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9 April 2021

Mr George Passmore
Queensland Competition Authority
Level 27, 145 Ann Street
Brisbane QLD 4001
by email: george.passmore@qca.org.au
via Submission process at: www.qca.org.au

Dear George,

**Aurizon Network – Annual Review of Reference Tariffs – FY2022**

We refer to the Queensland Competition Authority's ("QCA's") request for submissions on the Annual Review of Reference Tariffs for FY2022. We support the submission on this subject by the QRC and wish to use this opportunity to comment specifically on the proposed treatment of potential Private Incremental Costs (PIC) for the new coal carrying train service in the Newlands system as mentioned by Aurizon Network in its submission, as well as Aurizon Networks proposed treatment of GAPE / Newlands assets allocation (as appended to this letter due to its complexity). Glencore provides its approval to the QCA to release this submission as public.

Glencore notes that the comments made by Aurizon Network in its submission are somewhat speculative given that the new customer (Bravus) has not yet made an application regarding recognition of PIC, and that they have assumed that any PIC approved would result in the application of Clause 6.3.1(c)(ii) of the Undertaking.

The infrastructure in question is quite different in scale to other connecting infrastructure in the Newlands System and we believe that the approval of this in totality as PIC has the potential to result in a perverse and inequitable outcome with respect to Reference Tariffs. The Carmichael Rail Network, at approximately 200km, is longer than the Newlands System mainline infrastructure it will use. We question whether it was ever the intention of the PIC provisions to cover such construction, given the history of other connections and funding arrangements, especially in the absence of an expansion. Glencore understand that in its assessment of any PIC application for approval the QCA may approve the "prudent and efficient value" of the PIC.

We urge the QCA to consider the following factors in light of any potential application:

- Whether the PIC provisions were intended for such large scale connecting infrastructure;
- Whether the scale of the infrastructure is commensurate with the capacity contracted with Aurizon Network;
- The potential for the infrastructure to also be used by other new customers;
- The scale of the throughput of the new customer in comparison to existing throughput, and the impact of any forecast increase in share of throughput in the future; and
- Whether the Minimum Revenue Contribution as set out in the Undertaking represents at least the expected incremental costs of the increased throughput.

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In considering this issue, Glencore would prefer that Aurizon Network submit some pricing structure options for discussion and ultimately a recommendation in the form of a DAAU that would ensure that an equitable outcome is achieved whereby existing users are not effectively "subsidising" the new customer. It is imperative that this process be transparent and that there is an opportunity for stakeholders to provide submissions.

Please also refer to Appendix I as noted above, for our views on the GAPE / Newlands assets allocation.

We thank you for your consideration.

Yours Sincerely

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**Glencore**

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## APPENDIX I

**Submission to Queensland Competition Authority**
**Reallocation of GAPE costs to Newlands System**


### Summary

- The GAPE project (including the changes to the Newlands infrastructure) was implemented by Aurizon for the benefit of a group of users who wished to access the Abbot Point terminal from the Goonyella system. This investment was never required by the existing Newlands system and was not expected to provide existing users with any net benefit, given that that haulage costs were expected to increase due to the increased BRTT, even taking into account the move to larger trains. Aurizon Network did not present the benefits and costs of the GAPE Project to Newlands users and Newlands users had no input into the GAPE project.
- In its Annual Review of Reference Tariffs, Aurizon Network has proposed an approach to the allocation of renewals capital expenditure in the shared rail corridor between the Newlands System and the GAPE System. Aurizon Network's approach appears to recover the costs of replacing assets in the Newlands (which are used by both GAPE and Newlands users) almost solely from Newlands users.
- This approach is inconsistent with the QCA has applied in previous decisions and its Pricing Principles that incremental costs of expansions are borne by the expanding users rather than the existing users.
- The approach is also economically inefficient given that it would result in existing Newlands system users paying for infrastructure that they do not need. Charging some users for the costs of providing services required by other users does not provide the appropriate pricing signals to optimize investment and capital allocation.
- Glencore submits that:
    - all GAPE Infrastructure Enhancements remain incremental capital;
    - all capital expenditure which relates to any upgrading of infrastructure in the Newlands systems to the 26 tonne axle load (which was a requirement of the GAPE expansion) should be attributable to the GAPE system; and
    - all other capital expenditure on infrastructure which is primarily driven by traffic should be allocated between the different systems based on volume of traffic which transits the relevant infrastructure. This approach recognizes the fact that on-going capital expenditure is required due to the incremental demand from the GAPE system, as well as the pre-existing Newlands system requirements.
- This proposed approach ensures that costs are not over-recovered from the pre- GAPE Newlands users and helps to ensure that the incremental costs which continue to be imposed by the GAPE users are recovered through the regulated tariffs payable by the GAPE users.

