

Pacific National Submission to the QCA on the Aurizon Network 2017 Draft Access Undertaking

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1. Executive Summary and Introduction

Pacific National welcomes the opportunity to respond to the Queensland Competition Authority (QCA) on the Aurizon Network 2017 Draft Access Undertaking (2017 DAU). This submission outlines Pacific National's concerns with the 2017 DAU, the Draft Standard Access Agreement (SAA) and the Draft Train Operations Deed (TOD).

Previously Pacific National was part of the broader Asciano group but following the sale of Asciano in August 2016 Pacific National has become a stand-alone company with new owners. Submissions to QCA regulatory processes made by Asciano before this ownership change should be treated as being submissions from Pacific National.

This submission is set out as follows:

- Chapter 1 – Introduction and executive summary
- Chapter 2 – Outline of Pacific National's broad position on the 2017 DAU
- Chapter 3 – Pacific National's detailed comment on wording in the 2017 DAU which has been amended from the 2016 access undertaking
- Chapter 4– Pacific National's detailed comment on wording in the 2017 DAU SAA and TOD which has been amended from the 2016 access undertaking SAA and TOD
- Chapter 5 – Pacific National's detailed comment on elements in the 2017 DAU and SAA and TOD which are unchanged from the 2016 access undertaking. Pacific National believes that the elements identified should be addressed in the 2017 DAU.
- Chapter 6 – Concluding comments

Pacific National is a major operator of coal trains on the Aurizon Network rail network via third party access agreements agreed under the Queensland rail access regulatory regime¹. The Aurizon Network is also used by Aurizon's above rail operations, which is a related party to Aurizon Network. Thus in the Queensland coal rail network Aurizon is both a major competitor to Pacific National and the monopoly supplier of below rail services to Pacific National.

Pacific National's primary concerns with the 2017 DAU are:

- changes to drafting relating to the QCA oversight of negotiated access conditions;
- changes to drafting relating to the processes related to the relinquishment of train service entitlements (particularly when higher payload trains are being operated);

¹ Pacific National also has intermodal freight operations in Queensland which utilises sections of the Aurizon Network (primarily the section between Rocklands and Parana).

- changes related to drafting which allow Aurizon Network to unilaterally increase train payloads;
- changes to drafting relating to the Aurizon Network's role and obligations in supply chain group participation;
- changes to drafting relating to the Aurizon Network's role and obligations in addressing capacity shortfalls arising from expansions;
- changes to drafting relating to dispute resolution processes;
- lack of development of a take or pay pooling mechanism;
- lack of development of a well designed KPI regime and incentive mechanism;
- numerous matters of detail including several matters raised in the 2016 access undertaking process which Pacific National believes could be re-considered in the current regulatory process.

Pacific National seeks that these concerns be addressed by the QCA in this 2017 DAU stakeholder consultation process.

This submission contains no confidential information and may be considered a public document.

2. Pacific National's Position on the 2017 DAU

Pacific National Position

Pacific National believes that the matters outlined in this submission need to be addressed by the QCA when considering the 2017 DAU. Pacific National submits that the 2017 DAU should not be approved by the QCA in its current form. Pacific National would support QCA approval of the 2017 DAU if the matters outlined in this submission are addressed and resolved in the 2017 DAU regulatory process

Pacific National Concerns with 2017 DAU

Pacific National has numerous concerns with the 2017 DAU including concerns with:

- changes to drafting relating to the:
 - QCA oversight of negotiated access conditions;
 - processes related to the relinquishment of train service entitlements;
 - processes related to the Aurizon Network unilaterally amending maximum payloads for train services
 - Aurizon Network's obligations in supply chain group participation;
 - Aurizon Network's obligations in addressing capacity shortfalls;
 - dispute resolution processes;

- lack of development of a take or pay pooling mechanism and an incentive mechanism.

These concerns and others are outlined in more detail in this submission.

Pacific National Support for Elements of the 2017 DAU

A strong ring fencing and compliance regime is fundamental to facilitating third party access, particularly where the access provider is a vertically integrated natural monopoly. If the full benefits of above rail competition are to be realised then a strong ring fencing and compliance regime is needed. Given this Pacific National continues to strongly support the ongoing inclusion of the following sections in the 2017 DAU:

- Section 2.3 Behavioural Obligations - Pacific National supports the ongoing inclusion of these Behavioural Obligations in the 2017 DAU as they:
 - place obligations on Aurizon Network to not provide more favourable terms to a related operator, related competitor or a third party which has commercial arrangements with a related competitor;
 - require Aurizon Network to conduct all transactions with related parties on an arms-length and consistent basis; and
 - require that Aurizon Network must not engage in any activity or conduct that will result in cost shifting, cross-subsidies, price or margin squeezing.
- Part 3: Ringfencing - Pacific National supports the ongoing inclusion of the ringfencing provisions in the 2017 DAU and believes that these provisions could be further strengthened by increasing the level of independence and separation of the Aurizon Network board and management. Increased independence for the Aurizon Network board will provide more effective governance in relation to the separation and ring fencing of Aurizon Network from Aurizon Holdings.

Pacific National Comments on 2017 DAU Pricing

While Pacific National is an access holder it does not ultimately pay for rail access on the Aurizon Network as the network access charges are passed through to the end users. However, in its capacity as an above rail haulage operator Pacific National will be impacted by the 2017 DAU pricing and revenue positions in a number of ways, including:

- allowances relating to operating and maintenance costs directly impact on both current and future Pacific National above rail operations on the Aurizon Network; and
- allowances relating to current and capital expenditure impact on future Pacific National above rail operations on the Aurizon Network.

Given the impact that pricing and revenue have on Pacific National's operations, Pacific National is concerned that these regulatory decisions on the pricing and revenue components are consistent with the provisions of the QCA Act.

As a train operator on the Aurizon Network, Pacific National strongly supports an efficient Aurizon Network infrastructure maintenance program. Such a program is needed to maintain track quality and support efficient train and supply chain operations. Pacific National supports maintenance cost levels which are efficient and which ensure safe and efficient train operations on the Aurizon Network at the current contracted capacity.

