

An aerial photograph of a large dam structure extending across a wide river. In the foreground, a large barge is docked at a pier, with various pieces of equipment and structures on its deck. The water is a deep blue-green color. In the background, a town and rolling hills are visible under a clear sky. A large white arrow graphic is overlaid on the left side of the image, pointing towards the right.

DBCT Declaration Review DBCT User Group

20 March 2019

➤ Concerns about the opportunity to be heard

- The QCA has been transparent on the proposed process
- However, the DBCT User Group is disappointed with the way DBCTM has sought to 'game' the declaration review process
- DBCTM has made material changes in position that have only been raised nearly 12 months into the process
- Our response today is merely what can be prepared in the week we have had available to prepare a rebuttal

➤ DBCTM's positions rely on these deeply flawed arguments:

Criterion (b)

- The market in which the DBCT service is provided includes other coal terminals
 - Foreseeable demand includes all of BMA/BMC's demand
 - The access queue should be treated as demand
 - DBCT's capacity needs to be, but cannot be, expanded to meet peak demand
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Criterion (a)

- The future 'without declaration' is represented by the Access Framework
- The alleged cap on price increases under the Access Framework means that declaration would not promote a material increase in competition
- Competition cannot be promoted by declaration as future users won't be able to gain access to DBCT
- The coal tenements market is geographically wide, such that the impact on the tenements market from declaration would not promote competition in that wider market



Criterion (b)

Facility could meet total foreseeable demand over the declaration period at least cost



Criterion (b) is satisfied.

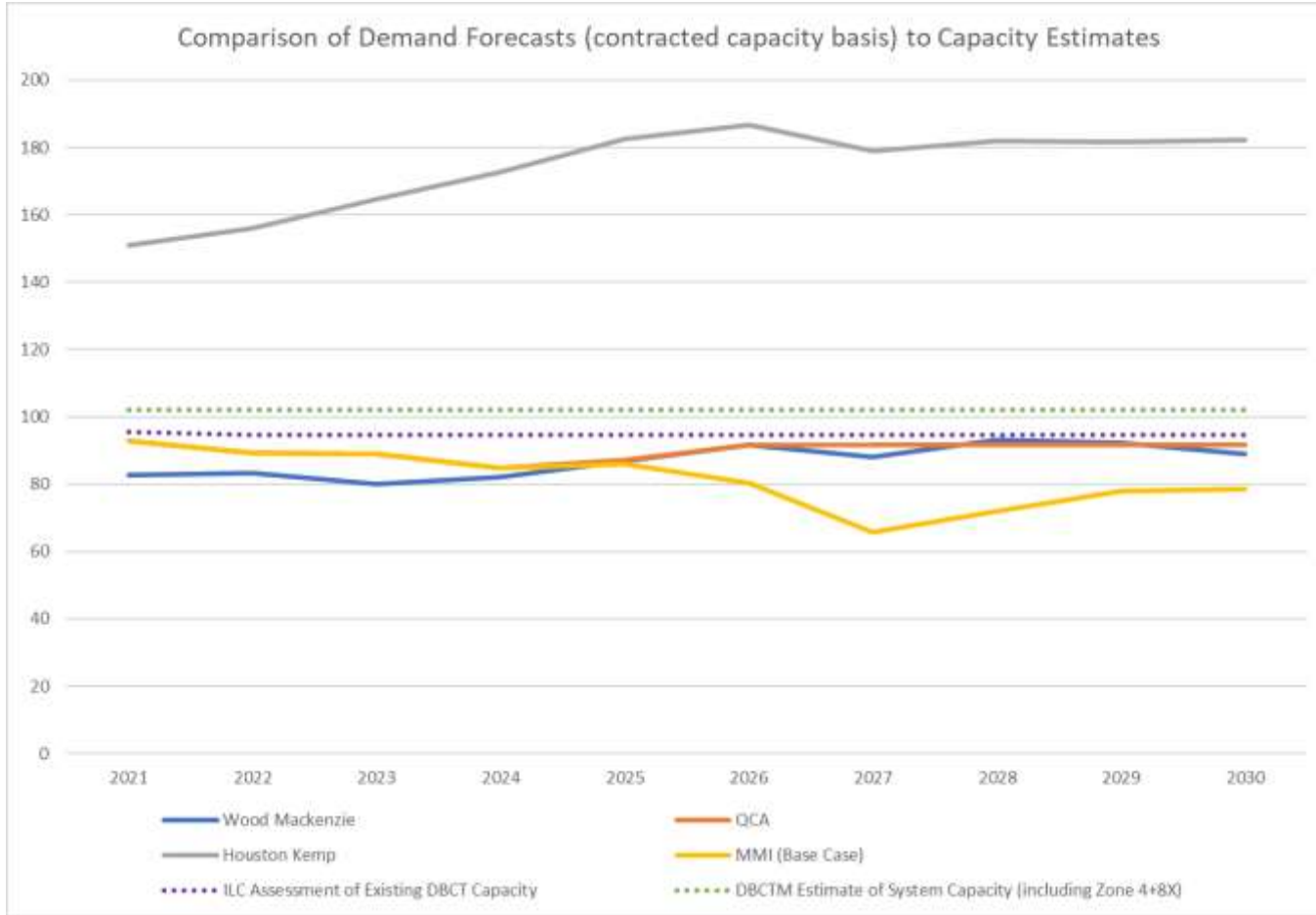
The relevant market for criterion (b) is the market for DBCT's coal handling services in the Goonyella system.

