

17 October 2022

Charles Millstead  
Queensland Competition Authority  
GPO Box 2257  
Brisbane. 4001  
Email: <http://www.qca.org.au/submissions>

Dear Charles,

**RE: GAPE & Newlands Pricing Draft Amending Access Undertaking (DAAU)**

Thank you for this opportunity to respond to the GAPE & Newlands Pricing Draft Amending Access Undertaking (DAAU) and Aurizon Network's associated explanatory paper, dated 2<sup>nd</sup> September 2022.

The following summary outlines the key issues for Bravus, which are set out in more detail in **Annexure A:**

**1. Bravus supports in principle a modified partial socialization proposal provided Aurizon Network losses are excluded from the Newlands system contract volumes for pricing purposes.**

Bravus would seek the QCA review the validity/completeness of the issues raised in *Table 13 Options for inclusion of the deferred NSIE* of the explanatory paper. Bravus is keen to understand the QCA's assessment of Aurizon Network's assertion that Bravus as a Newlands access holder receives different benefits to other Newlands system access holders, Qcoal and Glencore in utilizing historically sourced/ non expansion Newlands system tonnage.

Bravus does not accept that it receives different benefits to other Newlands users.

**2. Aurizon Network losses should be excluded from the Newlands system contract volumes for take or pay pricing purposes.**

Aurizon applies an arbitrary deduction of 3.5% to the total contracted volumes, for the purpose of system forecasts (page 45). This is remarkable in circumstances where Aurizon has, it appears, delivered less than 50% of the expansion volumes promised as part of the GAPE project including NSIE works.

Tariffs should be fixed based on 100% of contract volumes. This prevents any socialization of tariffs and incentivizes participants to trade all unused contracted capacity.

**3. Any commercial solution to NAPE pricing needs to also ensure delivery by Aurizon of promised GAPE project capacity.**

A comprehensive review of GAPE project history by the QCA would find the installation of sufficient project capacity has been within the control of Aurizon Network and GAPE project users since the inception of the project. Bravus would propose any commercial solution should

**Bravus Mining & Resources**

Level 9, 120 Edward Street, Brisbane QLD 4000  
GPO Box 2569, Brisbane QLD 4001  
Australia

Tel +61 7 3223 4800

Adani Mining Pty Ltd T/A Bravus Mining & Resources  
ACN: 145 455 205 ABN: 27 145 455 205

Level 8, 7-13 Tomlins Street, Townsville QLD 4810  
PO Box 967, Townsville QLD 4810  
Australia

Tel +61 7 4430 6800

[www.bravus.com.au](http://www.bravus.com.au)

not be introduced until project installed capacity has been fully delivered ie the delivery of a commercial solution to NAPE pricing should coincide with the delivery of promised GAPE project capacity.

#### 4. Bravus does not support any additional Relinquishments in the Newlands system.

- a. Bravus does not support any relinquishment process that would discriminate against or burden the Newlands system with higher tariffs. In doing so, Bravus notes [REDACTED]  
[REDACTED]  
[REDACTED] Any relinquishment rights permitted to Newlands system users should also apply to GAPE users. To the extent that this exposes Aurizon to commercial risks or costs, that is a matter for them.
- b. No additional Newlands relinquishments should be approved by the QCA whilst the QCA has yet to form an independent view on the historical root cause of the Existing Capacity Deficit (ECD) of the combined systems. An independent review of the chronology of GAPE history and milestones would outline to the QCA that Project access holders accepted the risks associated with outcome of value engineering project design workshops and the subsequent GAPE operating mode under clause 2.3 of the undertaking. The cost outcomes of these decisions and commercial arrangements should not be for the account of the Newlands system by virtue of higher system tariffs. The cost of rectification of the combined system ECD should be borne by GAPE users only in line with clause 2.3 of the undertaking and the Expansion Principles.
- c. Any additional relinquishments cut across Bravus's 2018 pre-existing rights as an Access Seeker of Newlands System Capacity. Bravus would propose, that should the QCA be minded approving any additional relinquishments above and beyond the relinquishments available in 2018 either through clause 7.4.8 or under 7A.5, it should only do so only after the pre-existing rights of any Access Seekers including Bravus are recognised in the first instance as required under clause 2.3(b)(ii) and clause 2.3(c) of the undertaking.
- d. It is not clear why additional Newlands system relinquishments are even required under this DAAU. Long term transfers remain a first best economic solution as it maintains a lower Newlands system tariff for the benefit of all. Aurizon Network is aware that Bravus is an active Access Seeker of any unwanted Newlands system capacity. In recent times, Bravus has approached all Newlands system players to accept any unwanted contracted capacity (copy of notifications provided to the QCA). If Aurizon Network or other Newlands access holders have any genuine concerns over Take or Pay exposure under the Newlands system contract volume pricing, Bravus would ask the QCA to endorse that long term transfers present a more efficient outcome than additional relinquishments.

