

Submission in response to Queensland Competition Authority
Draft Decision: QR 2020 Draft Access Undertaking

27 September 2019



NEW HOPE
GROUP

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1 Introduction and Executive Summary

This submission is made on behalf of New Hope Corporation Limited (**New Hope**) in relation to the Queensland Competition Authority's (**QCA**) April 2019 Draft Decision (the **Draft Decision**) on Queensland Rail's (**QR**) 2020 Draft Access Undertaking (the **2020 DAU**).

It is provided as a 'collaborative submission' following consultation with QR and other stakeholders to which the West Moreton and Metropolitan coal reference services are relevant (including Aurizon Operations and Yancoal).

Those consultations have been helpful in producing some agreed positions in relation to particular provisions of the access undertaking and standard access agreement (**SAA**). This submission confirms New Hope's support for the drafting positions that it understands are broadly agreed in principle by a number of stakeholders. However, New Hope's position on other wording matters remains as set out in its initial submission on the Draft Decision (which should be read together with this submission).

In regard to West Moreton and Metropolitan reference tariffs, consultation with QR has been limited and has not resulted in any areas of agreement.

As always, please do not hesitate to contact New Hope if we can be of any further assistance in the QCA's consideration of the 2020 DAU.

2 Overview of collaboration and outcomes

New Hope and QR have engaged in a number of discussions in recent months, some of which have also involved Yancoal. This has resulted in agreement on a number of issues regarding the terms of the Standard Access Agreement and the Access Undertaking. The outcomes of these discussions are set out in Schedule 1.

Limited consultation has also been undertaken regarding issues affecting West Moreton tariffs. These discussions have not resulted in any issues being agreed, however, updated information has become available which New Hope considers is relevant to the assessment of AU2, including that ongoing delays to the approval of the New Acland Stage 3 project are now certain to result in a period of lower tonnage for that mine (see section 4). New Hope's previous submissions suggested that information such as this should be taken into account when determining volume forecasts, pricing in a low volume scenario, and the question of loss capitalisation. New Hope's current views on matters affecting West Moreton tariffs are summarised below and explained in more detail in sections 3 to 10.

Issue	New Hope position
West Moreton reference tariffs	Tariffs are excessive, for the reasons described in initial submission and further described in section 3.
Volume forecasts	New information requires an updated assessment: discussed in section 4.
87 path constraint	87 path limit remains appropriate for coal cost allocation (as per the draft decision), for reasons described in initial submission and further in section 5.
Weighted average cost of capital (WACC)	New Hope accepts the draft decision on WACC. Section 6 responds to QR's submission and demonstrates that the draft decision is in line with relevant regulatory precedents.
Cost allowances	New Hope considers that capital and operating costs, and trade-off between these costs, should be re-assessed based on updated volume forecasts: see section 7.

Issue	New Hope position
'Low volume' scenario and loss capitalisation	New Hope supports the principles reflected in the draft decision. New information means that stakeholders are now better placed to consider this issue: see section 8.
Two-part tariff and contribution of Cameby Downs	New Hope remains concerned that the current tariff structure results in a subsidy: see section 9.
Other tariff related matters	New Hope's views are, as per the initial submission, summarised in section 10.

Part A – Reference Tariffs

3 West Moreton Reference Tariff

New Hope continues to have substantial concerns with QR's proposals in relation to the West Moreton coal service reference tariffs, including that:

- (a) it continues to be appropriate to allocate costs to coal services on the basis of 87 coal paths;
- (b) the WACC proposed in the Draft Decision is both appropriate and aligned (if not more favourable to QR) to other regulatory decisions when differences in underlying drivers for other regulated businesses are understood;
- (c) the cost allowances proposed by QR continue to appear too high to be efficient and prudent, and not reflective of a reconsideration of the lowest total cost approach as described in the Systra report; and
- (d) while New Hope supports the concept of loss capitalisation, New Hope has concerns that the approach proposed by QR will result in tariffs which are too high for too long, such that the tariffs will disincentivise utilisation of the network.

Further detail on those concerns is set out below.

4 Volume Forecast

New Hope accepts that volume forecasts should be updated to reflect more recent information. The delays experienced in gaining approvals for the New Acland Stage 3 project are now certain to result in a period of lower volumes from this mine, even if approvals are received in the near future. At this stage, New Hope has not completed a full assessment of those impacts, however, it is clear to us that the reduction will be material. Therefore, we consider that:

- (a) volumes and volume-related issues will need to be reassessed when there is more clarity as to the likely output of New Acland. Improved information is expected to be available late in 2019;
- (b) a reassessment of capital, operating and maintenance costs is required; and
- (c) consideration of the affordability of the resulting tariff is required. To the extent that this tariff could discourage investment in mining projects and discourage utilisation of the network, approval of an undertaking based on this tariff would not be appropriate. Possible solutions are discussed in section 8.

5 87 Path Constraint / Cost Allocation to Coal Services

New Hope strongly disagrees with QR's assertion in its latest submission that the correspondence from the Department of Transport and Main Roads (**DTMR**) requires the QCA to calculate reference tariffs 'without applying the 87 Train Path Constraint'.

The QCA is required by the QCA Act to determine whether the 2020 DAU (including the proposed reference tariffs) are appropriate. The current existence or otherwise of the constraint is clearly not determinative as to the appropriate outcome. However, in any case, as discussed in New Hope's initial submission on the Draft Decision, the DTMR correspondence to New Hope leaves open numerous questions about whether the constraint effectively still exists in the form of uncertainty as to whether Ministerial approvals of future access agreements will be provided, or whether a constraint could be (re)introduced in the future.

In addition, as New Hope's previous submissions have discussed:

- (a) the issue is not so much whether pathing constraints on coal services apply now (which is what the DTMR correspondence relates to), but that as a practical matter it did in the past, and that has had ongoing consequences for the volume of coal service usage of the West Moreton and Metropolitan network;
- (b) it is only at the point of coal services contracting above 87 paths on a long term basis that it will become clear that no such constraint exists (whether formally or informally and whether arising from QR, DTMR, Ministerial decisions or otherwise) and that the effects of past constraints are beginning to be overcome; and
- (c) as recognised in the Draft Decision, the cost allocation based on 87 coal paths already allocates to coal services a higher proportion of infrastructure costs than the proportion of capacity currently utilised by coal services – with New Hope and Yancoal effectively paying for paths which previous coal access holders contracted and New Hope and Yancoal have never had the benefit of.

Accordingly, New Hope continues to consider that the QCA's proposed approach of allocating to coal services the proportion of network costs reflecting 87 paths (at least until a higher volume of paths are contracted for long term coal services) remains appropriate.

6 Weighted Average Cost of Capital

6.1 Overview of Issues with the QR Submission

In its submission responding to the Draft Decision, QR urges the QCA to undertake a “top down systematic examination of the rate of return methodologies adopted by other regulators and their assessment of the required compensation for the risk of investing in rail infrastructure”.¹ QR claims, based on its review of a limited number of regulatory decisions, that the QCA's methodology results in a lower rate of return for QR than for “comparable networks”.²

It is unclear what QR means by a “top down systematic examination” of the rate of return methodology. The methodology relied on by the QCA in the Draft Decision is entirely orthodox and in line with the methodologies used by other Australian regulators. The QCA calculates the rate of return as a weighted average cost of capital, with the return on equity component estimated using the capital asset pricing model (**CAPM**) and the return on debt component linked to corporate bond rates – this is fundamentally the same methodology as is used by other Australian regulators.

Divergence between the QCA's Draft Decision allowance and those in other regulatory decisions is largely driven by:

- (a) changes in financial market conditions leading to variation in prevailing Government bond rates (used to estimate the risk-free rate) and corporate bond rates (used to estimate the return on debt);
- (b) differences in risk exposure between regulated businesses leading to differing estimates of the asset and equity beta (and in some cases different credit ratings used to estimate the return on debt);
- (c) different gearing levels assumed for different businesses, affecting both the weighting between the return on debt and equity, and estimation of the equity beta; and/or

¹ QR submission, p 3.

² QR submission, p 6.

- (d) in some cases, different methods (or combinations of methods) used to estimate the market risk premium (*MRP*).

Rather than examining the methodologies used by the QCA and other regulators, the QR submission focuses on the *outcome* of selected decisions. In doing so, QR ignores several of the *key underlying factors* set out above, which clearly drive variation in outcomes.

To the extent that comparison with other regulatory decisions might be seen as relevant, simply comparing outcomes without consideration of the underlying drivers of these outcomes is of little value. Any comparison needs to properly account for differences in market conditions, gearing levels and risk. To the extent that comparisons are to be drawn, that should be done at an individual parameter level, as the QCA does in its Draft Decision.³

The QR submission also avoids the important issue of what are “comparable” businesses. QR’s submission assumes that the only comparable businesses – and hence the only ones relevant for its comparisons – are those that involve access to below rail infrastructure. However, as the QCA has correctly identified, relevant comparators may include business in other sectors, such as energy and water. Indeed, businesses in these other sectors may be *better* comparators for QR than below-rail businesses operating in other States under different regulatory frameworks.

Based on first principles analysis, the QCA has identified regulated energy and water businesses and toll roads as relevant comparators. The QCA concludes in its Draft Decision that the risk faced by QR’s coal operations in the West Moreton system is likely to be less than that faced by toll roads but greater than for regulated energy and water businesses.⁴ The QCA also notes that QR’s coal operations in the West Moreton system are likely to face somewhat greater risk than Aurizon Network and ARTC’s Hunter Valley operations, but less risk than the WA freight networks and ARTC’s interstate operations.⁵

New Hope considers that the QCA’s Draft Decision reflects a conservative view of the risk faced by QR in its West Moreton coal operations. For reasons previously explained, we consider that the degree of risk faced by QR in supplying services to coal customers in the West Moreton system is likely to be only marginally greater than that faced by Aurizon Network, and that regulated energy and water businesses therefore represent appropriate benchmarks for estimating risk parameters.⁶ However, for the purposes of the analysis in this section, we adopt the QCA’s view on the relevant risk profile and comparator businesses.

In the remainder of this section, we review QR’s comparisons with other regulatory decisions and provide some alternative points of comparison which better account for differences in market conditions, gearing levels and risk. When these factors are properly taken into account, our analysis shows that the QCA’s Draft Decision is broadly in line with recent decisions of other regulators, and if anything, is somewhat favourable to QR.

