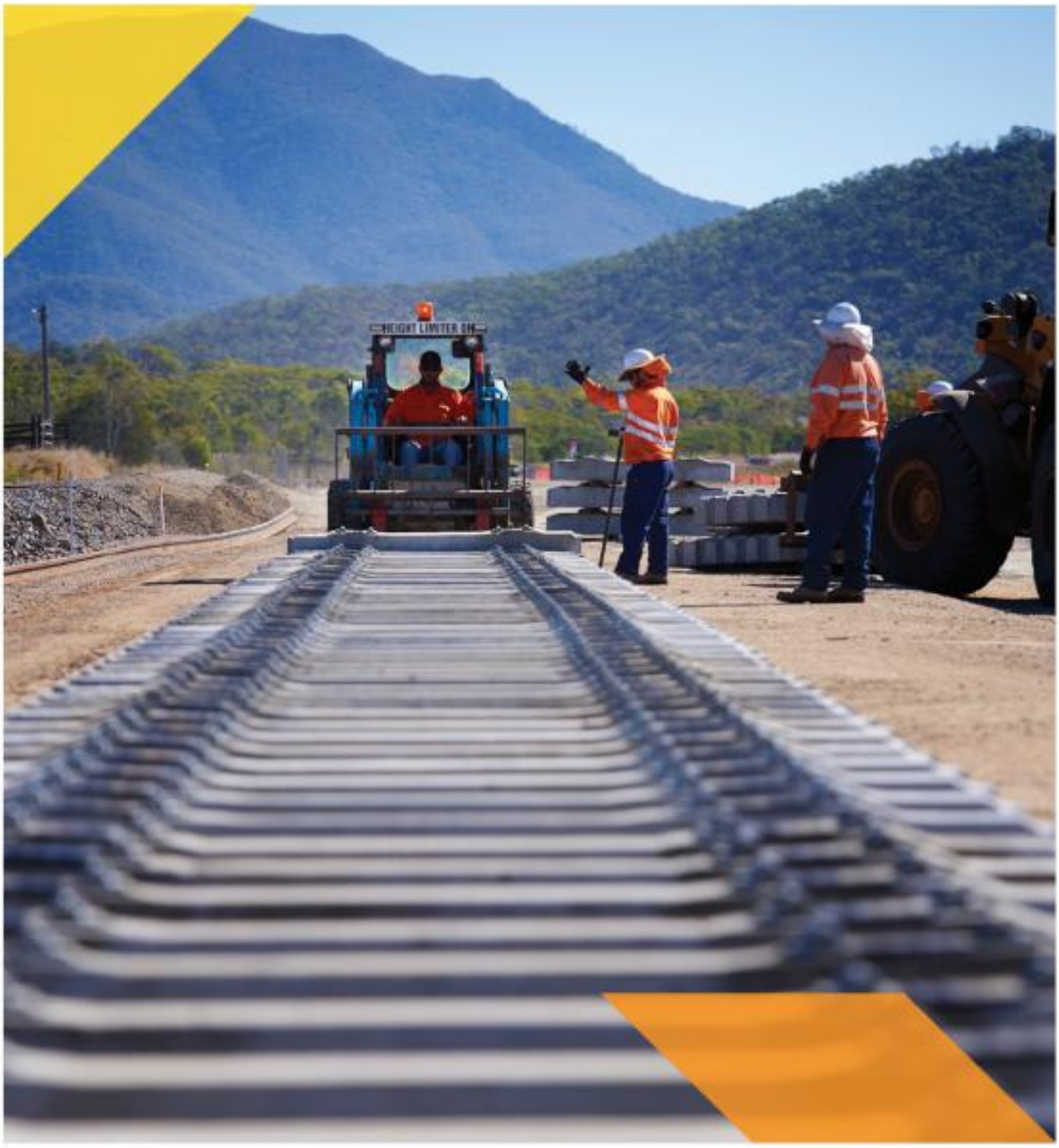
QR NATIONAL™

7 September 2012

Standard Rail Connection Agreement: Response to Queensland Competition Authority Draft Decision



1. Contents

2. Background

QR Network submitted a Standard Rail Connection Agreement (SRCA) to the Queensland Competition Authority (the Authority) on 30 June 2011, as required by clause 8.4(a) of *QR Network's 2010 Access Undertaking* (2010 Access Undertaking). On 27 June 2012, the Authority issued a draft decision to not approve QR Network's proposed SRCA. The Authority's draft decision includes a number of amendments to the drafting of the proposed SRCA and the Authority asked for some specific issues to be addressed.

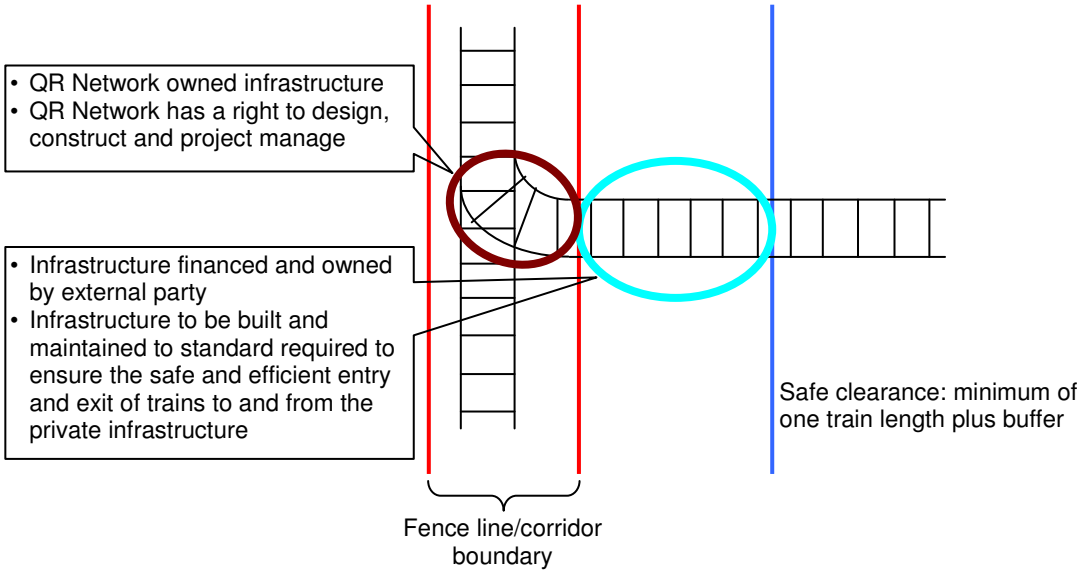
This response follows the structure of the Authority's draft decision document and includes a revised draft SRCA as an attachment. The numbers in the parentheses in the headings refer to the Authority's draft decisions. Square brackets are references to the revised draft SRCA

Confidentiality

This submission is not confidential.