Pacific National has had ongoing concerns with Aurizon Network's corporate cost allocations² as an over-allocation of Aurizon corporate costs to Aurizon Network results in Aurizon's above rail operations no longer carrying a reasonable allocation of corporate costs which then provides Aurizon above rail operations with an advantage in competing with other above rail providers such as Pacific National. Thus any over-allocation of Aurizon corporate costs to Aurizon Network is not economically efficient and acts to discourage competition in the market for train operations. Pacific National has no specific comment on the allocation of corporate costs to Aurizon Network in the 2017 DAU at this time but this issue remains a matter of interest for Pacific National.

3. Pacific National's Specific Comment on New Drafting in the 2017 DAU

This section addresses the drafting of the 2017 DAU access undertaking document. In particular this section focuses on the 2017 DAU access undertaking drafting where Aurizon Network proposes to amend the wording from the wording in the QCA-approved 2016 access undertaking.

2017 DAU Section 6.13 Access Conditions – this section in the 2017 DAU has been substantially amended from the 2016 access undertaking to require that the QCA approve access conditions negotiated by Aurizon Network and an access seeker unless the negotiated access conditions materially disadvantage other access seekers and access holders directly affected by the negotiated access conditions and / or contravene the QCA Act. The 2017 DAU amendments remove the criteria used by the QCA to assess the negotiated access conditions and the process used by the QCA to approve the negotiated access conditions.

² See for example:

- Asciano Submission to the QCA in Relation to the 2013 Aurizon Network Draft Access Undertaking pages 47 – 49 October 2013
- Asciano Submission to the QCA in Relation to the Resubmitted 2014 Aurizon Network Draft Access Undertaking pages 15 – 16 October 2013

Pacific National believes that the 2016 access undertaking wording should be reinstated. The removal of the 2016 access undertaking provisions removes processes and obligations which Aurizon Network is subject to when seeking approval of access conditions. Pacific National believes these controls are important, particularly when it is recognised that Aurizon Network is likely to be negotiating access conditions with a related party (being Aurizon Operations). The outcomes of such negotiations between related parties may meet the substantially reduced criteria in the 2017 DAU. For example only access conditions which only materially disadvantage other access seekers and access holders directly affected by the negotiated access conditions would be considered. This limits the assessment of the negotiated access conditions and raises issues related to the subjectivity of materiality and the potential for negotiated access conditions to indirectly (rather than directly) affect other access holders.

Pacific National notes that in earlier access undertakings section 6.13 Access Conditions appeared to be focussed on amending access conditions related to expansions. The 2016 access undertaking appeared to broaden access conditions to include any variations to access agreements. If the intention of the amendments to section 6.13 is to:

- allow minor amendments to coal access agreements which are unique to an access seeker (such as insurance provisions, security arrangements and nominal payloads); and / or
- allow non-coal access agreements to be negotiated (these access agreements include numerous negotiated access conditions);

then the 2017 DAU drafting should be amended to reflect these specific items as being explicitly identified exemptions to the otherwise reinstated section 6.13 access conditions section. This approach would be acceptable to Pacific National as long as access conditions negotiated under these exemptions do not unfairly differentiate between access holders and / or access seekers.

2017 DAU Section 7.4.3 Relinquishments – this section has been substantially amended from the 2016 access undertaking in order to allow Aurizon Network to reduce the number of nominated monthly train services of an access holder if the train services exceed the assumed maximum payload for that train service type. The reduction of the nominated monthly train services will occur via the SAA. Pacific National's detailed comments and concerns relating to this process are contained in section 4 of this submission which addresses changes in the drafting of the SAA.

Pacific National has several broad concerns regarding the drafting of 2017 DAU section 7.4.3 and issues relating to maximum payloads including:

- the 2017 DAU (and in particular the process in section 7.4.3 of the 2017 DAU) is focussed on maximising payload as a source of efficiency. Pacific National believes that the 2017 DAU should also encourage other means by which an access holder can create efficiency. For example efficiency gains could also be achieved by other methods such as a reduction in transit time of a service or a reduction in train headways. These alternate approaches to encouraging efficiency throughput should also be incentivised in the 2017 DAU;
- the 2017 DAU section 7.4.3 only seems to contemplate an access holder's ability to request an increase in its maximum payload. Pacific National believes that an operator should also have the right to request an increase in its maximum payload, particularly as increases in payload are likely to be created by the operator who owns and operates the rolling stock and as such the operator is likely to drive this process; and
- if the higher payload is created by the use of longer trains Pacific National believes that this has the potential to create capacity issues in the rail network unless properly managed. Pacific National believes that the 2017 DAU should ensure that if the higher payload is created by the use of longer trains then the capacity impact of these longer trains (if any) is fairly distributed among rail operators and among end users. That is the longer trains of one operator or end user should not negatively impact on the capacity for another train operator or end user. Pacific National believes that assessing the capacity impact of longer trains may be problematic as in the planning process it is likely that the longer train will be the first train "laid down" in the train planning process.

Pacific National supports the position in 2017 DAU section 7.4.3 k) that when the number of nominated monthly train services is reduced due to higher train payloads then any relinquishment fees to be paid are substantially reduced. Pacific National believes that the tariff component AT2 (that is the incremental capacity tariff linked to the train path) should continue to be paid if the paths relinquished due to higher train payloads are not utilised by other access holders or access seekers (including the access holder relinquishing the access rights).

Pacific National believes that this position is unlikely to result in any lost revenue for Aurizon Network as the AT3 and AT4 tariffs are expected to be recovered from the higher payload operations. Pacific National supports this position as it will not result in lost Aurizon Network revenue being socialised among all system users.

2017 DAU Section 7A.3 Supply Chain Co-ordination – this 2017 DAU section 7A.3 has been substantially amended from the 2016 access undertaking.

In changes to sections 7A.3 a) and b) Aurizon Network now only needs to participate in supply chain groups if it has the capacity to participate and it is reasonable to do so. Pacific National

believes that any reasonableness test is likely to be subjective and that Aurizon Network should participate in supply chain groups. Pacific National believes that the 2016 access undertaking wording in sections 7A.3 a) and b) should be reinstated.