In this market, there are no viable substitutes to DBCT.

DBCT is able to meet total foreseeable demand in the market at the least cost compared to any two or more facilities

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➤ The DBCTM demand forecast is not credible



Demand met by existing or expanded capacity on all credible forecasts

DBCTM forecast is flawed. Demand is being included:

- for services outside the market
- which is not credible

➤ The market does not include other terminals

- The QCA has defined the market properly – by reference to substitution
- That analysis showing that there is a single monopoly supplier with no close substitutes does not mean the QCA has mistaken the service and the market
- Infrastructure costs make switching more than a SSNIP – at QCA's estimate at least 47-130% more (which QCA acknowledges underestimates rail costs)
- Numerous other 'non-cost' barriers to switching, including capacity limits

➤ Users buying two services ≠ substitution



- QCA estimate of cost to APCT: At least **93%** more
- No access to HPCT for non-BMA/BMC users
- QCA estimate of cost to:
 - RGT: at least **47%** more
 - WICET: at least **130%** more
- Services at other terminals are, at most, compliments not substitutes

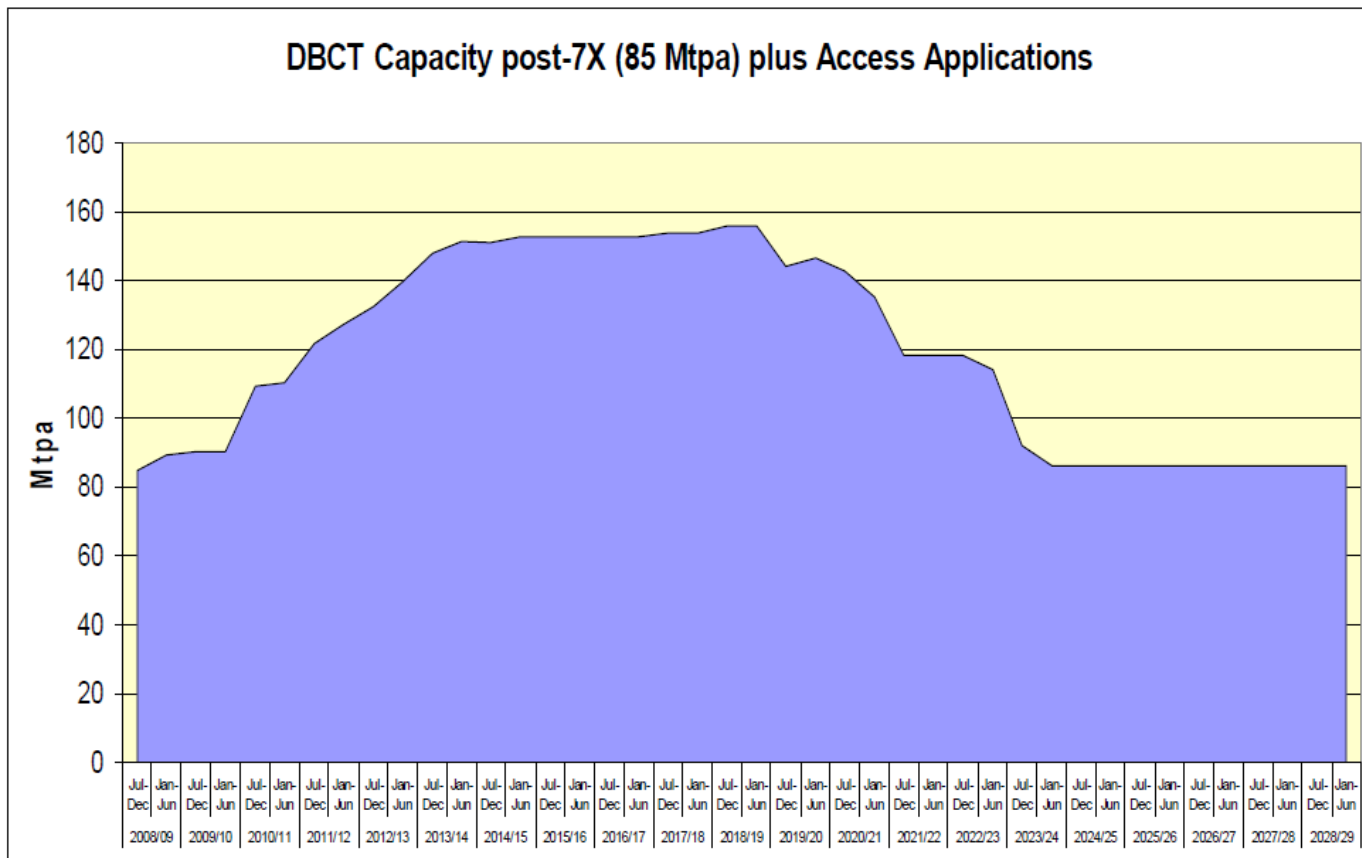
➤ Foreseeable demand does not include all BHP/BMA volumes