3. The nature of connecting infrastructure

Figure 1: High level illustration of Connecting Infrastructure



The two diagrams below provide a detailed description of two specific examples of connecting infrastructure. They illustrate the complexity of connecting infrastructure, particularly the way necessary demarcation points differ for the type of infrastructure, and the extent to which connecting infrastructure may be constructed on private infrastructure and how that varies with type of infrastructure.

A number of important points follow:

- Connecting infrastructure forms part of the mainline of QR Network's network (Network) with associated risk accruing to QR Network.
- Trains entering and exiting the private infrastructure via the connecting infrastructure may damage or otherwise compromise the safety, integrity and operation of the Network.
- Private infrastructure must be capable of allowing the safe entry and exit of trains at mainline speed to clear the connecting infrastructure, to ensure the effective operation of the Network.
- Private infrastructure owners desire to ensure the safe and efficient operation of their infrastructure.
- Some connecting infrastructure, such as signals and telecommunications may be located on private land. These remain critical to safe and efficient operation of the Network regardless of location.
- The operation and maintenance of the connecting infrastructure is distinctly different from the construction of the connecting infrastructure and the interface to the private infrastructure.
- Connecting infrastructure forms part of mainline infrastructure. Accordingly all standards applicable to safe and efficient operation of the mainline must apply.

- There is no such thing as “standard” connecting infrastructure. The maintenance regime, as well as the appropriate operating and interface measures to be adopted are impacted by factors such as:
    - construction scope;
    - construction methodology;
    - rail type;
    - foundation;
    - geography;
    - structure;
    - gradient;
    - site location;
    - flooding issues;
    - other site specific matters;
    - proposed use;
    - electrification;
    - signalling;
    - haul tonnages;
    - haul frequency;
    - haul type;
    - rolling stock used;
    - speed of Network line section;
    - future requirements on that section of the Network;
    - requirements of other users of the mainline; and
    - private infrastructure owner requirements.

Figure 2: Connecting a Spur – single balloon loop (short, single angle)

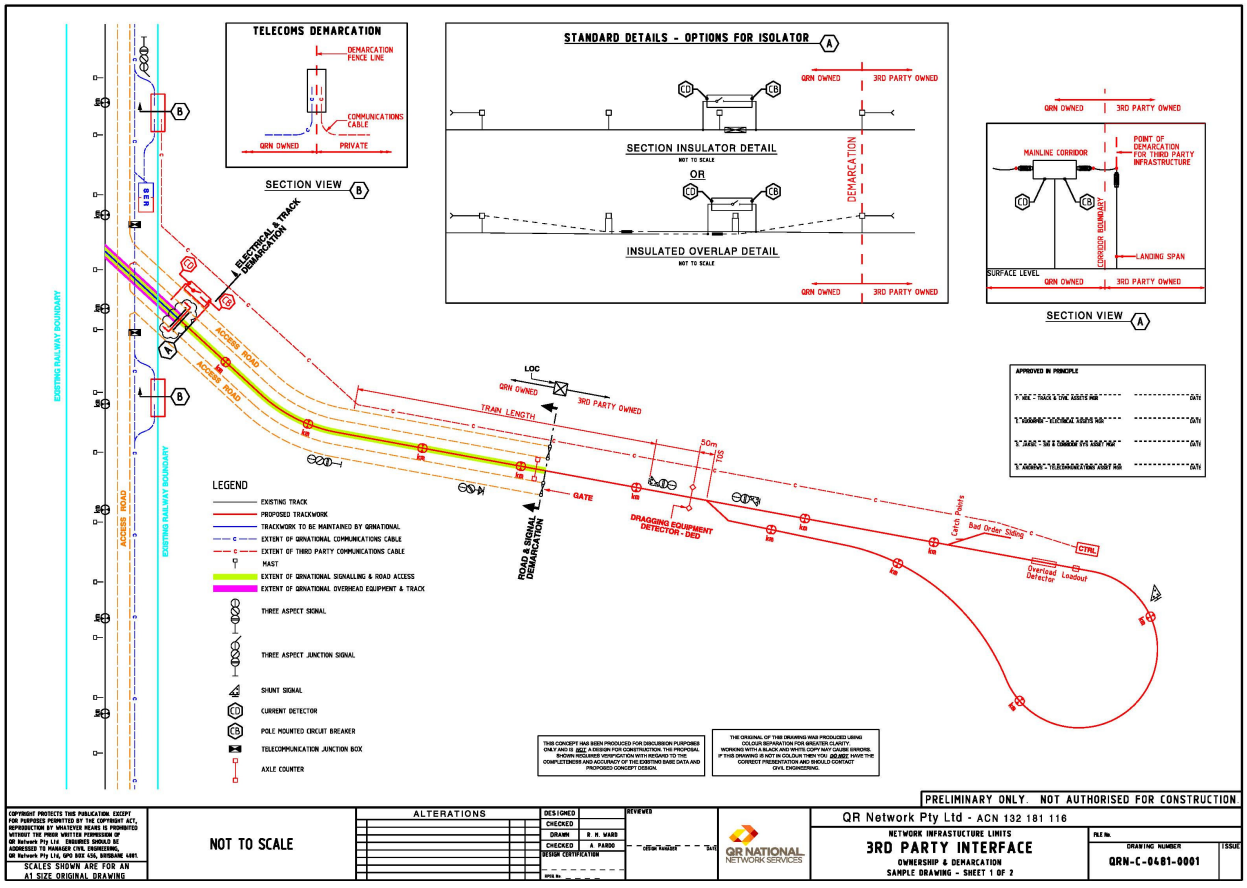
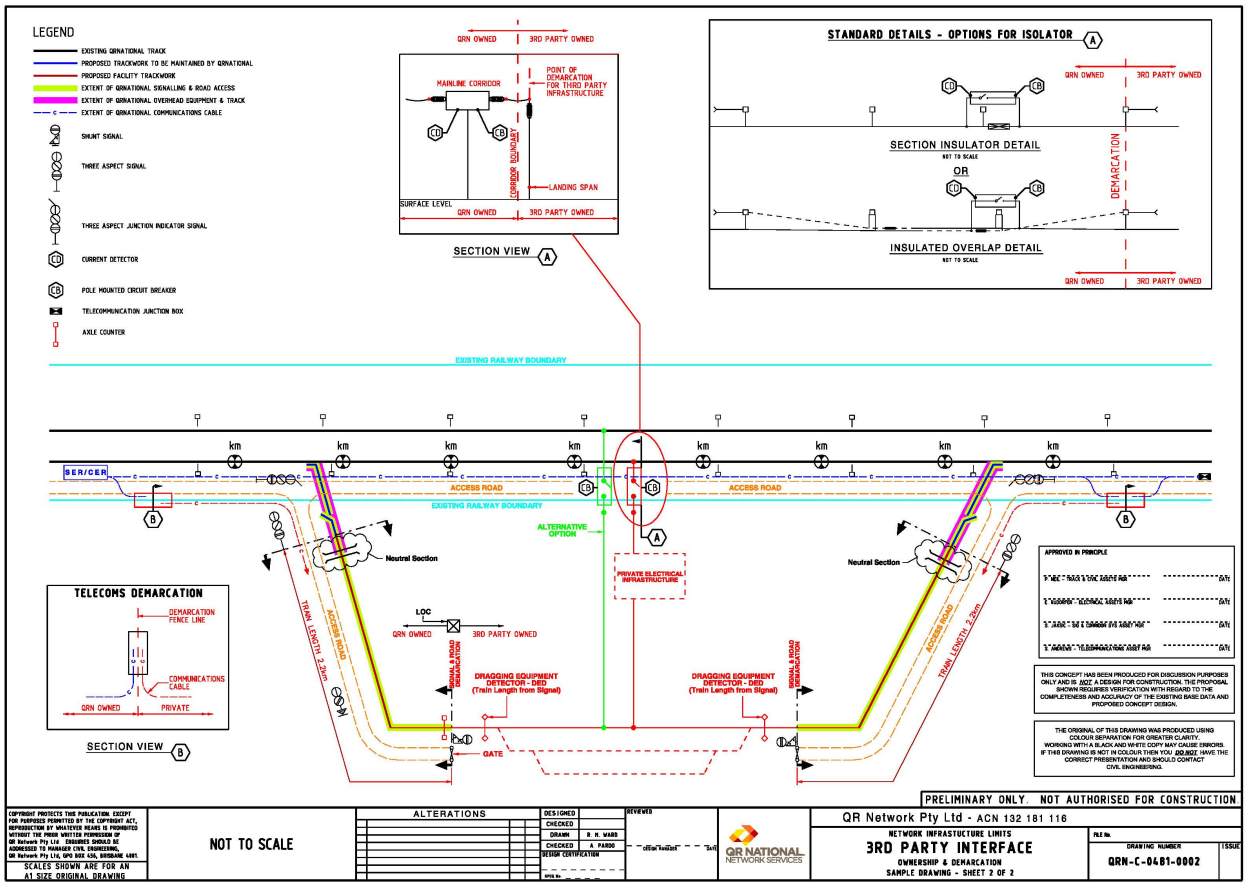