In changes to section 7A.3 c) ii) Aurizon Network no longer has to provide a consistent level of service to each supply chain. Pacific National believes that different supply chains should receive a consistent level of service. The 2016 access undertaking wording in sections 7A.3 c) ii) should be reinstated.

In changes to section 7A.3 d) Aurizon Network is no longer required to adopt an operational change identified by a supply chain group, but it must provide reasons for why it is not adopting the change being sought. Pacific National believes that if the supply chain group identifies an operational change which will improve capacity in the relevant system then Aurizon Network should adopt the change (subject to the conditions previously contained in this section 7A.3 d)). The 2016 access undertaking wording in sections 7A.3 d) should be reinstated.

In addition Pacific National notes that changes to section 7A.3 d) have removed wording for clarity that any dispute in relation to Aurizon Network's actions regarding an operational change will be addressed under Part 11 (Dispute Resolution) of the access undertaking. This wording should be reinstated.

2017 DAU Section 7A.4.2 Capacity Assessment - the section 7A.4.2 d) ii) has been amended from the 2016 access undertaking by replacing the word "review" with "audit". Pacific National believes that the term "review" better reflects the broad independent assessment process envisaged by section 7A.4.2, whereas the term "audit" narrows the scope to a verification of the capacity assessment calculations. The wording "review" should be reinstated. Pacific National notes that subsequent wording in section 7A.4.4 has also been amended replacing the word "review" with "audit". The wording "review" should also be reinstated in section 7A.4.4. Pacific National would accept wording which stated "review and audit" in these sections.

2017 DAU Section 7A.4.3 Capacity Deficit - the section 7A.4.3 e) ii) has been amended from the 2016 access undertaking by removing Aurizon Network's obligation to negotiate in good faith. This obligation should be reinstated.

In addition Pacific National notes that changes to section 7A.4.3 e) ii) have removed wording that any dispute in relation to funding and the proportion of funding between parties will be addressed under Part 11 (Dispute Resolution) of the access undertaking. This wording should be reinstated.

In relation to capacity deficits more broadly Pacific National believes that Aurizon Network has full control over the scope, cost and deliverable outcomes of any capacity expansions. Therefore any capacity shortfall resulting from a capacity expansion should have been able to be avoided by Aurizon Network during the planning, construction and implementation phases of any capacity expansion project. Given this Aurizon Network should be held accountable to correct the capacity shortfall (and bear the full cost of the capacity correction depending on the reason for the capacity shortfall).

2017 DAU Section 8.7.1 Funding an Expansion General – Under amended drafting in section 8.7.1 access seekers may fund an expansion if Aurizon Network elects not to fund the expansion. Pacific National believes that access seekers should have the choice to be able to fund an expansion regardless of whether Aurizon Network elects to fund an expansion or not.

2017 DAU Section 8.8.3 Development and Review of SUFA – section 8.8.3 has been substantially amended with many of the amendments having the affect of reducing QCA involvement in the SUFA development and review processes.

Given the protracted SUFA regulatory process remains ongoing at this time Pacific National believes that the 2016 access undertaking provisions should be reinstated to ensure that there is consistent and appropriate regulatory oversight over the development of the SUFA. Following the finalisation of the SUFA regulatory process then the outcomes of this regulatory process should be reflected in the 2017 DAU.

2017 DAU Section 8.9.3 Capacity Shortfall – Section 8.9.3 of the 2017 DAU has been amended such that in the event of a capacity shortfall Aurizon Network and the affected access holders now effectively agree an outcome, whereas the 2016 access undertaking was more prescriptive outlining the steps that would be taken to arrive at an outcome. Pacific National's concern is that the drafting of the 2017 DAU section 8.9.3 is too flexible and is likely to allow Aurizon Network, which holds considerable monopoly power, to avoid any obligation to rectify a capacity shortfall.

This concern is exacerbated by the deletion of section 8.9.4 of the 2016 access undertaking from the 2017 DAU. Section 8.9.4 of the 2016 access undertaking required Aurizon Network to fund a capacity shortfall following an expansion where Aurizon Network funded the original expansion or where Aurizon Network was responsible for the shortfall. This section has been removed from the 2017 DAU.

As outlined above Pacific National believes that Aurizon Network has full control over the scope, cost and deliverable outcomes of any capacity expansions. Therefore any capacity shortfall

resulting from a capacity expansion should have been able to be avoided by Aurizon Network during the planning, construction and implementation phases of any capacity expansion project. Given this Aurizon Network should be held accountable to correct the capacity shortfall (and bear the full cost of the capacity correction depending on the reason for the capacity shortfall). The 2016 access undertaking provisions should be reinstated.

2017 DAU Part 11 Dispute Resolution and Decision Making – the 2017 DAU Part 11 relating to dispute resolution and decision making has been substantially redrafted such that it narrows the scope of disputes, reduces the level of QCA involvement in any dispute, restricts the nature of an experts determination in a dispute and restricts the ability of other parties directly impacted by a dispute receiving notices regarding a dispute. (For example 2017 DAU Section 11.1.1 d) iii) previously stated that Aurizon Network must provide relevant parties with a copy of a dispute notice, however under the revised wording Aurizon Network may provide this notice. Pacific National seeks that the wording of the 2016 access undertaking be reinstated).

Pacific National notes that 2017 DAU sections 11.1.4 v) 3) and 11.1.5 e) have been amended to require that dispute determinations be consistent with the Aurizon Network Safety Management System. While Pacific National is strongly committed to rail safety and recognises Aurizon's strong commitment to rail safety Pacific National is concerned that dispute determinations are restricted by a document produced and controlled by Aurizon Network, where Aurizon Network would be a party to any dispute under 2017 DAU section 11. Pacific National is seeking that this matter be further clarified.

In addition the 2017 DAU also narrows the right to dispute certain matters arising from part 8.

Pacific National opposes the amendments made in 2017 DAU Part 11 and seeks that the drafting in the 2016 access undertaking be reinstated.

2017 DAU Schedule F Reference Tariff – Pacific National notes that in setting the volume forecasts Aurizon Network has assumed no growth³. Aurizon Network indicates that it has set the forecast based on contracted volumes, customer information, historical railings and expected production growth. Pacific National notes that it was not consulted in developing this volume forecast and believes that in future undertakings Aurizon Network should consult with access holders and train operators in relation to volume forecasts. Pacific National believes that the QCA should seek an independent review of the volume forecast.