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GPO Box 2569, Brisbane QLD 4001  
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5. **Bravus would ask the QCA provide recommendations on how this pricing DAAU could be expanded to solve for the efficient use of unused contracted GAPE expansion capacity by Newlands system users.**

Bravus notes that the underutilisation of GAPE project contracted capacity has been an ongoing feature of this project. Despite this, Newlands system users cannot practically utilise unwanted/excess GAPE contracted capacity. Any approved transfers require running trains south to first utilise the Northern Missing Link.

6. **Bravus supports the Aurizon Network's proposed amendments to cost allocation of Renewals on the Newlands/GAPE shared rail corridor as proposed.**

7. **Bravus remains concerned with the QCA's preference for a diminished role in the regulatory process.**

Bravus invites the QCA to take a direct and leadership role moving forwards, including forcing greater transparency on Aurizon in terms of justifying the decisions and timeliness of decisions involving questions of differential treatment of cost allocation and tariffs between stakeholders.

8. **Bravus does not accept the selective and self-serving chronology provided in the DAAU explanatory paper.** Bravus has attempted to fill in its understanding of some of the missing key historical details and reports around the GAPE/NAPE projects. A number of the missing elements from any chronology of the last decade has been included in **Annexure B**.

The balance of the matters raised above are expanded on in **Annexure A**. Should you have any questions please do not hesitate to contact myself or Stephen Straughan.

Sincerely,

*Ian Gibbons*

Ian Gibbons  
Supply Chain Consultant  
Bravus Mining & Resources

**Bravus Mining & Resources**

Level 9, 120 Edward Street, Brisbane QLD 4000  
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Australia

Tel +61 7 3223 4800

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Australia

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## ANNEXURE A

### 1. Bravus supports in principle a modified partial socialization proposal subject to any allowance for Aurizon Network losses being excluded from the Newlands system contract volumes for pricing purposes

Bravus supports in principle a modified partial socialization proposal (see *Table 13. Options for inclusion of the deferred NSIE* of the explanatory paper) without any allowance for Aurizon Network losses. In doing so, Bravus would seek the QCA's view on the validity/completeness of the issues raised in *Table 13 Options for inclusion of the deferred NSIE* including the implication that Bravus as a Newlands access holder receives different benefits from the GAPE project to either Qcoal or Glencore in utilizing its historically sourced Newlands system tonnage. Bravus does not accept that it receives any greater benefit than other Newlands users.