- The QCA has defined the market properly – by reference to the likelihood of substitution
- Clear that HPCT does not provide any competitive constraint on DBCTM
- BMA will continue to have strong incentives to operate HPCT as part of its own system / not provide access to other users
- At most represents asymmetric substitution by BMA/BMC that does not change the market boundaries

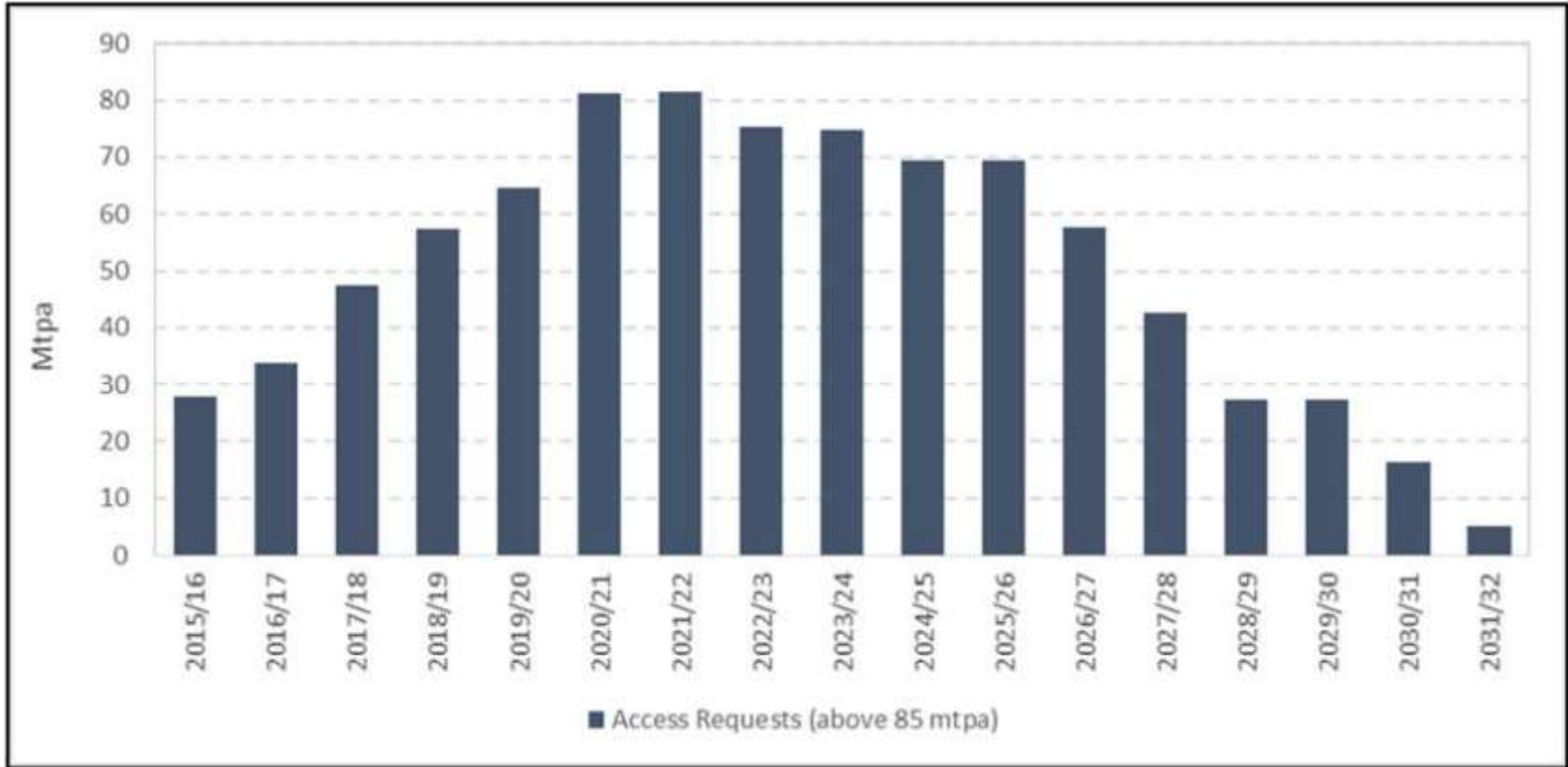
➤ The access queue does not equate to an equivalent level of aggregate demand