³ Aurizon Network Submission 2017 Draft Access Undertaking Figure 19 Page 123

4. Pacific National's Specific Comment on New Drafting of the SAA and TOD

This section addresses the drafting of the 2017 SAA and TOD. In particular this section focuses on the 2017 SAA and TOD drafting where Aurizon Network proposes to amend the SAA and TOD wording from the SAA and TOD wording in the QCA-approved 2016 access undertaking. The comments below are largely based on SAA references but given the similarity of the SAA and TOD wording Pacific National is seeking that the comments below be interpreted as applying to both the SAA and the TOD.

2017 DAU SAA and TOD Section 10 Reduction of Nominated Monthly Train Services if Maximum Payload Exceeded – this section has been added to the 2017 SAA and outlines the process to be undertaken by Aurizon Network to reduce the nominated monthly train service entitlements if the monthly maximum payload is exceeded. Pacific National has several concerns with this section including those outlined below:

- under the test in the 2017 DAU SAA if the access holder's average annual payload is greater than the maximum payload then the process to reduce train services may be triggered. Pacific National believes that a stronger objective test needs to be applied before Aurizon Network can reduce nominated train service entitlements. For example the test could be that over four consecutive quarters an access holder's average payload must exceed the maximum payload by a certain given percentage. This removes the possibility of the process being triggered by a relatively minor discrepancy between average annual payload and maximum payload;
- the 2017 DAU SAA should include an additional process which gives access holders an option to either:
 - retain existing paths - where an access holder wishes to keep retain existing paths a process should apply whereby payloads are increased and the paths are retained by the access holder. This option encourages additional coal chain throughput if an access holder has the ability to utilise the paths they currently hold even if payload increases; or
 - relinquish excess paths - where an access holder wishes to relinquish the relevant paths a process should apply where payloads are increased and the relevant excess paths relinquished by the access holder. As outlined in section 3 above the relinquishment fee should only reflect the AT2 tariff component, (in instances where the excess paths are not taken up by an alternative access holder), as Aurizon Network continues to recover the AT3 component (levied on net tonnes per kilometre) and the AT4 component (levied on net tonnes).

- the 2017 DAU SAA section 10.6 addresses matters relating to disputes. Under the proposed process if the access holder was to disagree with any of the elements of Aurizon Network's reduction notice then this disagreement moves directly to the dispute process. Pacific National believes that an interim step be included that allows an access holder an opportunity to contest any elements of Aurizon Network's reduction notice by providing evidence as to why the access holder is contesting the notice. Aurizon Network must consider the evidence presented and then reissue the notice in either an amended or unchanged form, providing reasons in each case. This interim step has the potential to address matters related to the calculation of payloads, the paths to be relinquished and other matters which could be subject to differing interpretations and which could be resolved prior to a formal dispute process.

2017 DAU SAA and TOD Section 11 Access Holder Initiated Increase to Maximum Payload – this section has been added to the 2017 SAA and outlines the process to be undertaken by an access holder to increase its maximum payload. Pacific National has several concerns with this section including those outlined below:

- under this SAA section and the TOD section 11.2 an operator (who is not an access holder) cannot directly request Aurizon Network to increase their payload. Pacific National believes that an operator (who is not an access holder) should have the ability to request an increase to the maximum payload if they can demonstrate support from the access holder. Increases in payload are likely to be created by the operator who owns and operates the rolling stock and as such the operator is likely to drive this process and may be in a better position to request an increase in the maximum payload;
- under SAA section 11.2 a) ii) A) the access holder is restricted by a 98% loading efficiency when they initiate an increase to maximum payload, whereas such a restriction is not placed on Aurizon Network when Aurizon Network initiate an increase in maximum payload on a train service or a reduction in nominated monthly train services if maximum payload is exceeded by an access holder.. Pacific National believes that the same testing parameters should be placed on the access holder and Aurizon Network when assessing these matters (that is the same approach should apply to both Aurizon Network and the access holder); and
- the additional processes relating to retaining existing paths and relinquishing excess paths as outlined in the discussion on SAA section 10 above should also apply in SAA section 11.

SAA and TOD Section 12 – Process Initiated by Aurizon Network to Increase Nominal Payload for a Train Service Type – this section has been added to the 2017 SAA and outlines the process to be undertaken by Aurizon Network to reduce nominated train services if the nominal payload is

increased. Pacific National has several concerns with this section and believes that if the matters raised below are not addressed via amended drafting of the SAA and TOD then this section should be removed from the SAA and TOD.

Pacific National believes that there is no strong rationale for Aurizon Network unilaterally dictating the nominal payload of a train service type to access holders. Access holders should have the right to operate with the nominal payload that they choose based on commercial and above rail operational reasons.

Pacific National notes that in this section 12 there is no requirement on Aurizon Network to specify the reason why the payload increase is required. Aurizon Network should be required to justify an increased payload for a train service type. Pacific National believes that Aurizon Network must consult extensively with end users and operators before requiring an increased payload for a train service type. In particular Aurizon Network should be required to demonstrate:

- there is a demand for additional capacity;
- evidence that increasing payloads as proposed by Aurizon Network will create the additional capacity;
- the impact of the payload increase on reference tariffs (Pacific National assumes an increase in payload would result in a decrease in train paths which may require AT2 to be adjusted); and
- reasons why particular access holders were selected for the enforced payload increase by Aurizon Network (note that Pacific National believes that if there was a legitimate reason to increase the nominal payload then it should be adopted by all access holders within a single coal system).

In addition to the above concerns the dispute provisions in section 12 of the SAA only appear to relate to the calculation of nominal payload and the reduction in train services and the dispute provisions in section 12 of the TOD only appear to relate to the net financial effect of Aurizon network's actions. Pacific National believes that the section 12 dispute process should be broadened so that it allows access holders and operators to dispute the entire SAA and TOD section 12 process. In addition there should be ability for access holders and operators to directly refer any SAA and TOD section 12 matters to the QCA under the broader dispute provisions of the SAA and TOD.