Figure 3: Connecting a Siding (short yard siding, dual connection, single angles)



4. Infrastructure Standards (2.1 and 3.3)

The Authority proposes three changes to clarify the standard to which connecting infrastructure and private infrastructure should be built to align these with the 2010 Access Undertaking.

2.1 The Authority requires QR Network to amend Parts 6 and 7 of the SRCA such that:

(a) the infrastructure standards for connecting infrastructure reflect the related requirements in cl. 8.3(a)((i)-(iii)) of the 2010 access undertaking;

(b) QR Network's involvement in the standards of private infrastructure is limited to the extent that private infrastructure may affect QR Network's infrastructure (e.g. safety) or the operation of train services on QR Network's network; and

(c) private infrastructure owners have more input into the design, construction, upgrade, modification and replacement of connecting infrastructure, including through the dispute resolution process.

The Authority also proposes five amendments to the SRCA regarding QR Network's assessment of infrastructure standards.

3.3 The Authority requires QR Network to amend the SRCA to provide private infrastructure owners with greater certainty over how, and whether, QR Network will determine whether or not infrastructure meets required standards. This includes providing for:

(a) QR Network to inspect the connecting infrastructure once built to assess whether it is suitable for connection and operation;

(b) QR Network to provide information and advice relating to design specifications and required infrastructure standards, when requested by the private infrastructure owner;

(c) the private infrastructure owner to submit a design for connecting infrastructure for QR Network's approval;

(d) QR Network to advise a private infrastructure owner of a material change in circumstances which would mean that a previously approved design would no longer meet the suitability requirements; and

(e) QR Network to inspect connecting infrastructure during construction, at the private infrastructure owner's request and cost.

Infrastructure standards

Infrastructure design and construction matters are properly addressed by a construction agreement. Such items are not intended to be part of the SRCA, which is concerned with the operation and maintenance of the connection.

QR Network has included drafting in the attached revised SRCA to address the requirements of 2.1(a) and (b) to a limited extent, should it opt to engage the private infrastructure owner to build the connecting infrastructure [clause 7.1]. Inspection and commissioning issues are best addressed as a part of practical completion matters under the construction agreement.

QR Network agrees with the Authority that the requirements of clause 8.3 of the 2010 Access Undertaking should apply to the standard of connecting infrastructure [clause 7.1(b)]. However we consider that such provisions should be interpreted as broad guidelines rather than as overly limited, prescriptive, fixed rules. The main principles being that:

- connecting infrastructure should have no impact on safety or efficiency of the mainline network and should be fit for purpose; and
- the requirements should be considered in a reasonable, prudent and non-restrictive manner and be applied in a way that accommodates the future needs of both QR Network, its existing customers and private infrastructure owners.