- Being in the access queue is a free option – often not converted to an access agreement. Access requests continually shift to later dates.
- DBCTM's simplistic approach of trying to aggregate contracted capacity and access applications does not account for:
 - the uncertainty of projects being developed (in terms of the investment decision being made, timing of development and volume of production)
 - the fact that some access applicants will obtain capacity through capacity trading or from existing user agreements relating to other mines in the user's portfolio

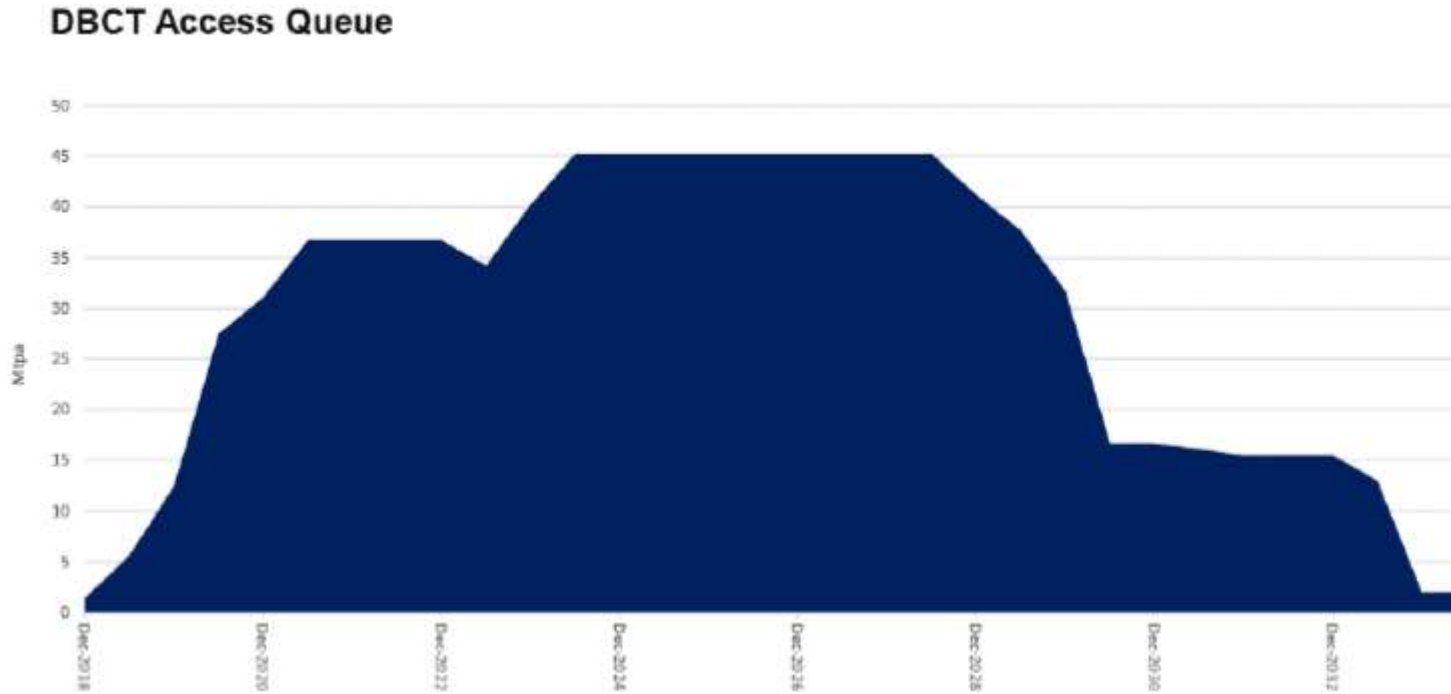
➤ DBCTM 2009 Master Plan



➤ DBCTM 2016 Master Plan



➤ DBCTM 2018 Capacity and Throughput Forum




➤ Existing terminal capacity and DBCT

- The nameplate capacity of 85 mtpa under-estimates DBCT's actual capacity
- Most recent ILC capacity estimate (October 2018): 95.4 mtpa (2021) and 94.7 mtpa (2022 onwards)
- Accordingly, the existing terminal has sufficient capacity
- But there is also clear expansions that are reasonably possible:
 - Zone 4 + 8X
 - DBCTM 2018 Master Plan estimates they provide system capacity of up to 102 mtpa
- DBCTM inappropriately excludes those expansions by seeking to impose restrictions on the meaning of 'reasonably possible to expand'



Criterion (a)

Access or increased access, on reasonable terms and conditions, as a result of declaration, would promote a material increase in competition in a dependent market



Criterion (a) is satisfied.

DBCT Management has an ability and incentive to exercise market power, such that in the absence of declaration, efficient entry to the coal tenements market would be discouraged and there will be a material impact on competition in that market.

Access (or increased access) to the DBCT service on reasonable terms and conditions as a result of declaration would promote a material increase in competition in the coal tenements market.

➤ This is not the same as the Newcastle shipping channel

DBCT coal handling service without declaration	Newcastle channel service without declaration
