on which they have not provided submissions in the body of the supporting submissions to the 2015 DAU. Consequently a number of those amendments are separately addressed in this Part 6 of this submission.

A mark-up showing the changes to the 2015 DAU that the DBCT User Group consider are appropriate (which reflects those submissions as well as those in relation to differential pricing and ring-fencing provided above) is set out in Schedule 6.

6.2 Review for inequity or unfairness (section 1.4(a))

The DBCT User Group considers that the QCA's right to require DBCTM to submit a draft amending access undertaking to rectify a significant inequity or unfairness which was not generally foreseen or intended at the Commencement Date, has always provided an important protection. The need for that protection has, if anything, been heightened by material changes like the introduction of differential pricing and the potential for greater vertical integration in the Goonyella Coal Supply Chain.

The DBCT User Group acknowledges that DBCTM's amendments still provide for that to occur. However, that does not ensure that changes will be made.

As demonstrated very clearly in recent times by DBCTM's refusal to submit a revised version of the Differential Pricing DAAU (discussed in section 6.4 below) following the QCA's final decision setting out the amendments required, DBCTM can and will refuse to resubmit where it does not wish to make the amendments. That makes the current review mechanisms toothless and completely ineffective.

The drafting notes in the DBCT mark-up of the undertaking refer to the provisions in the QCA Act which give the right to require amendments where there is an inconsistency with the QCA Act – but that does not provide any real protection as it would be highly unusual for such inconsistency to exist (as the QCA Act is, other than for some minor exceptions, not prescriptive about what access undertakings must contain).

Accordingly, it is important that section 1.4(a) be amended to:

(i) prevent DBCTM from withdrawal of a draft amending access undertaking submitted in respect of section 1.4(a)(2); and

(ii) require DBCTM to resubmit such a draft amending access undertaking including all revisions required by the QCA in a final decision on such a draft amending access undertaking.

The DBCT User Group has suggested required drafting amendments in Schedule 6.

The DBCT User Group has no issues with the proposed removal of the formal reviews if the above amendments are made, on the basis that the QCA is always free to consult with DBCTM, Access Holders and Access Seekers about whether an unforseen inequity or unfairness has arisen.

6.3 Role of the Operator (Section 3)

The DBCT User Group supports the provisions proposed to be included in Section 3.2, which accurately reflect the role and context in which Dalrymple Bay Coal Terminal Pty Ltd is the operator of the Terminal.

However, as discussed in further detailed in the DBCT User Group's submissions on the Ringfencing DAAU (as enclosed in Schedule 5), given the roles and discretions given to the operator in respect of issues like the Terminal Regulations and prudency of costs, the DBCT User Group considers that the access undertaking is dependent for its proper functioning on DBCT PL continuing as the operator.

Since the submission of the 2015 DAU, DBCTM has submitted a revised Ringfencing DAAU which incorporates a new clause 3.3 which goes some way to addressing the DBCT User Group's concern in that regard.

For the reasons set out in the DBCT User Group submissions on the initial Ringfencing DAAU, the DBCT User Group supports the inclusion of all of the provisions proposed in the revised Ringfencing DAAU in clause 3.3 of the access undertaking, but considers that they need to be extended further in a few cases.

All DBCT Users agree that the continuing independence of the operator of the Terminal is, short of complete structural separation, a critical protection against operational discrimination or preference occurring in favour of a vertically integrated supply chain business.

Yet the access undertaking (and even the revised Ringfencing DAAU) does not provide any entrenchment of that position or assurance that it will continue. Instead it continues to provide for the access undertaking to terminate if that ceases to be the case (resulting in the position that, on a change of operator, users would be both without the protection of an independent operator and, for an unspecified period at least, without the protections of any access undertaking).

The DBCT User Group suggests that an appropriate way to seek to mitigate this risk is for the access undertaking to impose:

(a) an obligation on DBCT Management to ensure there continues to be an independent operator; and

(b) an obligation not to replace the current operator of the Terminal until a replacement access undertaking (with appropriate changes to reflect the altered position) is in place.

The DBCT User Group acknowledges that DBCTM has proposed in the revised Ringfencing DAAU some of the other mitigation provisions proposed by the DBCT User Group in respect of lodgement of a draft amending access undertaking where a change of operator is occurring or is proposed to occur (and importantly limits on the rights to withdraw such a draft access undertaking, requirements and provision for the continuation of those obligations post-termination of the access undertaking).

The mark-up of the access undertaking in Schedule 6 contains a new Section 3.3 which reflects the amendments the DBCT User Group consider are appropriate (developed having regard to DBCTM's proposed clause 3.3 in the revised Ringfencing DAAU).

The DBCT User Group also note the new clause 3.4 proposed in the revised Ringfencing DAAU regarding disclosure of a summary of the Operation & Maintenance Contract. It is not clear to the DBCT User Group what purpose this serves (at least for as long as DBCT PL is the operator).

6.4 Negotiating Framework (Section 5 / Schedule A)

The DBCT User Group agrees with the principle proposed by DBCTM of reforming the negotiation framework and queuing arrangements with a view to seeking to ensure that the queue is more representative of the actual demand for additional access to the Terminal.

In particular, the DBCT User Group is generally supportive of:

(a) access applications (and renewal applications) needing to show the matters set out in the revised forms in Schedule A;

(b) the provisions regarding revision of an access application in section 5.2;

(c) the provisions regarding expiry and renewal of access applications in sections 5.3 and 5.3A;

(d) the changes to the queuing and priority arrangements in section 5.4; and

(e) a right for DBCTM to remove non-creditworthy access seekers from the queue in section 5.9.

However, the DBCT User Group has a number of concerns with some of the particular drafting amendments proposed to Section 5 (and suggested amendments are provided in the mark-ups in Schedule 6 regarding those issues).