In applying this model, Aurizon Network should not be permitted to reduce the forecast amount of contracted Newlands system volumes for pricing purposes to reflect an amount for "Aurizon Network Causes" because –

- a. Aurizon Network should not plan to fail:
  - Aurizon Network needs to be incentivized to deliver 100% of contract in any given year.
  - The proposed approach is inconsistent with the objective of the UT5 rebate mechanism's key focus to deliver contract
- b. In combined systems with excess capacity there is no need to plan for losses: Aurizon Network have stated that there is excess Deliverable Network Capacity in the combined GAPE/Newlands system and hence Newlands system users can deliver contract should they choose.
  - The proposed 3.5% losses given the level of loss variability presented would also appear arbitrary and Bravus notes that the actual throughput from FY17 to FY22 was below Deliverable Network Capacity for the combined systems.
- c. Aurizon Network will be kept whole from an allowable revenue perspective if 100% of contract is used to determine Newland system tariff.
- d. Setting tariffs based upon 100% of contract provides a better incentive to actively trade unused capacity and eliminates any socialization of pricing.

Further, Bravus also submits that the QCA should consider timing aspects of any NAPE pricing solution. Bravus would propose any commercial solution should not be introduced until project installed capacity has been fully delivered ie the delivery of a commercial solution to NAPE pricing should coincide with the delivery of promised GAPE project capacity. Bravus notes the installation of

#### Bravus Mining & Resources

Level 9, 120 Edward Street, Brisbane QLD 4000  
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Australia

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sufficient project capacity has been within the control of Aurizon Network and GAPE project users from the inception of the project. Any discussion around efficient costs of providing access should ensure there is a timing alignment between commercials and the provision of project capacity.

**2. Bravus’s contracted historic Newlands Capacity was sourced from and hence remains non expansion tonnes.**

Whilst this pricing DAAU is not proposing to subject Bravus to an Expansion tariff, the assertion that the pricing of historic Newlands system capacity used by Bravus could be priced by reference to an Expansion tariff is misconceived.

There is no valid practical or legal distinction that can be drawn between Bravus and other Newlands users. Any discriminatory treatment of users of common historical Newlands capacity by the introduction of a notion of “legacy” and “non-legacy” Newlands system capacity is directly inconsistent with clause 6.4.1(d) Expansion pricing principles of UT5, past commercial practice and the previous decision of the QCA on the allocation of GAPE project costs between GAPE project users, NAPE project users and the Newlands system.

The QCA notably rejected Aurizon Network 2012 proposal to include \$30.3m of project capex into the Newlands regulated asset base because the Newlands system had not been made better off by the project despite Aurizon Network justifying this outcome in part on the basis Newlands users could operate longer and heavier trains. (QCA Final Decision Aurizon Network 2014 DAAU Volume III – Pricing and Tariffs)

In contrast, Bravus notes that the [REDACTED] NAPE capacity is meant to be delivered from project capital upgrades beyond the historic 17Mtpa of Newlands contracted capacity. In short, the NAPE mine uses project Expansion capacity and Bravus uses historic Newlands system contract tonnage ie non project /non expansion tonnage.

**3. Bravus is prepared to pay an expansion tariff on contract GAPE expansion tonnes.**

Bravus notes that the underutilisation of GAPE project contracted capacity has been an ongoing legacy of the GAPE project. Bravus notes that the current and future GAPE tariffs would be substantially less if Newlands users were able to utilise unwanted GAPE expansion contracted capacity.

Despite this, Newlands system users cannot practically utilise unwanted/excess GAPE contracted capacity. Any approved transfers require running trains south to first utilise the Northern Missing Link in a push pull configuration. Bravus would propose the QCA provide recommendations on how this pricing DAAU could be expanded to solve for the efficient use of the GAPE system capacity and in particular how unused contracted GAPE expansion capacity could be made available to Newlands system users.

**4. Bravus does not support any additional Relinquishment Options in Newlands .**

- a. **Bravus does not support any new or modified relinquishment processes that would discriminate against or burden the Newlands system with higher tariffs.**

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In doing so, Bravus notes the GAPE system is prevented from participating in any relinquishments. It would appear, Aurizon Network are refusing to make available regulatory rights of relinquishment to GAPE users because it may result in Aurizon Network [REDACTED] Aurizon Network cannot argue that GAPE users should bear the commercial risks of the GAPE Deeds, where this interacts with the regulatory framework, without accepting that it must also wear those downside commercial risks.