| Aurizon Arguments | Responses |
|---|---|
| > the Newlands and GAPE Reference Tariffs are each less than the respective stand-alone costs and greater than the respective incremental costs for each system and are therefore consistent with the pricing limits; | Aurizon's analysis is based upon an assumption that Newlands should be reflective of a 26TAL. We suspect that if the full incremental costs of the GAPE system are attributed to the GAPE system rather than the Newlands system, this statement would not be correct. Aurizon has not provided such analysis despite our requests for this information, stating that "Aurizon Network has not established or maintained a stand alone cost limit for a 20TAL service in Newlands as this would be a hypothetical and a subjective exercise as those conditions do not prevail". This response is not acceptable to Glencore given that any determination of "stand-alone" costs are clearly hypothetical, the response indicates to Glencore that Aurizon are simply unwilling to perform the analysis because it will require some effort on their part, or because it does note suit them commercially to do so. |
| > the current Newlands RAB is not cost reflective of the 26 tonne axle load (TAL) services currently operating within the Newlands System; | Given that the adoption of 26 tonne axle loads was the result the expansion required for GAPE it is entirely appropriate that the Newlands RAB is not cost reflective of the 26TAL services. In correspondence provided to Glencore and others on this issue, Aurizon have confirmed that there has been approximately $500k included to date in the Newlands RAB which represent upgrades to 26TAL. Glencore believe this $500k should have been allocated entirely to GAPE. It would be prudent for the QCA to further investigate the historical allocation. |
| > the inclusion of the Newlands asset replacement expenditure in the Newlands Reference Tariff progressively transitions the price of the legacy 20TAL system to the more efficient 26TAL cost of service delivery over a long period of time; | Existing Newlands users did not require 26TAL services to deliver their contracted capacity, and certainly did not agree to pay for these upgrades. These principles were clearly identified and applied in the case of WIRP and should therefore also apply in this instance. |

| | |
|---|---|
| > the annual net impact on the Newlands RAB value and the Newlands System Allowable Revenues does not result in material price shocks and therefore does materially affect allocative or productive efficiency; | Even if this is correct, the absence of a material price shock does not justify a decision to change the regulatory approach which has been previously applied to the GAPE project. |
| > the resultant GAPE Reference Tariff provides stronger price incentives to maintain and increase the utilisation of the Newlands Coal System at expiry of the GAPE contractual arrangements; | Existing Newlands users do not benefit from an increase in the utilisation of the Newlands Coal System where they are bearing a disproportionate share of the costs of providing the required capacity (as is the case under Aurizon's proposal), and particularly where the increased revenue from such usage is attributed to the GAPE system rather than the Newlands system. This is not an economically efficient outcome.<br>The approach proposed by Aurizon has the effect of raising the tariff in the Newlands system and lowering the tariff in the GAPE system. This does not provide any justification for the proposed approach.<br>Aurizon's argument also ignores the fact that utilisation of a rail system is primarily driven by the location and overall economics of users' mines. |
| > the contract and demand positions of Newlands Users materially differ from the pre-GAPE Newlands contracted positions. It is both inefficient and inequitable for new or additional demand to maintain access at an access price which is not reflective of the cost of service delivery; | It is to be expected that the contracted positions within the existing system can change after the construction of an expansion to that system. Even if GAPE is treated as an expansion of the Newlands system (which it is not given that Aurizon established it as a separate system), this would not justify the socialisation of an expansion tariff. |
| > GAPE project costs are not included in the Newlands Reference Tariff and therefore, Aurizon Network's approach satisfies and remains consistent with the approved cost allocation methodology for the GAPE Project Costs; and | Aurizon has previously recognised that "The degradation of these assets will accelerate given the increase in utilisation and intensity associated with the GAPE Project."[1] Therefore, an asset specific approach which only recognises expenditure on certain specific GAPE Infrastructure Enhancements does not take account of all incremental capital costs that are imposed on the Newlands system as a |