Ultimately, connecting infrastructure must meet customer demands on the infrastructure over time, as reflected in the Train Services Plan and traffic requirements of the Network, including those of the private infrastructure owner and of all other users of the mainline. Technical specifications and safety requirements may also need to be updated from time to time, to enable the ongoing safe and efficient operation of the Network.

A distance of one train length (plus buffer) on the private infrastructure adjoining the Network must be designed, constructed and maintained to ensure that it is able to receive a train in both a safe manner and at a speed so as not to impact on the safe and efficient operation of the mainline. QR Network bears significant risks with this portion of the private infrastructure, as the impact of an incident on this portion of the private infrastructure has the potential to affect all traffic and thus all customers on the mainline. For example, if a derailment occurs on private infrastructure before a train has fully exited (or entered) the Network, then the mainline would also be affected. Consequently QR Network will need to ensure that private infrastructure can accommodate this requirement (referenced to the train configuration detailed in the Train Services Plan), to properly enable a train to safely enter and exit the Network so as to not affect the efficiency or safety of the Network [clause 8.4(b)].

Design and construction of connecting infrastructure

To address the Authority's concerns in draft decision 2.1(c), the revised SRCA provides for QR Network to either design and construct the connecting infrastructure, or to engage the private infrastructure owner to design and construct the connecting infrastructure on behalf of QR Network [clause 7.1(a)]. We have clarified that such design and construction will be undertaken through a separate design and construction agreement [clause 7.1(b)].

Connecting infrastructure is owned, managed and maintained by QR Network to ensure the safe and efficient operation of the mainline to which the private infrastructure connects. The risks associated with the operation of the Network are imposed on QR Network. It is therefore appropriate that QR Network be solely responsible for determining any requirements in respect of modification, upgrade or replacement of the connecting infrastructure. QR Network appreciates that the private infrastructure owner will be concerned as to the costs of such changes and has included consultation provisions and ultimately dispute provisions to address such concerns.

Determining whether the infrastructure meets the standards

As noted above, under QR Network's revised SRCA, QR Network will either design and construct the connecting infrastructure or engage the private infrastructure owner to design and construct the connecting infrastructure on behalf of QR Network. QR Network agrees with the Authority that "QR Network should undertake the initial design, construction and commissioning of connecting infrastructure in accordance with the terms of a separate construction agreement" (page 27).

In the situation where the private infrastructure owner is engaged to "undertake the initial design, construction and commissioning of connecting infrastructure" on behalf of QR Network, then it is appropriate that the same contractual relationship apply. That is, the private infrastructure owner is contracted to provide to QR Network the "initial design, construction and commissioning of connecting infrastructure" under a separate design and construction agreement to QR Network standards.

The inclusion of the Authority's draft decisions in 3.3 (a) – (e) into the SRCA will lead to contractual conflicts between connection agreements and construction agreements. It is therefore appropriate for issues such as scope, programme, approvals, practical completion, and accountabilities for construction of the connecting infrastructure to

cleanly sit within a design and construction agreement, not the SRCA. Any matters relevant to the negotiation of the construction of the connecting infrastructure should be dealt with under the dispute resolution and other relevant provisions of the Undertaking.

5. Termination and Suspension (2.2)

The Authority has made two proposals to provide increased time for default rectification prior to termination and to clarify QR Network's termination rights if private infrastructure is abandoned.

2.2 The Authority requires QR Network to amend clause 18 of the proposed SRCA to

(a) increase the timeframes for rectification of defaults prior to termination from 14 days to 30 days; and

(b) provide that QR Network may not terminate an agreement on the basis of a matter that is the subject of on ongoing dispute.

Rectification timeframes and termination of disputes

QR Network agrees with the Authority that the rectification timeframes should be increased and that there should be no termination right if there is an ongoing dispute resolution process, provided unfettered suspension rights in respect of safety and environmental issues are retained [clause 21.8].

Clarity and consistency will be improved by using 20 business days rather than 30 days as the termination timeframe.

Suspension rights are critical

Termination rights are closely linked to suspension rights and cannot be determined independently. There are three rights of suspension and it is critical that these are clearly specified in the SRCA:

(i) if there is a safety issue that impacts on QR Network, QR Network must have an absolute right to suspend instantly and indefinitely until the issue is resolved;

(ii) if there is an environmental issue, including coal loss, that impacts on QR Network, QR Network must, subject to specific coal loss rectification processes, have an absolute right to suspend until the issue is resolved; and

(iii) if a safety or environmental matter is under dispute, i.e. being addressed through the dispute resolution process, suspension rights must continue until the dispute is resolved.

QR Network cannot accept any safety or environmental risk arising on the Network.

QR Network also notes that suspension should prevent in almost all cases, provided the suspension remains in place, the need to terminate if an issue can be remedied by action or through the dispute resolution process.

6. Security (2.3)

The Authority proposes three changes to the SRCA.

2.3 The Authority requires QR Network to amend clause 20 of the proposed SRCA to better reflect the level of risks undertaken by both parties entering into the agreement. This includes providing that:

(a) a private infrastructure owner (or a parent company offering guarantee on its behalf) with an acceptable credit rating (no less than BBB+) does not need to provide security;

(b) the terms and conditions of security should not change and the amount should be indexed – and not unilaterally reviewed (cl.20.2); and

(c) the amount of security required from the private infrastructure owner be capped at the estimated reasonable and prudent costs of decommissioning and removing the connecting infrastructure upon expiry of a connection agreement.

QR Network agrees with the Authority that several of these changes would improve the SRCA. However, the security requirement should not be treated in isolation, as there are still residual risks that QR Network must bear that should be reflected in the price charged for rendering services under this agreement, if they are not recovered elsewhere. This will be discussed as a part of the pricing discussion later in this paper.

QR Network considers that where the Annual Service Charge is payable in advance, then QR Network's financial risk is limited to the cost of reinstating the main network to its optimal configuration (which may include removing the infrastructure). Subject to the Annual Service Charge being payable in advance, QR Network considers the Authority's proposed security limitation to be reasonable.

Our revised SRCA specifies payment in advance [clause 4.3(a)]. Payment of the Annual Service Charge in arrears is not appropriate, as it increases QR Network's risk exposure.