- b. **No additional Newlands relinquishments should be approved by the QCA whilst the QCA has yet to form a view on the historical root cause of the ECD of the combined systems.** A comprehensive review of the chronology of GAPE history would demonstrate that project access holders accepted risks associated with their value engineering project design workshops and the subsequent agreed GAPE operating mode. To the extent that this project design and value engineering produced lower capacity outcomes, the cost of remedying those shortfalls should not be able to be transferred to users of the Newlands system through higher Newlands tariffs. The cost of rectification of the combined system ECD should be borne by GAPE users in line with clause 2.3 and the Expansion Principles of the undertaking.
- c. **Any additional relinquishments cut across Bravus's rights as an Access Seeker of Newlands System Capacity put in place previously in 2018.** Bravus would propose, that should the QCA be minded approving any additional relinquishments above and beyond the relinquishments available in 2018 either through clause 7.4.8 or under 7A.5, it should only do so after the pre-existing rights of any Access Seekers are recognised in the first instance. Bravus notes that this is in keeping with the current undertaking
- 2.3b(ii) Aurizon Network must not engage in conduct for the purpose of preventing or hindering an Access Seeker's access to the declared service within the meaning of section 104 or 125 of the Act. and*
- 2.3(c) Aurizon Network must not unfairly differentiate between Access Seekers, Access Holders or Railway Operators in a way that has a material adverse effect on the ability of any of them to compete with any other of them.*
- d. **It is not clear why additional Newlands system relinquishments are even proposed or required under this DAAU.** Long term transfers remain a first best economic solution as it maintains a lower Newlands system tariff for the benefit of all. The obvious benefit of processing transfers (rather than relinquishments) is that it would have the effect of delivering railed volumes that will act to reduce tariffs for all users (compared to relinquishing those paths). Aurizon Network is aware that Bravus is an active Access Seeker of any unwanted Newlands system capacity. In recent times, Bravus has approached all Newlands system players to accept any unwanted contracted capacity (copy of notifications provided to the QCA). If Aurizon Network or other Newlands access holders have any genuine concerns over Take or Pay exposure under the Newlands system contract volume pricing, Bravus would ask the QCA to confirm to these stakeholders that long term transfers present a more efficient outcome than additional relinquishments.
5. **Bravus supports the Aurizon Network's proposed amendments to cost allocation of Renewals on the Newlands/GAPE shared rail corridor as proposed.**

## 6. Information Asymmetry/ Transparency Issues & the role of the QCA.

### Bravus Mining & Resources

Level 9, 120 Edward Street, Brisbane QLD 4000  
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Australia

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Australia

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www.bravus.com.au

Bravus invites the QCA to take a direct and leadership role moving forwards, including forcing greater transparency on Aurizon in terms of justifying the decisions and timeliness of decisions involving questions of differential treatment of cost allocation and/or tariffs between stakeholders and/or coal systems.

Examples of Information Asymmetry and Transparency Issues around GAPE remain. These include -

- a. The distributional impacts of the interplay of regulated revenue and the income capping nature of the MCR mechanism in GAPE on Aurizon Network's position and other stakeholders.
- b. Aurizon Network's lack of transparency and timeliness around presenting a comprehensive history of the GAPE and NAPE projects and decisions to the QCA.
- c. The refusal of Aurizon Network to clearly articulate the historical root cause of the Newlands GAPE ECD in the ICAR process to the Independent Expert or the QCA. Noting Aurizon Network first identified these project design root causes in 2012.
- d. The lack of acknowledgement by Aurizon Network that GAPE users as part of the project design/capital optimisation participated in value engineering process to reduce capital costs of the project and that as a result this and clause 2.3 of the undertaking, project users accepted the risk of non-delivery of project capacity.
- e. The lack of transparency around the change in circumstance that permits a NAPE Expansion tariff to be implemented in 2022 and not in 2014 when the NAPE mine first commenced exports.
- f. Timeliness issues around the transparency of the Byerwen transactions.