Bona fide disputes regarding rejection of renewal applications

Given the importance of priority in the queue, the DBCT User Group considers that where a renewal application is rejected and that rejection is the subject of a bona fide dispute, the access application should remain valid (and priority should remain the same) until the dispute is determined. This will require an amendment to section 5.3A (with the DBCT User Group's suggested amendments to 5.3A(e) set out in the mark-up in Schedule 6). In the absence of such a provision, the difficulty is that during a loss of priority (which is later found out to be invalid) there is the potential for an access agreement to be executed by another access holder which was later in the queue to be unfairly prioritised.

Retrospective commencement of access

While the DBCT User Group agrees with the general principle that available access rights should be provided to the entity that is willing to contract them at the earliest date, it should not be possible to execute an access agreement with an unlimited retrospective date for commencement (as currently provided for under Section 5.4(e)(i)). That wording simply invites an 'auction-like' process of access seekers having to take on greater take or pay commitments for past access they cannot possibly use to try to secure access rather than actually encouraging more efficient use of available capacity.

The earliest date that should be able to be nominated is the date on which notice is given by the Notifying Access Seeker (which will deal with the issues raised by DBCTM in their drafting notes about the timing for approvals while limiting the risks noted above)..

Timing for, and impact of, decision on differential pricing

The DBCT User Group considers that the 2015 DAU does not provide appropriate timing for a decision by the QCA about whether an expansion will be differentially priced.

The DBCT User Group appreciates that the appropriate timing is really a matter of balancing:

(a) the desirability for access seekers knowing prior to committing to a take or pay agreement for the expansion, and for DBCTM knowing of the regulatory treatment prior to investing in the capital costs of the expansion; and

(b) the desirability of not imposing an inappropriate result by making the decision too early (e.g. determining to socialise an expansion that the capital costs ultimately substantially increase, such that it should have been differentially priced – to the detriment of existing DBCT Users).

Having carefully weighed those competing issues, the DBCT User Group proposes that the appropriate time for DBCTM to make a proposal to the QCA (and for the QCA to make a binding decision) is after completion of the FEL 2 study. At that point, the design of the expansion and costs should be reasonably well known (albeit not perfectly) and that is prior to access seekers and DBCTM having to make commitments in respect of the expansion.

The issue that timing does not resolve, is a significant change in capital costs after that point (which could either occur through a problem in estimating the likely expansion costs or a problem in actual construction of the expansion). The DBCT User Group considers that the appropriate way to resolve that issue (so that after the FEL2 study remains an appropriate time for the determination) is that if the QCA's initial decision is to socialise that expansion, only capital expenditure below the costs forecast in the FEL2 study is treated as being prudent and accepted into the regulatory asset base of the Base Terminal.

The proposed approach creates all of the appropriate incentives for DBCTM – both to estimate accurately and with sufficient contingency (so that the QCA's decision about differential pricing is made by reference to an appropriate cost for the expansion and access seeker's make commitments based on a realistic assessment of costs) and to then construct the expansion efficiently (so that none of the expansion costs are removed from the regulatory asset base). It also protects the existing users, without punishing the access seekers who will commit to capacity created by the expansion if DBCTM's estimating or construction causes a material cost difference to that anticipated.

Consequential changes for differential pricing

A number of the amendments proposed by DBCTM to Section 5.4 reflect DBCTM's proposal regarding differential pricing. DBCTM acknowledges that consequential amendments are required, but as the DBCT User Group supports differential pricing principles much more akin to those proposed by the QCA in the Final Decision on the Differential Pricing DAAU, there are material differences in the consequential amendments required. In particular, under DBCTM's formulation a differentially pricing expansion will be physically separated (and that capacity will only be used by access holders for that expansion component), whereas the DBCT User Group envisages the potential for differential pricing expansions that physically form part of the same terminal footprint such that restrictions on using the expansion capacity are unnecessary and fairly nonsensical.

In addition, each of the provisions regarding providing access seekers with a view about whether a Terminal Capacity Expansion will be differentially priced should require the judgement to be made based on the criteria that the QCA will ultimately apply in determining whether to differentially price an expansion.

6.5 Funding of feasibility studies (Section 5.10)

The DBCT User Group agrees with the principle that access seekers seeking services that require the development of a Terminal Capacity Expansion should fund the feasibility studies for the relevant Terminal Capacity Expansion.

However, it has a number of concerns with the drafting amendments to Section 5.10 (with the section references below referring to the sections as they appear in DBCTM's 2015 DAU) as set out below. Addressing these concerns is reflected in the mark-up of the 2015 DAU provided in Schedule 6).

Timing for entry into funding/underwriting agreement

The proposed 20 day timing for entering into a Funding Agreement or Underwriting Agreement (and providing the required security) is too short to allow for reasonable negotiations regarding the terms of those agreements. Given the lengthy timeline for the planning and developing of a capacity expansion there would be limited harm in extending this period to at least 3 months. Similarly the period for raising disputes (under section 5.10(j)) should be lengthened from 5 days to 20 business days to be more consistent with the timing provided for in the Aurizon draft decision regarding study funding agreement. Slightly longer periods are important in order to allow for approval and decision making processes required by the DBCT Users (and which would typically be required within most mining companies prior to entering such agreements).

Standard terms for funding and underwriting agreements

To assist in such negotiations it would be appropriate for the Undertaking to also include a process for DBCTM to develop (and obtain QCA approval for) a standard Funding Agreement and Underwriting Agreement. That will both facilitate negotiations and ensure that these agreements are not used to extract monopoly rents or other terms.

20% Cap on FEL1 / FEL 2 Feasibility Study Costs

DBCTM proposes to delete the current 20% of prudent cost cap on the funding costs of a FEL 1 or FEL 2 Feasibility Study funded by DBCTM which can be included in the Terminal's regulatory asset base if a Terminal Capacity Expansion that has been studied does not proceed (see the proposed section 5.10(o)).