Section 12.1 d) ii) of the SAA states that the effective date that an increase in nominal payload applies is to be not less than 18 months from the date that Aurizon Network provides notice. Pacific National believes that this lead time is insufficient lead time for an operator to assess

current rolling stock capability and availability and if necessary re-engineer current rolling stock or procure new rolling stock. In addition this time frame may also be insufficient for mine customers to re-engineer load outs and other mine site infrastructure if they have to make changes to loading capabilities. Pacific National believes that this section must take into account lead times relating to investments needed to meet the Aurizon Network payload requirement. Pacific National believes a time frame of three years would be more appropriate if capital investment in rolling stock or mine infrastructure is required.

Pacific National is particularly concerned that access holders and operators will be required to undertake additional capital investments and incur additional operating costs due to this SAA section but will not be fully compensated for these costs. In particular the SAA does not allow an access holder to seek compensation for any financial impacts if Aurizon Network was to increase the nominal payload.

Pacific National recognises that under the TOD section 12 there is a process by which an operator has the opportunity to seek compensation for any net financial impact due to variations to the nominal payload enforced by Aurizon Network but no such process applies under the SAA (therefore a mine customer required to invest in new capital would not be able to seek compensation). Pacific National has major concerns with this TOD section 12 process including those outlined below:

- Aurizon Network will not make payment to an operator unless they are satisfied with the information submitted by the operator. Pacific National is concerned that such an assessment criterion is subjective and at Aurizon Network's discretion;;
- Aurizon Network has the ability to withdraw their intention to increase the nominal payload up to ten months before the effective date (as per section 12.3 a) of the TOD). This time frame is inappropriate as an operator could have committed to investments to meet Aurizon Network's increase nominal payload requirements but following Aurizon Network's withdrawal of their increase payload requirements the operator could have incurred substantial sunk capital costs. The TOD does not appear to allow an operator to seek compensation if Aurizon Network withdraws its notice to amend the payload. Pacific National believes that the TOD should be amended to explicitly allow an operator to claim compensation in the event Aurizon Network withdraws its payload increase;
- Under the TOD section 12.4 b) an operator will not be compensated for unforeseen future costs as a consequence of the increase to the nominal payload. Pacific National believes that it is reasonable that a change in payload could result in unforeseen future costs. Pacific National believes that this TOD section should be amended to allow additional costs

to be recovered. Pacific National accepts that a time limit would have to be placed on such a recovery;

- Under the TOD sections 12.4) a) and 12.6 Pacific National estimates that the operator has to wait at least 6 months after the effective date (that is from the commencement of higher nominal payload) to receive the payment of compensation from Aurizon Network. Pacific National believes that this time frame should be compressed; and
- Under TOD section 12.2 and 12.4 the operator is required to supply substantial levels of information to Aurizon Network including information relating to the train operator's costs. Much of this information is likely to be highly confidential and sensitive and could be expected to include information on matters such as current and future innovation in relation to wagons, locomotives and other capital components, current and future innovation in relation to operating procedures and the current and future capital and operating costs of wagons and locomotives and other capital components. Given the level of sensitivity of this information Pacific National is particularly concerned that the current access undertaking confidentiality and ring fencing provisions may not be sufficient to protect this information (particularly given the ability of Aurizon staff to transfer between Aurizon Network and Aurizon above rail operations). Pacific National is seeking that extra protection be established to ensure this information cannot be used by Aurizon's above rail operations

In addition to the above matters Pacific National believes that the QCA should also consider that given the impact of the processes in section 12 of the SAA and the TOD whether these processes are better outlined in the access undertaking and treated as Incorporated Provisions, rather than the SAA and the TOD. This would ensure a consistent process is adopted across all access holders and all operators.

Overall Pacific National strongly opposes these provisions in section 12 of the SAA and the TOD and believes that they require substantial amendment if they are to be acceptable.

5. Pacific National's Specific Comment on Unchanged Drafting in the 2017 DAU, SAA and TOD

Sections 3 and 4 of this submission address Pacific National's concerns with the new and revised drafting in the 2017 DAU, SAA and TOD. In addition to the matters raised in sections 3 and 4 of this submission Pacific National continues to have concerns with various sections of wording in the QCA approved 2016 access undertaking. These matters have been raised previously by Pacific National, particularly within the context of stakeholder consultation on the Aurizon Network 2016

Access Undertaking⁴. In particular Pacific National notes that in finalising the 2016 Access Undertaking numerous drafting changes were made to the access undertaking documents. Pacific National believes that some of these changes should be re-considered as part of the current 2017 DAU regulatory process. Pacific National's major concerns with the unchanged drafting are outlined below.

5.1 General Comments

Take or Pay Pooling Mechanism – The current 2017 DAU drafting does not have any take or pay pooling mechanism. Pacific National supports the introduction of an alternative Take or Pay pooling mechanism. Pacific National notes that a take or pay pooling mechanism is the subject of a substantially more detailed submission from the Dalrymple Bay Coal Chain Coordinator (DCCC). Pacific National is a member of the DCCC and strongly supports this DCCC submission on take or pay pooling.

An alternative Take or Pay pooling mechanism will facilitate a more flexible and efficient use of access rights. Under the proposed mechanism over-utilised train service entitlements from one origin - destination pairing in an Access Agreement can be used to offset under-utilised train service entitlements from a different origin - destination pairing in the same Access Agreement. Thus the Take or Pay pooling mechanism would be managed through Access Agreements, allowing any Take or Pay variances as a result of the Take or Pay pooling mechanism to be managed within an Access Agreement where any Take or Pay liability variances are borne fairly among the beneficial holders of the access rights under that Access Agreement. This will ensure that system users who choose not to adopt the Take or Pay pooling arrangement are not adversely impacted.

Under this proposal access holders would have incentives to work together to maximise system throughput in any given year which then reduces the Take or Pay liability borne by all users in the system under the current revenue cap mechanism. In addition it should be recognised that Aurizon Network would have the ability to recover the difference between System Allowable Revenue and Total Actual Revenue, thus they will not incur any financial disadvantage under this arrangement.