[1] Aurizon Network April 2013 submission to the QCA titled "Aurizon Network Access Undertaking (2010): Draft Amending Access Undertaking, Reference Tariff for the GAPE System", page 15

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|---|---|
| | result of the usage of GAPE users. An approach which attributes capital expenditure on shared infrastructure (to the extent it is tonnage related) based on tonnage usage provides a better indication of the true incremental costs which are imposed on the Newlands system by the GAPE users. |
| > It better reflects the significant indirect benefits provided to Newlands Users from the increased above rail efficiency seen through an increase in the average train payload between FY10 and FY20 of 45% and a material increase in competition from system interoperability. | The GAPE project did not have indirect benefits for Glencore but in fact was expected to impose additional costs. The increase in BRTT created an increase in overall above rail costs despite the move to larger trains. The compensation payments made to existing Newlands users is clear evidence that there would have been no financial incentive to move to 26TAL in the absence of the GAPE expansion. |

**Basis of cost allocation**

The established regulatory approach to the allocation of capital is based on the principle that the incremental users of a system should be responsible for the incremental costs

> "A key pricing principle common to both the 2010 AU and 2014 DAU (as well as under our proposed amendments to the 2014 DAU) is the pricing limit principle, which states that the relevant access charge for a train service will at least cover the expected incremental costs of providing access for that train service. Both the 2010 AU and proposed 2014 DAU define incremental costs as:
>
>> … those costs of providing Access, including capital (renewal and expansion) costs, that would not be incurred (including the cost of bringing expenditure forward in time) if the particular Train Service or combination of Train Services (as appropriate) did not operate, where those costs are assessed as the Efficient Costs and based on the assets reasonably required for the provision of Access.
>
> "This definition applies the concept of avoidable costs to address how a floor price can be established for new train services that require an expansion. This treatment of incremental costs for a major expansion was reflected in Aurizon Network's 2013 DAAU pricing proposal for Goonyella to Abbot Point Expansion (GAPE) train services, where it was proposed that the incremental costs associated with GAPE infrastructure be allocated to expanding customers. This approach is also consistent with the principles proposed by Aurizon Network for the expansion pricing framework in the 2014 DAU."[2]

The issues arising from the construction of the GAPE Infrastructure Enhancements within the Newlands system are closely analogous to the position of the Wiggins Island Rail Project (WIRP) Infrastructure within the Blackwater and Moura systems. We would submit that it would be

[2] Queensland Competition Authority, Final Decision, Aurizon Network 2014 draft access undertaking, Volume III – Pricing and Tariffs, April 2016, page 177

desirable for the purposes of regulatory certainty for the QCA to apply similar principles to the development of GAPE reference tariffs as were determined to be applicable to the WIRP.