Asymmetric price rises - future users pay more than existing users	Uniform price rises
High potential for asymmetric terms – DBCTM can easily amend terms provided to future users	Uniform terms of access
Terminal charges are significant	Channel charges less significant
Terminal charges paid by users	Some channel charges paid by customers
DBCTM has incentives to maximise profit by increasing price	NCC finding that PNO has incentives to maximise profit by increasing volume
Future without declaration is uncertain. Contrived access framework is only evidence presented by DBCTM.	Evidence of future without declaration from PNO conduct in prior period without declaration and treatment of users which had not commenced arbitration

➤ **The access framework is not a proper counterfactual**

- Contrived and artificial attempt to try to defeat the service remaining declared
- Its acceptance leads to absurd results. Allows a constant recontesting of the declaration by changing the proposed access framework/deed poll
- Even if the terms were identical to the undertaking – the outcome will not be the same – given the absence of the QCA, the regulatory certainty it provides and enforcement mechanisms under the QCA Act
- Cannot be used to assess the likely future state of dependent markets given the substantial uncertainty of its application

➤ In any case, the access framework and deed poll will not operate as DBCTM alleges

➤ 10 year term limit:

- no certainty beyond that term
- means it still impacts on competition for tenements where investments are made based on development/production beyond the declaration period

➤ The alleged '\$3 price cap' is a cap above a hypothetical figure

- DBCTM has an inflated view of what the QCA tariff should be
- Still provides great uncertainty as to the price which will be payable (even if was possible to enforce)

➤ DBCTM has extensive amendment rights

- the likely terms of access without declaration are not actually what DBCTM has currently provided
- DBCTM incentivised to incrementally improve its position