QR Network considers that the costs of removing and decommissioning the connecting infrastructure should be the primary risk to be covered under any SRCA security arrangement. However, given the long term nature of the SRCA, indexation of the security amount will cause a significant deviation from the actual costs to be paid over time. Recovery of these costs is clearly in the legitimate business interests of QR Network. This is exacerbated as maintenance costs tend to vary with elements such as steel, cement, heavy machinery, and labour costs, rather than a basket of consumer or other goods under the Consumer Price Index (CPI) or similar. Moreover, changing regulatory and safety requirements may also increase any variation over the years. As such, QR Network recommends that the security amount be periodically reviewed after the second year, on an annual basis, at QR Network's option, to enable the current security amount to properly match the cost of decommissioning and removing the connecting infrastructure [clause 23.2]. To deal with the Authority's concern about unilateral security review, we have made any review subject to dispute resolution [clause 23.2(b)].

7. Interface Risk Assessment (2.4)

The Authority sees value in QR Network and the private infrastructure owner collaborating on safety and interface issues and has proposed changes to the SRCA reflect this.

> 2.4 The Authority requires QR Network to amend the SRCA to ensure reasonable and reciprocal obligations on both parties to share information on safety and interface matters.

The Authority also mentions specifying "criteria for incidents for which QR Network may conduct an investigation" and has included drafting amendments to the SRCA.

Information sharing

QR Network agrees with the Authority that the inclusion of relevant information sharing obligations to ensure a safe interface between the mainline and private infrastructure under the SRCA is desirable. QR Network is concerned to ensure there is a clean delineation of contractual responsibilities, while avoiding potential overlapping or conflicting contract provisions. As any third party Rail Infrastructure Manager (RIM) managing private infrastructure is not a party to the Connection Agreement, information sharing obligations and other responsibilities cannot extend to such a party.

QR Network considers:

(i) There is a clear and demonstrated competitive market for RIM services allowing for differences and innovation in the way management and other requirements applicable to the private infrastructure are carried out.

(ii) Should the private infrastructure owner engage a third party to provide RIM services on the private infrastructure any interface between QR Network and the third party should be addressed by way of a separate interface agreement.

This has a number of implications:

- interface information should be controlled under the interface agreement and not under the connection agreement; and
- safety management systems are valuable intellectual property (IP) that must be protected.

The Authority's drafting of clause 10 is wide ranging, ambiguous and inadequate for the protection of intellectual property, with considerable potential overlap with the Interface Agreement. QR Network proposes that the relevant clauses focus on the exchange of safety information relevant to the operation and maintenance of the connecting infrastructure [clause 11]. Confidentiality and IP protection requirements, in relation to information required to be disclosed by QR Network under the SRCA, are also explicitly protected [clause 27.2].

Investigation criteria for incidents

With respect to criteria for investigation of incidents, QR Network considers it should remain responsible for all incidents which impact or have the potential to impact on the connecting infrastructure or the Network [clause 12.8]. This enables a consistent and readily applicable approach across the Network, without requiring a potentially complex assessment of possible claims.

Most importantly, the consequences of a failure are always significant for the mainline and other QR Network customers, whenever the Network's ability to deliver capacity is compromised.

8. Access to Land (2.5)

The Authority has included two proposals intended to align land access to the arrangements in the 2010 Access Undertaking.

2.5 The Authority requires QR Network to amend the SRCA to:

- provide private infrastructure owners with reciprocal rights to access land owned, or otherwise used by, QR Network, to fulfil its obligations under the SRCA;
- require QR Network to comply with the site and safety rules that apply to private land.

Reciprocal land access rights

QR Network considers that land access rights under the SRCA should only be permitted to the extent required to enable the parties to comply with the SRCA – that is, relating to the operation or maintenance of the connection. Access for other purposes is not required and should not be included in the SRCA. In particular:

- land access for construction related purposes is unnecessary – the SRCA is not a construction agreement; any construction agreement that may be relevant to the connecting infrastructure will have its own land access provisions;
- land access for maintenance of connecting infrastructure is also unnecessary as QR Network must always be responsible for the operation maintenance of Connecting Infrastructure. Any outsourcing of that function would be addressed under a commercial maintenance contract; and
- access for other purposes would be governed by a separate licence to enter the rail corridor, which would properly specify the various compliance requirements as well as a separate Interface Risk Management Plan relevant to the purpose of access and the characteristics of the rail corridor at the place where access is required.

Moreover, in respect of access to QR Network's land, QR Network considers it is important that access to the relevant land is governed by the terms of a separate agreement between itself and the party seeking access. That is because:

- real estate issues and third party land access requests need to be managed centrally to ensure that land access decisions are made in a coordinated fashion and licences are not granted for inconsistent uses (e.g. a right to access land for purposes associated with the connecting infrastructure is not inconsistent with a licence to another party over the same area to place a gas pipeline on that land);
- often the party seeking to use the land will be different from the party to the Connection Agreement (e.g. its contractor). In such circumstances, it is reasonable for QR Network to seek a direct relationship with the party accessing its land to deal with liability and enforcement issues, and the Owner will prefer that its contractor deal with QR Network directly on these issues; and
- each site is different both as to physical characteristics and operations and there will be different considerations and compliance requirements which need to be built into each licence and its separate Interface Risk Management Plan. This is particularly critical where the land to which access is sought forms part of, or is adjacent to the rail corridor through which the mainline runs. Any interference with the mainline may result in significant delays to traffic, major property damage or, in a worse case scenario, loss of life.

QR Network agrees with the Authority's draft decision that where QR Network requires land access rights onto land on which private infrastructure is located, where that land is owned or controlled by the private infrastructure owner or another party, that such access should be the subject of compliance with the owner's appropriate access protocols, and should be limited to the extent necessary to enable QR Network to comply with the SRCA [clause 29.3]. Moreover, any costs incurred attributable to delays in access to private land by QR Network, must also be compensated [clause 29.1]. Access to private land by QR Network in case of an emergency also has to be addressed [clause 29.4]

Site and safety rules

QR Network agrees with the Authority's draft decision. These obligations should be reciprocal to the extent required to comply with SRCA obligations.

9. Liability (2.6)

The Authority indicates that it wishes further submissions on its liability position.