6.2 Comparison to IPART Decisions

QR’s comparison with recent IPART decisions fails to account for differences in gearing levels and risk exposure.

IPART assumes gearing of 60% for water and rail businesses under its regulatory purview, compared to the 40% gearing for QR proposed in the Draft Decision. As well as affecting the weighting in the rate of return calculation, a higher level of gearing leads to a higher equity beta for a given level of asset risk.

³ Draft Decision, pp 40-41.

⁴ Draft Decision, p 28.

⁵ Draft Decision, p 29.

⁶ New Hope Group, Queensland Rail’s 2020 Draft Access Undertaking: Initial Submission – Volume 1, Overview and Reference Tariffs, 17 October 2018, pp 13-22.

It is also not clear that the businesses covered by IPART's WACC determinations are comparable to QR, in terms of their risk exposure. Water businesses in NSW are potentially comparable to QR, since they operate under a similar regulatory framework (a price cap regime, administered by IPART). However, the NSW rail access regime has little in common with the regulatory regime which applies to QR, meaning that the risk faced by rail businesses subject to this regime will be very different. Rail businesses in NSW are either subject to Part IIIA access undertakings or a negotiate/arbitrate regime under the NSW Rail Access Undertaking.

Table 1 provides a comparison of the Draft Decision with IPART's most recent determination of WACC parameters for water and rail businesses.⁷ The comparison accounts for differences in gearing and market conditions by:

- (a) using a consistent measurement period (the QR placeholder averaging period) for estimation of the risk-free rate and return on debt;
- (b) de-levering and re-levering IPART's beta estimates to reflect QR's lower gearing;⁸ and
- (c) calculating the WACC based on QR's gearing (i.e. with the return on debt weighted 40% and the return on equity weighted 60%).

This comparison shows that the Draft Decision is in line with the most recent IPART determination (above IPART's estimate for water businesses and slightly below its estimate for higher risk rail businesses). When IPART's beta estimates are de-levered and re-levered to reflect QR's lower gearing, they are actually lower than the QCA's allowance for QR. The only reason that the overall WACC determined by IPART is in line with the Draft Decision (not lower) is that IPART adopts a higher estimate of the current MRP. The difference in MRP estimates reflects the fact that, when estimating the current MRP, IPART relies only on the outputs of dividend discount models, analyst forecasts and market indicators.⁹ The QCA adopts a more balanced approach to estimating the MRP, taking into account estimates from a broader range of methodologies, including the Ibbotson and Siegel methods, market evidence and the dividend growth model.¹⁰

Table 1: Comparison with IPART water and rail determinations – controlling for differences in gearing and measurement period

	QCA draft decision	IPART – water¹¹	IPART – rail
Risk-free rate in QCA measurement period	2.28%	2.28% (2.66% in IPART measurement period)	2.28% (2.66% in IPART measurement period)
Cost of debt in QCA measurement period	4.67%	4.67% (5.01% in IPART measurement period).	4.67% (5.01% in IPART measurement period).
Market risk premium	6.50%	8.60%	8.60%
Gearing	40%	60%	60%
Equity beta (raw)	0.71	0.7	0.9
Asset beta	0.50	0.38	0.46
Re-levered equity beta (to reflect QR gearing)	0.71	0.52	0.66
Nominal WACC – with consistent measurement period and gearing assumption	6.0%	5.9%	6.6%

⁷ IPART Market Update February 2019.

⁸ De-levering and re-levering is based on the QCA's preferred Conine formula, and its assumed debt beta and gamma.

⁹ IPART, Review of our WACC method, February 2018, section 5.5.

¹⁰ QCA, Final decision: Cost of capital: market parameters, August 2014, section 4.

¹¹ IPART Market Update February 2019.

6.3 Comparison to ACCC Decisions

QR's comparison with recent ACCC decisions suffers from similar limitations to those discussed above.

QR has not accounted for differences in gearing between QR and ARTC (the ACCC assumes 52.5% gearing for ARTC's Hunter Valley operations and 50% gearing for its interstate operations). QR also fails to acknowledge that at least the interstate operations are considerably more risk-exposed.

Table 2 provides a comparison of the Draft Decision with the ACCC's most recent decisions for ARTC, controlling for differences in gearing and measurement periods. This shows that the Draft Decision is in line with these recent decisions – above the ACCC's allowance for ARTC's Hunter Valley operations (based on the draft decision of April 2017)¹² and below its allowance for the higher risk interstate operations. Table 2 also compares the Draft Decision to the ACCC's most recent decision for Telstra's fixed-line telecommunications network. This provides another potentially relevant point of comparison, although Telstra's fixed-line operations are likely to be more risk-exposed than QR's West Moreton system – Telstra's fixed-line network is subject to a price cap regime with no protection from demand or cost risk and significant exposure to asset stranding risk.

Table 2: Comparison with ACCC rail and telco determinations – controlling for differences in gearing and measurement period

	QCA draft decision	ACCC – HVAU¹³	ACCC – Interstate¹⁴	ACCC – telco¹⁵
Risk-free rate in QCA measurement period	2.28%	2.28% (2.12% in ACCC measurement period).	2.28% (2.78% in ACCC measurement period).	2.28% (2.76% in ACCC measurement period).
Cost of debt in QCA measurement period	4.67%	4.67% (4.96% in ACCC measurement period).	4.67% (4.61% in ACCC measurement period).	4.67% (4.57% in ACCC measurement period).
Market risk premium	6.50%	6.00%	6.00%	6.00%
Gearing	40%	52.5%	50%	40%
Equity beta (raw)	0.71	0.94	1.2	0.7
Asset beta	0.50	0.45	0.60	0.49
Re-levered equity beta (to reflect QR gearing)	0.71	0.64	0.87	0.7
Nominal WACC – with consistent measurement period and gearing assumption	6.0%	5.5%	6.4%	5.8%

6.4 ERA comparison

In comparing the Draft Decision outcome with recent decisions of the Economic Regulation Authority of Western Australia (**ERA**), QR has not sought to identify which of those decisions

¹² New Hope acknowledges that ARTC ultimately received a higher rate of return than the rate set out in the ACCC's 2017 Draft Decision on the HVAU. This outcome was negotiated with access holders and reflected specific circumstances which are not relevant to QR. The negotiated WACC is therefore not relevant as a regulatory precedent.

¹³ ACCC, Draft Decision: Australian Rail Track Corporation's 2017 Hunter Valley Access Undertaking, 20 April 2017, p 135.

¹⁴ ACCC, Draft decision: Australian Rail Track Corporation's 2018 Interstate Access Undertaking, 20 December 2018, p 125.

¹⁵ ACCC, Public inquiry into final access determinations for fixed line services: Final Decision, October 2015, p 67.

might be most relevant. The ERA determines WACC parameters for a range of businesses in Western Australia, each with very different risk profiles.

On closer examination of the ERA's WACC determinations, it is clear that those relating to the WA freight railways are of limited relevance. These businesses face much greater risk than QR, as is clear from the comparator set used by the ERA in setting the asset / equity beta for those businesses. The ERA notes that the risk profiles for Arc and Pilbara Railways are comparable with North American railroads.¹⁶ The QCA has correctly identified that North American railroads are much more risk-exposed than QR, and so are not relevant comparators. The QCA has also noted that QR faces less risk than the WA freight networks.¹⁷

A better comparator for QR is the Public Transport Authority (PTA). The ERA notes that the risk profile for the PTA is similar to, but somewhat lower than, toll roads.¹⁸ This indicates that the PTA's risk exposure is likely to be similar to QR's.

Another relevant point of comparison is the gas businesses regulated by the ERA. As noted above, the QCA has correctly identified regulated energy businesses as relevant comparators.

Table 3 provides a comparison of the Draft Decision with the ERA's most recent decisions for the PTA and ATCO gas businesses, controlling for differences in gearing and measurement periods. This indicates that the Draft Decision is relatively favourable to QR, compared to these recent ERA decisions.

Table 3: Comparison with ERA rail (PTA) and gas determinations – controlling for differences in gearing and measurement period

	QCA draft decision	ERA – PTA ¹⁹	ERA – ATCO draft decision ²⁰
Risk-free rate in QCA measurement period	2.28%	2.28% (2.76% in ERA measurement period).	2.28% (2.34% in ERA measurement period).
Cost of debt in QCA measurement period	4.67%	4.67% (4.23% in ERA measurement period).	4.67% (5.01% in ERA measurement period).
Market risk premium	6.50%	5.90%	6.00%
Gearing	40%	50%	55%
Equity beta (raw)	0.71	0.6	0.7
Asset beta	0.50	0.38	0.41
Re-levered equity beta (to reflect QR gearing)	0.71	0.53	0.57
Nominal WACC – with consistent measurement period and gearing assumption	6.0%	5.1%	5.3%

¹⁶ ERA, Draft Determination: 2018 Weighted Average Cost of Capital at 30 June 2018 for the Freight and Urban Networks, and the Pilbara Railways, 2 May 2019, [292]-[310].

¹⁷ Draft Decision, p 29.

¹⁸ ERA, Draft Determination: 2018 Weighted Average Cost of Capital at 30 June 2018 for the Freight and Urban Networks, and the Pilbara Railways, 2 May 2019, [284]-[291].

¹⁹ ERA, Draft Determination: 2018 Weighted Average Cost of Capital at 30 June 2018 for the Freight and Urban Networks, and the Pilbara Railways, 2 May 2019, Table 14.

²⁰ ERA, Draft Decision on Proposed Revisions to the Mid-West and South-West Gas Distribution Systems Access Arrangement for 2020 to 2024 submitted by ATCO Gas Australia, 18 April 2019, p 43.

6.5 Broader comparison, including regulated energy and water businesses

The QR comparison ignores a range of other regulatory decisions which are potentially more relevant than those for rail networks in other states. In particular, QR has not referred to decisions for regulated energy and water businesses, which the QCA has identified to be relevant comparators.