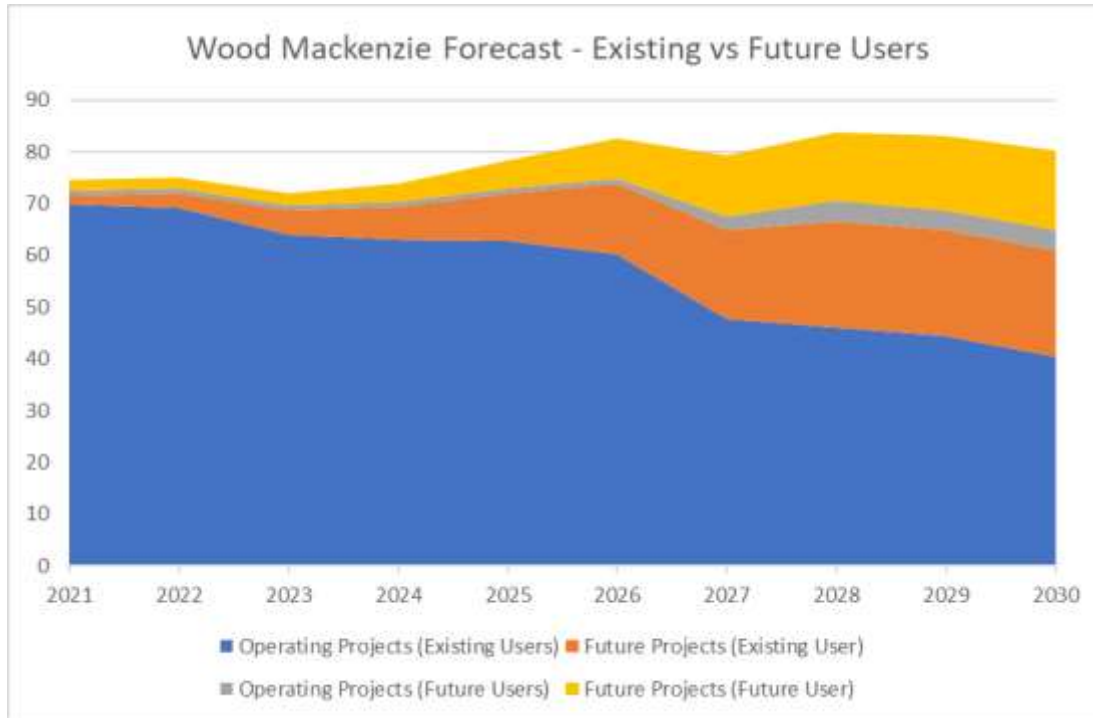
➤ In any case, the access framework and deed poll will not operate as DBCTM alleges

- Users have extremely limited options if/when DBCTM breaches the Access Framework (and makes inappropriate amendments)
 - No right to damages
 - Expensive court (or, for pricing, arbitration) proceedings as the only avenues for redress
 - No independent regulator to monitor or bring proceedings
 - Time bars
- For a potential tenement buyer – too much cost, risk and uncertainty.
- Rather than challenging at the time – future users will simply cease or reduce their investment in Hay Point catchment coal tenements

➤ Future users can gain access – real impact on competition

- ILC assessed existing terminal capacity as 95.4 in 2021 and 94.7 mtpa in 2022 onwards
- Numerous mechanisms for future users to gain access – notifying access seeker process, clause 20, expansions (such as Zone 4, 8X)
- DBCTM demand forecast / seeking to treat access queue as demand is not credible
- Credible demand forecasts attribute material demand to projects of future users

➤ Future users can gain access – real impact on competition



- Existing projects will progressively reach the end of their mine life
- Future users are what causes the demand growth (both pre and post 2030)
- This graph understates future users volumes (as it assumes existing users don't need additional capacity – which is not universally the case)
- This graph also shows throughput from future users which lags the timing of investment in the tenements market

➤ Geographic scope of the tenements market

- Hay Point catchment supported by:
 - Castalia (based on economic analysis)
 - Palaris and Balance Advisory (based on a holistic practical analysis)
- Valuations (and return) for equivalent tenements in other coal regions would be substantially different due to differences in supply chain costs (resulting in lower profits)
- There are numerous other differences, which makes it clear other tenements are not close substitutes – discussed particularly by Palaris:
 - Stable geological setting and favourable geotechnical conditions
 - Distribution of world class coal bearing formations
 - Coal quality attributes
 - Mines in the lower end of the cost curve
 - Favourable project development and approval conditions

➤ Conclusions

Criterion (b)

- Existing terminal can meet foreseeable demand at least cost
 - Even if you assume incremental capacity is required at some stage, DBCT (as reasonably possible to expand) can meet all demand forecasts at least cost
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Criterion (a)

- Access on reasonable terms and conditions as a result of declaration promotes a material increase in competition in the Hay Point catchment market for coal exploration and development tenements
- Access Framework is not an appropriate counterfactual
- Even if it was, the opportunities and environment for competition are materially improved with declaration – as without declaration the greater uncertainty and higher pricing confronting future users (but not existing users) creates a barrier to entry to efficient new entry