⁴ The Pacific National comments in this section are partially based on comments previously provided to the QCA in the following documents:

- February 2016 Asciano Submission to the Queensland Competition Authority December 2015 Consolidated Draft Decision on the Aurizon Network 2014 Draft Access Undertaking
- July 2016 Asciano Submission to the Queensland Competition Authority on the Aurizon Network July 2016 Submission of an Amended 2014 Draft Access Undertaking
- September 2016 Pacific National Response to QCA's August 2016 Draft Decision on Aurizon Networks Amended 2014 Draft Access Undertaking

It should be noted that the take or pay pooling arrangement outlined above can currently be achieved via a series of short term transfers throughout the year (that is by year-end the take or pay position would be the same). The take or pay pooling mechanism aims to achieve the same result as this series of short term transfers in a more efficient manner via a “true up” at year end. The key benefit of the take or pay pooling arrangement is that it reduces the administrative burden of conducting numerous short term transfers throughout the year. Instead, it allows the take or pay to be adjusted at the end of the year between origin – destination pairings.

In the event that this is not possible to approve the proposed mechanism as part of the 2017 DAU regulatory process Pacific National seeks that the QCA and Aurizon Network further consider the matter during the course of the 2017 access undertaking, in particular the foreshadowed Aurizon Network pricing review⁵ may be an appropriate forum to consider the proposed take or pay pooling mechanism.

Incentive Mechanism – Pacific National remains concerned with the ongoing lack of an effective Aurizon Network KPI regime and the lack of an effective Aurizon Network incentive mechanism. Pacific National believes that a genuinely efficient central Queensland coal supply chain will only be achieved with a well designed and mandatory incentive mechanism which ensures that Aurizon Network has strong incentives to reduce costs while maintaining and improving service quality and track quality.

Pacific National believes that in the event a KPI regime and incentive mechanism are not introduced in the current regulatory process then the foreshadowed Aurizon Network pricing review⁶ may be an appropriate forum to further progress an effective KPI and incentive mechanism regime.

Treatment of Rebates – Pacific National has previously raised with the QCA the treatment of rebates⁷ to holders of Access Facilitation Deeds (AFDs). AFDs are financing arrangements where a mine customer pre-pays certain capital costs relating to mine specific infrastructure. Under an AFD Aurizon Network must then rebate the mine customer a return on capital and a return of

⁵ For example the Aurizon Network Submission supporting the 2017 Draft Access Undertaking (page 24) indicates that a future pricing review will be undertaken by Aurizon Network.

⁶ For example the Aurizon Network Submission supporting the 2017 Draft Access Undertaking (page 24) indicates that a future pricing review will be undertaken by Aurizon Network.

⁷ For example

- Asciano Response to Aurizon Network Submission on 2013-14 Revenue Adjustment Amounts and Increments to the QCA 7 November 2014
- Asciano Response to Aurizon Network Submission on 2014-15 Revenue Adjustment Amounts and Increments to the QCA 6 November 2015
- Pacific National Response to Aurizon Network Submission on 2015-16 Revenue Adjustment Amounts and Increments to the QCA 9 December 2016

capital for those assets. Thus the mine pays the reference tariff to Aurizon Network for access services and will then receive a rebate for the capital charges associated with the relevant infrastructure.

Pacific National's concerns with these rebates are based on the fact that these rebate arrangements are commercial arrangements separate from the regulatory process, but Aurizon Network seek to recover over paid rebates by socialising the recovery of these over payments through the regulatory revenue and pricing process. This has been allowed in previous access undertakings and the current 2016 access undertaking.

Pacific National believes that the QCA should consider whether rebates arising from commercial arrangements separate from the regulatory process should be incorporated into the regulatory process. Pacific National believes that the QCA should consider a more equitable rebate adjustment method when considering the elements of the 2017 DAU.

Ultimate Holding Company Support Deed – Pacific National remains concerned that under the current drafting of the Ultimate Holding Company Support Deed the consequences which apply to Aurizon Holdings if they do not comply with their obligations under the deed are relatively minor. The consequence of non-compliance is now limited to that in section 2.5 (b) of the 2017 DAU where additional confidential information register audits and compliance training sessions are required.

This consequence is very weak and is unlikely to act as a deterrent. At a minimum Aurizon Holdings should be liable for any consequential loss suffered by any party as a result of any of Aurizon's businesses failing to comply with the obligations outlined in the deed.

Ongoing Impact of UT1 Access Agreements - UT1 access agreements have different take or pay obligations than other access agreements under UT2, Ut3 or UT4. This in turn may result in the impact of these UT1 take or pay obligations being socialised across access holders who hold access agreements signed under later access undertakings. Pacific National recognises that this issue arises due to changes made to access agreements over time but believes that at some point in the future this difference in take or pay treatment for access agreements from different periods needs to be addressed.

Transfer Mechanism Drafting – Pacific National broadly supports the general transfer principles introduced in the 2016 access undertaking; however Pacific National believes that the drafting which gives affect to these principles could be improved and clarified while maintaining the general

intent of these transfer provisions. Pacific National notes that the QCA noted in August 2016⁸ the QCA will further review and streamline the transfer arrangements as better information becomes available. Pacific National supports a further review of transfer processes and transfer drafting in the current 2017 DAU regulatory process. Specific aspects of transfers that could be reviewed include:

- whether transfers that require additional access rights should be managed through the access application process or the transfer process. Pacific National believes that such transfers should be addressed through the transfer process (in the 2016 access undertaking and the 2017 DAU they are addressed under the access application process);
- whether short term transfers and long term transfers should be differentiated and if so what time frame is appropriate for defining short term transfers and long term transfers. Pacific National believes that a time frame of two years is a reasonable point to differentiate between short term and long term transfers, but Pacific National would be willing to consider other differentiation points proposed by stakeholders;
- whether template forms or input fields could be made available (for example on the Aurizon Network website) to expedite the transfer process;
- whether Aurizon Network should be obligated to provide updated schedules to the transferee, transferor and their respective operators; and
- whether intersystem transfers should be considered going forward as the Aurizon Network coal systems become more closely aligned from a planning perspective. (For example Aurizon Network is looking to develop a single System Rule across the entire central Queensland Coal network which aims to standardise their planning processes)

Pacific National understands that the Queensland Resources Council (QRC) has been developing alternative drafting and will be seeking a series of drafting amendments to clarify the transfer process and make the process more workable. Pacific National supports the intent of a submission designed to clarify the transfer provisions. In particular Pacific National would support any proposed drafting which allowed more flexible use of access rights and which lessened restrictions how transfers are conducted. Pacific National is likely to make a further submission on this matter when the alternative QRC drafting is available.

