Declaration of Queensland Rail network

Submissions to the Queensland Competition Authority

Declaration Review in respect of the Queensland Rail network under the *Queensland Competition Authority Act 1997* (Qld)

30 May 2018

South West Producers – New Hope and Yancoal

Contents

1 Executive Summary – Each of the access criteria satisfied

1.1 The access criteria are satisfied and the declaration should be continued

New Hope and Yancoal (together the ***South West Producers***) consider it is clear that each of the four access criteria in section 76 of the *Queensland Competition Authority Act 1997* (Qld) (***QCA Act***) are satisfied either:

(a) in respect of the declared service generally, being:

> *the use of rail transport infrastructure for providing transportation by rail if the infrastructure is used for operating a railway for which Queensland Rail Limited, or a successor, assign or subsidiary of Queensland Rail Limited, is the railway manager* (the ***Declared Service***)
>
> or

(b) in respect of that part of the service involving the use of rail transportation infrastructure for providing transportation for coal to the Port of Brisbane by rail consisting of the West Moreton network, future extensions or expansions to it, and relevant parts of the South-East Queensland network including the dedicated dual gauge track from Lytton Junction to Fisherman Islands (collectively referred to in this submission as the ***West Moreton corridor coal rail access service***);

If the Queensland Competition Authority (***QCA***) has any doubt about whether the access criteria are satisfied in respect of the broader Declared Service, the QCA has the power under the QCA Act to declare the West Moreton corridor coal rail access service – as part of the Declared Service that forms a service itself.

It is clearly appropriate for the QCA to recommend the Declared Service or the West Moreton corridor coal rail access services continue to be declared for at least a further 15 year period in accordance with section 87A and 87C *Queensland Competition Authority Act 1997* (Qld).

In summary, the South West Producers have reached that conclusion based on the below.

1.2 Criterion (a) – promotion of competition

The South West Producers consider it is clear that access (or increased access) to the Declared Service (or at least the West Moreton corridor coal rail access service), on reasonable terms and conditions, as a result of a declaration would promote a material increase in competition in a number of dependent markets.

To be satisfied that there is such a promotion of competition, the QCA only needs to be satisfied that the continuation of declaration would give rise to a significant, finite probability of an enhanced environment for competition and greater opportunities for competitive behaviour – in a non-trivial sense – in a dependent market (compared to the likely state of the market without declaration).

The QCA is not required to be satisfied that competition would definitely be immediately enhanced (or immediately lost by the declaration coming to an end).

In that regard, the South West Producers consider that declaration results in long term certainty of access, reasonable access terms and efficient access pricing through the undertaking and West Moreton system coal reference tariffs, and thereby promotes a material increase in competition in at least the following dependent markets:

(a) the Port of Brisbane catchment coal tenements market (as without declaration supply of, and demand for, such tenements will be materially reduced if not eliminated);

(b) the Surat Basin coal tenements market (as without declaration supply of, and demand for, such tenements will be materially reduced);

(c) the south-west Queensland rail haulage market (as without declaration the credible threat of new entry will be removed, and demand for haulage services will be materially reduced);

(d) the Port of Brisbane coal handling services market (as competition for Queensland Bulk Handling's (***QBH***) coal handling services is dependent on the continued investment and operation by the South West Producers and demand for its services will be reduced / eliminated without declaration); and

(e) the south-east Queensland / northern New South Wales domestic energy supply market (as the distance from other coal fields and the cost of alternative energy sources means that any reduction in supply or potential supply to that market as a result of QR's price rises will materially reduce supply, and demand as customers go out of business, in the market).

It is possible that there are other dependent markets in which declaration promotes a material increase in competition, particularly in the south-west Queensland region in which the West Moreton coal mines are a major supplier of energy (in the case of New Hope), purchaser of goods and services and employer.

1.3 Criterion (b) – foreseeable demand at least cost

Given the time and resources available to the South West Producers, it has not been possible to provide a foreseeable demand projection for the entirety of the Declared Service.

However, the South West Producers consider it is clear that the foreseeable demand for the West Moreton corridor coal rail access service can be met at least cost by the relevant parts of the QR Network compared to 2 or more facilities.

That is the case because:

(a) the foreseeable demand is less than the capacity of the West Moreton corridor rail transport infrastructure (such that it is clearly met at least cost through that existing infrastructure);

(b) there is the potential to incrementally expand the West Moreton corridor rail transport infrastructure at a lower cost than construction of a new rail facility; and

(c) the costs of theoretical alternative facilities such as Inland Rail and a rail connection via the Surat Basin to the Moura system have been considered, but it is highly uncertain as to whether they actually could meet the demand, and even if they did, those facilities involve extremely high capital costs such that they would clearly not provide lower cost alternatives.

1.4 Criterion (c) – facility is significant

The South West Producers consider it is clear that QR's rail network generally, and/or those parts of it which provide the West Moreton corridor coal rail access service are significant, having regard to:

(a) its size:

  (i) the QR Network comprises of over 7000 km of track which covers a significant proportion of the State as shown in Figure 1 earlier in this submission; and

(ii) the West Moreton corridor – with the West Moreton system component alone being 314km and it being approximately 380km from Cameby Downs to the Port of Brisbane, with approximately 7 million tonnes of coal hauled per annum, plus grain, livestock and passenger traffics and spare capacity; or

(b) its importance to the Queensland economy, in the case of the West Moreton corridor through servicing coal, grain, livestock and passenger traffic and the economic contribution made by the coal mines, rail haulage, coal handling services, and resulting royalties and indirect economic benefits of the coal supply chain which the West Moreton system rail transport infrastructure forms part of.

1.5 Criterion (d) – promotion of the public interest

The South West Producers consider it is clear that access (or increased access) to the Declared Service (or at least the West Moreton corridor coal rail access service) on reasonable terms and conditions, as a result of declaration would promote the public interest.

In particular, the declaration promotes the public benefit by providing long term certainty as to rights of access, access being available on reasonable terms and at efficient pricing and thereby facilitates investment in the Western system region (and assisting with maintaining coal volumes in the region which reduce the subsidies that would otherwise be required by the State for the QR Network to continue to provide agricultural and passenger services in the region). The coal and other industries that the declaration facilitates investment in have wider economic benefits – through employment and other economic growth, particularly in the local Darling Downs region. The structure of the Western system coal tariffs which have arisen from the declaration have also served to protect Queensland Rail from the volatility in coal prices, which resulted in the Wilkie Creek mine closing in 2013, and the resulting change in demand. That protection arises due to the Western system coal tariffs being derived from a revenue cap – such that the maximum allowable revenue to be earned by Queensland Rail Limited (QR) is recovered across the then current users of the system. Consequently, the closure of an operating mine (such as what occurred with Wilkie Creek) does not result in Queensland Rail earning a lower return on its investment (unless its asset base is optimised which has not occurred). Instead, the charges owed by the remaining producers (in the case of the Wilkie Creek closure – that is the South West Producers) increase as a result of bearing a larger proportion of the same allowable revenue.

2 Introduction and context for the review

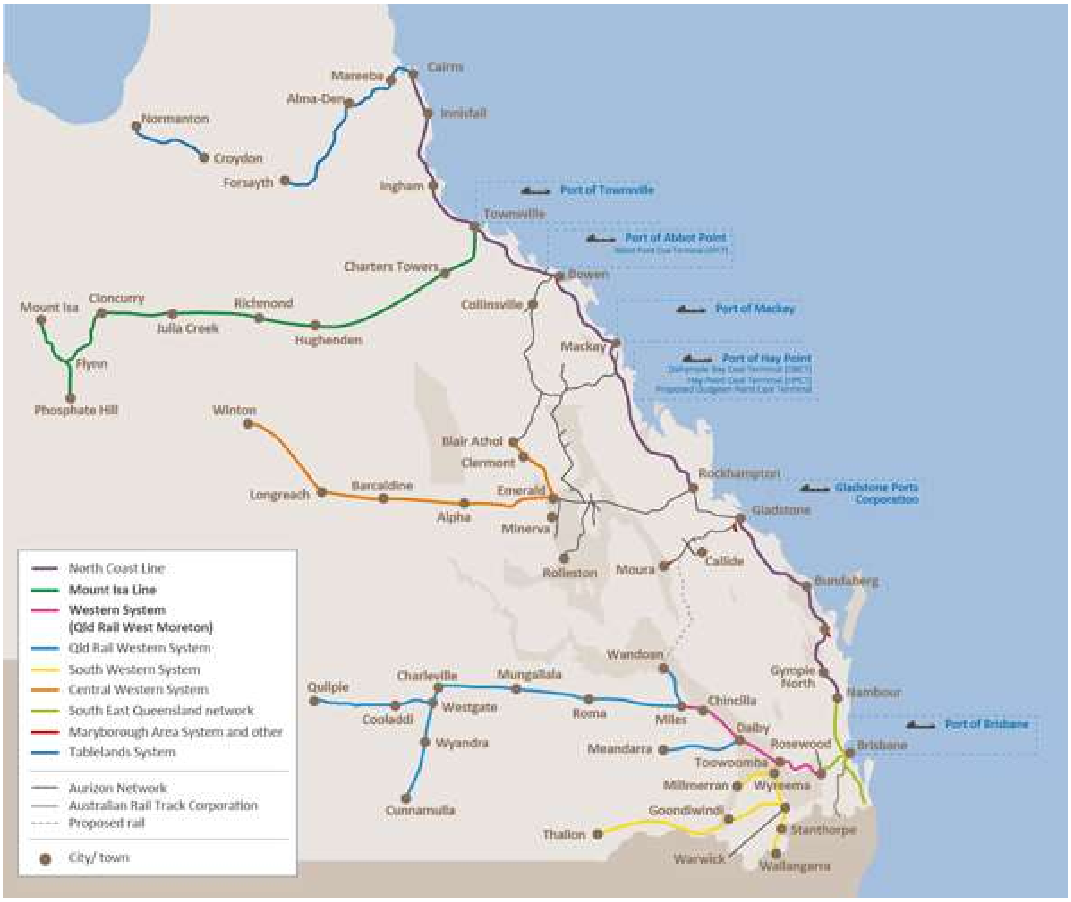
2.1 Introduction

The South West Producers thank the QCA for the opportunity to make submissions on the review of the current declaration in respect of service provided by Queensland Rail Limited (***QR***), namely being:

> *the use of rail transport infrastructure for providing transportation by rail if the infrastructure is used for operating a railway for which Queensland Rail Limited, or a successor, assign or subsidiary of Queensland Rail Limited, is the railway manager* (the ***Declared Service***).

Figure 1 below shows QR's rail network, the use of which is included within the scope of that declared service (the ***QR Network***).

Figure 1: The QR Network



The South West Producers are users of part of the QR Network, being the West Moreton corridor rail transport infrastructure, comprising:

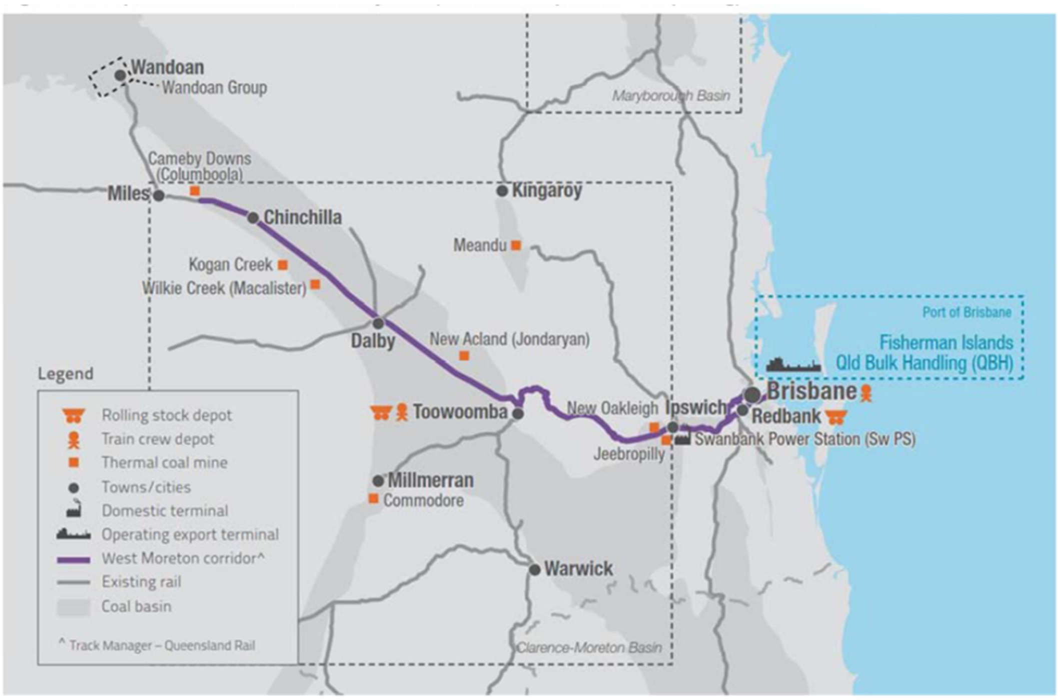
(a) the West Moreton system from their coal mines (New Acland and Jeebropilly for New Hope, and Cameby Downs for Yancoal) to Rosewood; and

(b) parts of the metropolitan Brisbane network (Rosewood to Port of Brisbane).

That rail transport infrastructure, and any branch lines, extensions or expansions to it is referred to as the ***West Moreton corridor rail transport infrastructure*** in this submission.

Figure 2 below shows the West Moreton corridor rail transport infrastructure:

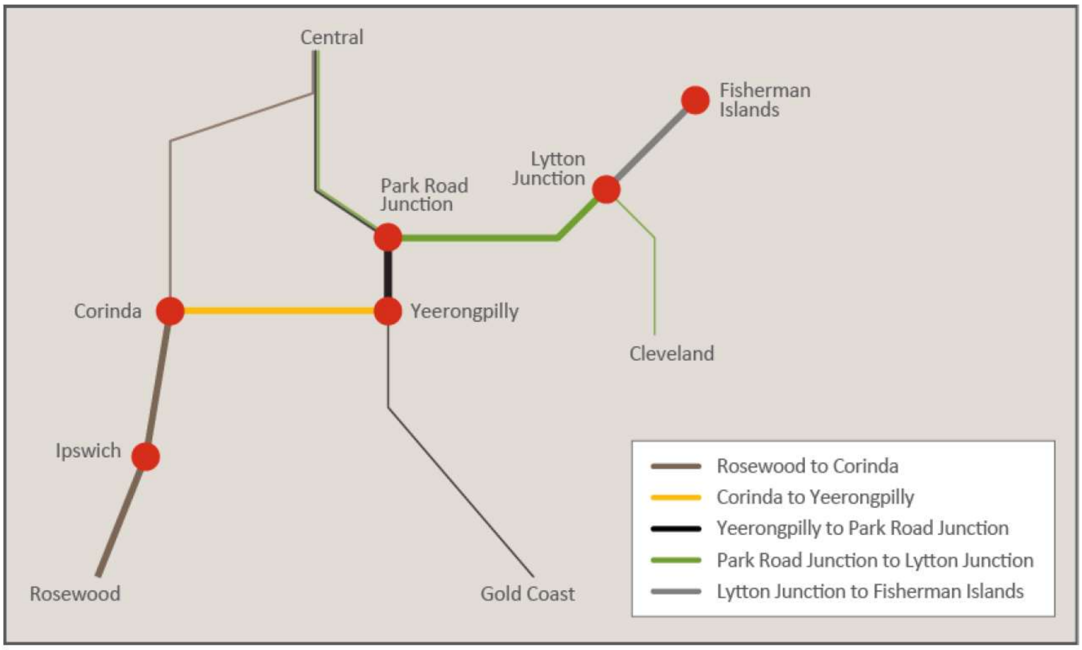
Figure 2: The West Moreton corridor rail transport infrastructure



As Figure 2 shows, the final part of the West Moreton corridor rail transport infrastructure includes parts of the Brisbane metropolitan system through to QBH's coal terminal at Fisherman Islands, Port of Brisbane.