> 2.6 The Authority requires QR Network to amend the liability clauses in the SRCA to provide more realistic obligations on parties, including:
>
> (a) removing the restriction that claims for liability should be limited solely to items provided for in a connection agreement (cl.21.2);
>
> (b) providing for liability claims to be limited to six months after the later of the claim arising or becoming reasonably apparent to the relevant party;
>
> (c) including an explicit liability cap; and
>
> (d) deleting requirements relating to conduct by train operators.

Unlimited scope of claims

QR Network does not agree with the Authority's position on scope of claims. One of the main purposes of the SRCA is to control risk and liability. The original clause 21.2 is a very standard approach to liability in commercial contracts. If there are specific types of risk (and so potential liabilities and claims) that either party needs to address, these can be dealt with through the negotiation process for a specific connection agreement. No commercial negotiation conducted with the benefit of legal and commercial advice would overlook these issues. Consequently, QR Network has reinstated this requirement [clause 24.2].

Liability timeframe

QR Network agrees that the proposed timeframe of six months is a reasonable approach for both parties to an SRCA [clause 24.3].

Liability cap

This provision is closely linked to the pricing provisions.

The Authority's proposed position on pricing under the SRCA is that QR Network passes through direct costs only, but excluding insurance costs and deductibles. If that provision remains, then there is no basis for QR Network to accept any liability. On this basis the liability cap should be set at $1 in addition to any proceeds recoverable under policies of insurance effected by QR Network in accordance with clause 18 [clause 24.4]. This cap excludes liability under the indemnity in clause 25.2 or for reckless or intentional breach of the agreement.

In practice, the Authority's position, if it remains, would serve to shift risks that should be carried by owners of private infrastructure to users of the regulated network – i.e. operators and miners. The fact that there may be considerable (but incomplete) overlap between private infrastructure owners and miners is not relevant. We do not consider this to be consistent with the 2010 Access Undertaking, the *Queensland Competition Authority Act 1997* (Qld) or QR Network's access agreements.

We also strongly reject any position where such a limitation would be reciprocal: failure of a private infrastructure owner to comply with the provisions of the SRCA can have real and significantly greater costs to QR Network, and these must be reflected in the liability provisions.

If QR Network's proposals on pricing (based on a negotiated outcome) are accepted by the Authority, then we consider that the liability cap should typically be equal to the Annual Services Charge payable by the connecting party.

Conduct by train operators

It is essential that this provision in the SRCA remains (i.e. is not deleted as proposed), as QR Network will have no direct relationship with the operator for its conduct on private infrastructure. Any access agreement QR Network might have with that operator will not cover its conduct on the private infrastructure, but only on the Network. It is essential that the SRCA deals with the situation where operator conduct on private infrastructure impacts on the Network. Therefore the private infrastructure owner must be responsible for the operator it engages.

The primary concern is the risk of overloaded trains entering the Network from the private infrastructure, which could cause damage to the connecting infrastructure and mainline, potential train stalling and create safety issues from heavy trains travelling at unacceptable speeds on the Network. The operator is in the best position, before proceeding from the loadout, to ensure that its train is not overloaded. The private infrastructure owner is in a strong position to enforce compliance by virtue of its contractual relationship with the operator.

We have however amended the relevant provision [clause 24.6] to limit its scope so that:

- the private infrastructure owner is only liable where the operator engages in any act or omission "involving the use of, or otherwise in connection with the Private Infrastructure"; and
- is only liable to the extent that the operator does not already indemnify QR Network or have its liability to QR Network limited by a separate agreement (e.g. an access agreement) between the operator and QR Network.

10. Indemnities (2.7)

The Authority has proposed amendments to the indemnity clauses so that "in particular, indemnities should apply equally in terms of the obligations of the owner of specific infrastructure to the other party" (page 18).

2.7 The Authority requires QR Network to amend the indemnity clauses to:

(a) provide for QR Network to indemnify private infrastructure owners for loss or damage in respect of the connecting infrastructure; and

(b) limit indemnities to acts or omissions that are negligent or in breach of the agreement.

QR Network agrees in principle that the first amendment is desirable. With respect to the second amendment, QR Network's position is that the terms of the indemnity should be further restricted to cover only loss of life, personal injury, property damage, penalties for breach of law and wilful misconduct and fraud, except where such losses result from the negligent act, error, omission or breach of this contract of the counterparty (or its officers, employees or contractors) [clause 25].

11. Accreditation (2.8)

The Authority asks for input on whether clause 13 of the SRCA should remain at all; but includes drafting to ensure that the SRCA to ensure a RIM cannot do anything that may lead to suspension of loss of accreditation. We have included that drafting in the revised SRCA.

The Authority also proposes that accreditation requirements should be reciprocal:

- 2.8 The Authority requires QR Network to amend Part 9 of the SRCA to require both QR Network and a private infrastructure owner to be required to ensure that they or another person or entity hold appropriate accreditation over the track they own.

QR Network agrees with this proposal [clause 10].

QR Network considers that confirmation that there is no connection without accreditation is critical.

12. Scope and Coverage (3.1)

The Authority proposes to radically expand the scope of the SRCA to cover all possible connections.

3.1 The Authority requires QR Network to broaden the application of the SRCA to include major connections, non-coal service connections and projects with multiple loading points.

This is a very significant change, and in our view inappropriate. It is impossible to design a single vanilla agreement to cover the wide variety of railway connections. A one size fits all approach cannot deal with the many different risks and issues that different types of connection give rise to.

A level of flexibility can be provided through schedules to the revised SRCA, through supporting arrangements such as Train Services Plan, Asset Maintenance and Management Plan, Interface Risk Management Plan, Emergency Response Plan, and construction and interface arrangements. However, we do not accept that the SRCA should include major connections, especially to other railway networks.

Asciano makes the point that it is during the construction phase that different terms and conditions might be necessary for major expansions. QR Network agrees that this will be the case, but does not agree that significant differences will not arise during operation.