Baseline Capacity and Capacity Assessment Drafting – Part 7A of the 2016 access undertaking requires a baseline capacity assessment to be undertaken. Pacific National recognises that this work is currently being undertaken.

⁸ QCA Draft Decision Aurizon Network's Amended 2014 Draft Access Undertaking page 19

Pacific National believes that various sections of the 2017 DAU (notably Part 7A Baseline Capacity and Schedule G) may need to be re-drafted in any final undertaking to reflect the status of this baseline capacity work. Pacific National is not currently proposing any changes but is seeking that the matter be recognised in future 2017 DAU drafting if the baseline capacity assessment is not finalised by the time of the 2017 DAU Final Decision.

In relation to this matter Pacific National has been in recent discussions with Aurizon Network regarding their draft System Operating Parameters and Baseline Capacity Assessment documents. Pacific National has provided comments directly to Aurizon Network on these documents. (These comments can be provided to the QCA if required).

5.2 Comments on Specific 2017 DAU Sections

2017 DAU Section 3.13 c) Disclosure of Confidential Information – in relation to section 3.13 c) Pacific National believes that Aurizon Network disclosure of confidential information to a third party should be on terms which are enforceable by the owner of the confidential information. Consequently this section should be strengthened by returning to the wording proposed in the QCA's Final Decision on the 2016 access undertaking.

2017 DAU Section 3.13 h) Disclosure of Confidential Information – in relation to section 3.13 h) Pacific National believes that the wording contained in the 2017 DAU allows Aurizon Network to disclose confidential information to Aurizon Network's related operator's employees involved in corporate governance, accounting, taxation, risk assessment, financing and similar functions. Pacific National is concerned that given this broad exemption the employees of Aurizon Network's related operator may receive this confidential information regardless of whether they are required to have the information to perform their activities. This section should be strengthened by returning to the wording proposed in the QCA's Final Decision on the 2016 access undertaking.

2017 DAU Section 5.1 d) Development of an Access Agreement and 7.1 (f) Application – these sections allow parties to agree to vary the terms of the SAA and any provisions of the access undertaking incorporated by reference into the SAA (including sections 7.4.2 (Transfers), 7.4.3 (Relinquishments) and 7.6 (Capacity Resumption)). Pacific National believes that transfers, relinquishments and capacity resumption provisions of access agreements should reflect the provisions of the access undertaking in force at the time. These sections relate to system capacity and so it is important that they are applied consistently across all system users. Any agreed variations to these sections in one access agreement may adversely impact other rail network users.

2017 DAU Section 6.4.1 d) iii) and iv) Expansion Pricing Principles – section 6.4.1 d) iii) states that “if expanding users face a higher cost than non-expanding users, a zero contribution to Aurizon Network’s common costs from expanding users is generally acceptable”. Pacific National does not agree that this situation should be “generally acceptable”. The expectation should be that expanding users should make some contribution to Aurizon Network’s common costs, although this contribution could be less than the contribution made by non-expanding users. Pacific National believes that a more acceptable wording of principle 6.4.1 d) iii) would be that “if expanding users face a higher cost than non-expanding users, a lesser contribution to Aurizon Network’s common costs from expanding users is allowed ”.

Section 6.4.1 d) iv) states that “an allocation of the expansion costs to non-expanding Users may be appropriate where an expansion has clear benefits to those users”. Pacific National has concerns with this principle as users who have not sought an expansion and who have not agreed to fund an expansion may be required to partially fund an expansion. This issue is of particular concern where the benefits identified are not verified by a third party and / or are based on Aurizon Network scheduling and planning train operations in a specific manner which results in the expansion appearing to benefit users who did not seek the expansion or agree to fund the expansion. This principle should be removed.

2017 DAU Section 6.7 Pricing Objectives- section 6.7 allows Aurizon Network to establish different access charges for non-coal carrying train services. Where capacity is insufficient Aurizon Network can seek the Maximum Access Charge from access seekers. Pacific National is concerned that non-coal train services (including Pacific National non-coal train services) could be disadvantaged as these services could potentially be subject to access charges set at the discretion of Aurizon Network. Pacific National believes that non-coal services access pricing should cover their marginal cost and make some contribution to fixed cost, thus reducing the fixed cost to be carried by the coal services.

2017 DAU Section 7.4.2 b) i) C) Transfers – this section relates to submitting transfers within a certain timeframe prior to the next train ordering week. This timeframe restricts an access holders’ ability to flexibly transfer access rights as they are restricted to submitting transfers within certain periods prior to the ordering week. Importantly, access holders are not be able to request short term transfers within a train ordering week to occur in that same ordering week. Pacific National believes that the procedures required under this section may reduce the number of short term transfers that would otherwise occur.

Pacific National recognises that this issue may be addressed by the alternative transfer drafting to be proposed by the QRC. Pacific National would support a drafting proposal which addressed this issue.

2017 DAU Section 10.6.4 Audit Process – Pacific National believes that the audit process outlined in section 10.6.4 could be improved by:

- requiring the auditor to consult with above rail operators and other access holders to ensure that any stakeholder concerns regarding compliance are adequately addressed in the audit; and
- requiring the auditor to produce a confidential and public audit report. The public report could then be distributed to relevant stakeholders.

Schedule I – Confidentiality Agreement – Pacific National has several concerns regarding the Confidentiality Agreement contained in the 2017 DAU Schedule I. These concerns include:

- section 6 of the Confidentiality Agreement only binds Aurizon Network rather than the broader Aurizon group. The Confidentiality Agreement should also bind the broader Aurizon group; and
- section 7 of the Confidentiality Agreement has relatively weak penalties on Aurizon Network for any breach of the agreement. The penalties for a breach should be strengthened.