Figure 3 below shows those parts of the Metropolitan network which form part of the West Moreton corridor (with the red dots showing the route from Rosewood to the Port).

Figure 3: Parts of the Brisbane metropolitan network in West Moreton corridor



The use of the West Moreton corridor rail transport infrastructure for the transportation of coal is referred to in this submission as the ***West Moreton corridor coal rail access service***.

2.2 'West Moreton corridor coal rail access service' as a stand-alone service

As noted earlier in this submission, the following service is currently a declared service under transitional provisions in section 250(1)(b) of the QCA Act:

> *use of rail transport infrastructure for providing transportation by rail if the infrastructure is used for operating a railway for which Queensland Rail Limited, or a successor, assign or subsidiary of Queensland Rail Limited, is the railway manager*

The scope of that declaration means that access to all of Queensland Rail's rail network (the ***QR Network***) constitutes part of the Declared Service (see Figure 1 earlier in this submission).

Many of the rail lines are highly significant, in a variety of different ways and are utilised by quite different rail haulage tasks. For example:

(a) the North Coast Line supports major containerised freight transportation; and

(b) the Mount Isa Line supports the transportation of mining inputs to and bulk mineral products from the north west minerals province;

(c) the West Moreton system, which supports coal, agriculture and livestock transportation and adjoins the Western System in the west at Miles with the South East Queensland network in the east at Rosewood; and

(d) the South East Queensland network contains the Brisbane metropolitan train system, on which QR operates the passenger train services used for travel by thousands of people every day, and which is accessed by coal and other freight services to access the Port of Brisbane.

While some of those rail lines are shown as distinct pieces of the QR Network in Figure 1, it is important to note that freight to and from a number of parts of the QR Network travel across other parts of the network, particularly including the South East Queensland network. That is the 'services' provided are best understood on an origin – destination basis, which do not necessarily correspond to QR's designation of its own lines and systems.

For example, as shown in Figures 2 and 3 coal hauled from the mines of the South West Producers is transported across both the West Moreton network and the South East Queensland network before unloading at the coal terminal at the Port of Brisbane. Travelling only along the West Moreton network is of very limited utility on its own.

As is clear from those diagrams, the West Moreton corridor coal rail access services is part of the larger Declared Service.

That is important, as under section 87C(3) QCA Act:

> *the authority may make a recommendation [to declare part of a service] under section 87A (1)(b) if the authority is satisfied about all of the access criteria for the part of the service*

Section 87(1)(b) QCA requires that for part of a service to be declared it must *'itself be a service'*.

Service is, in turn, widely defined in section 72(1)(a) of the QCA Act as:

> *A service provided, or to be provided, by means of a facility and includes, for example –*
>
> *(a) the use of a facility (including, for example, a road or railway line)*

The use of the West Moreton corridor rail transport infrastructure is therefore clearly a service itself, so that if the QCA was minded to recommend not continuing the whole of the Declared Service, the QCA should then consider whether all of the access criteria were satisfied in respect of the West Moreton corridor coal rail access service, such that that narrower service should be declared.

For the reasons noted in this submission, the South West Producers consider that following any such consideration it will be clearly appropriate to declare the West Moreton corridor coal rail access service.

2.3 Context of the declaration

Access to Queensland Rail's network has been declared since 1997 (when it was initially declared by the *Queensland Competition Authority Regulation 1997* (Qld)).

In 2007, the declaration was remade by regulation under the *Queensland Competition Authority Regulation 2007* (Qld). In both cases those earlier declarations were part of a declaration applying to the wider Queensland rail access services.

In 2010 when the transitional provisions were introduced, the declaration of what is today's QR Network and the central Queensland coal region network were separated in contemplation of Aurizon's separation and privatisation. When the ability to declare a service by regulation was removed from the QCA Act under the *Motor Accidence Insurance and Other Legislation Amendment Act 2010* (Qld), the declaration of access to QR's Network was continued under section 250(1)(b) of the QCA Act for a further 10 years.

QR is currently operating under its first access undertaking approved since the separation which has been customised to the retained QR Network.

The South West Producers understand that the only reason that the declaration now has a transitional expiry date is that the State wished to have the regime certified as an effective access regime under Part IIIA of the *Competition and Consumer Act 2010* (Cth) (***CCA***) (and was conscious of the principle in the Competition Principles Agreement clause 6(4)(d) that there was a periodic review of the need for access regulation) – not because there has been any change in the appropriateness of regulation.

2.4 Review of the declaration

As the transitional period for declared services provided by the QCA Act is due to expire on 8 September 2020, the QCA has commenced a review of each declared service in accordance with the criteria under section 87A QCA Act.

Under section 87C(1) QCA Act, if the QCA is satisfied of all the access criteria in respect of a service, it must make a recommendation to the Minister that the service remain declared.

As noted above, and relevantly for the QR Network given the diversity of the rail lines that it comprises, under section 87C QCA Act where the QCA is satisfied that the access criteria are met in respect of part of a service it may recommend declaration of that part of the service, provided it is a service in itself.

The four access criteria the QCA must be satisfied of in order to make such a recommendation to the Minister are stated in section 76 QCA Act as follows:

(a) *that access (or increased access) to the service, on reasonable terms and conditions, as a result of a declaration of the service would promote a material increase in competition in at least 1 market (whether or not in Australia), other than the market for the service;*

(b) *that the facility for the service could meet the total foreseeable demand in the market –*

(i) over the period for which the service would be declared; and

(ii) *at the least cost compared to any 2 or more facilities (which could include the facility for the service);*

(c) *that the facility for the service is significant, having regard to its size or its importance to the Queensland economy; and*

(d) *that access (or increased access) to the service, on reasonable terms and conditions, as a result of declaration of the service would promote the public interest.*

The South West Producers acknowledge that criterion (a), (b) and (d) were recently amended by the *Queensland Competition Authority Amendment Act 2018* (Qld) to reflect updates to Part IIIA of the *Competition and Consumer Act 2010* (Cth) which were enacted by virtue of the *Competition and Consumer Amendment (Competition Policy Review) Act 2017* (Cth), such that the South West Producers make reference to decisions and other materials relating to the national access regime where relevant.

Additionally, the South West Producers acknowledge that the QCA has released a staff issues paper to provide preliminary views on the interpretation and application of the access criteria (the ***QCA Staff Issues Paper***) and also seek to address that paper where most relevant.

3 Approach to Market Definition

3.1 Overview of approach to market definition

Section 72(1) of the QCA Act identifies that a market for the purpose of the QCA Act will include a market for the relevant goods or services and any services that are '*able to be substituted for, or are otherwise competitive*' with the service provided by the facility.

The South West Producers agree with the approach to market definition indicated in the QCA Staff Issues Paper, including:

(a) market definition being a matter of identifying the relevant service and any substitutable services;

(b) substitutability involving determining whether other goods and services are close substitutes (and the 'otherwise competitive with' wording in section 72(1) QCA Act) doing no more than confirming that close substitution not perfect substitution is required to be within the same market);

(c) an important test in determining substitutability being how market participants respond to a small but significant non-transitory increase in price of the service (a ***SSNIP***) (otherwise known as the hypothetical monopolist test or SSNIP test); and

(d) defining the market involving considering the service/functional dimension of the market and the geographic dimension of the market.

3.2 Markets can exist even where there is currently no competition

As will be seen from the detailed submissions below in relation to criterion (a), it is critical in the case of the declaration review in respect of the Declared Service to appreciate that a market can exist even if there are currently no suppliers or no competition.

The classic judicial statement of that principle is from Justice Deane in *Queensland Wire Industries Pty Ltd v Broken Hill Pty Co Ltd* (1989) 167 CLR 177 at 196:

> *a market can exist if there be the potential for close competition even though none in fact exists. A market will continue to exist even though dealings in it be temporarily dormant or suspended. Indeed, for the purposes of the Act, a market may exist for particular existing goods or at a particular level if there exists a demand for (and the potential for competition between traders in) such goods at that level, notwithstanding that there is no supplier of, nor trade in, those goods at a given time – because, for example, one party is unwilling to enter any transaction at the price or on the conditions set by the other party*

4 Market Definition – Market in which the declared service is provided

4.1 The challenges presented by a management/operator based declaration

The market definition question

The relevant market for the purposes of criterion (b) will be the market in which the facility provides the Declared Service (or the relevant part of the Declared Service).

The Declared Service is currently defined by reference to railways for which QR (or successors, assigns or subsidiaries) is the railway manager. That is the scope of the declaration is currently defined by QR's operatorship/management, not by reference to the use of a particular identified facility.

The question is therefore whether, for the purposes of the declaration review, the relevant primary market should be defined as:

(a) a wider market in which the entirety of the Declared Service is provided – i.e. a Queensland regional rail access market; or

(b) a series of markets for narrower services for which the market definition is determined by substitutability for those services.

Approach required by the QCA Act

The South West Producers consider the access criteria would be satisfied on either basis.

However, in this scenario, the South West Producers consider the QCA is first required to determine whether it is satisfied about the access criteria on the basis of the wider Declared Service. That follows because section 80(1) QCA Act makes it mandatory for the QCA to recommend declaration of the Declared Service if the QCA is satisfied of the access criteria.

If the QCA is not satisfied about the access criteria in respect of the wide Declared Service, then the QCA should consider whether it is satisfied about the access criteria in respect of any narrower service which forms part of the Declared Service – mostly relevantly to this submission, such as the West Moreton corridor coal rail access service – and then exercise its power to declare any such narrow service about which it is so satisfied in accordance with section 80(5) QCA Act.

For the purposes of this submission, given the limited amounts of information the South West Producers have in respect of other parts of the Declared Service, the South West Producers have principally sought to analyse below how the market would be defined on basis of the West Moreton corridor coal rail access service – but consider that the QCA should seek to inform itself (if QR or other stakeholders do not provide sufficient information) about how the access criteria would apply to the wider Declared Service.

4.2 Service/functional dimension

The South West Producers consider that the functional dimension of the market is coal rail access services.

Consideration was given to whether any of the following services should be considered in the same market as the market for coal rail access services:

(a) rail haulage;

(b) road haulage; and

(c) rail access for other products.

However, for the reasons set out below, the South West Producers have concluded that the appropriate 'functional' dimension is coal rail access services.

As a starting point, it is worth noting some relevant passages from the Australian Competition Tribunal's decision in *Re Fortescue Metals Group Limited* [2010] ACompT 2 (the ***FMG Tribunal Decision***) where it was said that:

> *806.* ***The service to which access is sought is a "below rail" service. The distinction between below rail and above rail services is well known. By above rail we refer exclusively to train operating activities. Below rail activities are those relating to railway infrastructure, such as tracks, terminals, signals and bridges…***
>
> *808.* *To identify what other facility may provide the service it is necessary, first, to consider what is contemplated by an equivalent service. Assume that there is a road and a canal side-by-side a railway. Each is capable of being used for haulage via, respectively, a truck, a barge and a train. Is each providing an equivalent service? At a very general level the answer is in the affirmative. Each is a means by which persons or goods may be transported.*
>
> *809.* *Yet this is too simple an approach. Take the instant case, FMG applies for a declaration in hopes of obtaining access to a below rail service for a particular purpose – to haulage iron ore. Not all railway lines are capable of providing that service – they must be specifically constructed as heavy haulage lines. Not all roads or canals can be used to haul iron ore. Some roads are in a geographic location where haulage of iron ore is not permitted. …* ***In the Tribunal's view an equivalent service is one which is capable of satisfying the particular need for which the service is sought.***

Similarly, when the Tasmanian rail network was declared it was determined by the Minister in his reasons for the declaration decision (the ***Tasmanian Railway Decision***) that there was:

> *a clear functional separation between the upstream market for the service and the downstream market for rail line haul services*

Rail haulage

Consistent with the FMG Tribunal Decision and the Tasmanian Railway Decision, rail haulage is clearly a functionally different market (other than potentially in respect of the passenger services where QR effectively provides a bundled above and below rail service).

Rail haulage and rail access involve different suppliers (in the West Moreton rail corridor QR is the below rail provider, Aurizon is the above rail provider) and using different assets (below rail infrastructure and above rail rolling stock).

They can now (under the new standard access agreement terms) also be contracted separately, with South West Producers contracting with QR for access rights and Aurizon for rail haulage.

A separate market for rail haulage is also consistent with the ACCC's assessment of the proposed acquisition of GRail by Aurizon and Pacific National (see Statement of Issues, 6 October 2016).

Road haulage

Road haulage is clearly a functionally different market to rail access, again involving different suppliers.

In addition to the comments noted above, the Tribunal also stated in the FMG Tribunal Decision:

> *812* *It is clear that iron ore can be transported in a number of ways apart from rail haulage. One way is trucking … In this case, the incumbents (particularly*

BHPB) argue that trucking should be considered the same service. The Tribunal does not accept this argument. We will explain why.

813. *The evidence is that for many mining companies who may seek access or to avail themselves of the service, the use of … trucking is not a realistic alternative to rail haulage. … For reasons we explained in Chapter 7.3.1,* ***trucking by road is not likely to be viable for transporting iron ore over longer distances and at larger volumes****. It is true that for some miners, transporting by road … may substitute for rail. It does not follow that transporting by road … is providing the same service for purposes of criterion (b).* ***Those facilities do not provide the same service because they are not a substitute for the many mining companies that require haulage by rail as the only practically possible or economically feasible means of hauling their desired throughput of iron ore****.*

This reflects the South West Producers' understanding that trucking/road haulage is generally uneconomic for coal from the West Moreton system mines, with the economics of road haulage becoming worse the further west the mine is (e.g. for Cameby Downs) and the larger scale the mine is (e.g. for the proposed New Acland development).

For most mines the cost is more than a small but significant non transitory increase in price (***SSNIP***) (even if it was assumed that non-price constraints did not exist).

In actual fact there are of course numerous non-price constraints on utilising road haulage including:

(a) government policy, environmental, safety and social licence to operate issues which would make a large volume of trucking practically impossible; and

(b) it being a condition of the QBH coal terminal's lease at the Port of Brisbane that it is prohibited from receiving coal by road haulage delivery without the Port of Brisbane's consent (which the South West Producers understand from previous discussions is highly unlikely to be given).

Rail access for other products

As noted above an 'equivalent service is one which is capable of satisfying the particular need for which the service is sought'. The need of the South West Producers is transportation of coal.

While it might initially seem that access for coal and other products is substitutable due to using the same below rail infrastructure, the South West Producers consider there are material limits on that substitutability which evidence the services being different.

In particular there are non-price limitations such as:

(a) a material number of paths are preserved for non-coal access (such that there are limits on supply side substitutability) as detailed in the QCA's Final Decision on QR's 2015 Access Undertaking;

(b) there is a metropolitan time 'blackout' – where coal trains cannot access parts of the metropolitan network;

(c) there may be alternative substitutes for transportation of other products that do not exist for coal (noting there is some trucking of grain, such that demand side substitution dynamics appear to be different); and

(d) the pricing for non-coal services is different due to government subsidies and the lack of reference tariffs.

As noted further below in relation to paragraph (b), the limited scale of non-coal services on the West Moreton corridor rail infrastructure means that this issue is not determinative of whether criterion (b) is satisfied.

4.3 Geographic dimension

Based on the above analysis, the South West Producers consider that the functional dimension of the market is coal rail access services.