The DBCT User Group does not agree with DBCTM's interpretation of how that cap operates (set out in the drafting notes to DBCTM's section 5.10(o)). The previous wording regarding the cap does not prevent DBCTM from funding more than 20% of the costs of such a study. As is clear from the plain words used, it is a cap on what could be included in the regulatory asset base, not a cap on what could be incurred. That could not be any clearer when read in conjunction with the previous 5.10(l) (shown as deletions in section 5.10(q) in the DBCT mark-up).

It remains appropriate to include such a cap for studies which DBCT Users are not funding (particularly given the strengthened provisions regarding funding of feasibility studies by access seekers). If DBCTM wants to fund more than 20% on an expansion study, that is effectively an entrepreneurial decision that users should not be required to subsidise. As a result it is appropriate to delete the proposed 5.10(o)(3) and return 5.10(o)(2) to the previous wording used including the cap at 20% of prudent study costs.

Consequential amendments

In addition, Section 5.10 contains a number of other amendments proposed by DBCTM as consequential amendments.

In that regard:

(a) the DBCT User Group considers that each of the provisions regarding providing access seekers with a view about whether a Terminal Capacity Expansion will be differentially priced should require the judgement to be made based on the criteria that the QCA will ultimately apply in determining whether to differentially price an expansion (and subject to change in the event of a different QCA decision); and

(b) a number of amendments would be required if the QCA did not approve DBCTM's proposed 15 year term (which, as noted in section 6.11, the DBCT User Group has not sought to mark-up at this stage).

6.6 Terminal Regulations (Section 6)

Since the submission of the 2015 DAU, DBCTM has submitted a revised Ringfencing DAAU which incorporates variations to the Terminal Regulations section of the 2015 DAU.

Those amendments reflect the DBCT User Group's submissions on the initial version of the Ringfencing DAAU, with one exception - being the reference to amendments being permitted where that is reasonably necessary for the operational of the Terminal in accordance with 'Good Operating and Maintenance Practice'.

The DBCT User Group remains supportive of the amendments it previously proposed, and accordingly for the reasons set out in its submission on the initial Ringfencing DAAU considers that the amendments to Section 6 of the Ringfencing DAAU should therefore be included in the 2015 DAU, other than the new addition of the reference to 'Good Operating and Maintenance Practice'.

To be clear on what this would mean, it is important to consider the definition of 'Good Operating and Maintenance Practice', which is (as it appears in the 2010 AU and is proposed in the 2015 DAU):

> ***Good Operating and Maintenance Practice*** *means adherence to a standard of practice which includes the exercise of that degree of skill, diligence, prudence and foresight which would reasonably be expected from a competent, experienced and qualified operator of a facility comparable with the Terminal*

That wording is appropriate as a standard of behaviour which the Terminal must be operated in accordance with (as used in section 12.3(a)(3) of the 2015 DAU) and a measure of the type of non-expansion capital expenditure that must be occurred (as used in section 12.10(a) of the 2015 DAU) – i.e. as a standard for a party to meet. It is not appropriate at a test for when a value or risk transfer between parties should occur.

To be clear, the concern of the DBCT User Group is that this amendment will allow for the Terminal Regulations to become a 'back-door' way to:

(a) impose additional costs and obligations on the Users (in excess of the pricing approved by the QCA as being appropriate in connection with the access undertaking and in excess of the obligations imposed under the User Agreements on terms reflecting the Standard Access Agreement terms considered appropriate by the QCA); and

(b) transfer operating risks and issues from DBCTM to the Users.

The DBCT Users are not opposed to the Terminal being operated in accordance with Good Operating and Maintenance Practice, but imposing additional requirements on the DBCT Users through the Terminal Regulations is not an appropriate way to achieve that outcome.

The operator already has obligations regarding the standard to which it must operate the Terminal under the Operation & Maintenance Contract. To the DBCT User's knowledge, there is no concern about whether that is occurring and there is no suggestion the Terminal Regulations are hindering that from occurring in their current form. The DBCT User Group notes that they support the wording regarding changes required by law and changes justified by the efficiency benefits and consider that covers the type of amendments that would be reasonable..

The change submitted is also disappointing coming from the party that started the 2015 draft access undertaking process with threats about not investing in any non-safety related non-expansion capital expenditure. In the context of those comments, it appears to the DBCT User

Group that the intention is for the Terminal Regulation to provide an avenue to impose the consequences of DBCTM's proposed under-spending on non-expansion capital expenditure wholly on DBCT Users via increased obligations and costs.

6.7 Confidentiality (Section 8)

Since the submission of the 2015 DAU, DBCTM has submitted a revised Ringfencing DAAU which incorporates variations to the Confidentiality section of the 2015 DAU.

Those amendments reflect the DBCT User Group's submissions on the initial version of the Ringfencing DAAU. The DBCT User Group remains supportive of those positions, and accordingly for the reasons set out in its submission on the initial Ringfencing DAAU considers that the amendments to Section 8 of the Ringfencing DAAU should therefore be included in the 2015 DAU.

6.8 Reporting (Section 10)

Since the submission of the 2015 DAU, DBCTM has submitted a revised Ringfencing DAAU which incorporates more extensive reporting requirements that DBCTM considers appropriate.

The DBCT User Group is supportive of the additional reporting requirements on the basis that additional transparency assists with any proposed ringfencing regime, and considers that the amendments to Section 10 of the Ringfencing DAAU should therefore be included in the 2015 DAU.

6.9 Expansions (Section 12)

Consequential amendments regarding Differential Pricing

A number of the amendments made to Section 12 of the 2015 DAU reflect DBCTM's view on how to implement differential pricing, such that they will need further amendments to reflect the appropriate implementation of differential pricing (see the submissions in section 4 of this paper).

60/60 Requirement

In addition to considering the direct consequential amendments as part of preparing the mark-up in Schedule 6, the DBCT User Group has given careful consideration to how the '60/60 Requirement' in Section 12.5 should operate in the context of a differentially pricing expansion.