Table 4 provides a comparison of the Draft Decision with two recent decisions of the Australian Energy Regulator (**AER**) for electricity and gas network businesses. This indicates that the Draft Decision is relatively favourable to QR, compared to these recent AER decisions. We note that the Ausgrid decision is representative of the approach and parameter estimates that will be applied to all energy network businesses going forward, since these are effectively locked in through the AER's binding rate of return instrument.²¹

Table 4: Comparison with AER determinations – controlling for differences in gearing and measurement period

	QCA draft decision	AER – Ausgrid²² (elec distribution)	AER – VTS²³ (gas)
Risk-free rate in QCA measurement period	2.28%	2.28% (2.04% in AER measurement period).	2.28% (2.73% in AER measurement period).
Cost of debt in QCA measurement period	4.67%	4.67% (5.74% in AER measurement period).	4.67% (4.72% in AER measurement period).
Market risk premium	6.50%	6.10%	6.50%
Gearing	40%	60%	60%
Equity beta (raw)	0.71	0.6	0.7
Asset beta	0.50	0.33	0.38
Re-levered equity beta (to reflect QR gearing)	0.71	0.45	0.52
Nominal WACC – with consistent measurement period and gearing assumption	6.0%	4.9%	5.3%

6.6 Overall Rate of Return Comparison

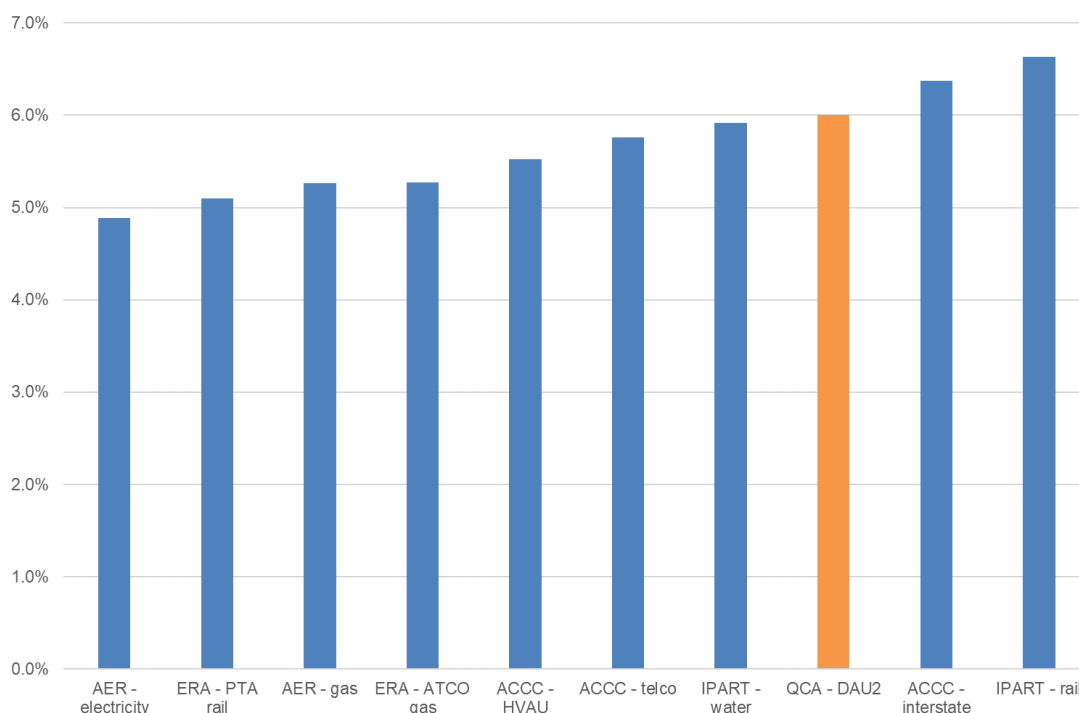
Figure 1 below provides a visual comparison of the decisions referred to above, again controlling for differences in gearing and measurement periods.

²¹ Under recent changes to the National Electricity Law and National Gas Law, the rate of return for regulated electricity networks and covered gas pipelines must be in accordance with the AER's rate of return instrument. The rate of return instrument sets out values for the market risk premium (6.1%), equity beta (0.6) and gamma (0.585), and formulae for calculating the risk-free rate and cost of debt (see: AER, Rate of return instrument, December 2018). The rate of return instrument is binding on the AER in making revenue / price determinations for electricity network and gas pipeline businesses (National Electricity Law, s 18H; National Gas Law, s 30C). It was applied by the AER in making its recent determination for Ausgrid, referred to in Table 4.

²² AER, Final Decision: Ausgrid Distribution Determination 2019 to 2024 – Overview, April 2019, Table 4.

²³ AER, Final Decision: APA VTS gas access arrangement 2018 to 2022 – Attachment 3 – Rate of return, November 2017, Table 3-1 and 3-2.

Figure 1: Comparison of recent rate of return decisions, controlling for differences in gearing and measurement period



This indicates that the Draft Decision is broadly in line with these recent decisions, and if anything slightly favourable to QR. The only two decisions providing for a higher allowance relate to businesses that are more risk exposed – i.e. the ARTC interstate operations and businesses subject to the NSW rail access regime. Most recent decisions for comparable energy, water and rail businesses provide for a rate of return below the Draft Decision allowance.

6.7 Systemic Risk

QR has raised the closure of the Wilkie Creek mine as evidence of systemic risk (section 2.8 of QR's July 2019 submission). This issue was considered and addressed by the QCA in the Draft Decision (Appendix A: First Principles Analysis). The QCA observed that:

- (a) there is a weak relationship between the state of the Australian economy and the demand for West Moreton coal (page 138);
- (b) the economics of the Wilkie Creek mine do not necessarily reflect those at the New Acland and Cameby Downs mines (page 140).
- (c) in addition to having a stable expected demand for a commodity that is relatively invariant to the state of the Australian economy, Queensland Rail's exposure to volume risk is also mitigated by it having a customer base that has shown resilience to price shocks and is heavily incentivised to maintain production (page 142).
- (d) differences in the specific characteristics of the networks' customer bases and cost-based regulatory regimes are likely to contribute to West Moreton coal facing a higher level of systemic risk relative to Aurizon Network (page 151).

In summary, the QCA has considered these issues and has appropriately reflected the systemic risk in its WACC estimates.

We would also observe that:

- (a) raising tariffs to compensate for a perceived risk of mine closures is likely to be a self-defeating exercise: the sources quoted by QR regarding the Wilkie Creek closure cite high costs as being a factor in the closure.
- (b) QR's concerns regarding the fragility of its customers do not appear to extend to QR's assessments of an appropriate or affordable tariff. Rather, section 2.6 of the QR submission seeks to demonstrate the robust economics of the Cameby Downs mine and its ability to bear a very high access charge.

New Hope's views are as follows:

- (a) QR does face higher risk of being impacted by mine closures due to its limited customer base and the high cost of rail services (above and below) in the West Moreton system.
- (b) This risk is a systemic risk only to a limited extent.
- (c) The risk has been considered by the QCA and is reflected in the proposed WACC.
- (d) A reasonable ceiling price must be applied in a low-volume scenario in order to avoid a situation in which access charges materially increase the risk of mine closures.

7 Cost Allowances and the Systra Report

Consistent with New Hope's initial submission on the Draft Decision, New Hope supports a more detailed assessment of the potential for QR to achieve greater efficiencies, including through the type of trade-offs between capital expenditure and maintenance costs that the Systra report and Draft Decision identified.

Separately to that report, New Hope continues to have significant concerns with the overall high costs being claimed by QR – particularly in the context of QR continuing to hold concerns about potential decreases in volume on the network. We note that, in QR's July 2019 submission, QR proposed revised tonnage forecast and states that "*Queensland Rail has amended its capital and maintenance programs to reflect these tonnage levels*". New Hope does not have access to these revised capital and maintenance plans nor are we aware of QR proposing any cost reductions as a result of changed plans.

New Hope now notes that QR's latest submission queries certain conclusions or estimates from the Systra report. New Hope is not well placed to provide a detailed response on those matters, but suggests the QCA engage Systra (or another suitably qualified expert) to provide an updated report that:

- (a) considers the issues raised by QR (and accepts, rejects or provides further information as appropriate);
- (b) considers the prudent and efficient cost allowances at the forecast volumes that the QCA considers should be used for determining reference tariffs (noting that the previous Systra report was principally based on QR's initially proposed volume forecast of 9.1 mtpa and presumably therefore provides for higher cost allowances than would be efficient at lower volumes);
- (c) to the extent that a lower volume forecast is used, reconsider the appropriate trade-off between capital expenditure and maintenance costs;
- (d) considers what capital can be postponed until such time as there is greater certainty of New Acland Stage 3 proceeding and the timing in which that might occur (noting that there will be a ramp up period for New Acland Stage 3 in which any required investments are likely to be able to be accommodated).

8 'Low Volume' Scenario

8.1 Implications of reduced volumes

As was discussed in section 4, New Hope considers that any increase in West Moreton tariffs compared to those set out in the draft decision, including as a result of a reduction in forecast tonnages, requires consideration of the affordability of the resulting tariff. To the extent that this tariff could discourage investment in mining projects and discourage utilisation of the network, approval of an undertaking based on this tariff would not be appropriate.

The issue of 'ability to pay' is discussed in section 8.2. New Hope considers that the current West Moreton tariffs are at the upper limit of an affordable range. The QCA's Draft Decision proposes reference tariffs which are slightly lower than current tariffs, based on the QCA's 'high volume' scenario. However, tariffs would exceed current tariffs if volumes were to be reduced significantly below the volumes used in the draft decision, and New Hope considers that such a volume reduction is, in the short term, inevitable. The reduced volume scenario therefore requires a solution, which could include a combination of:

- (a) Cost reduction (capital, operating and maintenance) to reflect lower volumes.
- (b) Asset optimisation: reflecting the existence of significant surplus capacity.
- (c) Revenue deferral, such as deferring depreciation charges or loss capitalisation.

New Hope suggests that:

- (a) Cost reduction should be a preferred solution to the extent that this is possible without compromising the long-term performance of the network.
- (b) Asset optimisation is appropriate to the extent that the reduction in volumes is expected to be permanent: we do not consider that asset optimisation is required at this time.
- (c) Revenue deferral: We consider that this is now necessary, and that the loss capitalisation approach described in the draft decision could, with some amendment, provide an appropriate framework. This is discussed further in section 8.3.

8.2 Ability to Pay

New Hope considers that QR has materially overstated the 'ability to pay' of West Moreton coal users, and is concerned that if low volume tariffs and loss capitalisation mechanisms (including loss recovery premiums) are being designed with an inflated view of coal user profitability, there is a real risk of access charges being set in a way such that coal volumes will not recover.