Consideration was then given to whether any of the following should be considered in the same market:

(a) access to other Queensland coal rail lines; and

(b) access to proposed rail lines which theoretically could carry coal from the 'West Moreton system' region.

Existing Queensland coal rail lines

Access to other existing coal rail lines are clearly not close substitutes.

Figure 4 below very clearly shows why there can't be a 'Queensland' market for the rail access services – a mine on the West Moreton corridor (labelled the 'Western' system in Figure 4) cannot access any coal terminal through any other railway (let alone the coal terminal at the Port of Brisbane where the South West Producers have contracted capacity on a take or pay basis).

Figure 4 – Queensland coal rail networks

As noted in the FMG Tribunal Decision:

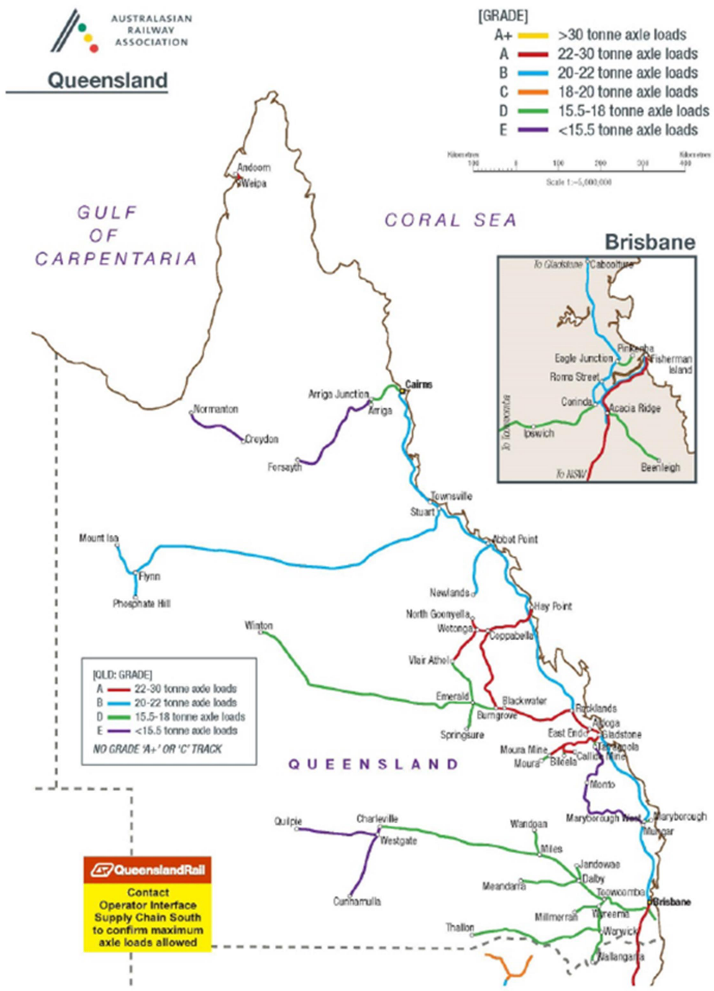
> *810.* ***Turning to another aspect of equivalence, the Tribunal's position is that an equivalent service must allow for use between the same or similar locations****. This was the approach adopted in Duke Eastern. There the service for which a declaration was sought was for the delivery of natural gas in a pipeline extending from Longford in Victoria to Sydney in New South Wales. The Tribunal (at [70]) rejected an argument that other gas pipelines originating or terminating at different locations provided the same "service".* ***The Tribunal explained that there were two possible approaches: (1) identification of the service by reference to the markets they service; or (2) identification of the service in terms of both start and end points. The Tribunal favoured the latter approach. That approach applies here, in a case where the start and end points are of real importance. What FMG has in mind is for the "inland" location to be proximate to a mine and the termination point to permit easy access to a particular port.***
>
> *811. RTIO argues in the case of the Hamersley line that an alternative rail service would be FMG's proposed Kennedy line … The Tribunal does not accept that this project, if it eventuates would provide the same service as that provided by the Hamersley line. First, the port location is different. Second, such a line*

would only enable haulage of ore from the Solomon area, whereas the Hamersley line extends well beyond that area.

That reasoning applies equally to the circumstances of the West Moreton corridor rail transport infrastructure. A rail line that does not allow origins at the coal mines of the South West Producers is not substitutable, and similarly a rail line that does not include the QBH coal terminal at the Port of Brisbane as a destination (where both South West Producers have contracted capacity) is not substitutable.

In addition, as shown below in Figure 5, the rail axle loads are different (such that, for example, rolling stock suitable to the central Queensland coal region network, cannot operate on the West Moreton corridor rail transport infrastructure).

Figure 5: Queensland rail networks' maximum allowable axle loads



Future proposed rail developments

The South West Producers acknowledge that:

(a) there has been previous consideration of proposals to develop a Surat Basin Rail link from the Wandoan project to the Port of Gladstone which, together with a further proposal to develop a Central Surat Rail link from the West Moreton system to the Surat Basin Rail, could theoretically result in it being possible to rail coal from a Surat Basin and/or West Moreton system mine to the Port of Gladstone; and

(b) the Commonwealth government has announced funding for the Inland Rail project being considered, and, at least theoretically, it might be possible at some point in the medium to long term to rail coal from a West Moreton system mine to a New South Wales coal terminal.

However, the South West Producers consider that access to those proposed rail lines is not a substitute for the West Moreton corridor coal rail access service (at least over the declaration period that is relevant to this declaration review).

The South West Producers have reached that conclusion because those rail lines:

(a) do not really meet the demand of the users – as their destination is not QBH's coal terminal (noting New Hope owns QBH and both South West Producers have take or pay contracted capacity at QBH's terminal);

(b) are hundreds of kilometres long (210km for Surat Basin Rail alone, with a further over 300 kilometres to travel on the Moura line itself to reach the Port of Gladstone, 1700km for Inland Rail) – such that they would involve high rail access and rail haulage costs;

(c) will cost billions of dollars to develop (publicly stated to be approximately $1.5 billion for Surat Basin Rail and approximately $9.9 billion for Inland Rail);

(d) would be likely to involve / require further infrastructure updates to the West Moreton network in order to be usable by the South West Producers or other access seekers;

(e) are not being driven by coal demand from the West Moreton region (Surat Basin Rail would be developed to serve the Wandoan or other very large scale Surat Basin mines, and Inland Rail is principally for general freight, such that they cannot be a substitute until they are already constructed and operational);

(f) are not going to be operational in the foreseeable future (Inland Rail is targeting the first train operating in 2024-2025, and there is no current work occurring in relation to Surat Basin Rail);

(g) are uncertain in terms of alignment (such that there is a real question of whether Inland Rail would be configured, or Surat Basin Rail would be extended, in such a way that it would provide a theoretical connection to the West Moreton mines); and

(h) are uncertain in terms of whether they will be developed, at least in respect of Surat Basin Rail.

Consequently, the South West Producers consider it is clear that access to the future proposed rail developments are not in the same market as the West Moreton corridor coal rail access service.

5 Market definition – dependent markets

5.1 Dependent markets considered

There are a number of dependent markets which have been identified by the South West Producers:

(a) the Port of Brisbane catchment coal tenements market;

(b) the south-west Queensland rail haulage market;

(c) the Port of Brisbane coal handling services market;

(d) a south-west Queensland domestic energy market; and

(e) regional markets for supply and acquisition of various goods and services in particular around the town of Oakey and the Darling Downs region more broadly.

This submission focuses on clearly defining the first three of those markets where the South West Producers consider it is absolutely clear that access (or increased access) on reasonable terms and conditions as a result of declaration would result in a material promotion of competition.

However, to the extent that the QCA formed the view that criterion (a) would not be satisfied in those markets (which would be, in the South West Producers' view, contrary to the evidence provided), the South West Producers would be able to provide submissions on further dependent markets where it considers there would be a material promotion of competition.

5.2 Port of Brisbane catchment coal tenements market

It is well accepted that there is a separate market for tenements:

(a) an iron ore tenements market was found by the Tribunal to exist in the FMG Tribunal Decision (as distinct from the market for iron ore);

(b) a market for the acquisition and disposal of exploration and/or mining authorities was found to exist by the Minister and the National Competition Council in the Port of Newcastle shipping channel declaration proceedings; and

(c) the State of Queensland indicated a coal tenements market existed in its certification application in respect of the DBCT Access Regime.

As noted in the FMG Tribunal Decision, a tenements market (distinct from coal markets) exists as there is evidence of supply and acquisition of tenements (of non-operational projects), including evidence of companies which acquire tenements with a view to future divestment for a profit rather than development.

The South West Producers consider that it is clear that such a tenements market does exist, and is geographically confined to the 'Port of Brisbane catchment', being that area for which the most efficient and lowest cost point of export is via a coal terminal at the Port of Brisbane.

There are a number of reasons the market is geographically confined in that way.

Firstly, the South West Producers, as acquirers in various tenements markets, can confirm that they value tenements using financial modelling, principally reflecting a discounted cash flow model. The critical parts of that cash flow model are:

(a) expected revenue – principally determined by coal prices and US$/A$ exchange rates;

(b) mine operating costs; and

(c) infrastructure / logistics costs.

The last of these is critically important for Port of Brisbane catchment coal tenements.

In particular, as the QCA is aware from consideration of the Western system coal tariffs in the last undertaking process, the infrastructure costs for this coal supply chain are higher than any other coal supply chain in Australia. This is exacerbated by the smaller vessel size which can be loaded at the Port of Brisbane. The South West Producers understand the high infrastructure costs were a significant contributing factor to the closure of Peabody's Wilkie Creek mine in 2013. There is also, as explained earlier in this submission, no alternative infrastructure pathway to export markets. Consequently a tenement in this system is actually far less valuable for the same quality of resource / project due to the lesser profitability anticipated as a result of infrastructure cost profile (and not substitutable).

The Final Decision of the QCA on the 2015 DAU required a tariff of $17.92 per '000 gtk from 1 July 2016 – which is substantially more than the central Queensland coal network tariffs applied under Aurizon Network's access undertaking.

In addition, there are other particularly distinct issues relating to development of West Moreton system coal projects that would also result in such tenements being valued lower on account of the risks involved. In particular, there has been previous government policy consideration given to ceasing coal haulage via the Brisbane metropolitan region – and any cessation of that (without a ready-made alternative) provides an existential threat to the future of any new coal project in the Port of Brisbane catchment. That is combined with the issue of reserved paths for non-coal traffics, and the greater opposition to coal development given proximity to farming land.

All of these issues mean that tenements in the Port of Brisbane catchment are valued at a discount to, and are not considered substitutable for, coal tenements elsewhere. While it is hard to draw comparisons, Yancoal acquired the Cameby Downs producing mine in 2011 for US$202 million (a mine with a very significant coal resource and low mine site operating costs) – while Whitehaven recently acquired the Winchester South tenement in the Goonyella region (with no likely production for years) for US$200 million.

While it is acknowledged that there are not high volumes of transactions in this Port of Brisbane catchment coal tenements market, it is notable that:

(a) Peabody has run previous sale processes for the sale of the Wilkie Creek mine (currently on care and maintenance) – including an announced sale to Exergen in July 2015, which ultimately did not proceed; and

(b) In 2013 OGL Resources was reported to agree terms for tenements in respect of the Ebenezer and Bremer View coal projects in the West Moreton region (although the agreement lapsed without completing).

The fact of those processes suggests a market, albeit one which is 'lumpy' in nature and fairly illiquid. The South West Producers consider that part of the reason for the limited transaction the market is the uncertainty arising from a declaration review of the Declared Service which is currently having a chilling impact on investment in coal mines in the region.

In addition, as noted in section 3.2 of this submission, it is possible (and this is currently such a case) for there to be a market without transactions occurring.

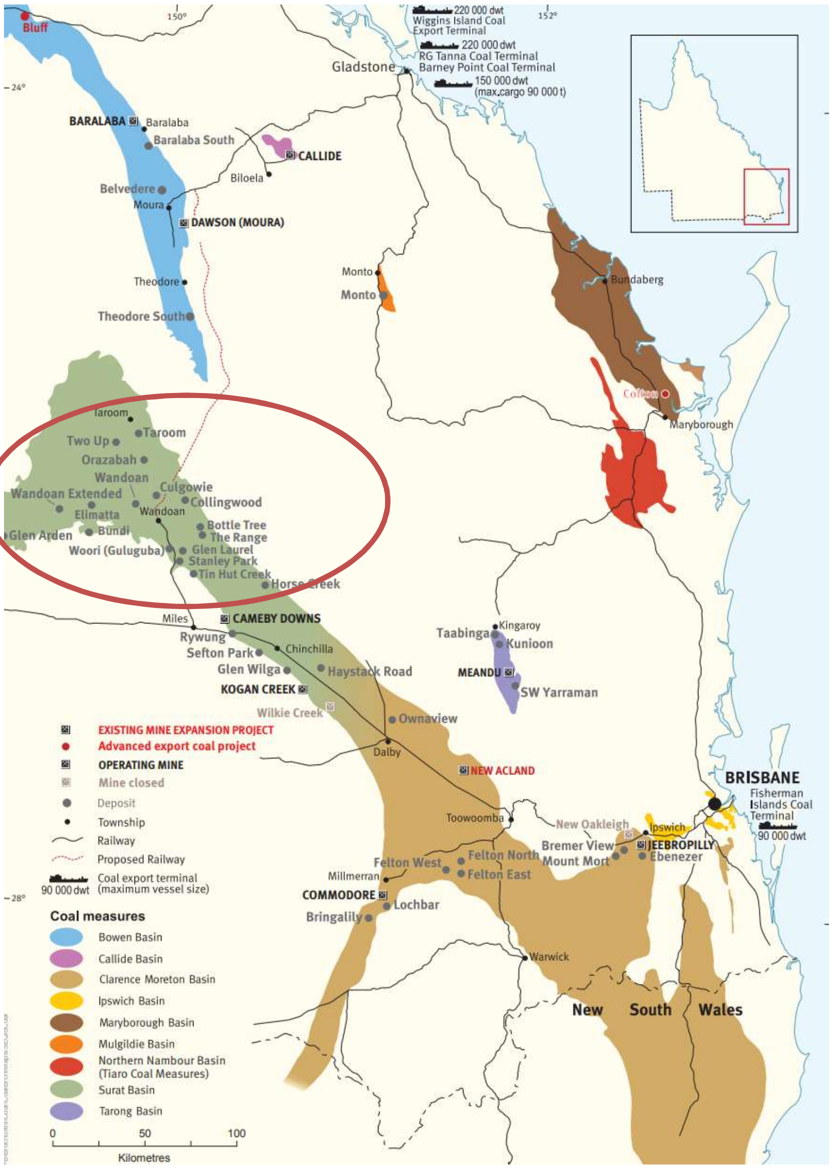
5.3 South Surat Basin coal tenements market

The South West Producers consider that there is likely to also be a separate but related market for coal tenements in the Surat Basin.

For all of the reasons noted in section 5.2, there is a market for supply and acquisition of coal export tenements.

In relation to the geographic dimension of the market, the South West Producers consider that there is likely to be a distinct market for coal tenements in the Surat Basin that are separate to those in the Port of Brisbane catchment. Figure 6 below shows the approximate area for the market.

Figure 6: South-east Queensland map (noting Surat Basin)



Source: Department of Natural Resources, Mines and Energy

That distinction is principally borne of the fact that:

(a) the Surat Basin tenements are currently disconnected from any rail line and located at a substantial distance from the nearest coal supply chain (such that the infrastructure costs involved are an even larger component of the valuation calculation than for Port of Brisbane catchment tenements); and

(b) the Port of Brisbane may not be the least cost and 'natural' coal export terminal for all Surat Basin projects – a tenement with a very large resource (such as Glencore's Wandoan project) potentially could consider an infrastructure corridor to the Port of Gladstone.