In relation to WIRP, the QCA stated that an allocation of WIRP capital costs to existing users would be appropriate if "there is clear benefit to existing users based on the evidence provided, and existing users have stated they want the benefit and are willing to pay for it".[3]

In relation to WIRP, the QCA has also stated that there are certain principles which should be used to determine the pricing framework to be applied to expansions such as GAPE:

> "The user(s) requiring the expansion should generally pay an access charge that reflects at least the full incremental costs (capital and operating) of access.
>
> Existing users should not experience a material increase in tariffs due to an expansion triggered by access seekers.
>
> …
>
> An allocation of expansion costs to existing users may be appropriate where an expansion has clear benefits to those users."[4]

We would submit that these principles are equally applicable in the case of the GAPE project.

**Background to GAPE Project**

The GAPE project was constructed by Aurizon Network in order to alleviate pressures on the Goonyella rail and port infrastructure and to utilize the expansion of the Abbot Point Coal Terminal.[5] Aurizon Network has publicly disclosed that the GAPE project is underpinned by specific commercial agreements between Aurizon Network and its foundation customers[6] and that it derives both regulated and unregulated revenue from the GAPE project.[7]

The GAPE project involved the construction of infrastructure upgrades, track renewal works and partial duplication within the Newlands system in order to support the additional GAPE and NAPE volumes.[8] The submissions made by Aurizon in April 2013 in support of its Draft Amending Access Undertaking, Reference Tariff for the GAPE System do not include any suggestion that the upgrades to the Newlands system were designed to benefit the existing users of the Newlands system, and in fact the overall impact on the exiting users of the Newlands system was expected negative (which was apparent to these users and Aurizon even before GAPE was constructed, giving rise to the need for compensation payments). It is clear that these upgrades were necessary to provide the expansion capacity which would permit the GAPE users to access the expanded capacity at Abbot Point.

The GAPE project also involved an upgrade of the axle loads. As is explained in the April 2013 Submission, the selection of train lengths and wagon type (including the required axle load) was done on the basis of the total cost of ownership and lowest capital cost configuration for the GAPE (and NAPE) customers. These changes to the Newlands system were implemented in order to deliver the

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[3] Queensland Competition Authority, Supplementary Draft Decision, Aurizon Network 2014 DAU: Reference Tariffs for Wiggins Island Rail Project Train Services, July 2015, page 30

[4] ibid, page 46

[5] April 2013 Submissions, page 5

[6] April 2013 Submissions, page 3

[7] See for example Aurizon's investor presentation for FYR 2019, slide 83

[8] April 2013 Submissions, page 8

expansion capacity that was required for the GAPE and NAPE customers. These works were not justified by Aurizon on the basis of any benefit to the existing Newlands system, and no benefits to the existing Newlands users were mentioned in the April 2013 Submission. In fact, the changes to the Reference Train in the Newlands system would require the existing Newlands users to accept a slower BRTT (which would have the result of increasing above rail costs) and in some cases to carry out modifications to their train load out facilities (in order to be able to load larger trains within an acceptable time). Aurizon Network highlights in its submission that Newlands customers were paid compensation associated with the upgrade to 26TAL. We consider this further evidence that Newlands customers would not have been incentivised to move to 26TAL in the absence of GAPE.

**Commercial and regulatory approach to GAPE project**

Aurizon determined the commercial and regulatory structure for the GAPE project. This involved putting in place unregulated commercial arrangements with the GAPE customers, and setting up the GAPE as a separate rail system for the purposes of the then applicable Access Undertaking.

The justification for Aurizon's decision to propose the establishment of a GAPE system with its own capital indicator is not clear from the April 2013 submission.

One reason stated in the April 2013 Submission is the time likely to be required for the project costs to be finalised and approved by the QCA as prudent for inclusion in the RAB. However, it is not clear why this timing issue would justify the establishment of an independent GAPE system. Aurizon does also state that there is a higher asset stranding risk for the GAPE Reference Tariff than for the existing Newlands and Goonyella systems.[9] And this may have been considered in its broader "commercial arrangements" with GAPE Users.