QR's analysis of Cameby Downs Ability to Pay (QR submission section 2.5) was based on coal prices "derived from" the December 2018 Quarterly Update of the Office of the Chief Economist for the Department of Industry, Innovation and Science. This report:

- (a) Provides forecasts of coal prices only as far as the June 2020 quarter. The report is not intended to be, nor is it, suitable for any longer-term analysis.
- (b) Is now out of date. The most recent (June 2019) report provides forecasts out to June 2021: which are USD 5 lower (or AUD 6.60) than the forecast for June 2020 contained in the December update. For the analysis below, we have used USD 70 at 75c, sourced from the "Quarterly Prices" and "Aus macro" tabs of the June 2019 excel file (website of the Office of Chief Economist).
- (c) Uses a coal price which is based on "benchmark quality" Hunter Valley coal with an energy content of 6000kcal/kg net as received basis. [REDACTED]

[REDACTED]

The table shows Cameby Downs being in a loss-making position in every year. However, even if coal prices were to increase such that prices support a break-even result under this analysis, this is not a sustainable outcome for the business, because no allowance has been made for 'sustaining' or 'stay in business' capital expenditure. Nor would the prospect of re-entering the network under such conditions be a viable prospect for the New Acland mine, because substantial capital expenditure is required for New Acland Stage 3, and a cash break-even scenario provides no return on capital.

It is important to remember that the ceiling price established under a loss-capitalisation model must do more than keep the Cameby Downs mine in business. It must also provide a profile of expected access charges which promotes a decision by New Hope to invest capital in the New Acland Stage 3 project. Such a tariff must:

- (a) be set at an affordable maximum level for the period during which capitalised losses are being repaid.
- (b) return to 'normal' levels (without a premium) within a reasonable period. The QCA's proposed amortisation of losses over five years ensures that the uplifted tariff will not endure beyond a reasonable period, reducing the extent to which new mines face disincentives to invest arising from historic underutilisation of the network. The QCA's proposal is consistent with the object of Part 5 of the QCA Act because it promotes utilisation of the infrastructure, with the effect of promoting competition in upstream and downstream markets.

This discussion highlights the risk of allowing QR to estimate an affordable tariff based on QR's understanding of coal markets. In summary, QR's analysis:

- (a) Assumes that a short-term coal price forecast is appropriate for medium-term analysis.
- (b) Fails to account for coal quality.
- (c) Fails to account for sustaining capital expenditure or to consider the investment required for the New Acland Stage 3 project.
- (d) Is out of date: which will often be the case due to the volatile nature of coal markets.

Given the challenges of estimating an 'affordable' tariff and the changeable nature of such a tariff, New Hope suggests that the QCA should also consider the appropriate maximum tariff in the context of the impact which below-rail and above-rail costs (which are a result of the standard of the below-rail infrastructure) have on the competitiveness of West Moreton mines. These impacts are shown in the following table. :

	QR estimate of Cameby Downs	Central Queensland mines	Hunter Valley
Above rail estimate \$/t	\$17.00/t	\$5.80 average	
Below rail estimate \$/t	\$16.81/t	\$3.80/t (Average) (range \$2.20-\$7.80)	\$2.55/t (average)
Total rail costs \$/t	\$33.81/t	\$9.60/t	\$8.35/t

Above rail average cost estimated using data from Aurizon H1FY2019 results presentation (slide 15). This data relates to Aurizon's above-rail coal business in Queensland and NSW

Hunter Valley below rail estimate derived from ARTC 2015 Compliance Assessment

New Hope suggests that a below-rail tariff which:

- (a) Is around five times the average paid by Central Queensland and Hunter Valley producers; and
- (b) Is paid for the use of infrastructure which, due to its limitations, results in above-rail costs being around triple the costs seen in other systems,

should not be considered appropriate.

New Hope considers that the maximum tariffs discussed in the draft decision for low volume scenarios (being a 15% premium above the draft decision tariffs) will risk creating a disincentive to investment and utilisation of the infrastructure. Our view remains as explained in our July 2019 submission: that a premium of 5-10% above the draft decision tariffs is more likely to achieve the intended outcome of a loss capitalisation model. We also note that, as the assessment of the maximum tariff should be driven primarily by considerations of affordability, the maximum tariff level should not be influenced by changes in the underlying assumptions or building block inputs. For example, if volumes are reduced such that the final decision tariffs move above the affordable maximum tariff, then the maximum affordable tariffs and loss capitalisation should apply immediately. Conversely, if QR's costs were to be reduced compared to those assumed in the draft decision, this should not reduce the maximum tariff level (and capitalisation of losses would become less likely to occur, or the quantum of losses would be reduced).

8.3 Loss Capitalisation Conclusion

New Hope generally supports the loss capitalisation approach set out in the draft decision, subject to the comments on the maximum affordable tariff set out in section 8.2. While we consider that there are strong arguments in favour of immediate optimisation of the asset base, we understand the QCA's preference to give QR every opportunity to avoid this outcome. This is achieved by the 'limited life' loss capitalisation model. Under this approach:

- (a) QR would incur a permanent loss of revenue only where volumes do not recover within a reasonable period of time; and
- (b) future users of the network may incur a premium price arising from a past period of low utilisation of the network, but will not be required to do so indefinitely.

9 Two-part tariff and contribution of Cameby Downs mine

In section 2.3 of New Hope's submission of 11 July 2019, New Hope explained its concerns regarding the revenue contribution of the Cameby Downs mine, and the question of whether the proposed pricing arrangements would result in a subsidy. Appendix A of the submission presented analysis, based on information extracted from the financial model provided by the QCA, which indicated that the revenue contribution of Cameby Downs was unlikely to cover the incremental costs of the mine (costs incurred West of Jondaryan, plus variable costs including East of Jondaryan). New Hope sought to consult with QR on this question, and provided a copy of the modelling to QR for review, however received limited feedback. New Hope therefore continues to request:

- (a) Confirmation that Cameby Downs is expected to contribute revenue at least equal to its full incremental cost (including the cost of capital which could have been avoided in the absence of the project); or
- (b) An explanation of why a subsidy is considered appropriate by the QCA.

We acknowledge that the increased volume forecast for Cameby Downs which QR appears to have indicated in its July 2019 submission may well result in Cameby Downs covering its incremental costs.

10 Other West Moreton tariff-related matters

New Hope's views on the following matters were explained in the initial submission and are unchanged:

- (a) The Endorsed Variation Event for increases in contracted coal services above the levels on which reference tariffs were based should continue. This is critical in any scenario in which the level of capacity reflected in cost allocations is greater than the volumes used to develop reference tariffs (July 2019 submission, 2.3.4).
- (b) Changes are required to the capital expenditure approval process (July 2019 submission, 2.4.2).
- (c) The Adjustment Charge approval process from AU1 should be retained (July 2019 submission, 2.4.3).

Part B – Access Undertaking and Standard Access Agreement

11 Consultation

New Hope has met with QR and a number of other stakeholders since the Draft Decision was handed down.

On a select range of issues concerning the wording of the 2020 DAU and SAA, QR provided proposed alternative drafting.

Following consultation, compromise drafting was agreed for most of those selected issues, which New Hope understands will be included in QR's collaborative submission.

12 New Hope Positions on 2020 DAU and SAA Wording Issues

New Hope has reviewed its positions from its previous submission, taking into account the Latest QR Submission and the consultations that have occurred.

Schedule 1 summarises for the QCA:

- (a) the issues on which consultation occurred; and
- (b) New Hope's position – including where it supports the compromise position to be provided in the QR collaborative submission, and where it supports that position subject to some further refinements.

13 Regional Network User Groups

Consultations with QR also extended to the proposed insertion of a new clause into the undertaking in relation to 'Regional Network User Groups' (such as the South-West User Group which currently operates in respect of the West Moreton system). New Hope is strongly supportive of the South-West User Group being expressly recognised in the Undertaking, and considers that an effective forum of that nature will be critical to increasing the prospects of achieving productivity and efficiency improvements.

QR has proposed drafting around how productivity and operational improvements would be addressed. New Hope has set out below the amendments it considers appropriate to QR's proposed drafting for this new undertaking clause. The principal changes New Hope is seeking are that:

- (a) the SWUG is currently chaired by a user representative – and New Hope considers that should continue given that the users are the only entities which have exposure to each element of the supply chain (through contracts which each of the below rail, above rail and coal terminal providers) – acknowledging that the North Coast Line may require different treatment given that it does not have the same end user customer base.
- (b) at least some consideration is given to capacity constraints and Extensions as possible resolutions – while acknowledging that there is a separate regime for progressing any such Extension under clause 1.4 of the Undertaking. There will be times when a capital solution is more efficient than an operational solution; and
- (c) the existing Terms of Reference for the SWUG continue to apply until new Terms of Reference are agreed (so as to not disrupt the existing user group that is currently in operation).

Productivity and Operational Improvements

- a) *Within two months of the Approval Date, Queensland Rail will convene a Regional Network User Group for each of the West Moreton System, North Coast Line System and Mt Isa Line System, subject to there being active and ongoing support for the group from the relevant nominated Rolling Stock Operators and Access Holders that operate in the respective system.*
- b) *~~A Queensland Rail representative will~~ The chair of each of the Regional Network User Groups will be an end user representative agreed by the participating Access Holders (for the West Moreton System and Mount Isa Line System) or a Queensland Rail representative (for the North Coast Line System).*
- c) *Each Regional Network User Group will be a co-operative group with emphasis on analysis of data, open, impartial discussion and consensus discussion making to improve the operation of the supply chain.*
- d) *Queensland Rail will (and will provide resources to):*
 - i. *develop and produce operational and system performance reports; ~~and~~*
 - ii. *provide analysis of the root causes of ongoing or systemic issues being experienced.*
 - iii. *identify resolutions to such issues (including, where appropriate, potential Extensions) and other productivity or efficiency initiatives; and*
 - iv. *provide evaluation and modelling of the outcomes of potential supply chain operational changes and productivity and efficiency initiatives that the Regional Network User Group are supportive of investigating (with consideration any potential Extensions which are identified to be resolved in accordance with clause 1.4).*
- e) *Decisions made by the Regional Network User Group will not be binding on any organisation.*
- f) *Queensland Rail and other group members may agree to invite other supply chain participants (including port operators and adjoining rail network owners) in specific advisory roles but not to participate in Regional Network User Group decision making processes.*
- g) *The frequency, rules for the conduct of meetings, and purposes and objectives of each Regional Network User Group will be as agreed between Queensland Rail and group members and will be documented in a Terms of Reference. Within one month of the Approval Date, Queensland Rail will propose Terms of Reference for each Regional Network User Group and use its best endeavours to agree those with the members of the Regional Network User Group. For the West Moreton System, the existing Term of Reference for the South West User Group will continue to apply unless and until revised Terms of Reference are agreed.*

Regional Network User Group means a separate group in relation to each Regional Network established to review, discuss and consider solutions to improve rail operational issues and capacity constraints which can affect system or supply chain performance or capacity, comprised of each Access Holder, Rail Transport Operator and End User Access Seeker relevant to each Regional Network.