5.3 Comments on Specific 2017 SAA and TOD Sections

SAA 1.1 Definition of Train Service Type and Ad Hoc Train Service - Pacific National has a concern with the SAA Definitions relating to the definition of “Train Service Type” and “Ad Hoc Train Service”. In particular an Ad Hoc Train Service for a Train Service Type is defined as:

- a) a Network Train Service which is additional to the Nominated Monthly Train Services for that Train Services Type but which is otherwise in accordance with the Train Description for that Train Service Type; or*
- b) a Network Train Service which is not a Train Service for a Train Service Type but which Aurizon Network permits an Operator to operate for the Access Holder under this Agreement as if it was a Train Service for the Train Service Type (subject to any derogations to the Train Description for the Train Service Type permitted by Aurizon Network, which includes a change in the Origin and Destination for that Train Service Type provided that the changed Origin and Destination forms part of the Nominated Network).*

This drafting implies that once an ad hoc train is scheduled in the daily train plan the, Ad Hoc Train Service is to be treated as a contracted service under the access agreement (i.e. all of the terms and conditions of the agreement would apply to Ad Hoc Train Services as if it was utilising Access Rights for that Train Service Type).

This drafting is supported by Pacific National as it provides Ad Hoc Train Services the same level of scheduling priority as a contracted train service once it is entered in the daily train plan. The definition further states that it could include a change in the origin and destination for that Train Service Type provided that the changed origin and destination forms part of the Nominated Network. Again this is supported by Pacific National as it provides an access holder with more flexibility to utilise their access rights. Pacific National is seeking that the 2017 DAU clarify how such Ad Hoc Train Services will be treated for take or pay purposes (i.e. can ad hoc services offset the take or pay of existing contracted services). Pacific National supports such ad hoc services offsetting the take or pay of existing contracted services.

SAA 4.8 Operation of Ad Hoc Train Service – This section allows Access Holder to nominate an Operator to run an ad hoc train service. The section requires the Operator to have an existing Train Operations Deed. Pacific National queries how this will operate in practice, in particular for haulage requirements that arise on short notice (for example spot hauls) where the access holder wishes to utilise a different operator. As currently worded this section may limit the choice of operator. Pacific National seeks further clarification on this process and in particular whether the intent of the process is for operators to have Train Operations Deeds pre-agreed with potential customers.

SAA 24.4 Claims and Exclusions in Respect of Non – Provision of Services – Pacific National believes section 24.4 b) should contain a time period in which the relevant train service is to be rescheduled.

SAA 29 Suspension - This section potentially allows Aurizon Network to suspend services with no notice of such suspension. While Schedule 6 outlines the Suspension Events, and therefore the Access Holder should be aware of the potential for suspension, unless the suspension relates to a safety issue Pacific National would expect at least 2 business days notice of impending suspension. Pacific National requests that this time frame be included in the SAA.

SAA 38 Most Favoured Nation Status – This section provides an opportunity for access holders to raise concerns with potential pricing differentiation with Aurizon Network. Where it is found that Aurizon Network has provided access charges to another customer at a rate outside of the pricing

differentiation limits outlined in the access undertaking, Aurizon Network are then obliged to rectify the matter but the clause provides no avenue for compensation to be paid to the disadvantaged access holder. Pacific National requests that this be rectified.

TOD 10.1 b) Operation of Train Services – Under this section the operator must not operate train services if the access holder does not hold supply chain rights for these train Services. Pacific National believes that such a requirement should not be imposed on the operator as the operator will not necessarily have knowledge of whether an access holder does or does not hold supply chain rights. The section should include a requirement on Aurizon Network to advise the operator if the access holder does not hold supply chain rights.

TOD 13.2 b) Train Control Rights and Obligations – Aurizon Network – Under this section the obligations on Aurizon Network in regard to the train control function should be strengthened to reflect the importance of Aurizon Network’s responsibilities. For example, these obligations should include obligations that:

- Aurizon Network have facilities, systems and processes in place to enable the operator to utilise the train paths and in accordance with the agreement; and
- Aurizon Network will use its best endeavours to provide the Operator with details, of all operating incidents as soon as reasonably practicable which has affected or could potentially affect the ability of any train to use its path, or which otherwise affects the security or safety of the train, the freight or other users of the network.

TOD 21.2) a) Maintenance of the Nominated Network – Under this section Aurizon Network is required to carry out network maintenance so that certain standards are met and the operator can operate train services on the network in accordance with their scheduled times. Pacific National considers that the obligations of Aurizon Network with respect to maintenance activities should be strengthened to reflect the importance of Aurizon Network’s responsibilities. The focus of this section should be broadened to include the safe use of the network in addition to standards and train service operation.

TOD 22.4 b) i) B) 1) Management of Incident Response – Under this section if an incident occurs, the operator must make arrangements to effect the recovery and retrieval within three hours of the incident occurring. This section should clarify that the incident site should not be disturbed unless both Aurizon Network and the operator have had the opportunity to complete appropriate investigations of the incident site.

6. Conclusion

Pacific National believes that the matters outlined in this submission need to be addressed by the QCA when considering the 2017 DAU. Pacific National submits that the 2017 DAU should not be approved by the QCA in its current form.

In particular Pacific National's primary concerns with the 2017 DAU are:

- Changes to drafting relating to the QCA oversight of negotiated access conditions;
- Changes to drafting relating to the processes related to the relinquishment of train service entitlements (particularly when higher payload trains are being operated);
- Changes related to drafting which allow Aurizon Network to unilaterally increase train payloads;
- Changes to drafting relating to the Aurizon Network's role and obligations in supply chain group participation;
- Changes to drafting relating to the Aurizon Network's role and obligations in addressing capacity shortfalls arising from expansions;
- Changes to drafting relating to dispute resolution processes;
- Lack of development of a take or pay pooling mechanism;
- Lack of development of a well designed KPI regime and incentive mechanism;
- Numerous matters of detail including several matters raised in the 2016 access undertaking process which Pacific National believes could be re-considered in the current regulatory process.

Pacific National would support QCA approval of the 2017 DAU if the matters outlined in this submission (including the matters directly above) are addressed through the 2017 DAU regulatory process