Another reason identified in the FY2022 Reference Tariff review is that the purpose of establishing the GAPE System as an independent coal system was in order to allocate the GAPE Infrastructure Enhancements to a separate Reference Tariff which would support the contractual arrangements entered into at the time the decision was made to invest in those infrastructure enhancements. The QCA has previously stated that the negotiations between Aurizon and the GAPE users were not a factor which justified the approval of the GAPE reference tariff.[10]

Aurizon now states that the establishment of an independent GAPE system was equivalent to the establishment of an Expansion Tariff for the Newlands system.[11] Aurizon could have adopted the approach of treating the GAPE as an expansion of the Newlands coal system rather than including the GAPE Infrastructure Enhancements within the Newlands coal system as part of an entirely independent coal system, but chose not to do so. There does not seem to be any reason why the GAPE tariff should now be treated as an Expansion Tariff, when it is not and never has been an Expansion Tariff.

In any event, even if GAPE is treated as an expansion of the Newlands coal system, under the expansion pricing principles applied by the 2017 Access Undertaking this would not justify the socialisation of GAPE project costs within the Newlands system until such time as the socialisation tests are met.[12] Incremental costs which are imposed by the GAPE users within the Newlands system should not be socialized unless and until such socialisation tests are met.

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[9] April 2013 Submissions, page 14

[10] QCA's April 2016 decision

[11] Aurizon Network 2017 Access Undertaking: Annual review of Reference Tariffs – FY2022, page 22

[12] 2017 Access Undertaking, clause 6.4.1

**Incremental costs imposed by the GAPE project**

Aurizon claims that some GAPE Infrastructure Enhancements have now lost their character as incremental costs solely attributable to GAPE Train Services. Aurizon argues this on the basis that these costs have been beneficial to Newlands users given the increase to 26 tonne axle load trains, the provision of additional passing loops and holding roads and investment at the Port.

These facts cannot give rise to a conclusion that there has been any change in the character of the GAPE Infrastructure Enhancements, which have previously been treated by all parties as incremental costs.

Aurizon does not claim that there has been any change in these matters since the GAPE Infrastructure Enhancements were originally constructed. Aurizon and the QCA have both determined that it was then appropriate for the GAPE Infrastructure Enhancements to be treated as incremental costs. The mere passage of time does not change the fact that the GAPE Infrastructure Enhancements were and are necessary to deliver the GAPE project, and in the absence of the GAPE project would never have been required.

The bulk of the "benefits" to existing Newlands system identified by Aurizon simply describe the provision of the necessary additional capacity in the Newlands system necessary to accommodate the demand from the GAPE project. No additional capacity was necessary in the Newlands system for Newlands Users. The provision of additional capacity within the Newlands system cannot be regarded as a benefit to the existing users of the Newlands system where this capacity was required in order for Aurizon to deliver the additional volumes required as a result of the GAPE Project.

Aurizon states that there has been an "increase in the productive capacity of all train services" given the increase in axle load and train lengths.[13] It is an obvious statement of fact that larger trains can carry more coal – but the mere fact that this is the case does not show that any benefit has been provided. In order to assess this question, a holistic approach must be taken which would include taking account of the increases in BRTT, which mean that trains operate less frequently and at greater cost. Contemporary documents related to the compensation payments provided by Aurizon show that Glencore's Newlands and Collinsville operations were expected to suffer an increase in the above rail costs incurred to provide their required capacity, and therefore the efficiency of the train services provided to these operations has decreased rather than increased.

As has been clearly stated by the QCA, any benefits provided to non-expanding users by expansion infrastructure can only justify the allocation of expansion costs to those users where they have requested and agreed to pay for the benefits. Neither of those requirements is met in this case (and in fact, at least in the case of Newlands and Collinsville, no overall benefit was expected to be provided by the GAPE to existing Newlands users).