14 Rail Connections

Through recent experiences in seeking to negotiate a rail connection agreement for the New Acland rail siding, New Hope has developed serious concerns about the approach QR currently takes to rail connections to its network.

In particular, New Hope is concerned that the existing undertaking and the 2020 DAU contain insufficient protections in relation to the terms (particularly including connection charges) that QR imposes on such connections. Inefficiently high connection charges provide a barrier to entry and hinder efforts to return volumes to the West Moreton system. The difficulty in such negotiations obviously is that while it is possible for an access seeker to have a third party develop the private infrastructure, the connection can only be negotiated with QR – such that the access seeker or private infrastructure owner has no bargaining position.

New Hope notes that Part 9 of Aurizon Network's access undertaking provides some arrangements in this regard which it would be appropriate to introduce here. However, New Hope appreciates that the number of private infrastructure connections to the QR network are likely to be less than applies in the central Queensland coal region network – such that it may not be appropriate to require a standard rail connection agreement.

Accordingly, taking into account that context and the factors in section 138(2) QCA Act, New Hope considers it would be appropriate to ensure that the 2020 DAU contains:

- (a) clear recognition that the private infrastructure owner has a right to bring an access dispute in relation to the terms of connection (which New Hope considers is consistent with the Draft Decision which ensures that the definition of 'Extension' applies to such connections); and
- (b) principles which each connection agreement must be consistent with, most importantly including that:
 - (i) charges imposed by QR are limited to the efficient costs which directly relate to the connecting infrastructure – but only to the extent that such costs have not, or will not be, included in the regulatory asset base (for the West Moreton network), taken into account in access charges or otherwise recovered by Aurizon Network through other means under the undertaking (such that costs that QR would incur irrespective of the connection and costs which it will otherwise recover are not charged again for);
 - (ii) QR must not require technical specifications for connection to the rail infrastructure that require higher standards for the design or construction than those required under the relevant legislation and safety standards; and
 - (iii) QR will provide access to all land owned, leased or licensed by QR that is necessary to construct, operate, use and maintain the connecting infrastructure.

Schedule 1- Outcomes following consultation

Standard Access Agreement

<i>QR Proposal</i>	<i>Clause</i>	<i>QCA Draft Decision</i>	<i>New Hope Initial Response</i>	<i>Consultation occurred?</i>	<i>New Hope Position</i>
Variations for productivity and efficiency improvements					
Access holders or train operators can seek a variation to the access agreement to promote or accommodate a demonstrable efficiency or productivity improvement for the supply chain	1.3	Not appropriate to be approved. Amendments are appropriate to remove the words 'for the supply chain'	Support Draft Decision. In addition, consider that QR's proposed drafting 'to all parties' at the end of clause 1.3(a) should be deleted	✓	Drafting agreed – see QR collaborative submission
Operational rights for train operators					
There is a process for granting operational rights to train operators and the nomination of subsequent train operators	3	May not be appropriate to approve the proposed drafting, given our concerns about the clarity and workability of the clause, but we invite further submissions from QR and stakeholders on this matter	In favour of simplifying the process for appointment subsequent operators. Propose an explicit provision be inserted where the initial operator is appointed by the access holder.		As per initial response. Do not agree with argument in QR Latest Submission. It is appropriate to seek to ensure that standard access terms are as clear as possible.
Liability in relation to performance levels					
QR is not liable for failing to meet performance levels, except as set out in agreed performance levels	13.4(a)	Not appropriate to be approved. We accept the intent of this clause, but consider that amendments are appropriate to clarify the drafting	Support Draft Decision – noting that historically the imbalance in negotiating power and delay associated with the dispute resolution process has resulted in a failure to agree performance levels		As per initial response. Do not agree with argument in QR Latest Submission. It is appropriate to seek to ensure that standard access terms are as clear as possible.

<i>QR Proposal</i>	<i>Clause</i>	<i>QCA Draft Decision</i>	<i>New Hope Initial Response</i>	<i>Consultation occurred?</i>	<i>New Hope Position</i>
Security deposits					
Access holders must, in appropriate cases and having regard to the access holder's financial capability, provide a security deposit of at least six months of access charges	17.1 and Sch 1	Not appropriate to be approved. Amendments are appropriate to set the level of security as a maximum amount rather than a minimum amount, and to make future payment obligations under the agreement a factor to be considered when determining the security amount	Support Draft Decision	✓	Drafting agreed – see QR collaborative submission
Relinquishment fees					
Access holders must pay a fee for relinquishing their access rights that is 80 per cent of the present value of take-or-pay charges for the remainder of the agreement (unless the contracting parties agree otherwise)	21.2(c)	Overall proposal is not appropriate to be approved. QR's proposal as it applies to reference tariff services is appropriate to be approved. However, the proposal to prescribe relinquishment fees for non-reference tariff services is not appropriate to be approved	Support Draft Decision		As per initial response. As New Hope only utilises reference services it has not commented on QR's arguments in relation to non-reference tariff services
Requirements to negotiate or consult in good faith					
Various obligations to negotiate or consult in 'good faith' in the current SAA no longer apply	Various	Not appropriate to be approved. Amendments are appropriate to reinstate the requirements to negotiate or consult in good faith that apply in the current SAA. We support QR's intention to negotiate with stakeholders on the development of a definition of good faith.	Support Draft Decision	✓	QR and stakeholders have agreed that references to good faith should be retained, but without any express definition – see QR collaborative submission.
Other terms					
QR proposed to remove the references to subsequent agreements contained in the current SAA to clarify the drafting	4.1(c)(i)	Appropriate to be approved, as it is a minor procedural change relative to the current SAA.	Support Draft Decision.		As per initial response
QR proposed an amendment to the current SAA to clarify that each party to the agreement (including the operator) provides the relevant representations and warranties	4.6(a)	Not appropriate to be approved. An operator must provide representations and warranties under cl. 23, so there is no need to add an additional requirement in clause 4.6(a). Therefore, our draft decision is that	Support Draft Decision.		As per initial response

QR Proposal	Clause	QCA Draft Decision	New Hope Initial Response	Consultation occurred?	New Hope Position
		amendments are appropriate to reinstate the drafting that applies in cl. 4.6(a) of the current SAA.			
QR proposed amendments to the current SAA to reflect changes to rail safety legislation and clarify that only relevant information is to be provided	5	This proposal, which reflects changes to rail safety legislation, is appropriate to be approved.	Support Draft Decision.		As per initial response
Pacific National argued that the 10 business days timeframe for making payments, as proposed by QR, should be extended to 45 days in line with rail industry practice	6.2(a)	QR's proposed payment timeframe is appropriate to be approved. Pacific National has not justified its suggestion to extend the timeframe to 45 days and we are not aware of evidence to suggest that 10 business days is out of line with industry practice. We also note that a 10-business day timeframe applies in Aurizon Network's current SAA.	Support Draft Decision the 10 business days' timeframe for payment is a long-standing obligation.		As per initial response
Under QR's proposal, the parties are not required to provide notification of actual or likely failures of the access agreement. These requirements are in the current SAA, but QR said the requirements were inappropriate and not customary in commercial contracts.	7.3(f), 8.4(d)	QR's proposal is not appropriate to be approved because it prevents the parties from preparing for likely breaches or mitigating the effects of actual breaches. It does not appropriately balance the interests of QR, access holders and train operators. QR should amend the clauses to reflect the requirements in the current SAA, except that notification should only be required for material breaches or likely breaches (otherwise the obligation is likely to be too onerous).	Support Draft Decision and agree to it being restricted to material breaches or likely breaches.		As per initial response
Aurizon Bulk considered that additional train services and ad hoc train services were similar and should be consolidated under one request for extra train services that counts towards an access holder's take or pay obligations. In response to Aurizon Bulk's submission, QR argued that the two services are	8	QR only prescribes take-or-pay provisions for reference tariff services. QR's proposal of allow additional services but not ad hoc services, to offset an access holder's take-or-pay liability is appropriate to be approved. As noted by QR, there are differences between ad hoc and additional services (as those terms are defined in the SAA). An	Support Draft Decision.		As per initial response

<i>QR Proposal</i>	<i>Clause</i>	<i>QCA Draft Decision</i>	<i>New Hope Initial Response</i>	<i>Consultation occurred?</i>	<i>New Hope Position</i>
different and that it did not support the consolidation of the definitions or consider there was a case for ad hoc services to be offset against take-or-pay obligations.		<p>additional service is the same type of service as the contracted service, but an ad hoc service different from the contracted service (for example, it could be a service with a different origin and destination).</p> <p>Under the take-or-pay provisions, the access holder agrees to pay for the paths it has contracted, whether or not those paths are used. We do not consider it appropriate to use revenue from different types of services (i.e. ad hoc services) to reduce an access holder's take or pay liability.</p> <p>Our draft decision to approve QR's proposal appropriately balances the interests of QR and access holders.</p>			
Aurizon Bulk submitted that amendments were appropriate to ensure QR provides additional and ad hoc train services wherever available and evidence to support any rejection of the request	8	QR's proposed is appropriate to be approved. We do not consider that Aurizon Bulk's suggested amendments are appropriate. We consider QR has an incentive to provide additional and ad hoc services to increase its revenue and note Aurizon Bulk's comment that QR has been accommodating and reasonable in practice.	Support Draft Decision.		As per initial response
Pacific National submitted that QR should only be allowed to recover 'reasonable' costs and expenses	8.4(c), 10.2(c), 10.7(a), 11(c)	QR's proposal is not appropriate to be approved. In relation to cl 8.4(c), 10.2(c) and 11(c), it is appropriate to include the caveat proposed by Pacific National to balance the interests of the contracting parties. QR should be able to recover reasonable costs, while access holder should not be liable for costs that are excessive. However, we do not consider it is appropriate to add this caveat to cl 10.7(a), because there are sufficient protections within the clause requiring QR to act reasonably.	Support Draft Decision.		As per initial response