New Hope owns a number of deposits in the Surat Basin region, and while those deposits can seek access to the West Moreton network – doing so would require a material extension of the West Moreton network at a cost that is currently unknown.

5.4 South-west Queensland rail haulage market

As noted in section 4.2, rail haulage occurs in a functional market distinct from rail access, and is not in the same market as road haulage given the high costs of transportation of a bulk commodity such as coal at long distance.

Rail haulage in relation to the West Moreton corridor is also in a different market to rail haulage elsewhere because:

(a) the narrow gauge network means that rolling stock that are utilised for haulage on the West Moreton system cannot be utilised in the non-Queensland standard gauge network;

(b) as noted earlier in this submission – the maximum axle loads are significantly less than for the central Queensland coal region (due to the infrastructure not being constructed to the same heavy haulage standard), such that it is not economically viable to use the same rolling stock in both systems; and

(c) because of the distance from the other coal haulage regions, new entry would effectively require the ability for the new haulage operator to invest in a maintenance / provisioning system on the West Moreton system rail corridor.

The South West Producers acknowledge that the current state of this market is that there is only a single provider, Aurizon Operations.

However, the declaration creates the conditions for new entry (either through a new rail haulage provider or the South West Producers investing in their own rolling stock), such that there is the potential for competition.

The facilitation of, and credible threat of, a new entrant is particularly important as Aurizon's haulage fleet in use in this system is aging and there is an opportunity coming in the near future where there will at least be 'competition for the south-west Queensland rail haulage market' even if there is not 'competition in the market' at the point where Aurizon is required to make a reinvestment decision.

5.5 Port of Brisbane coal handling services market

There is only one coal terminal at the Port of Brisbane – operated by QBH, a New Hope subsidiary.

QBH's coal terminal at the Port of Brisbane currently only services two customers, being each of the South West Producers. It previously serviced Peabody's Wilkie Creek mine (which ceased operating in 2013).

Currently there can be competition between the South West Producers for ad-hoc capacity, and if the coal price remains high and the West Moreton corridor coal rail access service declared, potentially competition for long term capacity.

QBH is highly dependent on the continuation of both customers.

The market is a Port of Brisbane coal handling services market, not a wider market as:

(a) other terminals at the Port are not suitable for coal and would require very significant capital investment to be useable for coal (and do not have the space required for coal stockpiles); and

(b) other coal terminals (in central Queensland or New South Wales) are geographically distant and not connected to the West Moreton coal mines.

For completeness, it should be noted it is a condition of QBH's lease that QBH can only use the premises for the storage, loading and unloading of export coal (without the consent of the Port of Brisbane), such that it is not possible for QBH to supply services other than coal handling (i.e. there is no supply side substitutability for other services).

5.6 SEQ/NNSW domestic energy market

Each of the mines in the West Moreton systems produce thermal coal (used for power generation).

The thermal coal produced is either:

(a) railed via the West Moreton rail transport infrastructure and exported via the Port of Brisbane to international export customers; or

(b) trucked to a range of domestic customers in south-east Queensland or northern New South Wales (SEQ/NNSW).

New Hope currently supplies 26 different domestic customers in the SEQ/NNSW region in the following industries:

Industry	Number of customers
Abattoir	12
Aquatic	1
Building Materials	2
Fertilisers	1
Floral	1
Food	3
Hospital	1
Nursery & Garden	1
Paper	1
Rendering – Animal By-products	3

The coal sold to the SEQ/NNSW customers is predominantly used in boilers to provide process steam.

These customers are in quite a different position to export customers who have a number of different sources of thermal coal to choose from. In particular, the very substantial costs of transport from other coal fields to this region, means that coal produced outside of the West Moreton region is not substitutable.

The South West Producers acknowledge that some of these customers can theoretically access alternative energy sources – principally gas, although the costs of that are high given the east coast gas market shortage that is currently being experienced. It is theoretically possible they might also be able to access other energy sources such as diesel or bagasse, but that would also be expected to involve higher additional expense. In all cases a switch of energy source will involve some switching costs in testing/commissioning the new energy source.

Consequently it appears to the South West Producers, that there is a separate market for SEQ/NNSW energy supply, in which coal from the West Moreton mines is currently the main source of supply.

By way of practical evidence, some of these customers have indicated to New Hope previously that if New Hope was to cease supplying domestically it is likely they would have to close their business – which tends to suggest a lack of substitutable energy supply sources to which customers can switch in the event of a SSNIP in the price of coal to those customers.

5.7 Other regional markets

The South West Producers are (as a result of their mining operations), major acquirers of a variety of goods and services in the local Darling Downs region. Similarly they employ a very significant number of personnel at the mine sites. All of this results in economic wealth and demand for services in the Darling Downs region.

If the QCA was not satisfied that criterion (a) was satisfied on the basis of at least one of the other dependent markets noted above, then it would be necessary to consider the exact definition of the various regional markets in which more indirect impacts of the declaration ceasing may be felt.

6 Criterion (a) – Promotion of competition in dependent markets

6.1 Interpretation of criterion (a)

Under section 76 QCA Act, criterion (a) requires:

> *that access (or increased access) to the service, on reasonable terms and conditions, as a result of a declaration of the service would promote a material increase in competition in at least 1 market (whether or not in Australia), other than the market for the service*

As described in section 4 above the relevant market for the service is the market for the West Moreton corridor coal rail access service.

Criterion (a) requires consideration of whether access (or increased access) on reasonable terms and conditions as a result of declaration would promote a material increase in competition in a market other than the market for the service.

The explanatory memorandum to the *Competition and Consumer Amendment (Competition Policy Review) Act 2017* (when in bill form) at 12.19-12.20, and the preliminary views provided in the Staff Issues Paper suggest this should occur by considering:

(a) other relevant markets in which the state of competition may be adversely impacted (such as the dependent markets identified in section 5 of this submission); and

(b) how the likely state of those markets would be altered with and without declaration.

However, the South West Producers note that:

(c) as criterion (a) continues to use the wording 'access (or increased access)' (without any wording in the QCA Act that indicates the interpretation of those words from the decision in *Port of Newcastle Operations Pty Ltd v Australian Competition Tribunal* [2017] FCAFC 124 has been altered), the criterion should arguably continue to require a comparison of the likely state of the market with or without 'access' (meaning a right or ability to use the service as interpreted in that decision); and

(d) the additional wording 'on reasonable terms and conditions as a result of declaration' arguably merely indicates that in the usual situation where a party is applying for a declaration that had not yet occurred, that it should be assumed that declaration would result in access (i.e. a right to use the service) being provided on reasonable terms and conditions.

The South West Producers consider that on that interpretation it would be absolutely clear that criterion (a) would be satisfied given the very clear damage to competition that would occur in numerous markets if there was no right of access to the West Moreton coal rail access service – as it would eliminate competition in at least the south-west Queensland rail haulage market and the Port of Brisbane market for coal handling services.

Given how clear it would be that criterion (a) would be satisfied on that interpretation, these submissions focus on demonstrating that criterion (a) would be satisfied on the basis of the interpretation suggested in the QCA Staff Issues Paper.

It is, of course, worth noting that the various statements of how criterion (a) works assume the criterion is being considered in the context of an entity seeking declaration of a currently undeclared service (where the extent of likely future access without declaration would be clearer). However, the QCA is, in the context of this review, placed in the more unusual position of determining whether a future continuation of declaration would promote a material increase in competition compared to the likely state of access without declaration.

6.2 What is required to promote a material increase in competition?

The revised criterion (a) continues to use the wording 'promote a material increase in competition' and there has not been any indication in connection with the recent reforms to suggest that the intention was to change the settled meaning of that wording. Consequently, the only thing that has changed in criterion (a) is therefore what it is that is required to have produced that promotion – declaration (rather than 'access').

The materiality threshold is described in the exploration memorandum (at [1.38]) to the bill which introduced the material increase in competition wording to mean *'not trivial'*. In other words, the materiality threshold which is required to be satisfied under criterion (a) is not a particularly high one.

The threshold for what constitutes promotion of an increase in competition is well established and set out in the Australian Competition Tribunal's decision in *Re Virgin Blue Airlines Pty Ltd* [2005] ACompT 5 at [162]. In that decision the Tribunal stated:

> *In our view, we need to be satisfied that if the Airside Service is declared there would be a significant, finite probability that an enhanced environment for competition and greater opportunities for competitive behaviour – in a non-trivial sense – would arise in the dependent market,*

And similarly:

> *The Tribunal does not consider that the notion of 'promoting' competition in a 44H(4)(a) requires it to be satisfied that there would be an advance in competition in the sense that competition would be increased. Rather, the Tribunal considers that the notion of 'promoting' competition in s 44H(4)(a) involves the idea of creating the conditions or environment for improving competition from what it would be otherwise. That is to say, the opportunities and environment for competition given declaration, will be better than they would be without declaration*

This was also the position taken in *Duke Eastern Gas Pipeline* (2001) ATPR 41-821 at 43.061 at [75]), where the QCA Act empowers the QCA to require QR to submit an access undertaking in respect of the declared service (which the QCA has recently exercised to require QR to submit the 2020 draft access undertaking);

the Tribunal stated that:

> *The notion of promotion of competition involves a consideration that if the conditions or environment for improving competition are enhanced, then there is a likelihood of increased competition that is not trivial*

Similarly the NCC's Guide to Declaration provides that:

> *3.23 The promotion of a material increase in competition involves an improvement in the opportunities and environment for competition such that competitive outcomes are materially more likely to occur.*

Accordingly, it is clear that for the QCA (and ultimately Minister) to be satisfied in respect of criterion (a), it only requires that there would be a 'significant finite possibility' of an enhanced environment for competition and greater opportunities for competitive behaviour arising from declaration. The QCA (and ultimately Minister) are not required to be satisfied that, if the declaration was to cease there would definitely or even probably be an immediate and material decline in competition levels.

6.3 Protections arising from declaration

The likely future state of the dependent markets with declaration is well reflected by the status quo.

Each of the following are protections which assist with promoting and providing the opportunity for competition which currently exist as a result of declaration:

(a) the QCA is responsible for setting Western system coal reference tariffs and has a clearly established methodology for setting those tariffs at an efficient level (see the decisions in the context of the 2015 Draft Access Undertaking process);

(b) the QCA is responsible for setting reasonable standard terms of access – as per the standard access agreement terms;

(c) a transparent queuing process which provides an even playing field for all access seekers;

(d) a more transparent operating regime – including through the operating requirements manual;

(e) the disclosure and reporting regime – which provides transparency and accountability and should assist in improving performance and informing access negotiations;

(f) the QCA Act and undertaking provide rights to bring access disputes where an access seeker cannot reach agreement with QR on obtaining access to the QR Network;

(g) other protections that the QCA Act provides for declared services generally, such as obligations to:

  (i) negotiate access requests in good faith;

  (ii) try to meet the reasonable requirements of users; and

  (iii) the prohibition against preventing or hindering access or use of the services.

It would be anticipated that each of those protections would continue in materially the same form in future regulatory periods were the declaration continued.

6.4 Likely outcomes without declaration

The likely future state of the dependent markets without declaration will be impacted by the following outcomes:

(a) the existing 2016 UT1 will terminate on 30 June 2020 – so all protections under the access undertaking, most materially in respect of pricing will cease at that point;

(b) all of the protections provided by the QCA Act for declared services will also cease; and

(c) the existing access agreements in respect of the QR Network do not provide any automatic right for future renewals, such that protections which might be said to exist under those agreements will progressively expire (assuming for now that they were not terminated for frustration due to their reliance on the existing regulatory regime).

6.5 QR's incentives

In the absence of declaration and competitive constraint, QR would be incentivised to increase prices to realise monopoly profits, reduce service levels and seek more favourable terms (i.e. charge more and give less).

One only needs to consider QR's proposed pricing in the context of the now approved access undertaking in contrast to the resulting QCA outcome – to see that even where constrained by the regulatory regime, QR sought a significantly higher price than was considered to an efficient and appropriate price by the QCA.

Figure 6: Western System tariff pricing proposals

Pricing source	Tariff per '000 gtk (on a 1 July 2016 basis)
QR 'Ceiling Tariff'	$34.92
QR Proposed Tariff	$19.74
QCA determined efficient price	$17.92 West Moreton $16.66 Metropolitan

Source: Queensland Competition Authority, Decision – Queensland Rail's Draft Access Undertaking, June 2016

QR's 'ceiling price' was intended to reflect the costs of a stand-alone service for the coal users. In other words it is some kind of proxy for the costs of developing a rail line that would just serve the West Moreton coal mines.

It goes without saying that, pricing at that level, would make all West Moreton coal mines uneconomic, yet (as discussed earlier in this submission), other rail networks and road haulage do not provide substitutes or alternatives which would otherwise constrain QR's pricing, such that the only limits on QR's monopoly pricing are the price at which it becomes economic to develop a duplicate facility (assumed to be something akin to that ceiling price) or the price at which the existing producers exit the market.

The South West Producers assume that QR may assert that it has an incentive to maintain throughput in relation to the West Moreton corridor coal rail infrastructure, such that it will only increase prices to the profit maximising point (i.e. just below the point at which coal producers exit the market).

However, the South West Producers do not consider that the QCA can simply assume that access will continue to be provided on that basis premised on that theoretical incentive alone.

QR may argue that it has no intention of increasing prices to such a point that the West Moreton coal industry grinds to a halt. However, the South West Producers consider that:

(a) QR's submissions in respect of the 2016 UT1 review demonstrates that if QR is willing to press coal producers with inefficient and unrealistic price increases in a regulated climate, it is likely to do so on a more catastrophic scale in an unregulated climate – not seeking to materially increase charges is inconsistent with QR's previous behaviour;

(b) QR is a passenger train operator in the metropolitan region – and comes under great public and policy pressure to operate passenger trains in a way that limits delays and outages – such that QR's long term commitment to continuing the coal industry throughput is questionable given the interaction with the passenger network;

(c) given QR is politically controlled, its commitments can easily change off the back of political policy changes such that a commitment to refrain from pressing price increases on coal companies may be exchanged for:

    (i) seeking to derive greater revenue for the State budget; or

(ii) eliminating coal transport through the Metropolitan Network, thereby preventing export via the Port of Brisbane and severely damaging existing West Moreton mines and increasing the barriers to entry for new explorers; and

(d) even in circumstances where QR genuinely sought to limit its price increase to a point below the tipping point (being the point at which existing coal companies exit the market and barriers to entry rise such that new entrants do not enter the Western Moreton coal industry) QR is not sufficiently familiar with the coal market and long term coal price projections and coal mine operating costs such that any projections it conducts will be flawed and will result in irreversible damage to the West Moreton coal industry.

Given the narrow customer base, there is a very clear risk that if QR increases prices to a point that one of the two South West Producers ceases to invest or shuts (as Wilkie Creek did previously) – it will create an economic 'death spiral' or 'domino effect' where the other South West Producer is also forced to exit (as it cannot pay charges sufficient for QR to recover all of the relevant costs from that customer alone). Regulation may (through optimisation of the asset base) resolve this economic 'death spiral', but should prevent it occurring in the first place in a way that commercial negotiations with a monopolist will not.

6.6 Port of Brisbane catchment coal tenements market

As discussed in section 5 above, there is a separate Port of Brisbane catchment coal tenements market.

The removal of declaration will have a real chilling impact on that market.

In particular, the South West Producers have real reservations about future investment in the West Moreton coal mining industry in the event that the West Moreton corridor rail access service ceased to be declared.