The decision to use larger train sizes was made by GAPE Users in order to reduce total GAPE Project costs. At the time, both Aurizon and Glencore understood that this approach would have permanent negative consequences on the Newlands and Collinsville operations by virtue of the increase in BRTT (and the resulting increase in train operating costs that both parties expected to occur), and would also require some investment to allow faster train loading given the larger train sizes.

The fact that the Newlands users were willing to allow these changes to occur in order to facilitate the use of the larger train sizes (and slower BRTT) preferred by the GAPE project, does not mean that they should now bear the costs of investment in expansion capital or increased axle loads which were

[13] Annual Review of Reference Tariffs – FY2022, page 23

not required by the existing Newlands system users. Presumably, the costs of compensating Newlands users for negative externalities were taken account of when determining that the larger train size was the preferred outcome for the GAPE users. Although Aurizon states that Newlands users were "fully compensated" for such impacts, it is not possible to know whether this is the case. The compensation was calculated as a once off compensation payment on the basis of certain assumptions, so it is unlikely that all Newlands users have been provided with compensation which corresponds exactly to the negative impacts which have been suffered by them.

Furthermore, when the amount of compensation was calculated, both parties would have been aware both of the increase in train size and of the increase in BRTT which was expected. The compensation would therefore have been determined based on the net impact (taking account of all costs and benefits to the existing Newlands users). If the compensation had been determined only on the basis of the cost of the increase in BRTT and upgrades to train loading speeds, without taking account of any benefits that an increase in train sizes would provide, then the compensation amount would have been larger, and existing Newlands users would enjoy an overall benefit from the increased train size. However, since the compensation discussions took place with both parties being fully cognisant of the increase in train sizes, existing Newlands users have already paid for that benefit by accepting a compensation amount which was lower than if the parties had not factored in the impact of larger train sizes. Therefore, this benefit cannot now be presented as a reason which justifies imposing further costs on the existing Newlands users – the effect of this would be that the existing Newlands users would be paying for this benefit twice.

Given that the move to 26 TAL within the Newlands system was a requirement of the GAPE expansion, all of the costs of such upgrades should be considered as incremental costs and allocated to the GAPE system. We understand that there continues to be capital expenditure on matters such as upgrading sleepers which is required to bring them to the 26 TAL standard. Aurizon have also confirmed to Glencore and other users that approximately $500k of 26TAL upgrade work has since been incorporated into the Newlands RAB. This may need further investigation by the QCA. Such capital expenditure occurs as a result of the GAPE expansion and would not have been required in the absence of this expansion and therefore should be treated as fully incremental and allocated to the GAPE system.

It is not only the initial GAPE Infrastructure Enhancements and the cost of upgrading the Newlands system to 26 TAL which should be considered as the incremental cost imposed by the GAPE users. As has been recognized by Aurizon, the increased usage of shared infrastructure resulting from the construction of GAPE will cause an accelerated degradation of previously existing Newlands infrastructure. Therefore, the ongoing capital costs of replacing other shared infrastructure (to the extent that the need for such replacements are primarily tonnage related) should be allocated between the GAPE and Newlands system based on tonnage, as a proxy to determine the level of incremental capital imposed by the GAPE system.

**Newlands system costs**

Aurizon now claims that it is appropriate to assess the stand alone costs of the Newlands Coal system on the basis of a 26 tonne axle load, since it reflects the actual assets used in the system.

Of course, it has always been the case since the construction of the GAPE Infrastructure Enhancements that they have physically formed part of the Newlands network and been used by Newlands users. Given the nature of railway infrastructure, it is always likely that incremental increases in capacity are provided by additional infrastructure which is added to a rail system and is physically used by all users of the system. If the physical usage of the expansion infrastructure was the determinant of whether it should be considered as incremental capital, then expansions of main line infrastructure could rarely be treated as incremental capital. This is not the approach that the QCA has adopted to expansion infrastructure. The appropriate test is to determine whether the capital was invested to provide incremental capacity to enable new or expanding users to access the rail system.