Railways of this nature have continuous changes in traffic and have significantly more sophisticated safety management systems. Changes to traffic, both number and type and the proposed operations, standards and communication protocols applicable on both sides of the connection, will affect the safe and efficient operation on the other side of the connection. In addition, the scale of major connections of this sort will have investment implications for the other party and potentially require changes to safety management systems. These implications need to be considered on their merits and in the context of the existing commercial framework and obligations on

each side of the connection. They will be highly specific to each connection of this sort. An SRCA cannot deal with this in an effective way. As a result, the scope of the SRCA should exclude any Major Connection unless the parties, having assessed the future requirements and risks of services entering and exiting the private infrastructure, negotiate otherwise [clause 2].

13. Charges and Payments (3.2)

The Authority proposes a number of changes to the pricing provisions in the SRCA. These changes are intended to provide greater certainty to connecting parties about the basis of charges, plus a right to audit.

3.2 The Authority requires QR Network to:

- amend the SRCA to provide greater certainty over the allowed charges and payments;
- amend the SRCA to provide for an audit of any costs, fees or charges, at the private infrastructure owner's request and cost; and
- provide that the annual service charge be a pass through of direct costs actually incurred by QR Network in meeting its obligations under the agreement that are not included in the reference tariffs or have otherwise been recouped through other charges.

Stakeholder concerns that appear to be behind the Authority's position were:

- lack of detail in the development of the Annual Service Charge; and
- risk that QR Network would include unreasonable costs in the charge.

QR Network Response

The decision requires that QR Network only be required to recover the "incremental and direct" costs associated with the connection under the Annual Services Charge. Direct costs are defined only as those inputs directly consumed in maintaining the infrastructure. This would require specific systems to be developed around the charging of hours and inventory against each rail connection, which would impose significant upfront and ongoing costs to derive actual costs to the required level of specificity for each maintenance year. QR Network considers this not to be feasible at this time.

Moreover, as maintenance is performed by an internal business unit, the Authority's draft decisions would preclude the inclusion of indirect costs such as business and corporate overhead. As the Authority does not provide for the recovery of all business and corporate overheads incurred by QR Network through the published reference tariffs, the recovery of direct costs only is not reasonable or consistent with our legitimate business interests. It is also not clear why the maintenance and operating costs associated with connecting infrastructure which is included in a reference tariff would be inclusive of these indirect costs but somehow not be a reasonable or permissible cost of inclusion in service charges.

Accordingly, QR Network should be entitled to recover all reasonable costs (direct and indirect) associated with maintaining and operating the connection. Our revised SRCA has removed the Authority's clause 1.2(d)(i).

There are four main types of cost incurred in a rail connection:

- the capital cost of the connection;
- maintenance costs;
- operations costs; and
- if the connection is electrified, additional electrical traction related costs.

Capital costs are dealt with in separate construction contracts and do not need to be addressed in a connection agreement. Incremental operations and electric costs, while not zero, will be relatively small. QR Network proposes to absorb these over the period between the completion of the connecting infrastructure and the next full recalculation of maximum allowable revenue and reference tariffs, as including these costs would significantly increase the complexity of the SRCA.

Incremental maintenance costs are significant. In our view, the best way to address these is as follows [clauses 3.3 and 15]:

(i) negotiate an asset maintenance and management plan with the connecting party for the rail connection;

(ii) that price to be charged directly to the connecting party for the period between the completion of the connecting infrastructure and the next full reset of the reference tariffs; and

(iii) include the connecting infrastructure in the reference tariffs at the next full reset.

Maintenance regimes, risks, and costs are typically highly specific to the nature of the connection. Their quantum depends on layout, structure, land type, type of earthworks, traffic control options and other variables.

In our view, this is a robust position for both QR Network and for connecting parties. It allows connecting parties to obtain expert advice if needed, and minimises any risks to the period between connection and revenue reset.

We consider that the asset maintenance and management plan, audit rights and dispute resolution mechanisms available once the connection is operational will provide sufficient transparency and protection for private infrastructure owners.

We also note that other costs (e.g. training) may be claimed under the SRCA, and we have amended the revised SRCA accordingly [clause 4.1(d)].

Pricing for non-coal services

Reference tariffs in the 2010 Access Undertaking apply to coal services only. Above we have agreed with the Authority that the SRCA should apply to non-coal services. The pricing approach we have outlined above is not appropriate to non-coal services or connections associated with operator facilities. In such cases we would directly charge the connecting party and not proceed to step (iii) above.

A less effective alternative

If the Authority rejects this approach, an alternative though less effective approach would be to adjust QR Network's maximum allowable revenue on an annual basis to include the additional maintenance costs generated by each connection. This would allow these costs to be included in reference tariffs.

Those costs could be estimated by calculating a NTK rate for the system on which the connection is made, and multiplying that rate by the contracted tonnes for the connection.

This approach would not be feasible for non-coal services. For non-coal connections, the model above should apply.

14. Definition of Connecting Infrastructure

While the Authority has made no draft decisions on connecting infrastructure definitions, it has included amendments to the Agreement in its revised draft, particularly to the definition of connecting infrastructure. We agree that these amendments improve understanding of the connecting infrastructure definition.

15. Train Control (3.4)

The Authority proposes some changes to this part of the Agreement to attempt to align access paths on the private infrastructure to those on the mainline and ensure cooperation between parties.

> 3.4 The Authority requires QR Network to amend the SRCA to ensure that:
>
> - QR Network uses its best endeavours in train scheduling to utilise corresponding access rights (so that train paths line up); and
> - the owner of the private infrastructure cooperates with the scheduling process.

The Authority's first proposal that QR Network uses its "best endeavours" to align train paths is an overly strong legal requirement. It would require that QR Network prioritise this traffic over other traffic and override existing access and other agreements. This is unnecessary and will promote confusion and potential conflict with other users of the mainline. Moreover it would lead to a breach of Schedule G of the 2010 Access Undertaking. Train control is governed by Schedule G of the 2010 Access Undertaking. That schedule is based on cyclic traffic (on the basis that this leads to the most efficient use of the Network) and is not compatible with priority based scheduling. The relevant access agreements covering train control should deal with the Authority's concerns.

The interface agreement will address the issue of private infrastructure owner and RIM co-operation with QR Network scheduling.

Our revised SRCA revises the Authority's proposal to address these issues, as well as the circumstances where train services may not be scheduled to enter or exit the private infrastructure [clause 13].