Potential future investors in the Port of Brisbane catchment coal tenements markets would, in the absence of declaration, be faced with:

(a) uncertain terms of access; and

(b) uncertain pricing for access,

both of which are to be negotiated with a monopolist. In that environment it is hard to conduct discounted cash flow modelling to determine the value of the tenement, and hard to satisfy financiers of the prudence of such an investment. As a result, it is hard to see how such an investor could place significant value on tenements in the Port of Brisbane catchment.

In addition, for existing tenement holders, a removal of the declaration would create a disincentive to explore for resources on those tenements, and thereby reduce the supply (either in quality or quantity) of tenements in this market.

The South West Producers consider it will, in effect, eliminate from the market all acquirers of tenements other than those who are acquiring for the purposes of power generation in an area closely proximate to one of the existing coal fired power stations (the locations of which are shown in Figure 2 earlier in this submission) – which are not reliant on the QR Network, and at the same time reduce future supply.

The distortion of competition (the removal of those investors seeking to develop projects for coal export or to on-sell tenements to others looking to do that) will have a material adverse impact on demand in the Port of Brisbane coal tenements market.

Consequently, the South West Producers consider that criterion (a) would be satisfied as access (or increased access) to the Declared Service (or at least the West Moreton corridor coal rail access service), on reasonable terms and conditions, as a result of a declaration would promote a material increase in competition in the Port of Brisbane catchment coal handling services market.

6.7 South Surat Basin coal tenements market

As discussed in section 5 above, there is likely to be a separate Surat Basin coal tenements market.

Similarly to the above, the removal of declaration will have a chilling impact on that market, particularly in respect of small-scale tenements for which new greenfield infrastructure towards the Port of Gladstone will not be economically viable.

In particular, similar to in the Port of Brisbane catchment the South West Producers consider that small-scale investors in the south Surat Basin catchment will be incentivised to cease exploration and development in the south Surat due to:

(a) uncertain terms of access; and

(b) uncertain pricing for access,

both of which would force small-scale investors to rely upon the development of, and access to, the Surat Basin Rail. That access would likely come at a much higher cost than that of access to a declared West Moreton corridor coal rail access service and the addition of increased rail haulage costs of transporting coal up through the Surat Basin Rail and the Moura System to the Port of Gladstone would make that option economically infeasible.

The South West Producers consider these factors would force those miners who typically seek to acquire small-scale tenements (primarily junior producers) out of the market due to:

(c) an inability to fund the higher cost of access; and/or

(d) to sufficiently negotiate reasonable terms of access,

thereby having a material adverse impact on demand in the Surat Basin tenements market.

Similarly, for existing tenement holders, a removal of the declaration would create a disincentive to explore for resources on those tenements, and thereby reduce the supply (either in quality or quantity) of tenements in this market.

Consequently, the South West Producers consider that access (or increased access) to the Declared Service (or at least the West Moreton corridor coal rail access service), on reasonable terms and conditions, as a result of a declaration would promote a material increase in competition in the south Surat Basin coal tenements market.

For completeness the South West Producers note that, even if the Surat Basin tenements and the Port of Brisbane catchment tenements were considered to be in the same market – given the similar impact on both of the declaration being removed – it is clear that criterion (a) would still be satisfied based on that wider market definition.

6.8 West Moreton corridor coal haulage

As discussed in section 6 above, there is a separate West Moreton coal haulage market.

The South West Producers consider it is clear that the removal of declaration would result in a material decrease in competition in the West Moreton corridor coal haulage market.

It is acknowledged that Aurizon is currently the only above rail haulage provider in the market. However, its fleet is aging and in the near term either Aurizon will invest in further fleet or a new entrant will enter the market. That is, at the point in time where Aurizon is no longer willing to provide services with its existing fleet, there will be competition 'for the market' – even if there is not ongoing more regular competition 'in the market' in the way that occurs in the central

Queensland coal networks (particularly because the required investment may be as low as two locomotives with the addition of wagons/other rolling stock which could be owned by a separate supplier).

The South West Producers have both considered a range of options including investing in their own fleet, negotiating with Aurizon in relation to investment in new fleet or seeking to sponsor a new entrant into the market. They therefore are well placed to appreciate the environment that currently exists for new entry.

New entry (not necessarily immediately) provides a threat which imposes competition in the negotiation of haulage rights.

However, that threat will be completely eliminated if the declaration was to cease. From the discussions each South West Producer has had with potential new entrants in the past (and in their own considerations about investing in fleet) it has been clear that open access at QCA determined pricing is an absolute pre-condition for considering entry.

That issue is obviously exacerbated by the fact that the impact in the Port of Brisbane catchment coal tenements market (and the Surat Basin coal tenements market), would be to remove future demand – making it even harder to justify investment in long life rolling stock, when there is real questions about the future demand for coal haulage.

In terms of the prospects of new entry with declaration, the South West Producers consider that is a realistic prospect for any rail haulage provider that was able to win business from both South West Producers if it occurred at the point in time when Aurizon had to make a reinvestment decision. There have been haulage operators who have expressed a willingness to seriously consider an entry into the market in those conditions.

The South West Producers also note that Southern Shorthaul Railroad profitably operates for Centennial Coal in New South Wales on a similar basis (smaller trains than in the Hunter Valley or Central Queensland) and smaller tonnages (14.9 million tonnes in 2017 – not all of which would have been hauled by rail).

Keeping in mind that, in order to be satisfied of criterion (a), the QCA only needs to be satisfied that the continuation of declaration would give rise to a significant, finite probability of an enhanced environment for competition and greater opportunities for competitive behaviour – in a non-trivial sense – in a dependent market (compared to the likely state of the market without declaration), the above issues in respect of potential for new entry and reduced demand are clearly sufficient for criterion (a) to be satisfied in respect of the South-west Queensland haulage market.

6.9 Port of Brisbane coal handling services market

As discussed in section 5 above, there is a separate Port of Brisbane coal handling services market.

This market is downstream of the coal tenements market, rail access and rail haulage markets where the impact on competition as a result of the declaration being removed will be felt.

The South West Producers consider it is clear for the reasons set out above that:

(a) QR will be incentivised to increase prices – creating a high risk of one or both South West Producers being driven out of the market (and thereby substantially impacting on the demand for coal handling services at the Port of Brisbane);

(b) the risk of material pricing increases and uncertainty of prices, access terms and ability to obtain access will reduce investment in existing West Moreton coal mines and demand in the various coal tenements market and thereby reduce the future demand for coal handling services at the Port of Brisbane; and

(c) that reduced demand will reduce any incentive for QBH (or any potential new entrant) to invest further in providing coal handling services at the Port of Brisbane,

and this material reduction in demand will be sufficient for criterion (a) to be satisfied in respect of the Port of Brisbane coal handling services market.

6.10 SEQ/NNSW Domestic Energy Market

As noted earlier in the submission, each of the mines in the West Moreton systems produce thermal coal (used for power generation), with New Hope selling coal to a range of domestic customers in the SEQ/NNSW region predominantly for use in boilers to provide process steam.

For the same reasons previously noted, QR's incentives and ability to increase price (in the absence of declaration) creates the clear potential for QR's pricing to result in Yancoal or New Hope exiting the market. Even if it was Yancoal who exited the market (who does not currently sell domestically), the result would be likely to be a New Hope exit as New Hope would not be able to bear alone the costs of the West Moreton corridor rail transport infrastructure.

That would create a material lessening of competition in the SEQ/NNSW Domestic Energy Market as it means that the absence of declaration is likely to remove one or both potential supplier to the market.

As also noted above:

(a) these customers are in quite a different position to export customers who have a number of different sources of thermal coal to choose from; and

(b) the very substantial costs of transport from other coal fields to this region, means that coal produced outside of the West Moreton region is not substitutable.

Even if gas and other energy sources provide some limits, the reality is that a SSNIP on the price of thermal coal from the West Moreton mines would not give rise to substitution given the lack of options these customers have.

The South West Producers genuinely consider that some of these customers will, as they have indicated to New Hope previously, simply go out of the business in the event New Hope sought to pass through any increase in costs resulting from QR's monopoly behaviour.

Consequently, the South West Producers consider that criterion (a) would be satisfied as access (or increased access) to the Declared Service (or at least the West Moreton corridor coal rail access service), on reasonable terms and conditions, as a result of a declaration would promote a material increase in competition in the SEQ/NNSW domestic energy supply market.

6.11 Other regional markets

The South West Producers are (as a result of their mining operations), major acquirers of a variety of goods and services in the local Darling Downs region. Similarly they employ a very significant number of personnel at the mines sites. All of this results in economic wealth and demand for services in the Darling Downs region.

If the QCA was not satisfied that criterion (a) was satisfied on the basis of at least one of the first three dependent markets noted above, then it would be necessary to consider the exact definition of the various regional markets in which more indirect impacts of the declaration ceasing may be felt.

7 Criterion (b) – Foreseeable demand at least cost

7.1 Interpretation of criterion (b)

Criterion (b) requires consideration of whether the facility for the service could meet the total foreseeable demand in the market:

(a) over the period for which the service would be declared; and

(b) at the least cost compared to any 2 or more facilities.

The South West Producers agree with the statement in the Staff Issues Paper that there is *'substantial congruence in criterion (b) in both Part 5 of the QCA and Part IIIA of the CCA, with the articulated approach of the NCC and ACT to criterion (b) in its previous form'* and that *'previous NCC recommendations and Tribunal decisions on criterion (b) in the context of Part IIIA are relevant and should be considered as part of evaluation where criterion (b) in the context of Part 5 of the QCA Act is satisfied'*.

Those previous decisions interpreted the previous criterion (b) in language such as the following from *Duke Eastern Gas Pipeline Pty Ltd*:

> *We agree with the submissions of NCC that the "test is whether for a likely range of reasonably foreseeable demand for the services provided by means of the pipeline, it would be more efficient in terms of costs and benefits to the community as a whole, for one pipeline to provide those services rather than more than one.*

Where the legislature is conscious of those previous decisions and then chooses to enshrine that language in the new statutory threshold for criterion (b), it must be assumed that the legislature wished to have the law reflect those previous decisions.

The NCC described this as covering 'infrastructure exhibiting natural monopoly characteristics'. (consistent with the commentary in the explanatory memorandum to the *Competition and Consumer Amendment (Competition Policy Review) Bill 2017* (***Competition Policy Review Bill***) specifies that the relevant test is a natural monopoly test [12.22 – 12.23]).

That test is market-based – inclusive of any substitute services which serve or will serve the market, and considers foreseeable market demand for the period of declaration with the maximum demand able to be supported by the existing facility. In assessing substitutable services as part of the considerations under criterion (b), it is accepted that if there is no substitutable service provided by another facility, the only alternative scenario able to be considered is the duplication (or partial duplication) of the existing facility.

7.2 The facility for the service

The relevant facility for the service is the below rail QR West Moreton system and the section of the Metropolitan system required for the South West Producers to reach the Port of Brisbane, namely sections of the Ipswich, Beenleigh, Cleveland lines and the dedicated dual gauge freight and coal lines from Lytton Junction to the port at Fisherman Islands (collectively referred to throughout this submission as the ***West Moreton corridor rail transport infrastructure***).

7.3 The market in which foreseeable demand is assessed

As specified in section 4 of this submission, the relevant market in which to assess foreseeable demand is the market for West Moreton corridor coal rail access services.

7.4 The period over which foreseeable demand is assessed

As the service is already currently declared, and because the decision regarding the relevant period for declaration is one for the QCA to recommend and for the Minister to make, the

South West Producers consider that the relevant period over which to assess foreseeable demand must be any reasonable period in which the test of foreseeable demand at least cost is met.

The explanatory memorandum to the Competition Policy Review Bill specifies that the Council and the Minister may need to consider multiple potential declaration periods to determine if there is an appropriate period over which criterion (b) is met (see [12.27]).

In considering this with the long term tenure of coal mine investments (usually around 10 to 30 years) and the long useful life of both above and below rail investments, the South West Producers consider that the relevant period ought to be the longest period for which the test of foreseeable demand at least cost (and all other access criteria) is met.

This is on the basis that an extended declaration period will better produce efficiencies, including capitalisation on assets (including coal mine infrastructure and both the below rail infrastructure and rolling stock), and investment certainty in dependent markets.

The South West Producers also consider there is limited harm in such an approach given that it will remain open to QR to seek revocation of the declaration under the QCA Act if, at any point in the future, it was to consider that the service had ceased to satisfied the access criteria.

Acknowledging that there must reach some outer time frame where there is insufficient certainty as to whether the access criteria would continue to be met, the South West Producers consider that a reasonable period over which to declare the service is a period of 15 years (which is notably the same as that recently adopted in respect of the Newcastle shipping channel declaration). The South West Producers also note that the most recent declaration decision regarding a railway access service was the Goldsworthy Railway being declared for 20 years.

7.5 Foreseeable demand in the market

The next step in the criterion (b) analysis is to determine the foreseeable demand for the West Moreton corridor coal rail access service.

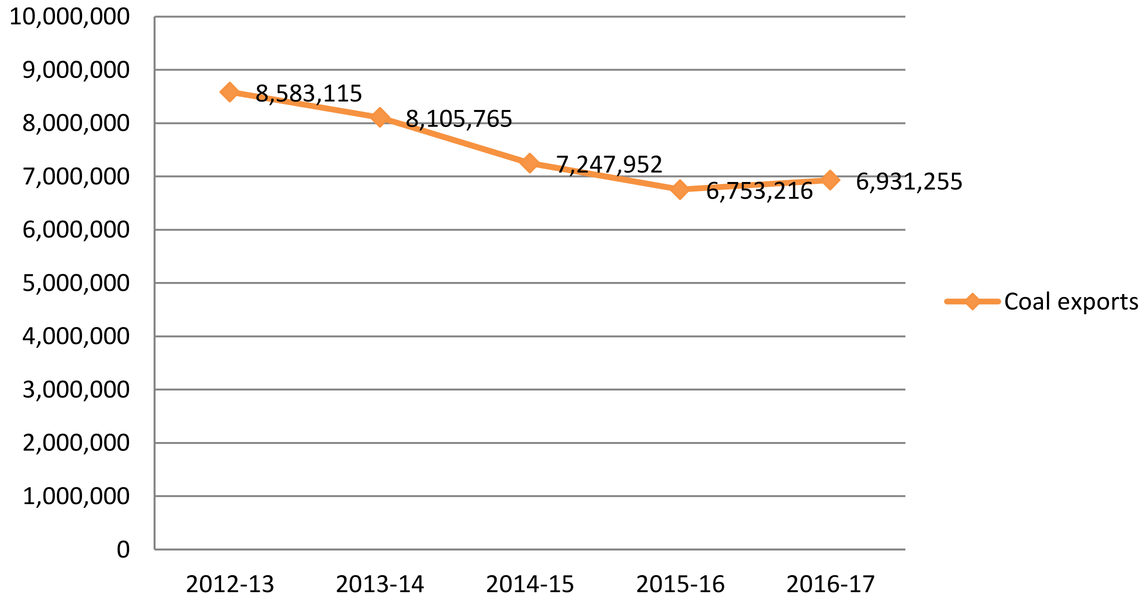
(a) Projections from historical data

All coal transported on the West Moreton corridor coal rail access service to the Port of Brisbane originates from mines operated by the South West Producers (as does all domestic supply other than the mines co-located with a power station under common ownership).

As coal paths on the West Moreton coal rail access service are limited (to 77 paths west of the range and 87 beyond it of 112 paths, as per the QCA Final Decision on QR's 2015 DAU) the South West Producers are limited in the amount of coal they are able to transport utilising the West Moreton coal rail access service.