According to Aurizon's own previous submissions to the QCA, the adoption of 26 tonne axle load trains occurred in order to provide the additional capacity required by GAPE and NAPE users in the Newlands system. This expenditure is therefore incremental capital for the benefit of the expanding users and the costs of providing 26 tonne axle load infrastructure should not be used as the basis for the calculation of the stand alone cost of providing the Newlands system capacity. If the Newlands system had continued on a stand-alone basis providing the existing capacity to existing users, then there would have been no need to increase the applicable axle loads.

Given the positions outlined above, it is no surprise that (as stated by Aurizon) the Newlands system RAB does not reflect a 26 TAL system. This is to be expected, given that the existing Newlands system was a 20 TAL system and that the move to a 26 TAL was in order to provide the expansion capacity required by GAPE. However, this does not provide any compelling economic argument which would justify the GAPE users not bearing the incremental costs which they have imposed – which in our submission would include (a) all costs associated with the initial upgrading of assets to 26 TAL, and (b) an allocation (based on tonnage) of replacement costs for capital which is required based on the usage of the system. This is the economically principled approach.

**Economic efficiency of Aurizon's proposals**

Aurizon states that its proposals are economically efficient and argues that they are consistent with pricing limits, the QCA's Statement of Regulatory Pricing Principles and the expansion pricing principles contained in the 2017 Access Undertaking.

Aurizon's arguments that its new proposals are consistent with pricing limits depend on its reclassification of 26 TAL infrastructure as part of the stand alone cost of the Newlands system. This is not the case.

Aurizon argues that a lower GAPE tariff is preferable to increase competition between coal terminals. This is a highly debatable argument given that coal terminal markets are generally segregated based on geographic proximity (as the QCA has already considered in relation to the declaration of the DBCT). Even to the extent that there may be any truth in this proposition, any increase in demand for Abbot Point capacity brought about in this manner will be at the expense of the existing Newlands users being required to subsidise GAPE expansion infrastructure, by bearing incremental costs which should be attributed to the GAPE system. This is not an economically efficient approach, given that it would have the effect of reallocating costs from the parties benefitting from increased access to Abbot Point to existing Newlands users, who are not provided with any such benefit.

Aurizon argues that because the Newlands existing users were compensated for negative externalities associated with the GAPE project, the remaining benefits justify the imposition of a higher Newlands tariff. It is impossible to be sure whether the Newlands users were fully compensated for negative externalities, and even if they were, the positive benefits cited by Aurizon have already been taken account of in the calculation of the compensation and cannot now be used as a separate justification for the imposition of a higher Newlands tariff.

Aurizon argues that changes in Newlands contracted capacity make it unfair that Newlands RAB is kept separate from the GAPE RAB. If there has been a diminution in the contracted capacity of the existing Newlands users, this will increase the Newlands reference tariff and Aurizon will therefore not be adversely impacted by the reduction. If there is an increase in contracted capacity, it is up to Aurizon to ensure that the capacity corresponding to the existing Newlands system is not over-contracted, and that capacity not available within the existing Newlands system is treated as an expansion.

**GAPE unregulated commercial arrangements**

Aurizon has publicly stated that the GAPE users have entered into separate commercial arrangements from which Aurizon derives unregulated revenue. Although these arrangements are not subject to QCA regulation, it is possible that such unregulated arrangements may have an impact on Aurizon's commercial incentives as regards the setting of regulatory tariffs.

If the unregulated arrangements meant that Aurizon was relatively indifferent to the GAPE regulated tariff (for example because a higher regulated tariff has the effect of reducing the unregulated tariff), this would provide Aurizon with a commercial incentive to raise the costs which are attributed to the Newlands system, in order to increase its overall revenue. We would submit that it would be appropriate for the QCA to determine whether any such commercial incentive exists, when considering this issue.