QR Proposal	Clause	QCA Draft Decision	New Hope Initial Response	Consultation occurred?	New Hope Position
QR proposed to clarify that changes to the interface risk management plan (IRMP) could be made by exchanging written notices. QR considered the amendment would remove an unnecessary administrative burden and enable safety issues to be dealt with quickly.	9.2(d)	QR's proposal is not appropriate to be approved. We accept the intent of QR's proposal to simplify the process of changing the IRMP and consider that the rights of the contracting parties are not affected. However, amendments to cl 9.2(d) are appropriate to clarify the drafting in a manner similar to the following: '(d) For administrative ease, the IRMP may be amended by way of written communication between the duly authorised representatives of the Parties.	New Hope supports QCA's proposed drafting, the importance of the IRMP is sufficient to warrant greater communications rather than just notice.		As per initial response. Do not agree with assessment in the Latest QR Submission that this is minor and inconsequential. Changes to the IRMP should be explained.
QR proposed a number of amendments to the current SAA to reflect changes to rail safety legislation and the establishment of the Office of the National Rail Safety Regulator	9.3, 9.10, 10.1, 28.1	QR's proposal is not appropriate to be approved. We have reviewed QR's proposal and consider the following amendments are appropriate: <ul style="list-style-type: none"> The definition of 'RNSL' needs to be amended to reflect that the Queensland and South Australian laws are separate acts and to refer to the South Australian National Law The removal of the definition of 'Railway Operator' requires consequential amendments to Schedule 2 where the term 'Railway Operator' is still used 	New Hope supports QR's intention behind making these amendments but agrees with the amendments proposed by the QCA.		As per initial response. Appears from Latest QR Submission that QR is proposing to amend the drafting to align with the Draft Decision.
Pacific National submitted that amendments should be made to this clause to only enable QR to do anything it considers 'reasonably' necessary	10.2(c)	QR's proposal is not appropriate to be approved. It is appropriate for QR to amend cl 10.2(c) as suggested by Pacific National. Including this caveat is appropriate to guide the actions taken by QR and strikes a reasonable balance between the interests of the contracting parties.	New Hope supports the amendments proposed by Pacific National.		As per initial response. In relation to the argument made in the Latest QR Submission, the words 'reasonably necessary' are an objective test that will encompass the broader interests that QR refers to.

QR Proposal	Clause	QCA Draft Decision	New Hope Initial Response	Consultation occurred?	New Hope Position
Pacific National argued that the ability to use dispute resolution for disputes about the noise mitigation requirements should be made explicit	10.7	While the general dispute resolution mechanism in cl 19 would apply to disputes in relation to this clause, we do not consider that QR's proposal is appropriate to be approved because it may result in disputes being referred to a court, even though disputes of this nature would be more appropriately dealt with by an expert. QR should include an additional provision to provide that disputes in relation to cl 10.7 are directly referred to an expert for resolution under cl 19.3.	Support Draft Decision.		As per initial response. New Hope agrees with the QCA that noise disputes are more appropriately dealt with by experts rather than involving the cost and delays of court proceedings (for what is not a legal matter).
Pacific National argued that the clause should be clarified to specify that QR is not indemnified in the event that it is negligent. Pacific National also suggested removing cl 12.2(c) and 12.2(d)	12.2	QR's proposal is not appropriate to be approved. This clause applies where the operator's customer is not a party to the SAA and is intended to apply the same limitations on the potential liability of QR as those that apply under cl 13 to the operator's customer. QR's potential liability for negligence is considered in cl 13. Pacific National has not provided any reasons for deleting cl 12.2(c) and (d) and these clauses are consistent with the intent of cls 12.2(a) and (b).	Support Draft Decision.		As per initial response
QR proposed to amend the current SAA by including cl 15.1 to clarify that cls 15.2(c), 15.3(c), 15.4(a) and 15.5(a) are subject to relevant legislation and regulations regarding the enforcement of contractual provisions relating to insolvency events. QR advised that these changes are necessary to address the ipso facto legislative amendments.	15	QR's proposal is appropriate to be approved given the introduction of the new ipso facto regime. While QR advised that consequential amendments should be made to cl 17.2, which deals with QR's recourse to security, it did not appear to submit any proposed amendments. We will consider proposals in relation to further amendments in response to the draft decision.	Support Draft Decision.		As per initial response
Pacific National considered the clause should be amended to protect the operator from QR terminating the	15.2(a)	QR's proposed cls 15.2(a) and 15.3(a) are not appropriate to be approved. It is appropriate for QR to amend cls 15.2(a) and 15.3(a) to	Support Draft Decision.		As per initial response

QR Proposal	Clause	QCA Draft Decision	New Hope Initial Response	Consultation occurred?	New Hope Position
agreement, if the operator is not liable for a failure under the agreement. Pacific National proposed similar wording to cl 15.4(c)		reflect the wording in cl 15.4(c). Providing reciprocal rights in relation to the ability to terminate an agreement appropriately balances the interests of QR, access seekers, access holders and train operators.			
Pacific National argued that the operator should be able to terminate the agreement if QR fails to comply with safety related obligations in the agreement (consistent with QR's rights in cl. 15.2)	15.4	QR's proposal is appropriate to be approved. We do not consider that the amendments proposed by Pacific National are necessary, noting that the operator's rights under cl 15.4(c) are likely to address Pacific National's concern.	Support Draft Decision.		As per initial response
Pacific National argues that the clause appears to be incorrectly drafted because insurance claims paid are for liability to QR, not necessarily damage to the network.	16.9	QR's proposal is appropriate to be approved. We do not consider that cl 16.9 implies that all claims are paid in respect of damage to the network. Clause 16.9	Support Draft Decision.		As per initial response
Pacific National argued that access holders should not be required to pay higher costs if there is a change in taxes, law or credit. This is an example of QR attempting to shift risk on to its customers who are not better placed to manage the risk.	18.2	QR's proposal, which only applies to non-reference-tariff services, is appropriate to be approved. The clause appropriately addresses how adjustments to access charges are to be made when there is a change in costs due to the occurrence of certain events that are outside QR's control. Relevantly, it provides for adjustments that reflect cost decreases, as well as cost increases. While we consider the proposed clause is an appropriate default contract provision, the parties may negotiate variations. Our draft decision appropriately balances QR's legitimate business interests with the interest of access seekers and access holders.	New Hope only uses reference tariff services and as such does not have a position on this issue.		As per initial response
QR proposed to remove this clause, which was included in the current SAA, to reflect	19.4	QR's proposal is not appropriate to be approved having regard to the s 138(2)	Support Draft Decision.		As per initial response

QR Proposal	Clause	QCA Draft Decision	New Hope Initial Response	Consultation occurred?	New Hope Position
the commencement of the Rail Safety National Law (Queensland) and the establishment of the Office of the National Rail Safety Regulator, which has no jurisdiction to resolve disputes		factors. While the changes to the safety laws mean that the national regulator has no jurisdiction to resolve disputes under the national law, QR should amend its proposal so that disputes relating to safety issues are to be referred to an expert for resolution under cl 19.3. We expect that safety-related disputes would be more appropriately dealt with by an expert than a court.			
QR's proposed dispute resolution mechanism requires the parties to agree to refer a dispute to an expert, unless the SAA explicitly requires a dispute to be referred to an expert	Various	<p>Elsewhere in this chapter, we have identified disputes that may be more appropriately considered by an expert rather than being referred directly to a court (for example disputes in relation to noise mitigation requirements any performance levels). There may be other instances where disputes would be more appropriately, and also potentially more efficiently, dealt with by a relevant expert (such as disputes that relate to technical matters). Under the proposed drafting, these types of disputes would be referred to a court if the parties could not agree on expert review (unless the relevant clause specifically calls for expert review).</p> <p>We consider that such an approach may more appropriately balance the interests of QR, access holders, train operators and customers. However, we welcome comments from stakeholders in relation to these matters and particularly as to specific circumstances where disputes may be better referred directly to an expert. Relevant clauses for further consideration by stakeholders may include cls 8.8, 8.9, 8.10, 9.2, 9.6-9.8, 10.1, 11</p>	New Hope agrees that certain types of disputes are more appropriately resolved via an expert (both due to the likely greater speed with which expert resolution would operate relative to court resolution and because of the benefits of the dispute being resolved by a decision making with specialist expertise in the relevant field). In particular New Hope considers that disputes regarding each of the following should be resolved by an expert unless agreed otherwise: operational matters (clause 8), interface and safety issues (clause 9), incident, environmental and emergency issues (clause 10), compliance of trains and rolling stock (clause 11).		As per initial response
Pacific National argues that QR should reimburse train operators for take-or-pay		In the absence of a reference tariff applying on the North Coast line and given the limited	Support Draft Decision		As per initial response

QR Proposal	Clause	QCA Draft Decision	New Hope Initial Response	Consultation occurred?	New Hope Position
charges incurred on the Aurizon Network sections of the North Coast line, when train services are not used on those sections due to a QR cause		and specific circumstances to which reimbursement may apply, we consider it would be appropriate for these matters to be negotiated between the contracting parties as part of an overall package of risks, costs and entitlements. In our view, this approach appropriately balances the interests of QR, access seekers and access holders.			
Various corrections and updates	Various	<p>We consider that it is appropriate for QR to make the following amendments:</p> <ul style="list-style-type: none"> • Cl 8.10(b)(i) – add 'to' after the word 'relation' • Cl 19.3(b)(i)(B) – the term 'Institute of Chartered Accounts in Australia' is not current and should be changed to 'Chartered Accountants Australia and New Zealand' • Cl 28.1 – in the definition of Access Charge Input the reference to cl 0 of schedule 3 should be corrected • Schedule 3 – references to cl 0 should be corrected • Any further amendments required to correct identified typographical or cross-referencing errors <p>It is the interests of all parties that the SSA is workable and free from errors</p>	Support Draft Decision.		As per initial response