As such, capacity on the West Moreton coal rail access service is shared between the South West Producers, with each mining company 'backfilling' capacity as it becomes available and neither mining company exceeding the capacity constraints available on the network. This constant level of demand is supported by trade statistics for the Port of Brisbane for the five years ending 30 June 2017, which indicate marginal variations in coal exports from the port:

Figure 7: Port of Brisbane coal exports for five years ending 30 June 2017 (mtpa)



Source: Queensland Department of Transport and Main Roads, *Trade Statistics for Queensland Ports – Throughput statistics for the five years ending 30 June 2017*

Although these statistics indicate that demand for the West Moreton coal rail access service has decreased in recent years (19% decrease in exports between FY2012-13 and FY2016-17) , this decrease is principally attributable to the ceased operations at the Wilkie Creek mine which occurred in mid-2013 in the midst of increased costs of operation and a reduced coal price.

As a result, the South West Producers consider that the approximate 7 mtpa level which has prevailed since 2014/15 is likely to reflect the foreseeable demand in the longer term.

(b) **South West Producer Views**

It is acknowledged that there is some uncertainty about some projects or expansions of the West Moreton mines – but the South West Producers have both individually formed the view that, if the declaration continued, they would be likely (subject to relevant government, third party and internal approvals) to seek to increase production to something approaching the network capacity if the other South West Producer's project was not to eventuate.

In effect, the South West Producers' view is that foreseeable demand is effectively constrained by network capacity (because it is uneconomic for any producer to bear all the costs of the West Moreton corridor coal access service on the basis of its current tonnage alone – such that an economically rational response to the other South West Producer exiting would be for the remaining South West Producer to expand production to the extent possible to cover the gap).

(c) **QR Projections**

The South West Producers do not feel at liberty to disclose the full contents of the West Moreton System – Regional Network Planning discussions held with QR given their confidential nature.

However, at a high level summary, the South West Producers note that QR has also previously consulted with them in respect of incremental expansions to the West Moreton rail infrastructure, which would be able to achieve a further increase in capacity – to create total capacity of up to 12-20 mtpa (at costs of approximately $20 million for the two additional passing loops required for the 12 mtpa – and $150 million for more significant infrastructure upgrades to achieve the 20 mtpa).

That discussion occurred in the context of discussing potential expansion pathways – and was not discussed as a projection of actual foreseeable demand.

The South West Producers do not regard those tonnages as reasonable or likely demand – but note them, as those cost figures conclusively demonstrate that criterion (b) is satisfied given how much more that it would cost to develop a stand-alone rail line for these volumes.

(d) **Prospects of Wilkie Creek restarting**

The South West Producers consider there is no reasonable prospect of the Wilkie Creek mine being restarted, such that it would not be appropriate to include it in any projection of foreseeable demand.

The South West Producers appreciate that Peabody has, in the past, sought to sell the mine site. However, Peabody appears to have removed all equipment and mine-site infrastructure from the mine site. It would involve a very high capital cost to restart relative to the coal thought to be remaining and the South West Producers are not aware of any party being interested in doing so.

(e) **Existing contracted capacity**

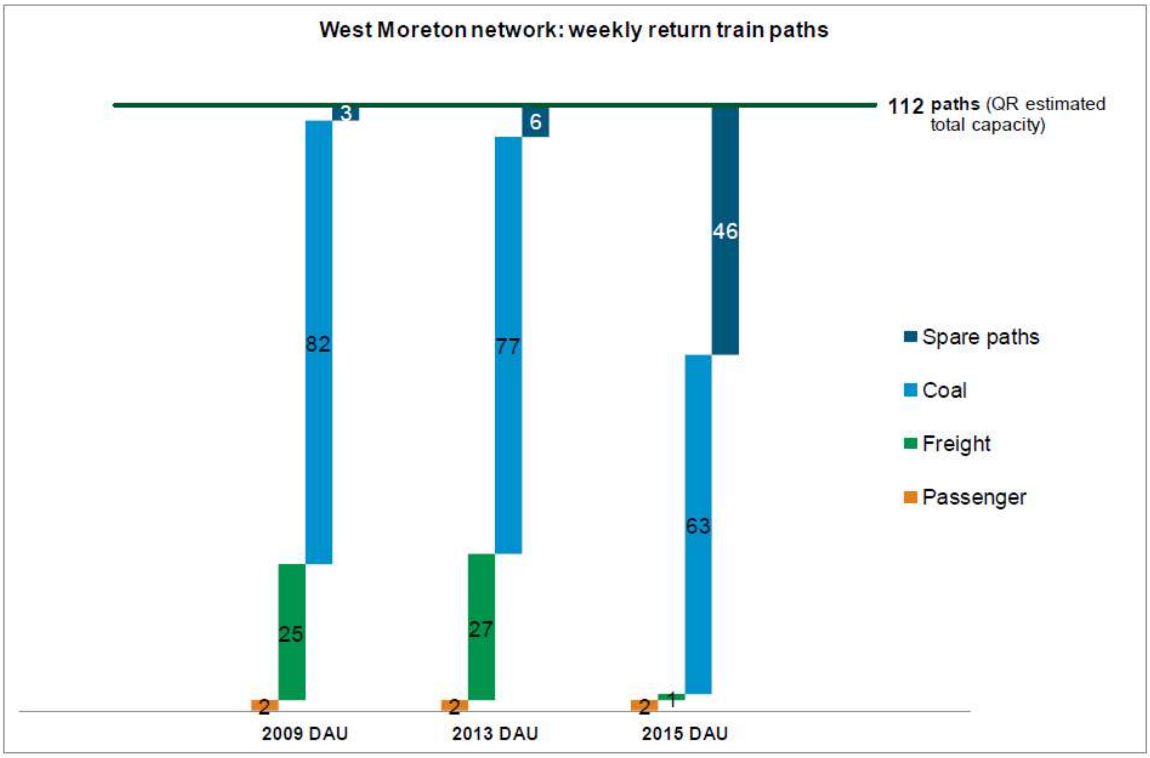
During consultation for the determination of QR's 2016 Access Undertaking 1 (2016 UT1), QR asserted (in contradiction to its previous submissions) that there was no cap on the number of train paths for coal services which travel through the Metropolitan Network. QR's motivation for those claims was to enforce allocation of fixed costs to coal companies rather than allocating costs in accordance with pathing constraints (that is, also allocating costs among grain and passenger services) in light of a changed (and negative) volume outlook.

There is no indication that those retained paths for non-coal uses would be available to coal even if demand were to reach that level.

At that time, the PwC report commissioned by QR conceded that 41% of paths on the West Moreton Network were unused. The QCA also referenced the significant reduction in forecast traffic volumes for the West Moreton network in its Decision on the 2015 DAU (which became 2016 UT1), which indicated that the West Moreton network capacity utilisation status had historically decreased.

Figure 8: West Moreton network capacity utilisation status

Figure 3: West Moreton network capacity utilisation status



Note: a) The 2009 DAU capacity utilisation status corresponds to the last two years of the DAU period (2011–12 and 2012–13. b) The 2015 DAU forecast coal paths are 62.8 (for presentational purpose we have used 63).

Source: QR Network (2009); QCA (2009b); Queensland Rail (2013a: 8; 2013d: 5; sub 2: 20).

Source: Queensland Competition Authority, Decision on QR Draft Access Undertaking, June 2016

It appears from the endorsed variation event reference tariff adjustments that have occurred since then that there has been some additional lift in volume. For example, on 9 January 2017, QR notified the QCA that it had contracted additional coal-carrying train services from Yancoal's Cameby Downs mine which would exceed the forecast volumes relied upon by the QCA when it assessed and approved the West Moreton reference tariffs.

The QCA presumably has visibility of the contracted capacity levels of each South West Producer (that for competition law and commercial sensitivity concerns the South West Producers are not able to share with each other) and the South West Producers ask that those be taken into account.

Despite QR's conflicting statements about the ability to contract additional coal services which were made throughout previous consultation processes undertaken by the QCA, the additional capacity contracted to Yancoal still appears to indicate that material surplus capacity does still exist within the West Moreton coal rail access service.

(f) **Impact of agricultural and passenger services on the West Moreton coal rail access service**

Even in circumstances where access to the services was not considered to be constrained to a coal-only market despite the clear separation of coal and freight services in the structure of existing regulation, the impact of agricultural and passenger services on demand for the West Moreton coal rail access service is so marginal (as shown in the diagram above) that it would not have a material impact on the foreseeable demand addressed above.

The draft report prepared by Uniquest for the QCA during the Western System reference tariff review supports this, referencing that 'only 3 of the allocated 35 non-coal paths are used by non-coal services, with the remaining paths unused'.

(g) **Surat Basin coal related demand**

For completeness, the South West Producers note that they did give consideration to whether Surat Basin coal mines should be included in foreseeable demand for these purposes.

However, it appears to the South West Producers, that even if some Surat Basin demand was railed through the West Moreton corridor at the same time as higher demand from West Moreton developments (i.e. New Acland or an expanded Cameby Downs) those operations would be anticipated to be from smaller projects (likely no larger than 3-5mtpa) such that demand would remain within the capacity of the existing facility.

To the extent that Glencore was to develop Wandoan (together with a rail link to the Port of Gladstone), that demand (and any other large scale demand originating in the Surat Basin) would be in a different market (as access would not be being sought through the West Moreton corridor).

(h) **Conclusions on foreseeable demand**

It is clear to the South West Producers that the existing coal (and non-coal) paths on the West Moreton coal rail access service are under contracted, and foreseeable demand is below the existing capacity for the rail – such that foreseeable demand can be met by the existing facility.

7.6 Does the existing West Moreton coal rail access service meet foreseeable demand at least cost

(a) **Costs where surplus capacity exists**

The South West Producers consider it is clear that surplus capacity exists on the West Moreton coal rail access service, such that foreseeable demand is easily met by the existing facility.

That is consistent with the discussions which have occurred with QR at the West Moreton System – Regional Network Planning discussions.

Given the very extensive costs that would be required to develop a new facility (such as land acquisition for the rail corridor, construction and development costs, engineering and design costs), it necessarily follows that foreseeable demand is being met at least cost given that there would be no incremental cost to contract that additional capacity.

(b) **Costs if it was assumed that further capacity was required**

Even in circumstances where there was limited or no surplus capacity, the current facility would still meet demand at least cost (through incremental expansions), given the astronomical costs of a new facility.

As noted above, the South West Producers understand from previous consultations with QR in respect of incremental expansions to the West Moreton rail infrastructure, that it would be possible to achieve further increase in capacity up to 12-20 mtpa (at costs of approximately $20 million for the two additional passing loops required for the 12 mtpa – and $150 million for more significant infrastructure upgrades to achieve the 20 mtpa).

Relative to the costs of capacity being provided by the Surat Basin Rail and Inland Rail projects – it is absolutely clear that provided demand is at or below the 20 mtpa capacity (which all evidence suggests to be the case), that demand will be met at least cost by either the existing West Moreton corridor rail transport infrastructure or that infrastructure as incrementally expanded.

(c) **Coordination and efficiency costs**

'Least cost' for the purposes of criterion (b) includes 'all costs associated with having multiple users of the facility for the service, including costs that would be incurred if the service were declared'. Given the varied use of the West Moreton coal rail access service (that is, coal and livestock, grain and passenger transport) it is likely that the West Moreton corridor rail infrastructure would still service a number of users both with and without declaration, such that coordination and efficiency costs are not particularly relevant to this assessment.

(d) **Administrative and compliance costs**

The QCA Staff Issues Paper identifies that assessment of administration and compliance costs of declaration should be considered with assessment of criterion (d). As such, the South West Producers do not propose to deal with that matter here, other than to specify that QR's regulation should involve far lesser administration and compliance costs than, for example, the Aurizon network (given only one system has reference tariffs and the QR undertaking is less lengthy).

In addition, those costs are a cost to users through the QCA Levy.

(e) **Theoretical alternative facility – Surat Basin Rail**

The South West Producers acknowledge that there has been a previous proposal for the development of Surat Basin Rail link from the Wandoan project to the Port of Gladstone which, together with a further proposal to develop a Central Surat Rail link from the West Moreton system to the Surat Basin Rail, could theoretically result in it being possible to rail coal from a Western and/or West Moreton System mine to the Port of Gladstone.

The map below shows the proposed alignment for those rail connections.

Figure 9: Surat Basin Rail proposal

However, the South West Producers consider that it is very clear that access via Surat Basin Rail (***SBR***) would not meet foreseeable demand for West Moreton corridor coal rail access services at least cost as:

(i) the demand is partly destination specific – New Hope owns the QBH terminal and both South West Producers have take or pay based contracted capacity there – such that rail access to a Gladstone coal terminal does not actually meet demand in the short-medium term;

(ii) the costs of developing SBR are enormous – last estimated at approximately $1.5 billion (for the initial 30 mtpa development to support the Wandoan project), with expansions or a higher capacity initial build likely to be required to accommodate;

(iii) to use SBR there would need to be expansions or adjustments to the West Moreton system (to allow coal haulage west); and

(iv) the cost of haulage would continue to be expensive – SBR is 210 kilometre, plus there would be further travel on the Moura system (another 300 kilometres), plus initial travel on the West Moreton system (from mines east to Miles) and on the Western system (north from Miles to Wandoan).

The other issue is that whether SBR is developed is not driven by demand from the West Moreton mines, rather it is principally determined by the timing for development of the Wandoan mine. Mining leases for the Wandoan Coal Project were granted to Glencore in August 2017. However, Glencore confirmed that it would take a 'responsible approach' regarding bringing new large scale production volumes to market, expressing the view that to do so at that time could potentially adversely impact upon thermal coal production and the market as a result of oversupply. To proceed, the Wandoan Coal Project will require 'a multi-billion dollar capital investment for both the mine and related rail infrastructure' – specifically, development of the Surat Basin Rail (Glencore Media Statement, 8 August 2017).

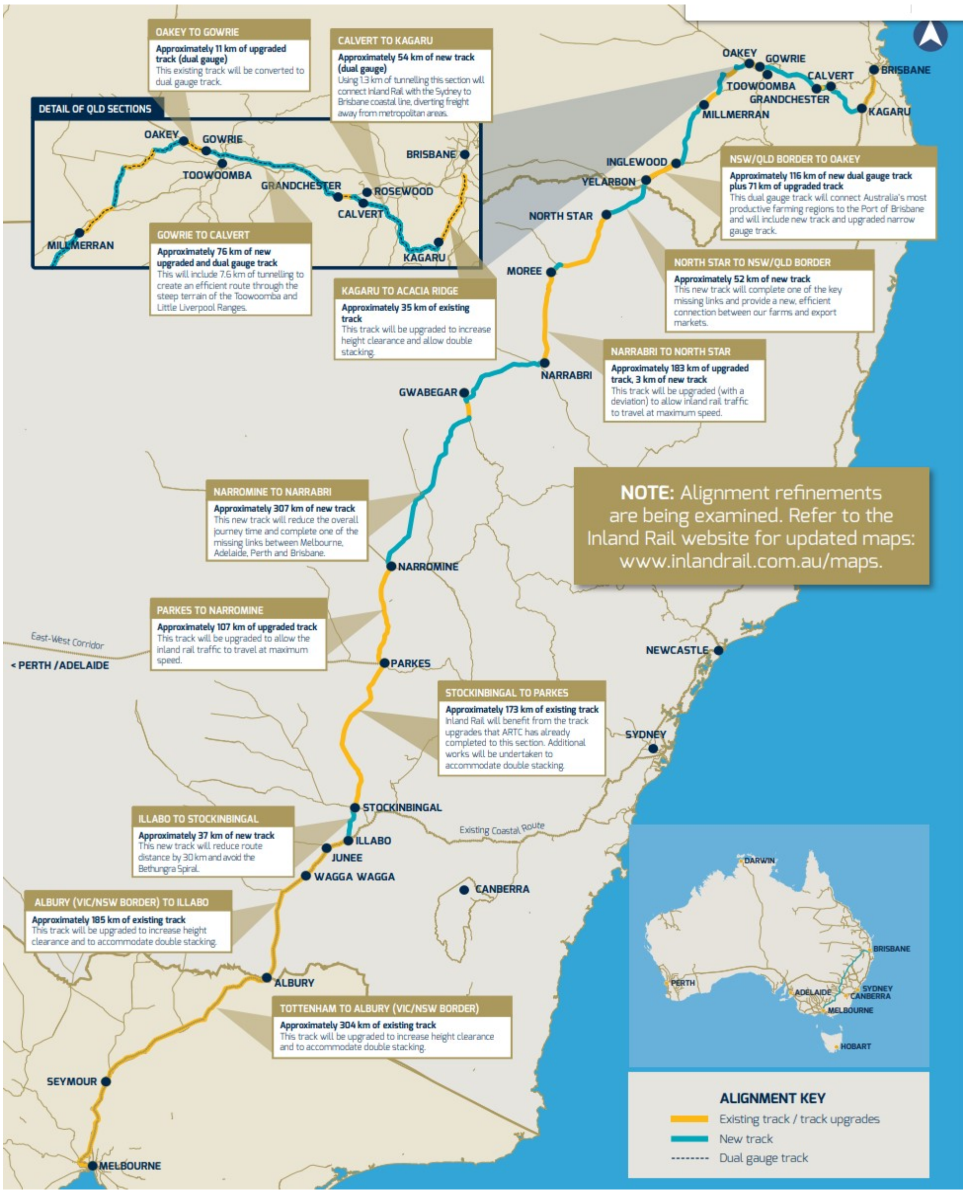
The South West Producers are not aware of any work currently being done on development Surat Basin Rail – such that it is not an actual alternative facility.