DBCTM's drafting notes for their amendments suggest that users other than the differentially priced Access Holders should not be included in the vote as they will not be paying for access arising from the differentially priced expansion. The DBCT User Group agrees that in that circumstance they would not be concerned about capital cost issues, but would still want protection that the differentially priced expansion does not create material operational issues or risks that impact on the existing Terminal. For example, if a differentially priced expansion was done in an extremely low capital expenditure way which had the impact of raising operation and maintenance costs or outages required for maintenance or repairs across the wider Terminal, that will cause a problem for all users of the Terminal. The DBCT User Group is open to considering alternatives means of being provided with this protection, but proposes that either:

(a) the 60/60 Requirement should stay as involving all Access Holders, given that the opportunity for QCA review effectively prevents the existing Users who are not participating in the expansion from stymieing the expansion (which seems to be DBCTM's concern); or

(b) the 60/60 Requirement should be divided into two parts, one of which relates to approval of pricing (in which only the differentially priced access holders would participate) and one of which relates to technical and operational issues (in which all Access Holders would be able to vote).

Differential pricing as an excuse not to expand

The DBCT User Group does not support the amendments to section 12.7(e) where DBCTM is seeking to expressly provide for the 'risk profile presented by a Terminal Capacity Expansion' which is determined to be differentially priced as a matter to be had regard to in determining whether the cost to expand would make an expansion unreasonable or uneconomic. While the DBCT Users would acknowledge that is potentially relevant to that assessment, it is already effectively provided for (by the references to anticipated long term demand, the costs of the expansion and the long term nature of DBCTM's investment in the Terminal – see paragraphs (a), (c) and (e)). Including DBCTM's proposed wording unduly emphasises this factor above the other relevant factors already listed.

6.10 Non-Expansion Capital Expenditure (Section 12.10)

Investment in NECAP

The focus in previous draft access undertaking processes has been providing protection against imprudent NECAP In that regard the DBCT Users are willing to support DBCTM's proposed amendments to clause 12.10(b) and (c) as continuing to have sufficient protections.

However, the DBCT User Group now has genuine concerns about whether DBCTM will approve appropriate NECAP expenditure in the future (i.e. the concern is about underspend, as the existing and revised provisions only protect against overspend).

To be clear about why under-investment in NECAP is now a concern, it is not even necessary to look beyond the submissions made by DBCTM during this process:

> *The level of equity return DBCTM expects to receive from this reset process, using previous QCA decisions as a guide, will not justify putting further capital into the asset – either expansionary or non-expansionary. … Further major sustaining capital projects such as machine replacements will be similarly deferred with an expected increase in operating costs.*[52]

That is an unambiguous threat to cease funding non-safety related NECAP, including for clearly prudent items like machine replacement. The DBCT Users are concerned that DBCTM will effectively be seeking for the DBCT Users to bear all of the additional costs of maintaining the terminal (and thereby protecting the value of DBCTM's investment) despite the fact that DBCTM is apparently unwilling itself to invest in the sort of sustaining capital expenditure which is necessary for prudent upkeep of the Terminal.

DBCTM appears to suggest in their 2015 DAU submissions, that the way of resolving their foreshadowed refusal to invest in prudent NECAP is to give them an inappropriately high WACC. Clearly that would run contrary to the objects of Part 5 of the QCA Act and would be effectively giving regulatory approval to monopolistic pricing behaviour.

It is clear to the DBCT User Group that the way of resolving monopolistic investment hold-up behaviour of this type is to impose a clear obligation for DBCMT to invest in NECAP where appropriate.

The DBCT User Group also notes that this is not an unfounded fear. During the period when the Terminal was owned by Babcock & Brown Infrastructure (***BBI***) it was not uncommon for BBI to seek to defer or avoid NECAP. By way of example, the water pipeline to the Terminal ultimately had to be invested in by the State (through Ports Corporation of Queensland) with the charges under a supply agreement providing the State with the return of and on the capital investment – because BBI simply refused to invest in what was clearly required NECAP.

[52] 9 October 2015, Letter from DBCTM to Queensland Competition Authority

Accordingly, the DBCT User Group have proposed (in the mark-up in Schedule 6) a clear and positive obligation to invest in NECAP recommended by the Operator (for as long as the operator is Dalrymple Bay Coal Terminal Pty Ltd, as the users which are its shareholders have a dual incentive of wanting to keep costs low, while maintaining capacity and productivity – such that it is well placed to make a decision on the appropriate level of NECAP).

Allocation of NECAP where differential pricing applies

As discussed in section 4.6 of this submission, the 2015 DAU requires amendments to provide a more appropriate basis for allocations of NECAP where an expansion is to be differentially priced. The DBCT User Group propose the same allocation principles would apply to NECAP as would apply for operations and maintenance contracts as discussed in section 4.6 of this submission.

6.11 Term of Access Agreements (Section 13.2 / Schedule G)

DBCTM is proposing to revise the term of future access agreements (for which a Terminal Capacity Expansion is required) from 10 years to 15 years.

While there is nothing in the body of the 2015 DAU submissions to support or explain this change, it is sought to be justified in drafting notes provided in the mark-up of the 2015 DAU as something which is *'better aligned with the terms which potential financiers to DBCTM are likely to require in order to provide funding for capacity expansions'*.

As the DBCT User Group are existing users (and this amendment would not apply to existing User Agreements), the DBCT User Group will leave it to the QCA to determine the appropriate balance between DBCTM and expansion users of the Terminal in respect of the term of future access agreements related to Terminal Capacity Expansion. Accordingly the DBCT User Group has not sought to mark-up or amend the DBCTM changes related to this issue in Schedule 6, but that should not be taken as supporting or rejecting these changes.

However, the DBCT User Group does note that changing the term of future access agreements should have consequential impacts on the DBCT User Group's permitted pricing, because:

(a) The greater certainty it provides of longer term contracted volume (both through the initial longer term, and the 5 year 'evergreen' nature of future extensions, reduces DBCTM's risk profile, which should result in a reduction of the equity beta; and

(b) the longer dated contracted volume would also be anticipated to reduce the efficient costs of financing due to that greater certainty (as hinted out by the drafting notes provided by DBCT).