Undertaking - Preamble and Scope

<i>QR Proposal</i>	<i>Clause</i>	<i>QCA Draft Decision</i>	<i>New Hope Initial Response</i>	<i>Consultation occurred?</i>	<i>New Hope Position</i>
Preamble					
Provides high-level context for Queensland Rail's 2020 DAU	n/a	Appropriate to be approved.	Suggest the Preamble is deleted given the declaration review may result in some of QR's network ceasing to be declared - such that much of the preamble will cease to be appropriate.		As per initial response
Term of the undertaking					
Five-year term – 1 July 2020 to 30 June 2025	1.1	Appropriate to be approved.	Support QR Proposal and Draft Decision.		As per initial response
A shorter term will apply in certain circumstances, for example if the service is no longer declared.		Not appropriate to be approved. Amendments are appropriate to clarify that the undertaking will continue if the service, or part of the service, is declared.	Support Draft Decision and QCA proposed drafting.		As per initial response
Extensions and network connections					
Various provisions relating to the negotiation, development and funding of extensions. There is no standard connection agreement.	1.4 (and others)	Largely appropriate to be approved. However, we consider that clarifying amendments to the definition of 'extension' are appropriate.	Support Draft Decision and QCA proposed drafting.		As per initial response
Master planning provisions					
Regional network master plans for the Mount Isa and West Moreton systems will be developed on request. Queensland Rail is not required to develop a plan if customers do not agree to fund it.	1.5	Not appropriate to be approved. Amendments are appropriate to require Queensland Rail to provide access to the master planning process for all systems, except the North Coast system. We support Queensland Rail's proposed approach of consulting with stakeholders about changes to the process for development master plans and encourage Queensland Rail to submit a revised approach for consideration.	Continue to consider master planning should be conducted by QR as a matter of normal business for major relatively regularly utilised systems (like West Moreton and Metropolitan). However, willing to accept master planning only proceeding if funding is agreed subject to: <ul style="list-style-type: none">a new operational and productivity improvement process being included; and		As per initial response

<i>QR Proposal</i>	<i>Clause</i>	<i>QCA Draft Decision</i>	<i>New Hope Initial Response</i>	<i>Consultation occurred?</i>	<i>New Hope Position</i>
			<ul style="list-style-type: none"> reasonable protections being included around the costs of funding (scope, budget and timeframe and overruns) and input that funding users would have in that process. 		
Other matters					
Removal of the words 'subject to schedule F', which were in the 2016 undertaking	1.2.1(b)(ii)	May not be appropriate to be approved, because the reasons for removing these words are not clear. The QCA seeks further submissions from Queensland Rail and stakeholders on this issue.	Support that wording not being deleted.		As per initial response

Undertaking – Negotiation Process

<i>QR Proposal</i>	<i>Clause</i>	<i>QCA Draft Decision</i>	<i>New Hope Response</i>	<i>Consultation occurred?</i>	<i>New Hope Position</i>
Access requests in different forms					
If Queensland Rail agrees, a request for access rights does not need to be in the form of an access application.	2.1.1(a)	Largely appropriate to be approved. However, amendments are appropriate to clarify that applications in different forms are treated as access applications for the purposes of the undertaking.	Support Draft Decision.	✓	Drafting agreed – see QR collaborative submission
Information exchanged in preliminary stages of negotiations					
Information provided, and discussions held, in the preliminary stages of access negotiations are not binding on the negotiating parties	2.1.2(a), (b)	Appropriate to be approved.	Support Draft Decision, subject to the recommendation that QR be obliged to keep Capacity Information current and accurate also being adopted.	✓	Drafting agreed – see QR collaborative submission
Queensland Rail will keep preliminary information current and accurate	2.1.2(c)	Not appropriate to be approved. Amendments are appropriate to require Queensland Rail to also keep capacity information current and accurate.	Support Draft Decision.		

<i>QR Proposal</i>	<i>Clause</i>	<i>QCA Draft Decision</i>	<i>New Hope Response</i>	<i>Consultation occurred?</i>	<i>New Hope Position</i>
Permitted disclosures in confidentiality agreements					
Confidentiality agreements must permit disclosure of confidential information to certain parties and as required by law	2.2.2(d)	Not appropriate to be approved. Amendments are appropriate to apply the same exceptions to the disclosure of confidential information that apply in cl 2.2.1(b)(ii).	Support Draft Decision.		As per initial response
Contract renewal rights					
Eligible access holders can renew their access rights without joining a queue	2.7.2 and 2.9.3	The proposal, which is considered in conjunction with the renewal pricing arrangements proposed in Part 3 of the 2020 DAU, is not considered appropriate to be approved.	Do not support either the QR proposal or Draft Decision. For at least West Moreton / Metropolitan network coal access services, renewal rights should be inserted in the 2020 DAU reflecting the treatment from the 2016 access undertaking.		As per initial response. Strongly disagree with the argument in the Latest QR Submission that renewals are more appropriately determined through negotiations. None of QR's claimed justifications are actually true in relation to West Moreton coal services. Renewal right for West Moreton coal uses is clearly not locking out new entrants as suggested when there is surplus capacity and concerns about low volume scenarios. Renewal rights do not encourage capacity hoarding given the 100% take or pay nature of access agreements. Similarly for reference tariff services, issues of pricing ceasing to be appropriate also don't apply. Accordingly it remains appropriate to provide renewal rights for

<i>QR Proposal</i>	<i>Clause</i>	<i>QCA Draft Decision</i>	<i>New Hope Response</i>	<i>Consultation occurred?</i>	<i>New Hope Position</i>
					West Moreton coal contracts.
Other matters					
Access applications be sent to the address nominated on QR's website	2.1.1(a)	Appropriate to be approved.	Support Draft Decision.		As per initial response
An access seeker would be required to promptly advise if it does not intend to proceed with its access application on the basis of the indicative access proposal	2.5.1(b)	Appropriate to be approved. We consider the proposed clause makes it clear that the access seeker only needs to advise Queensland Rail if it does not intend to proceed.	Support Draft Decision.		As per initial response
Changing '2008 undertaking' to 'AU1'	2.8.3(ii)A)	Appropriate to be approved.	Support Draft Decision.		As per initial response

Undertaking – Pricing Rules

<i>QR Proposal</i>	<i>Clause</i>	<i>QCA Draft Decision</i>	<i>New Hope Response</i>	<i>Consultation occurred?</i>	<i>New Hope Position</i>
Pricing limits rule					
Access charges will be set so that expected revenue does not exceed the ceiling revenue limit and, unless approved by the QCA, fall below the floor revenue limit	3.2	Largely appropriate to be approved. However, amendments are appropriate to clarify the application of the floor revenue limit and the definition of the weighted average cost of capital in the formula to calculate the ceiling revenue limit.	Support Draft Decision proposal that WACC for the floor and ceiling limits should be linked to the regulatory and commercial risks of providing access for the relevant train services in respect of the relevant part of QR's network (i.e. not be linked to the WACC determined for West Moreton / Metropolitan coal reference tariff services).		As per initial response
Pricing differential rule					
Queensland Rail will have regard to a range of factors when formulating access charges, but will not differentiate between access seekers where the characteristics of the train service are alike and the	3.3	Largely appropriate to be approved. However, amendments are appropriate to extend the limitation on price differentiation in cl 3.3(d) to capture access holders and to make consequential amendments, as required.	Support Draft Decision, while noting that the price differentiation rules do not apply to services covered by reference tariffs which are utilised by New Hope.		As per initial response

<i>QR Proposal</i>	<i>Clause</i>	<i>QCA Draft Decision</i>	<i>New Hope Response</i>	<i>Consultation occurred?</i>	<i>New Hope Position</i>
access seekers operate in the same end market					
Contract renewal provisions are available to eligible access holders					
Contract renewal provisions are available to eligible access holders	2.7.2, 2.9.3 and 3.3(h)-(j)	Not appropriate to be approved. Amendments are appropriate to remove automatic renewal rights for new access seekers and expand renewal rights for existing access holders who have made substantial sunk investments. We invite further submissions on an appropriate approach for existing access holders.	Do not support either the QR proposal or Draft Decision. For at least West Moreton / Metropolitan network coal access services, renewal rights should be re-inserted in the 2020 DAU reflecting the treatment provided in AU1.		As per initial response. Strongly disagree with the argument in the Latest QR Submission that renewals are more appropriately determined through negotiations. None of QR's claimed justifications are actually true in relation to West Moreton coal services. Renewal right for West Moreton coal uses is clearly not locking out new entrants as suggested when there is surplus capacity and concerns about low volume scenarios. Renewal rights do not encourage capacity hoarding given the 100% take or pay nature of access agreements. Similarly for reference tariff services, issues of pricing ceasing to be appropriate also don't apply. Accordingly it remains appropriate to provide renewal rights for West Moreton coal contracts.

<i>QR Proposal</i>	<i>Clause</i>	<i>QCA Draft Decision</i>	<i>New Hope Response</i>	<i>Consultation occurred?</i>	<i>New Hope Position</i>
QCA levy					
Queensland Rail can charge access holders a QCA levy to recover the annual fees it pays to the QCA	3.7	Not appropriate to be approved. Amendments are appropriate to simplify the process, reduce the regulatory burden and improve certainty.	<p>In principle, support the Draft Decision proposal to pre-determine the allocation for the term of the undertaking.</p> <p>However, consider 60% is a more appropriate allocation to West Moreton / Metropolitan system services (given the reduction in the QCA's time that should be required to deal with West Moreton coal issues during the 2020 DAU assessment and term).</p> <p>Clause 3.7 of the 2020 DAU should also be amended to exclude from the QCA Levy amounts that the QCA determines were caused by QR adopting unreasonable positions.</p>		<p>As per initial response.</p> <p>New Hope has no issues with the change in timing proposed in the Latest QR Submission for the calculation – but continues to consider that in light of 1) the lesser complexity of determining West Moreton and Metropolitan tariffs now and 2) lower current volumes (in both cases relative to when the original proportions were set) a reduction in the proportion allocation to West Moreton / Metropolitan systems is clearly appropriate.</p>

Undertaking – Operating Requirements

<i>QR Proposal</i>	<i>Clause</i>	<i>QCA Draft Decision</i>	<i>New Hope Response</i>	<i>Consultation occurred?</i>	<i>New Hope Position</i>
Operating requirements manual					
Remove the ORM from the access undertaking. Require consultation before amendments are made to the ORM	4.3(c) and Sch G	Not appropriate to be approved. Amendments are appropriate to revise the way the ORM is reviewed and altered.	<p>Support Draft Decision subject to incorporating into the 2020 DAU:</p> <ul style="list-style-type: none"> the same protections as exist in relation to System Rules amendments in the Aurizon Network access undertaking; and 	✓	<p>Drafting agreed – see QR collaborative submission.</p> <p>New Hope considers it is particularly important that the wording facilitating supply chain group consideration of productivity and</p>