Consequently, the South West Producers consider it is clear that foreseeable demand is met at least cost by the existing West Moreton corridor rail infrastructure – not through SBR either alone or in combination with another facility (even if it was assumed that it would be developed).

(f) **Theoretical alternative facility – Inland Rail**

The South West Producers acknowledge that ARTC is seeking to develop the 'Inland Rail' project, constituting an inland rail connection from Brisbane to Melbourne, and understand that Inland Rail is currently proceeding on the basis of joining the existing QR Network at Gowrie and running to Acacia Ridge (where the existing QR Network would continue to take the traffic to the Port of Brisbane).

Figure 10: Inland Rail



However, the South West Producers consider it is very clear that access via Inland Rail would not meet foreseeable demand for West Moreton corridor coal rail access services at least cost as:

(i) the demand is partly destination specific – New Hope owns the QBH terminal and both South West Producers have take or pay based contracted capacity there – such that rail access to a New South Wales coal terminal does not actually meet demand in the short-medium term;

(ii) the costs of developing Inland Rail are enormous – estimated to be $9.9 billion – with $9.3 billion in funding provided by the Commonwealth and the remainder yet to be funded (with funding proposed to be sourced from public private partnerships);

(iii) Inland Rail itself will not connect to a coal terminal – such that there would be likely to be additional below rail expansions to reach a New South Wales coal terminal;

(iv) Inland Rail will not be connected to Queensland for a significant period. No current construction work is occurring in Queensland and Inland Rail has publicly stated it is targeting the first train operating in 2024-2025;

(v) even with higher volume trains reducing unit costs, the greater haulage length (Inland Rail is 1700km) means that haulage costs will remain high.

(g) **Conclusion**

The South West Producers consider it is very clear that criterion (b) is met.

Foreseeable demand is within the existing capacity of the West Moreton coal rail access service such that the West Moreton corridor rail infrastructure will continue to meet foreseeable demand at least cost.

Even in circumstances where an increase in demand existed (which the figures and modelling discussed above suggest is unlikely), the availability of further capacity in the West Moreton coal rail access service, and the ability to undertake incremental expansions at much lower costs than would be involved in a new facility, indicates that any such further demand would also be met at least cost using the West Moreton rail transport infrastructure.

8 Criterion (c) – Facility is significant

8.1 Interpretation of criterion (c)

In order to satisfy criterion (c), the facility for the service must be significant, having regard to the size of the facility or its importance to the Queensland economy.

The National Competition Council (***NCC***) has determined that rail track and associated infrastructure can be of significance in the context of the national access regime, but that physical size of a facility is not determinative of criterion (c) (see *National Competition Council, Final Recommendation Herbert River. 2010*).

As indicated in the NCC Guide to Declaration of Services, other relevant indicators of size include physical capacity and throughput of goods and services using the facility.

The Herbert River infrastructure – which the NCC determined was not of national significance – was a railway with materially lesser throughput, which only served one customer and industry, and was a more confined radial network in one local government area where the longest haul was 60 kilometres contrasted to the point to point linear nature of most major railways. That, and the fact that that facility was considered against the national significance (rather than State significance) criteria – means it does not provide any real guidance for the appropriate outcome in this context.

As is illustrated by the phrasing of the criterion, what is required is that the service is significant having regard to its size or as an alternative importance to the Queensland economy.

8.2 Criterion (c) is satisfied

The QR Network as a whole is clearly significant, consisting of approximately 8000 km of track which covers a significant proportion of the State as show in Figure 1 earlier in this submission.

However, the South West Producers consider it is clear that even if the consideration is confined to the rail transport infrastructure used to provide the West Moreton corridor coal rail access service (being the combined West Moreton system and the section of the metropolitan Brisbane system used to transport coal from the West Moreton regions to the Port of Brisbane) it would also be regarded as a facility that is significant, having regard to its size or the economic benefits it facilitates for Queensland.

The West Moreton corridor coal rail access service infrastructure is the focus of the South West Producers submissions.

QR's rail transport infrastructure was accepted by the NCC as being critical to Queensland's substantial mining industry and of great importance to the Queensland economy during the certification process (*NCC, Final Recommendation*).

8.3 Significant in size

On any measure the West Moreton rail corridor infrastructure is significant having regard to its size.

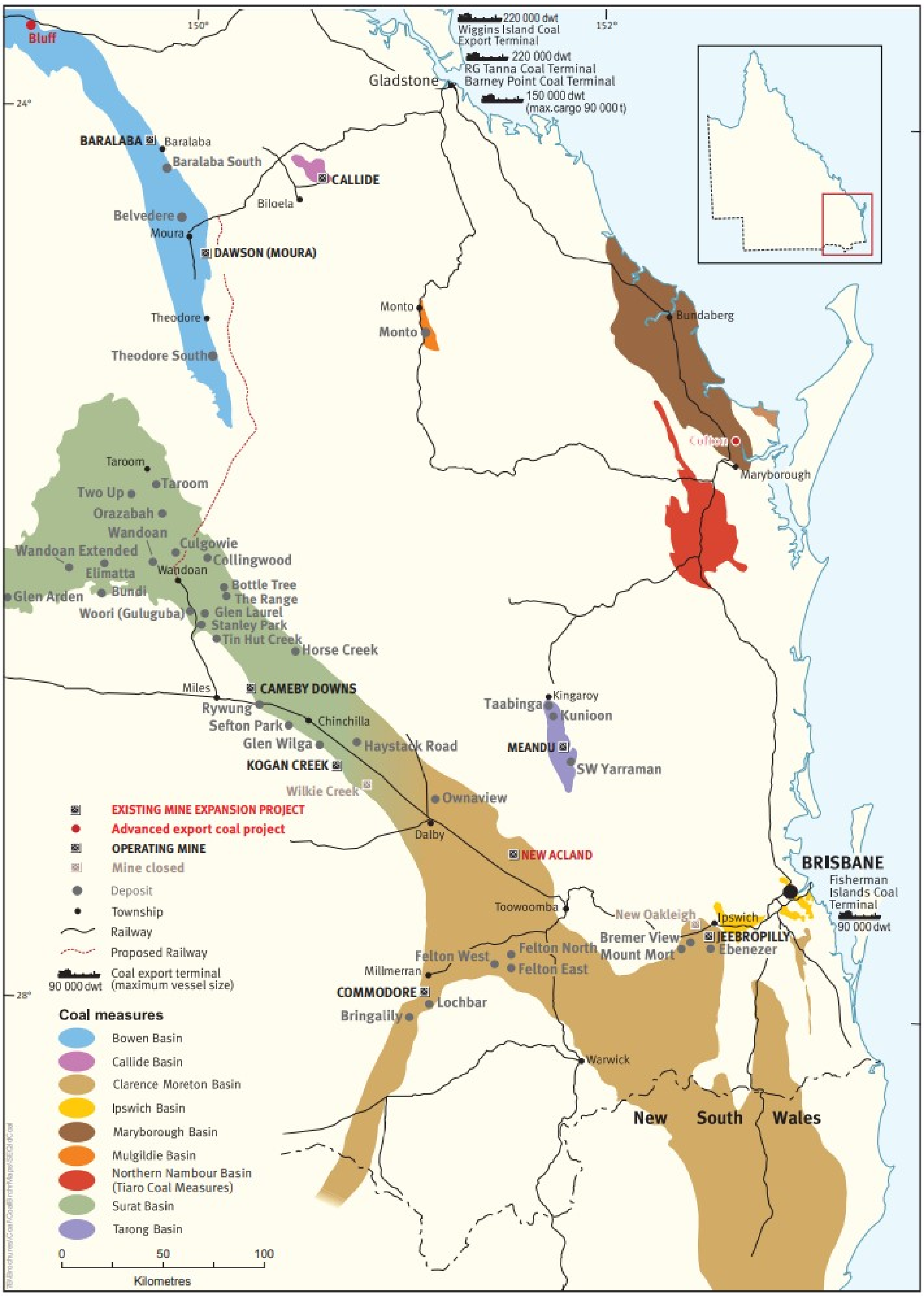
The West Moreton system alone runs over 314 kilometres adjoining south-east Queensland in the east of Rosewood with the far-west section of the Western system in the west at Miles. Various branch lines off the Western System also run off the West Moreton System. The total rail distance from the furthest West Moreton system mine to the Port of Brisbane (Cameby Downs) is approximately 380 kilometres.

The system transports approximately 7 mtpa of coal per annum, the vast majority of which is exported, as well as providing grain livestock and passenger services (while having further unutilised capacity).

Beyond Rosewood, coal and other commodity services traverse the Ipswich, Beenleigh, Cleveland lines and the dedicated dual gauge freight and coal lines from Lytton Junction to reach the port at Fisherman Islands. Those parts of the network are clearly significant, having regard to their wider use for passenger and freight transportation.

As set out in Figure 11 below, the West Moreton coal rail access service currently services 5 operating mines, with a number of further coal deposits that are yet to be mined proximate to the West Moreton coal rail access service.

Figure 11: South-east Queensland coal projects map



Source: [Department of Natural Resources and Mines]

8.4 Significant in economic contribution to State

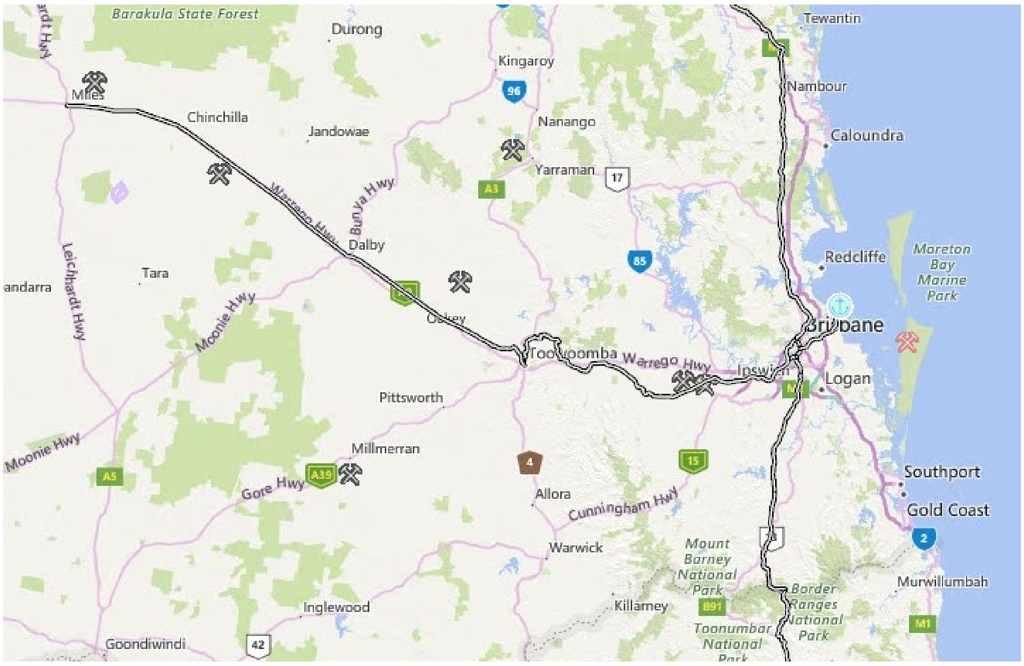
(a) Key freight route

In addition, the West Moreton corridor coal rail access service is specifically recognised by the National Transport and Infrastructure Council as a national key freight route. The Council plays a key role in delivering national reforms to improve efficiency and productivity of Australian infrastructure transport systems and to ensure those systems drive economic growth. The significance of the West Moreton coal rail access service was determined in accordance with a set of guiding principles that were developed and agreed upon through multi-jurisdictional consultation.

In addition to consideration of priority road and rail freight routes designated within a jurisdiction by legislation and key strategic policy, the final guiding principles for determination as a key freight route are that:

- the route connects existing and potential nationally significant places for freight such as:
  - intermodal freight terminals;
  - industrial, mining and agricultural precincts;
  - significant freight destinations in regional centres;
  - interstate freight; and
- the route carries:
  - high volumes of freight; and/or
  - high value commodities; and/or
  - a high frequency of heavy vehicles (for road); and/or
  - specific commodities of high economic significance for the region.[1]

Figure 12: National Key Freight Routes Map: West Moreton and Metropolitan IMEX network



Source: National Key Freight Routes Map

[1] Transport and Infrastructure Council, FAQ: guiding principles for key freight routes.

(b) Economic contributions

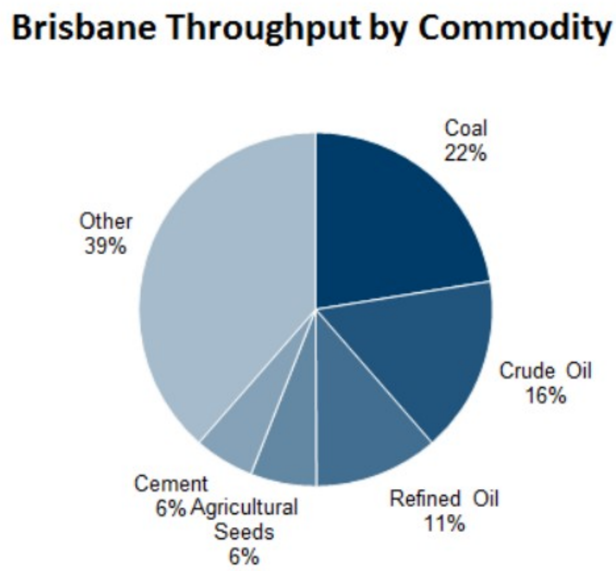
The criticality of the extension of the below rail track inland to regional communities, as is the case with the West Moreton coal rail access service the subject of this submission, is noted and is identified as being important to the Queensland economy.

Source: The Courier Mail

The economic contributions made by the coal, freight and passenger services that travel the West Moreton coal rail access service are significant.