16. Insurance (3.5)

The Authority considers that QR Network should be required to demonstrate that it holds the appropriate insurances and that the insurances required by each party be stipulated in Schedule 3 with the levels of cover required. The Authority considers that the suggestion of the Queensland Resources Council (QRC) to include the provision of "any other insurance which is required by law" could become contentious.

> 3.5 The Authority requires QR Network to amend:
>
> - the SRCA to reflect reciprocal insurance requirements; and
> - Schedule 3 of the SRCA to specify the types and amounts of insurances required for both parties.

QR Network agrees with the Authority's draft decision. We have amended the SRCA to reflect these recommendations and reflect that not only the private infrastructure owner but also QR Network is required to take out and maintain the insurances outlined in Schedule 3 [clauses 18 and 19].

We have provided a template for Schedule 3. We agree with the Authority that all required insurances should be specified in the Schedule.

QR Network considers that the QRC suggestion for a Public Liability limit of $20,000,000 per claim is inadequate, given the nature of the incidents which may occur (e.g. damage to, or derailments affecting, the mainline) and the potential damage and liability which may result from such incidents. Given differences in rail connection characteristics and usage, QR Network considers that $100,000,000 a more reasonable and prudent level as a starting point that if required can be further assessed by the parties working through the relevant risks during the negotiation process.

17. Disputes (3.6)

The Authority proposes to align the dispute resolution process with that provided in the 2010 Access Undertaking.

> 3.6 The Authority requires QR Network to amend the SRCA to make clear that disputes relating to matters covered by the dispute resolution mechanism in QR Network's 2010 access undertaking should be resolved in the manner set out in the access undertaking.

The Authority has also proposed drafting amendments about the appointment of the appropriate expert in a dispute process.

QR Network agrees with the Authority's proposals [clause 20].

18. Coal Loss Mitigation (4.1)

The Authority has put forward the view that coal loss mitigation provisions (CLMP) should be removed from the SRCA. The rationale appears to be that such a provision is not contemplated in the Undertaking, and that the issue would be better addressed in access agreements or possibly by outcome provisions:

> 4.1 The Authority requires QR Network to delete the coal loss management provisions from the SRCA.

We disagree with the Authority's view that coal loss provisions are outside the scope of clause 8.3 of the 2010 Access Undertaking. Clause 8.3 provides that "neither the Private Infrastructure nor the Connecting Infrastructure is required to be of a standard or to be of any condition which exceeds the standards and condition of any QR Network infrastructure". This clearly contemplates that standards applying to private infrastructure could be included in connection agreements. For example, as discussed above in relation to standards, it is imperative that a connection agreement addresses private infrastructure standards to ensure safe and efficient entry and exit of trains to and from the mainline. In principle, the CLMP is no different.

In our view, the Authority's draft decision to remove CLMP is undesirable, particularly in light of the Coal Dust Management Plan (CDMP) jointly developed by QR Network and the Coal Supply Chain incorporating miners, rail operators, and port and other unloading facilities, as endorsed by the Department of Environment and Heritage Protection (formerly Department of Environment and Resource Management). Under the CDMP, it is the mine loadout, not operator, that is responsible for the loading, profiling and veneering of coal, and QR Network is mandated to incorporate the CDMP into its commercial arrangements. As such, we consider that the SRCA is a particularly effective mechanism to implement the CLMP where QR Network cannot contract with the operators of coal loadouts on private infrastructure. Access agreements (with operators) cannot do this as coal loss management is outside the control or responsibility of train operators, as recognised in the CDMP. If the private

infrastructure owner is properly mandated under the SRCA, it can contract with coal loadouts on its private network to incorporate the CLMP.

Implementing coal loss mitigation provisions on the Network is a key objective for QR Network and the Coal Supply Chain. The CDMP is detailed and specific in terms of its requirements to implement coal dust mitigation measures. The plan does not leave it to operators, miners or private infrastructure owners to determine methods for addressing coal dust, nor does it leave it to them to determine which party to the supply chain undertakes specific obligations. Rather the CDMP sets out specific requirements for mitigation measures and places responsibility for each measure on specific sections of the supply chain.

The reason why the CDMP places the requirement to veneer and profile wagons on mines and not operators is because coal fouling is fundamentally caused by loading practice. For example, a veneering station is integrated into both the loadout itself and the loading methodology. Operationally, the veneering system is also integrated into the mine train loadout (TLO) software for automation purposes. This works in conjunction with readers to ensure the veneering station is turned on and off as wagons are being loaded. Incorporation into the mine's TLO software also prevents overspray between wagons and the spraying of locomotives. As a result of this integration the loadout operator (mine staff) and not the train operator has control of the veneering station and also control the profile of wagons loaded.

In rolling out the veneering requirement, QR Network has facilitated the requirements of the CDMP. This has been done through two mechanisms:

(i) Transfer Facilities Licenses (where the mine loadout is on the Network); and

(ii) Connection Agreements (where the mine loadout is on a private infrastructure or network).

The Transfer Facilities License (TFL) is a license for mines to build, own and operate a train load out facility on QR Network rail infrastructure. Veneering obligations are included in TFLs as the primary purpose of the TFL is a right to load trains on the network. Investigation reports have identified the predominant source of coal dust as originating from the surface of the loaded wagon. Intrinsically, this is very much linked to the way in which a wagon is loaded.

At the time of submission, there are 36 loadouts on the Network. Of these, 22 TFL's (incorporating the veneering requirement) have been agreed and executed with mine customers. A further two (incorporating the veneering requirement) have been agreed with mines and are currently in the execution process. Significant momentum has been achieved in negotiations with the remainder. Connection agreements have been used to incorporate the loading, profiling and veneering obligations to cover scenarios where the mine loadout is located on private infrastructure or networks. This approach will ensure loading, profiling and veneering obligations extend to all mines utilising the Network. No mine using the Network should be excluded simply because they load on private infrastructure.

19. General

QR Network has also amended timeframes in the SRCA as required, utilising business days instead of ordinary days.

20. Conclusion

QR Network appreciates the efforts of the Authority and the submissions of key stakeholders and has sought to reach a reasonable compromise on the issues raised where possible. We consider that the SRCA must be limited to the operation and maintenance of the rail connection, as a part of a wider contractual package with a construction and interface agreement, and giving sufficient room to properly reflect the different characteristics of each rail connection.