<i>QR Proposal</i>	<i>Clause</i>	<i>QCA Draft Decision</i>	<i>New Hope Response</i>	<i>Consultation occurred?</i>	<i>New Hope Position</i>
			<ul style="list-style-type: none"> a regime for productivity and operational improvements 		operational improvements is included (and is working with QR on updates to the charter for the South West User Group to supplement these undertaking changes).
	4.3(f)			✓	<p>Drafting agreed (other than cl 3.4(f)) – see QR collaborative submission. New Hope is not supportive of a right for QR to breach the ORM amendment process (even for rail accreditation or safety purposes) given:</p> <p>1) QR has presumably designed the current operating requirements manual to meet its accreditation and safety obligations (and the ORM leaves QR with sufficiently flexibility to make some operational changes without the ORM having to be varied);</p> <p>2) changes to the requirements for accreditation or obligations under rail safety law won't occur without advance notice – such that QR will have time to go through the</p>

<i>QR Proposal</i>	<i>Clause</i>	<i>QCA Draft Decision</i>	<i>New Hope Response</i>	<i>Consultation occurred?</i>	<i>New Hope Position</i>
					ORM amendment process; and 3) access holders would support changes which are genuinely required for safety reasons.
Network management principles					
Create a new category of possessions called 'Ad hoc planned possessions'	7.1, Sch F	Not appropriate to be approved. It is appropriate to provide further detail on the purpose of ad hoc planned possessions and keep track of all possessions and disruptions in a public document.	Support Draft Decision recommendation of utilising the Western Corridor Alignment Calendar, subject to the Network Management Principles being appropriately amended to make that the key planning document and to oblige QR to regularly update it.		As per initial response. New Hope has no issues with referring to these as Planned Possessions and Regularly Planned Possessions – but wants to make sure that the non-regular possessions are now visible in the alignment calendar and that access holders have the same protections in relation to them as they do in relation to regular possessions
Permit variations to the daily train plan (DTP) on short notice to accommodate special events	Sch F, cl 2.2(f)(i)	Not appropriate to be approved. Amendments are appropriate so Queensland Rail makes reasonable endeavours to consult and promptly updates a public document that keeps track of special events.			As per initial response The Latest QR Submission appears to propose aligning with NMP with the requirements of the Draft Decision in this regard.
Maintain approach for modifying a master train plan (MTP), save to update to account for ad hoc planned possessions	Sch F, cl 2.1(m)(ii)	Not appropriate to be approved. Amendments are appropriate such that there is certainty regarding an access holder's TSE when modifying a MTP/scheduling an ad hoc planning possession.	Support Draft Decision.		As per initial response. New Hope is willing to accept limitations around when a dispute needs to be raised – but considers

<i>QR Proposal</i>	<i>Clause</i>	<i>QCA Draft Decision</i>	<i>New Hope Response</i>	<i>Consultation occurred?</i>	<i>New Hope Position</i>
					it is critical that if a bona fide dispute is raised that the modification is not implemented until the dispute is resolved.
Remove the requirement that a planned possession that is subject to a dispute raised by an access holder be delayed until that dispute is resolved	Sch F, cl 2.4	Not appropriate to be approved. Amendments are appropriate so that access holders and operators are required to raise the dispute at least 60 days before the possession.	Support Draft Decision, subject to a minor wording amendment.		As per initial response
Maintain the Traffic Management Decision Making Matrix from the 2016 access undertaking	Sch F and cl 3(g)	May not be appropriate to approve. We invite comment from stakeholders on the viability of extending on-time windows for freight rail.	Subject to the views of haulage operators, support maintaining the existing matrix in respect of the West Moreton / Metropolitan systems.		As per initial response Given comments in the Latest QR Submission, it is important that changes are not made on other systems which has adverse impacts on network planning or the length or number of possessions.
Maintain the principles for managing deviations from a DTP	Sch F and cl 3(i)(i)(B)	Appropriate to be approved.	Support Draft Decision, subject to introduction of a regime for productivity and operational improvements (as discussed in section 6.5 of these submissions).		As per initial response
			<p>New Issue</p> <p>Management of Cross River Rail Project</p> <p>New Hope suggests specific provisions should be inserted to address issues relating to the development of Cross-River rail (and the impact closures relating to development of that project will have on West Moreton services).</p>	✓	<p>No resolution reached in consultation.</p> <p>New Hope remains concerned about this issue and invites the QCA to consider whether there is a balanced way to manage the issues Cross-River rail presents.</p>

Undertaking – Reporting

<i>QR Proposal</i>	<i>Clause</i>	<i>QCA Draft Decision</i>	<i>New Hope Response</i>	<i>Consultation occurred?</i>	<i>New Hope Position</i>
Quarterly network performance reports					
Publish by end of month after each quarter, or as agreed with QCA	5.1.1	Appropriate to be approved.	Support Draft Decision.		As per initial response
Allow 30 minutes' leeway in timing of planned possessions	5.1.2(x)	Not appropriate to be approved. Amendments are appropriate to specify that reporting on planned possessions should be subject to 15 minutes' leeway, and provision information in ranges.	Support Draft Decision (with the intention of reassessing at the next undertaking period whether this threshold was appropriate).		As per initial response
No proposal on reporting on use of ad hoc planned possessions	5.1.2(y)	Queensland Rail should report on ad hoc planned possessions.	To the extent that ad hoc planned possessions are permitted, support Draft Decision.		As per initial response
Specify types of service covered, for example: coal, bulk minerals, freight; exclude metropolitan system	5.1.2(b)	Appropriate to be approved.	Support Draft Decision.		As per initial response
		Invited further submissions on whether urgency or emergency possessions should be reported.	Support number of urgent or emergency possessions being reported.		As per initial response
Annual network performance reports					
Format of annual network performance report unchanged	5.2 and 5.3	Not appropriate to be approved. Amendments are appropriate to provide for combined performance reporting with the regulatory accounts.	Support either of QR proposal or Draft Decision position.		As per initial response. New Hope has no issues with the proposal in the Latest QR Submission (i.e. a combined document for presentation purposes but with the below rail financial statements being audited as a stand-alone document first)
Publish within six months after end of each year	5.2.1(a)	Appropriate to be approved.	Support Draft Decision.		As per initial response

<i>QR Proposal</i>	<i>Clause</i>	<i>QCA Draft Decision</i>	<i>New Hope Response</i>	<i>Consultation occurred?</i>	<i>New Hope Position</i>
Commentary required only for 'material' changes	5.2.2(k)	Not appropriate to be approved. Amendments are appropriate to define 'material' (suggested as greater of \$500,000 or 10% of forecast amount).	Support Draft Decision (with the intention of reassessing at the next undertaking period whether this threshold was appropriate to capture the material variances experienced during the term of 2020 DAU).		As per initial response
Other matters					
Incorrect clause number	5.2.2(i)(vi)	Clause 5.2.2(i)(vi) should be numbered 5.2.2(i)(v)(B).	Support Draft Decision.		As per initial response

Undertaking – Administrative Provisions

<i>QR Proposal</i>	<i>Clause</i>	<i>QCA Draft Decision</i>	<i>New Hope Response</i>	<i>Consultation occurred?</i>	<i>New Hope Position</i>
Parties that can access dispute resolution					
Dispute resolution is only available to access seekers	6.1.2	Not appropriate to be approved. Amendments are appropriate to enable other parties (including access holders and train operators) to access the dispute resolution mechanism if they receive the benefit of an obligation in the undertaking.	Support Draft Decision.		As per initial response
Disputes referred to the QCA for resolution					
The QCA must obtain advice from a rail safety expert when arbitrating certain disputes	6.1.4	Not appropriate to be approved. Amendments are appropriate to address identified problems with the workability and clarity of the clause.	Support Draft Decision.	✓	New Hope is, in principle, supportive of requiring advice from a rail safety expert in such arbitrations. However, dDrafting was not able to be agreed in consultation with QR – see QR collaborative submission for QR's proposal.

<i>QR Proposal</i>	<i>Clause</i>	<i>QCA Draft Decision</i>	<i>New Hope Response</i>	<i>Consultation occurred?</i>	<i>New Hope Position</i>
					<p>New Hope is opposed to QR's proposal for a carve out for its obligation to comply with the undertaking or a QCA determination in relation to safety matters in cl 6.1.4(d). New Hope position remains as per initial response.</p> <p>QR's proposed formulation of cl 6.1(d) is not appropriate as it makes QR's view of 'safety' prevail without any scrutiny – which will in effect mean that access seekers and holders cannot dispute QR's conduct in relation to any matter which has any connection with safety. That is particularly problematic when there will often be multiple ways in which safety obligations can be met – and QR's choice may be one that imposes significantly more cost or other adverse outcomes on access holders or rail haulage operators than other available choices.</p> <p>During the collaboration process, Yancoal</p>

<i>QR Proposal</i>	<i>Clause</i>	<i>QCA Draft Decision</i>	<i>New Hope Response</i>	<i>Consultation occurred?</i>	<i>New Hope Position</i>
					proposed a cl 6.1(c) which would provide QR with an opportunity to engage with the QCA before a final determination was made. New Hope is willing to support that – but only on the basis that following that process, the QCA can simply make a determination. QR should not have a right to be able to simply ignore QCA determinations.
The process for the QCA to resolve disputes may differ depending on the nature of the dispute	6.1.4	Not appropriate to be approved. Amendments are appropriate to provide certainty as to the awarding of costs and the binding nature of the process.	Propose an alternative way of achieving this aim, so as not to create the potential for disputes of this type to be frustrated.		As per initial response
Other matters					
Update the transitional provisions so that references to 'the 2008 Undertaking' become 'AU1'	6.4	Appropriate to be approved.	Support Draft Decision.		As per initial response
Remove a requirement for tariff reports for the West Moreton Network, which covers the period before the undertaking commences.		Appropriate to be approved if the 2020 DAU commences on 1 July 2020. If not, we consider it would be appropriate to include a similar clause to cl 6.4(f) of the 2016 undertaking, updated for the 2016 undertaking. We also consider that this requirement should be extended to include reports for other networks that are provided for under cl 5.2.2(j). In our view, this requirement reduces information asymmetry in negotiating and determining future access charges.	Support Draft Decision.		As per initial response
Cross-referencing errors		The following amendments are appropriate:	Support Draft Decision.		As per initial response

<i>QR Proposal</i>	<i>Clause</i>	<i>QCA Draft Decision</i>	<i>New Hope Response</i>	<i>Consultation occurred?</i>	<i>New Hope Position</i>
		<ul style="list-style-type: none"> cl 6.1.2(b) – correct the reference to cl 1.0.1(a) <p>any further amendments that are required to correct identified typographical or cross-referencing errors.</p>			