Coal from the West Moreton network constituted 22% of the Port of Brisbane's throughput:

Figure 13: Port of Brisbane throughput by commodity



Source: Queensland Department of Transport and Main Roads: Trade Statistics for Queensland Ports (five years ending 30 June 2016)

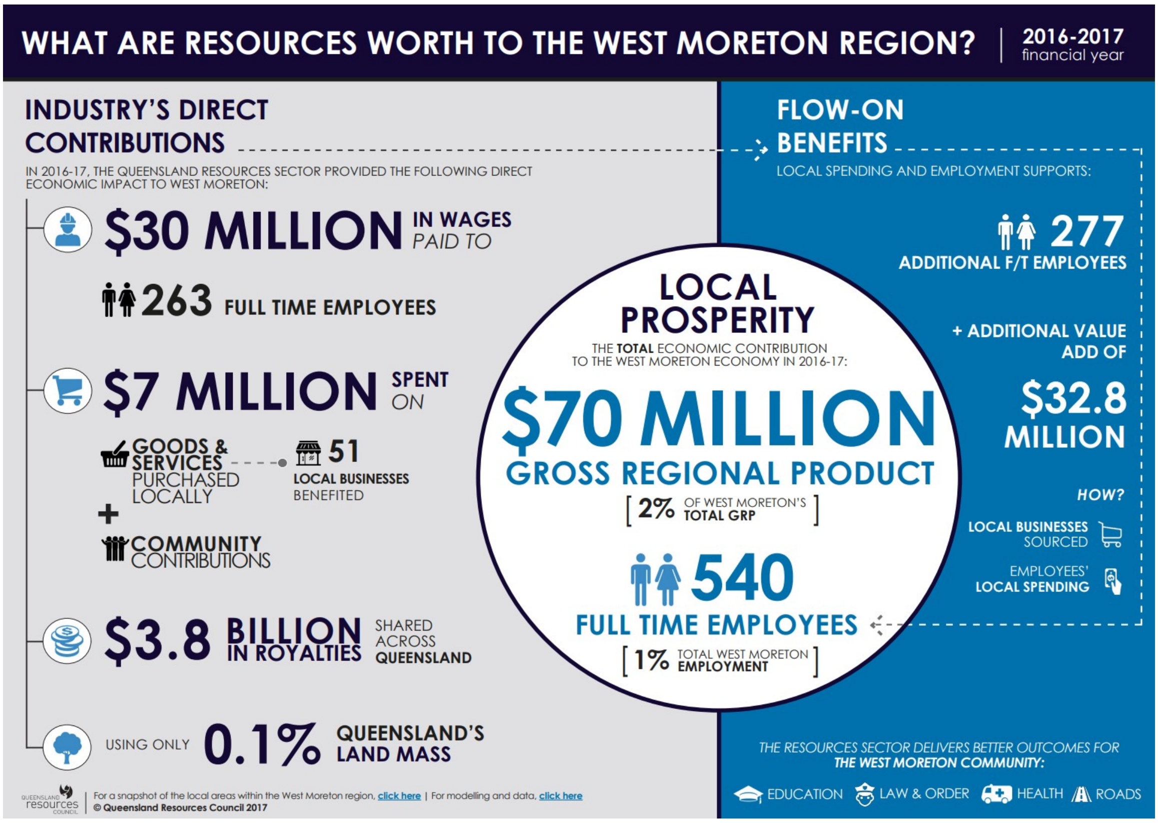
The total value of agriculture commodities (including livestock) produced in the Ipswich and West Moreton region for 2010-11 was $574 million.

In addition, QR, Aurizon and QBH employ a material number of people in connection with below rail and above rail operations on the West Moreton corridor, and the coal handling services at the Port of Brisbane which form part of the West Moreton coal supply chain.

Recognition of the significance of the West Moreton coal rail access service is also supported by the state government as demonstrated by an announcement to invest $28 million to upgrade rail bridges on the West Moreton system between Ipswich and Chinchilla. The announcement emphasised that the West Moreton system was a critical link for rail services from Brisbane to the west and south west and is a 'major artery to the Darling Downs', including as home to the iconic Westlander passenger service, which promotes tourism in Queensland's west (Queensland Government Media Release, 9 February 2018).

The contributions of the West Moreton region have been summarised by the Queensland Resources Council as follows (acknowledging that the West Moreton coal industry represents some, but not all, of that contribution.

Figure 14: QRC Estimate of West Moreton Region Economic Contributions



Source: Queensland Resources Council

In 2009, tourism in the Ipswich and West Moreton region injected $70 billion to the state economy, with current objectives planning to achieve more than $115 billion in overnight spend by 2020 (RDA Ipswich & West Moreton Inc, Regional Roadmap 2016-2020).

8.5 Conclusion on significance

Based on all of the above reasoning, the South West Producers consider it is clear that criterion (c) is satisfied, even if measured solely against the West Moreton corridor rail transport infrastructure.

9 Criterion (d) – Promotion of the public interest

9.1 Interpretation of criterion (d)

The newly amended criterion (d) in section 76 QCA Act requires that:

> *access (or increased access) to the service, on reasonable terms and conditions, as a result of declaration of the service would promote the public interest.*

Under section 76(5) QCA Act, that assessment also requires consideration of:

(a) the effect that declaring the service would have on investment in:

- (i) facilities; and
- (ii) markets that depend on access to the service;

(b) the administrative and compliance costs that would be incurred by the provider of the service if the service were declared; and

(c) any other matter the QCA or Minister considers relevant.

The South West Producers also note the wider list of public interest factors under the former section 76(3) QCA Act were endorsed in the explanatory memorandum to the *Queensland Competition Authority Amendment Bill 2018* (***2018 QCA Amendment Bill***) as continuing to be of relevance, despite no longer being explicitly included in the QCA Act.

9.2 Overview of how Criterion (d) is satisfied

As noted previously, the South West Producers have focused their submissions on the West Moreton corridor coal rail access service.

The South West Producers consider it clear that criterion (d) is satisfied in respect of the West Moreton corridor coal rail access service when regard is had to factors such as:

(a) how declaration has facilitated investment in the West Moreton system region - the long term certainty of being able to obtain access, access being available on reasonable term, and pricing being set at efficient levels based on a well understood methodology, that declaration provides; and

(b) how the continuation of the coal industry, that declaration has facilitated, has relieved some of the financial pressure that would otherwise sit with the state government to fund maintenance of the West Moreton coal rail access service solely for the purposes of passenger, livestock, grain and other freight services.

Both the direct and indirect economic benefits that flow to the public as a result of these factors (as (as summarised in the figure in section 8.4 above) clearly support that criterion (d) is satisfied.

9.3 Declaration facilitates investment in facilities and markets that depend on access to the service

As discussed above in respect of criterion (a), declaration of the West Moreton coal rail access service facilitates ongoing investment in coal mining in the West Moreton region by:

- (i) reducing barriers to entry, particularly for smaller or new users who would be less likely to hold sufficient bargaining power to negotiate or obtain access to the system on reasonable terms;
- (ii) creating the certainty required to make necessary long-term investment decisions; and
- (iii) promoting and facilitating investments in below rail expansions and above rail haulage services to accommodate projects in the West Moreton region.

Encouraging investment across these areas clearly promotes economic growth, greater employment, infrastructure development and indirect economic benefits to regional Queensland communities including through investments in the coal industry, rail haulage industry and other related markets, as set out below.

(a) Investment in the coal industry

The reasonable pricing and terms of access under the existing declaration are an attractive sales point for coal mining investment in the West Moreton region.

As explained by Resources Investment Commissioner Todd Harrington during his keynote address at the 2018 AMPLA Queensland Branch Conference, because infrastructure costs are some of the first costs considered when testing the viability of a new investment, low infrastructure costs are a front page selling point for resources investment.

This can be demonstrated by:

(i) the decisions by Yancoal to increase production at Cameby Downs (expanding from an initial 1.8 mtpa on Yancoal's initial acquisition to 2-2.5 mtpa currently); and

(ii) the proposal by New Hope to develop the New Acland mine continuation. With the continuation plan, New Acland is anticipated to continue to operate from 2019 to 2031 subject to mining rate. Without the continuation plan, the mine is anticipated to close in 2020, in line with the depletion of the current resources.

Both South West Producers confirm that those investment decisions were made, in part, in reliance on the certainty provided by the declaration and resulting access undertaking.

Given the nature of the basin, continued investment will be critical to the rail line's future – as if either one of the South West Producers was to cease producing, there is some risk as to the future of the rail line (or QR simply not being able to recover a return on the capital it has invested).

The investment in the coal industry will have significant flow-on economic benefits for the state of Queensland, including in the dependent rail haulage market, which will in turn benefit the public through increased government investment in essential public and community services.

Between the South West Producers' West Moreton coal mines they employ hundreds of people and hundreds of contractors. None of those employees are fly-in fly-out – they live and work in the local region.

By way of example of the wider economic benefits of continuing investment in the West Moreton coal industry, a financial impact study was commissioned by New Hope Group in 2017 in respect of the New Acland mine continuation project which quantified substantial economic benefits and showed the project will result in substantial payments to a variety of stakeholders.[2]

Even on the basis of the existing profile (without New Acland) the extent of the contribution of the coal industry is clear (noting that those figures only reflect New Hope's business, such that the contributions of Yancoal's Cameby Downs operations would be providing additional economic contributions).

In addition to supporting coal production, the coal industry investment resulting from declaration also supports rail haulage services and coal handling services and broadly promotes payment of coal royalties to the State. In turn, those royalties promote a stronger State budget which provides for other community and public services.

[2] The report can be found on the New Hope Group website.

(a) **Investment in rail haulage and coal handling services**

Two of the most direct effects of increased investment in the coal industry is the increase in investment for rail haulage and coal handling services required to service new coal investments.

As noted earlier in this submission, Aurizon's haulage fleet is aging and a decision needs to be made in the foreseeable future about further investment by Aurizon or another operator.

Rolling stock are long life assets (approximately 20-25 years), and no rational operator will make such an investment if the certainty of access, access terms and efficient pricing methodology provided by the declaration is removed. If declaration was removed, and investment in the West Moreton coal industry is reduced or eliminated as a result as anticipated, any rolling stock investment would be stranded (given the rail constraints make such rolling stock unable to be transferred for use in other rail networks).

(b) **Investment in coal handling services**

Similarly, QBH's incentives to continue to invest in the coal terminal at the Port of Brisbane will clearly be jeopardised if the certainty of access, access terms and efficient pricing methodology provided by the declaration is removed.

The West Moreton corridor is the only rail corridor which delivers coal to the terminal – so again if declaration was removed, and investment in the West Moreton coal industry is reduced or eliminated as a result as anticipated, any investment in the terminal would be largely stranded.

(c) **Further investments in other related markets**

Investment in the coal industry as a result of declaration of the West Moreton coal rail access service also increases investment in local business as a matter of rational economic theory (eg, increased local spending by employees), including in related markets for mining inputs and outputs, but also in other services in the regional areas where the mines are located.

The clearest examples of how that occurs are:

(i) through employment by the South West Producers (or Aurizon or QBH); or

(ii) through a continuation of domestic thermal coal supply which is a critical requirement for numerous regional businesses (as discussed in respect of the SEQ/NNSW domestic energy market earlier in this submission).

9.4 Other public benefits

(a) **Local growth and employment**

Investment in coal production, the rail haulage market, the coal handling services market and other related markets as a result of declaration of the West Moreton coal rail access service creates substantial flow-on economic benefits to communities, including through employment and economic growth in regional areas. Specifically, the West Moreton region encompasses four local government areas including Ipswich, Lockyer Valley, Scenic Rim and Somerset, each of which have experienced the delivery of community outcomes for education, public security, health and roads as a result of resources investments.

In addition to such indirect impacts, New Hope's domestic coal sales supply provides cost effective energy to local businesses, without which some would be likely to shut their doors.

(b) **Economic efficiency**

The economies of scale created by use of a single facility to meet foreseeable demand in the market promotes ecologically sustainable outcomes and reduces conflict related to land acquisitions.

That is important given the productive farming land which characterises some of the Darling Downs region.

(c) **Relieved financial pressure from the Queensland Government**

In circumstances where West Moreton coal rail access service users, including the South West Producers, continue to use the service under a declared (and therefore sensibly priced) model, users will continue to contribute towards the maintenance of the West Moreton coal rail access service by way of reference tariffs.

If the service was to be unregulated such that prices would increase and push coal users out of the market for the service, a far greater proportion of the costs of operating and maintenance of the West Moreton corridor infrastructure would fall onto other sectors or directly on the government.

The Queensland Government would likely be forced to make substantial contributions in order to subsidise the maintenance of the West Moreton coal rail access service and assure its continued operation – even if only for passenger and agriculture transportation services. With declaration, the Queensland Government incurs less costs in that regard and those funds can be allocated to other public and community services.

(d) **Cost of passenger transport services**

The cost of passenger transport services would be maintained if the West Moreton coal rail access service was to remain declared. In the absence of declaration arising in users being pushed out of the market due to increased prices, QR would likely be incentivised to increase the price of passenger transport services, which would flow-on to the public as passengers.

(e) **Increased royalties**

By incentivising investment in the coal industry through declaration of the West Moreton coal rail access service, particularly in the current climate of increased coal prices, increased coal royalties will be payable by producers to the Queensland Government. In 2016-17 alone, total general government sector revenue improved by 10.7% to $5.439 billion which was acknowledged as being attributable to the increase in coal prices at the end of 2016 (Queensland Government Budget Strategy and Outlook 2017-18).

(f) **Reduced costs of negotiation**

The South West Producers consider that declaration has also played an important role in reducing the costs of negotiation. In particular, New Hope notes that its experience prior to there being a standard access agreement which applies to the West Moreton corridor coal rail access service, was that it had negotiated an access agreement with QR for 9 months without successfully reaching a resolution. A standard access agreement and independently determined efficient pricing, reduces the barriers to obtaining access, saves all parties (including QR) costs that would otherwise be associated with a drawn out negotiation.

9.5 Minimised or no public detriment arising from declaration

Whilst there are administrative and compliance costs involved in maintaining declaration, given that these costs are met by users by virtue of the QCA Levy, these costs are immaterial in the context of any public detriment.

In addition, most of the administrative costs would have to be incurred in any case, given the existing multi-user nature of the QR Network and the West Moreton corridor.

Additionally, declaration will result in QR maintaining its investment priorities in maintaining and upgrading the West Moreton coal rail access service which will continue to accommodate passenger transport services.

9.6 Conclusions on the promotion of the public interest

It is clear to the South West Producers that criterion (d) is satisfied in respect of declaration of the West Moreton corridor coal rail access service by virtue of the factors discussed above, which exceed any minor detriment (which can only really be minor regulatory costs) that would arise if the declaration continued.

10 Next steps and time provided for submissions

The South West Producers look forward to an opportunity to make further submissions once QR's position on the continuation of the declaration of the Declared Service is made public.

The South West Producers understand that the Authority is proposing a short period (of approximately 4 weeks) for submissions to be provided by stakeholders on the initial submissions made in relation to the declaration review. That is an extremely short time frame for users which have to respond to the submissions of multiple infrastructure providers.

Both of the South West Producers have interests in relation to other Queensland coal projects which are either existing or potential future users of infrastructure services that are also subject to the declaration review, and consider it would be highly desirable to provide a longer period for submissions.

In that regard, the South West Producers note that QR has been unwilling to disclose its position on the declaration review prior to initial submissions – such that it will only be on publication of the initial submissions that the South West Producers will actually find out QR's views on whether the declaration should continue (and if not, on what basis QR considers should justify the non-extension).

If the QCA has any further questions on this submission please do not hesitate to contact John Hedge of Allens on (07) 3334 3171, Sam Fisher of New Hope on (07) 3108 3668 or Mike Dodd of Yancoal (02) 8583 5930.