The WACC parameters detailed earlier in this submission assume that these adjustments to the terms of future access agreements are not made. Accordingly, if the QCA was minded to the accept the changes proposed by DBCTM regarding the term of future access agreements a further reduction in the WACC from that set out earlier in this submission would be appropriate.

6.12 Standard Access Agreement (Schedule B)

The DBCT User Group's comments on the Standard Access Agreement are set out separately in section 8 of this submission.

6.13 Services (Schedule E, 10(d))

The DBCT User Group are concerned with the provision of the Services (and DBCTM's obligations in respect of that provision) being modified by the provisions of the Operation and Maintenance Contract.

There is already provision for force majeure events under the User Agreements, such that the DBCT User Group are not convinced that clause 10(d) of this Schedule is appropriate.

6.14 Notional Contracted Tonnage

The DBCT User Group strongly considers the change (the deletion of paragraph (b) of this definition) should be reversed. No evident justification has been provided by DBCTM for this change.

The change seeks to immunise DBCTM from the revenue consequences of an early termination of an access agreement. In substance, where paragraph (b) would otherwise have applied, this will increase the revenue cap by decreasing the denominator in the formula in Schedule C Part A, 2 from what it would be under the 2010 AU.

The DBCT User Group is concerned that this blunts DBCTM's incentives to recontract access or obtain appropriate protections from an access seeker at the time of signing an access agreement (as the impact of the change is that the risks of early termination are effectively borne by the other users rather than DBCTM). Accordingly, this change should be rejected.

To the extent any consideration were being given to accepting this change, the DBCT User Group notes that this would be a significant reduction in the risk profile borne by DBCTM, and would be anticipated to result in a reduction in the equity beta from what would otherwise be appropriate. The equity beta analysis provided by the DBCT User Group assumes rejection of this proposed change, such that the appropriate equity beta with this change is lower than the equity beta being supported by the DBCT User Group in this submission.

6.15 Definition changes

DBCTM has proposed a significant number of changes to the definitions in Schedule H, in many cases without any justification or connection to the other amendments proposed to the

Definition	Issue
Access Applicant	A person should only cease to be an 'Access Applicant' if the access application has 'lapsed, expired or otherwise been validly rejected'
Affiliated Party	Definition does not appear to be used, so suggest it be deleted.
Aggregate Annual Contract Tonnage and Aggregate Reference Tonnages	Consequential amendments as part of differences in approach to differential pricing
Annual Revenue Requirement or ARR	The references to Services being provides solely utilising particular parts of the Terminal is a result of DBCTM's approach to differential pricing being based on separability. Further consequential amendments are required to reflect the appropriate outcome on differential pricing discussed earlier in this submission.
Brookfield Group	Given the structure of the Brookfield Group and the need for this definition to be wide enough to provide for an appropriate scope to the ringfencing regime it is important that this definition captures any entities in which Brookfield has an interest, entities it manages and entities it finances. Brookfield's corporate and financial structure is opaque (as is evident from the recent press commentary on Brookfield regarding the Asciano bid) and unless wider wording is used it will be easy for Brookfield to game or avoid the intended scope of the ringfencing provisions.
Differential Pricing and Differentially Priced	Consequential amendments needed in both definitions as part of differences in approach to differential pricing.

Access Agreement	The reference to providing Services 'utilising an Expansion Component' is driven by DBCTM's position that differential pricing is based on separability. The definition should just finish after the words Differentially Priced.
Expansion Component and Expansion Component Capacity	Consequential amendments needed as part of differences in approach to differential pricing.
Funding Access Seeker	Amended to provide for a definition rather than utilising a cross-reference
Publicly Report	The definition should make it clear that the information must both be uploaded to the website and be publicly accessible.
Reference Tariff and Reference Tonnage	Consequential amendments needed as part of differences in approach to differential pricing.
Regulated Asset Base	Consequential amendments needed as part of differences in approach to differential pricing.
Related Entity	Related Entity – the amendment should be reversed as this term is not used, whereas Related Party is still used
Review Event	Paragraph (e)(1) is accepted as simply preserving the amendments from the 2011 draft amending access undertaking in respect of NECAP. However, the DBCT User Group has concerned with the other amendments to the definition. The DBCT User Group does not understand what paragraph (e)(2) is intended to achieve beyond the existing Review event for capacity expansions in paragraph €. This should be deleted in the absence of any sufficient justification. Paragraph (e)(5) of this definition should retain the 20% cap (see more detailed comments on this issue in relation to funding of feasibility studies earlier in this submission).
Supply Chain Business	As noted above in the submissions related to ring-fencing this needs to become an inclusive definition by the opening words instead referring to: 'an entity (or group of entities) in the Brookfield Group which operates in a market upstream or downstream from the Services, including an entity in the Brookfield Group which:'
Terminal	Consequential amendments needed as part of differences in approach to differential pricing.
Terminating Date (paragraph (e))	Paragraph (e) of this definition should be deleted. There is no justification for the undertaking terminating if the handling of coal at the Terminal ceases to be a declared service. This is not how previous undertakings in respect of the service have operated and does real harm to the regulatory certainty that an undertaking is supposed to create. It is also at odds with the requirement under the Port Services Agreement between DBCTM and the State which requires DBCTM to seek to have a current access undertaking in place (which that requirement not being dependent on declaration).

	(The opening words and paragraphs (a) to (b) are acceptable).