## ANNEXURE B

### Missing milestones in Aurizon Network's explanatory paper - Figure 8 Chronology of Commercial and Regulatory Events for GAPE Project Costs.

- 2005: Early GAPE study works
- 2009: The 2009 Coal Rail Infrastructure Master Plan identified **Newlands historical system capacity at 19Mtpa.**
- 2009: McKinsey/Aurizon Network/GAPE customers value engineering workshops to reduce project capital costs to save the viability of the project. As a result, the project was designed with some Remote Control Signalling (RCS) stripped out and was left with Direct Traffic Control (DTC) on a large section of the Newlands system with pathing subsequently limited to 24 trains per day and not the 36 trains per day required to deliver the contracted 51Mtpa.
- 2009: Project holders accept operating mode and design risk are implicitly for their account.
- Late 2011: Project delivered without RCS fully installed in Newlands system and without 24 hr access to the critical Collinsville passing loop.
- Early 2012: Delivered **GAPE project design and operating mode** were identified as the root cause of a significant shortfall in delivered contracted/promised project capacity. Solutions to rectify the lack of promised delivered capacity included the installation of RCS and a Coral Creek passing loop as a substitute for Collinsville passing loop – these solutions are referred to in subsequent

#### Bravus Mining & Resources

Level 9, 120 Edward Street, Brisbane QLD 4000  
GPO Box 2569, Brisbane QLD 4001  
Australia

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Adani Mining Pty Ltd T/A Bravus Mining & Resources  
ACN: 145 455 205 ABN: 27 145 455 205

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Australia

Tel +61 7 4430 6800

www.bravus.com.au

Network Baseline Capacity Assessments and Development Plans. The same transitional projects have been identified by the Independent Expert over 9 years later in October 2021.

- 2021: The Independent Expert identified the GAPE project designed 60 minute headway constraint (retention of DTC and not 100% RCS) as the key constraint in GAPE/Newlands system. Deliverable Network Capacity was nominated at 32.8Mtpa against the contracted capacity of 51Mtpa.
- 2021/2022: The Independent Expert based upon legal advice, was unable to provide the historical root cause of the Newlands /GAPE ECD in the Initial Capacity Assessment Report. Aurizon Network has remained silent on the historical root cause of the ECD.

#### Collinsville Passing Loop

- 2009: Collinsville loop 24 hr operation is identified as necessary in order to deliver contracted GAPE capacity of 51Mtpa.
- 2010: Collinsville passing loop community blockades protesting proposed additional volumes/noise/dust from future GAPE trains
- 2010: Aurizon Network negotiated daylight only use of the Collinsville loop with protestors.
- 2012: Rail Operators identified Collinsville passing loop as too short for 84 wagon GAPE length trains with a high risk of a Signal Passed at Danger (SPAD)
- 2012: Aurizon Network identified Coral Creek passing loop as a substitute for Collinsville passing loop was required as a 24 hour solution.
- 2021: IE identified 24 hour access to Collinsville passing loop or Coral Creek passing loop substitute was required to deliver the contracted 51Mtpa.

#### NAPE Project History

- ~2010: Qcoal entered into NAPE deeds and a GAPE deed
- ~2014: Completion of new haul roads connecting the project mine to project capacity at the existing Sonoma Train load out as a substitute for original connecting mine infrastructure - the Drake spur line and loop.
- 2014: NAPE mine allowed to rail using a preferential Newlands system tariff. No acknowledgement of the commencement of railings by project mine or explanation by Aurizon Network in 2014 on why a NAPE expansion tariff was not implemented by Aurizon Network.
- 2018: Construction by Aurizon Network of additional mine infrastructure to access project capacity, the Jax level crossing across the GAPE main line.
- 2022: GAPE and Newlands Pricing DAAU now able to implement a NAPE expansion tariff. No explanation given to working group on the reasons for the delay or the distributional impacts of this delay.

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