7 Undertaking changes not being objected to

To allow the QCA to focus on the issues of importance, the DBCT User Group notes that it is willing to support the following changes proposed in the 2015 DAU, as being appropriate:

Section of 2015 DAU	Description of changes
1.1-1.3	Changes to 1.1 and 1.3 to reflect different background to submission of 2015 DAU Non-substantive change to 1.2 to reflect definition of Access making the following wording redundant.
1.4(b)-(e)	Deletion of clauses which allow DBCTM to submit a drafting amending access undertaking in certain conditions (noting that under the QCA Act, DBCTM retains the right to submit a draft amending access undertaking voluntarily at any time) and clarify wording in relation to paragraph €.
1.6	Removing a redundant provision regarding amendment of the Operation and Maintenance Contract
3.1	Clarifying wording recognising the different sections of the QCA Act under which an access undertaking can be submitted
3.2	Inserts a factually accurate description of the role of the Operator
5.1-5.3A (except as noted in the Negotiation Framework section), 5.5-5.9	Consequential amendments to changes to negotiation framework to streamline queuing and priority mechanisms Consequential amendments resulting from introduction of differential pricing provisions Non-substantive clarifying changes
Previous 12.5(q)	Deletion of wording which is no longer relevant due to solely relating to the Stage 7X Project
14	Removing references to LTS Outcome (as the LTS Process did not ultimately result in agreement) but retaining wording regarding agreed coal supply chain outcomes.
17.3(g)	Updating legislation reference and non-substance drafting amendment
Schedule A	As per the DBCT User Group's comments on the negotiation framework amendments, the information sought by DBCTM on access application and renewal of an access application is considered appropriate
Schedule D	Non-substantive drafting improvements
Schedule E (other than 10(d))	Updating to reflect the operation and maintenance contract and other non-substantive drafting amendments
Schedule F	Continuation of existing Terminal Master Plan
Schedule G	Deletion of the current Schedule which is no longer relevant due to solely relating to the Stage 7X Project
Schedule H Definitions as noted and Interpretation	Amendments/deletions of the following definitions are supported: • Access Application – consequential change to access application renewal provisions in negotiation framework

section	• Access Application Date – clarifying wording and consequential change to reflect new provision regarding renewal applications • Annual Contract Tonnage – clarifying wording • Auditor – consequential inclusion as part of the introduction of ring-fencing amendments • Business Day – non-substantive amendments • Coal Guidelines – consequential amendments to access application requirements • Coal Resources - consequential amendments to access application requirements • Commencement Date – updating date from the previous undertaking • Completion – clarifying wording • Confidential Information – clarifying wording • Control – consequential amendment to inclusion of ring-fencing regime • DBCT Management Executive Team – consequential amendment to inclusion of ring-fencing regime • Differentially Priced Access Holder - consequential amendment to inclusion of differential pricing provisions • Funding Agreement – consequential inclusion as part of the introduction of feasibility study funding requirements • Goonyella Coal Chain – ceasing to capitalise term that was never defined • Interim Reference Tariff Period – inserting a definition with a cross-reference to where this term has previously been defined • LTS Outcome – deletion of redundant definition • LTS Process – deletion of redundant definition • JORC Code - – consequential amendments to access application requirements • Marketable Coal Reserves - – consequential amendments to access application requirements • Operator – clarifying wording • Protected Information – consequential inclusion as part of the introduction of ring-fencing amendments • Rail Operator – consequential inclusion as part of the introduction of ring-fencing amendments • Reference Tonnage Access Holders or RTAH – clarifying definition • Renewal Application – consequential inclusion as part of the introduction of renewals for access applications

	• Service Provider – change to correct reference to a defined term • Stage 7X Project – deletion of redundant definition • System Capacity Expansion – appropriate new definition to reflect this terms usage in the definition of System Capacity • TCMP – new definition for existing tender contract and management process • Trading SCB – consequential inclusion as part of the ring-fencing amendments • Underwriting Agreement – consequential inclusion as part of the introduction of feasibility study funding requirements • WACC(1) Rate – non-substantive change as Final Decision is not a defined terms

8 Standard User Agreement

In relation to the Standard User Agreement, the DBCT User Group considers:

(a) The provisions regarding Terminal Regulations should reflect the outcome under the access undertaking regarding that issue (see the submissions on that issue in section 6.6 of this submission above and also be consistent with existing User Agreements);

(b) The provisions regarding pricing should reflect the outcome under the access undertaking in respect of differential pricing (see the submissions on that issue in section 4 of this submission;

(c) The changes to clause 11 and 20 are dependent on the QCA's views about the appropriate term of future access agreements (see the submissions on that issue in section 6.11 of this submission above);

(d) The limit on the services in Schedule 3 10(d), should be deleted (see the submissions on that issue in section 6.13 of this submission above); and

(e) The amendments in clause 29.3(b) are only appropriate where the Standard Access Agreement is being used in connection with a Terminal Capacity Expansion that is subject to differential pricing. Where the costs for the access are being socialised it is not appropriate to be able to rely on a single user having 'a materially increased risk that this [ceasing to be reputable of or good financial standing] will occur prior to the earlier of the Terminating Date and the end of the Term' as a basis for asking for increased security – because the risks of the volume ceasing to be contracted are ultimately borne by the DBCT Users not DBCTM and the impact of a single user is likely to be relatively small. However, the DBCT User Group are willing to accept this on the basis that it is clearly stated to only apply to differentially priced expansions (where a single user and the credit risk relating to them may be more serious).

9 Conclusions

For the reasons set out in this submission, the DBCT User Group considers that the only appropriate decision is for the QCA to:

(a) refuse to approve the 2015 DAU; and

(b) give DBCTM a secondary undertaking notice requiring it to resubmit the 2015 DAU with changes set out in this submission.

Schedule 1 – Allens advice

Schedule 2- Rail Network Capacity Constraints

Figure 1: Goonyella (to DBCT) capacity constraints

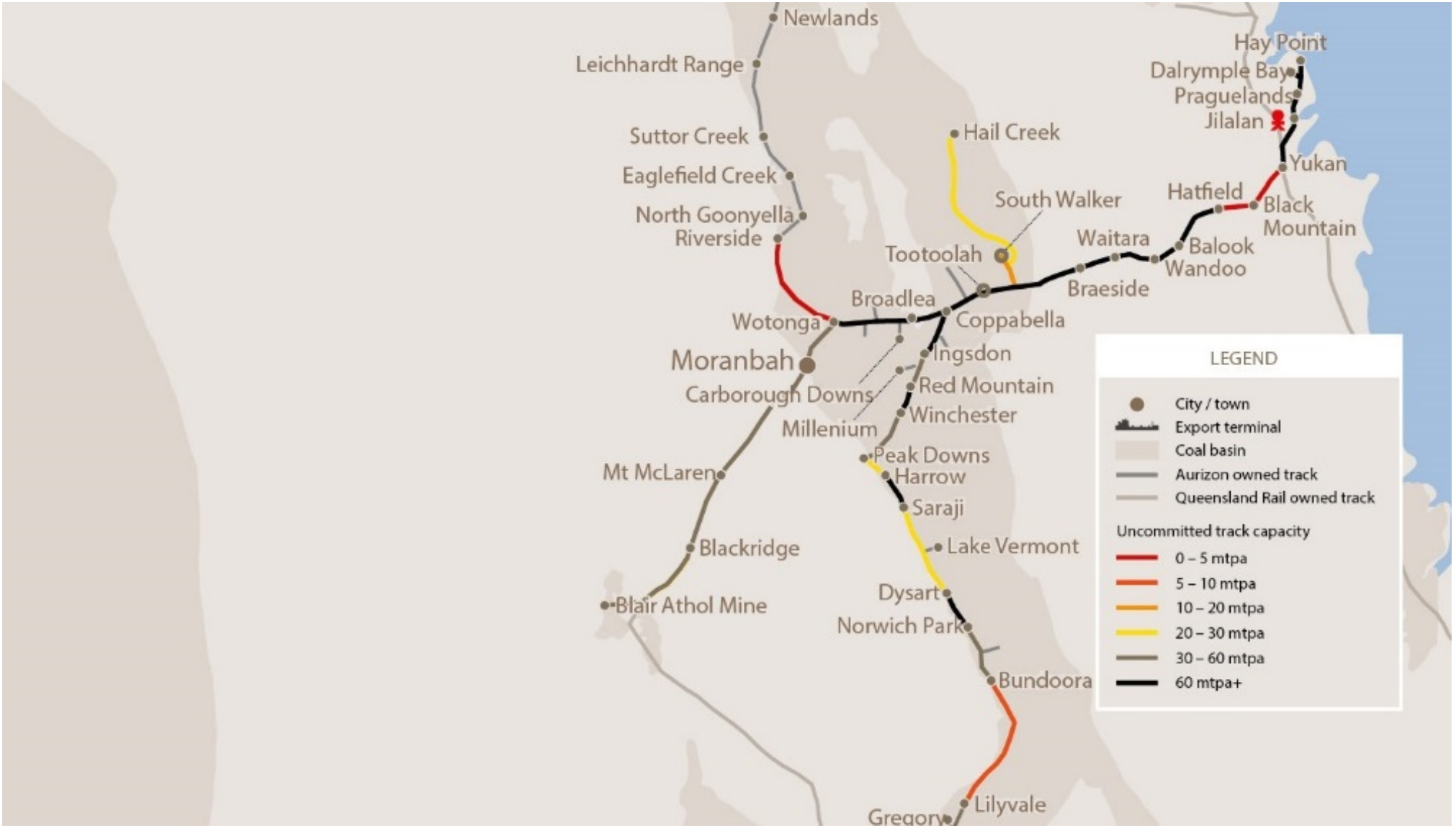


Figure 2: Newlands system (to Abbot Point) capacity constraints

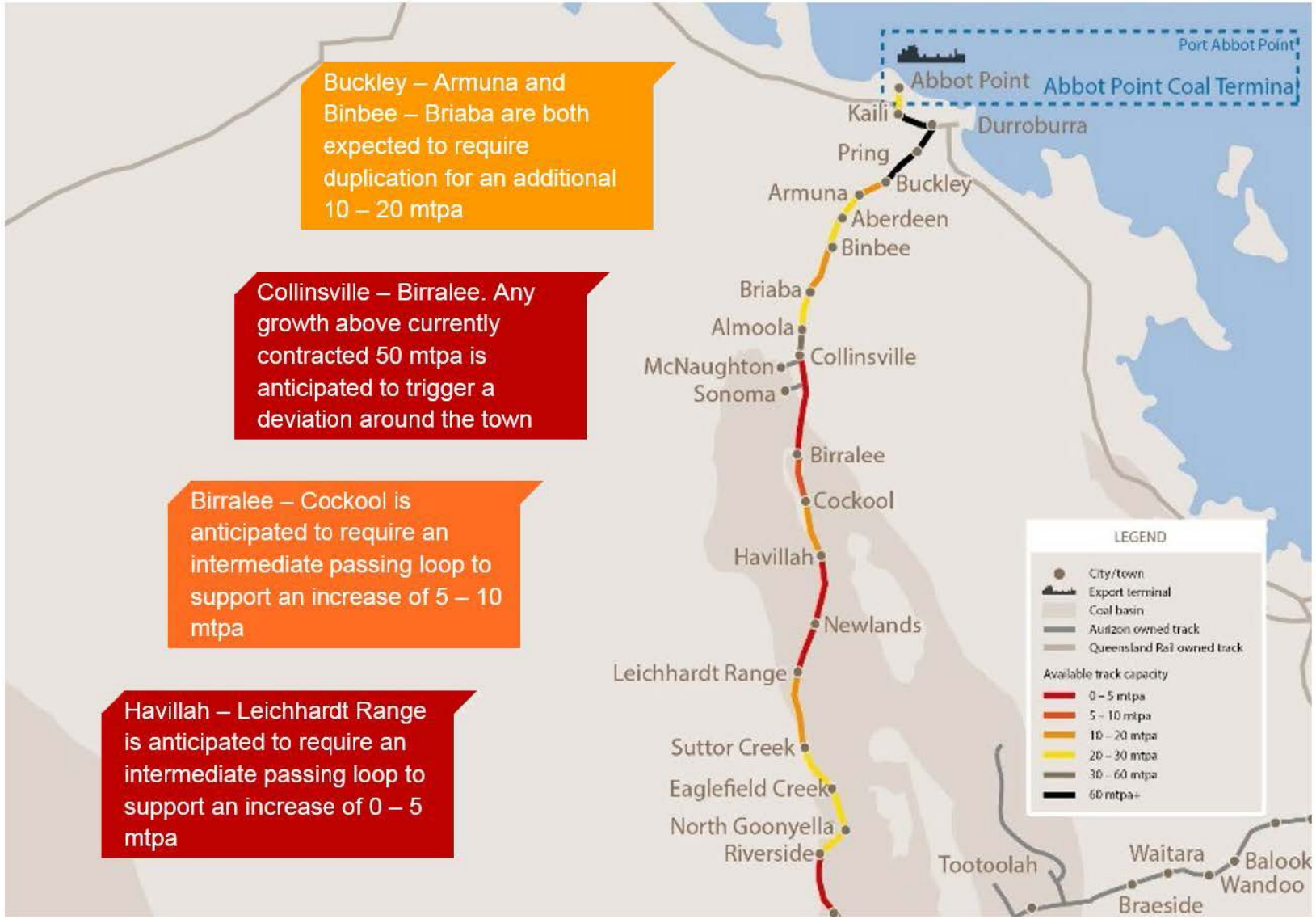
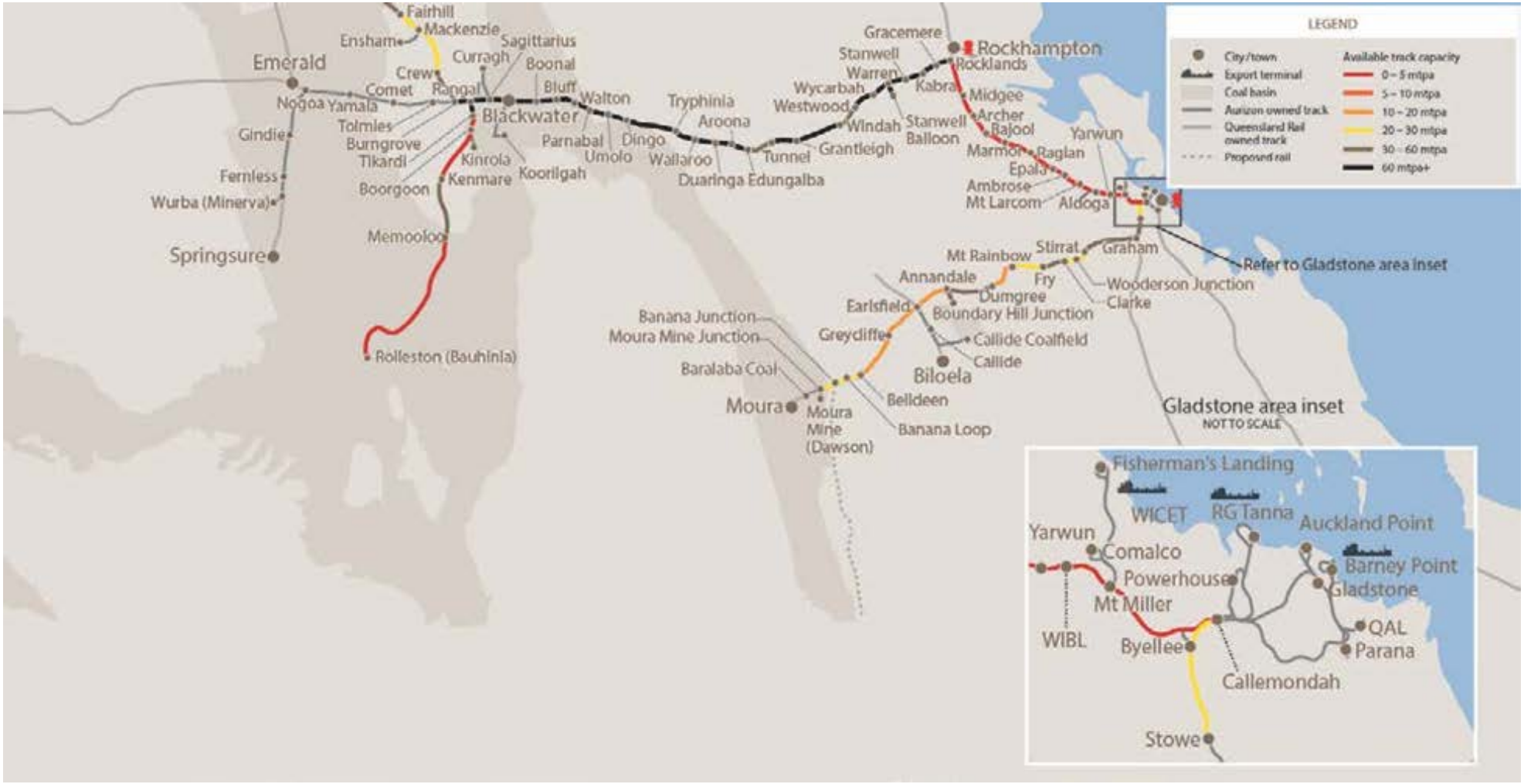


Figure 3: Blackwater/Moura (to Gladstone) capacity constraints



Schedule 3 – PWC Report: Estimating a Cost of Capital for DBCTM

Schedule 4 – DBCT User Group submissions on Differential Pricing

Schedule 5 – DBCT User Group submission on Ringfencing

Schedule 6 – Mark-up of 2015 DAU

Schedule 7 – Mark-up of Standard Access Agreement