



Queensland Rail's 2023 Draft Access  
Undertaking:

New Hope submission  
(Collaborative submissions stage)

8 November 2024

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## 1 Introduction and status update

Thank you for the opportunity to provide this submission on behalf of New Hope Group (**NHG**) in relation to Queensland Rail's proposed draft access undertaking (the **2023 DAU**).

We understand that the intent of the current stage of the process is to provide 'collaborative' submissions reflecting the consultation which QR and stakeholders have undertaken over recent months. Given that the purpose of this round of submissions is to reflect the outcome of collaboration, we will not repeat arguments or restate positions which were presented in previous NHG submissions. Except where specifically noted in this submission, those previous views have not changed, and this submission should be read alongside our previous submissions.

A significant amount of consultation has occurred. This has improved the understanding of both QR and stakeholders on a range of issues. In some cases, the consultation has also resulted in various levels of agreement on issues, which we will document in this submission.

The principal focus of engagement with QR during the collaboration period was in relation to reference tariffs and the underlying 'building blocks' used to derive them, including volume forecasts and the capital projects which are reflected in the capital indicator. However, there was also engagement through the collaboration period between:

- (a) the West Moreton coal producers (New Hope and Yancoal) and QR; and
- (b) the haulage operators and QR,

on a number of drafting issues in the standard access agreement and access undertaking, as discussed in Sections 4 and 5.

In the key area of West Moreton tariffs, we have an improved understanding of QR's views on capital expenditure requirements and how those would vary under a range of tonnage scenarios, some understanding of the impact of the acceleration of depreciation under a range of scenarios, and a better understanding of the tariff impacts of changes in the volume assumptions. Our collaboration did not seek to address remaining tariff matters such as operating costs, the WACC, the value of the existing asset base or maintenance costs.

Tariffs sought by QR in all tonnage scenarios remain, in our view, unaffordable for customers. At this stage we are not confident that QR will take a commercial approach to addressing this issue unless there are strong indications from the QCA that a regulatory outcome will also require this issue to be addressed. Any outcome, whether negotiated or determined by the regulator, which fails to address affordability, will jeopardise the future of QR's customers and utilisation of the network. Based on current tariff indications, it will not be possible for an affordable tariff to sustain a full rate of return on QR's existing RAB and planned capital expenditure, if the claimed level of operating and maintenance costs, plus accelerated depreciation, is required. We remain hopeful that an improved approach to capital expenditure, operating costs, maintenance and depreciation could allow QR to earn a full return on its assets. If this is not possible, then we do not consider that a tariff which provides a full return on assets in the very short term, but risks stranding the assets in the medium term, would be appropriate having regard to QR's legitimate business interests (S138(2)(b)), the public interest (s138(2)(d)) or the interests of QR's customers (s138(2)(e)).

As was explained in our July submission, we suggest that targeted position papers or discussion papers from the QCA might help to narrow the gap between the expectations of QR and customers and therefore encourage more constructive discussion of these matters.

## 1.2 Structure of this submission

This submission discusses:

- Consultation on tariff matters and expected outcomes under a range of tonnage scenarios (Section 2).
- Consultation on QR's capital expenditure program and our response to the information provided to date (Section 3).
- Comments on matters affecting the Standard Access Agreement, which have been discussed predominantly between QR and operators (Section 4).
- Non-tariff undertaking matters which have been discussed with QR, the status of agreement (or otherwise) on these matters, and suggested drafting (Section 5).
- Conclusion and way forward (Section 6).

## 2 Consultation of Tariff matters

### 2.1 Tariff scenarios

Consultation on tariff matters has focussed primary on the capital expenditure program (discussed in Section 3) and on tariffs under a range of scenarios. Some comments on the scenarios are provided below. Note that all modelled tariffs exclude any recovery of capitalised losses (discussed in Section 2.2). The references to annual tonnage in each scenario refers to the maximum tonnage reached in each scenario, generally after a ramp-up period:

- 9.6Mtpa revised: Compared to the original 9.6Mtpa scenario, this case shows a slower build-up of tonnages, identical capital expenditure requirements, and small changes to maintenance and opex costs. The one-part tariff increases marginally from the amount proposed in the DAU.
- 7.5Mtpa scenario: [REDACTED]. This is the scenario which NHG is currently focusing on as a base case.

This case shows a 25% reduction in capital expenditure (\$2025/26) compared to the 9.6Mtpa scenario. A critical issue will be how QR manages the risk and timing issues of the capital expenditure which is required for the 9.6Mtpa case, but which is not required in the 7.5Mtpa case. If capital is committed based on the 9.6Mtpa case and this tonnage is not achieved, or is not sustained over the long term, then QR will have invested around \$90 million of funds on projects which are not required. Remaining customers will be unable to financially support a recovery of this investment, given the challenging level of tariffs in the 7.5Mtpa case (which excludes this cost).

The 7.5Mtpa case shows a tariff (\$37.86/000gtk) which is 16% higher than the unaffordable tariff of \$32.63/000gtk proposed in the DAU, or 52% above the current one-part tariff. Clearly the impact of the loss of tonnage in this scenario is not being fully offset by the rationalisation of capital expenditure. We consider that the tariff shown under the 7.5Mtpa scenario is unaffordable (noting that it also excludes any recovery of capitalised loss, which QR seeks to add to this tariff) and will, if implemented, bring about the 5.0Mtpa scenario or worse.

- 5.0Mtpa scenarios with/without optimisation: [REDACTED]. A 5.0Mtpa scenario is NHG's expected outcome if an affordable tariff which supports the 7.5Mtpa scenario is not

developed. The 'without optimisation' scenario shows a tariff increase of 162% above current levels. Clearly this will not be sustainable. We note that this scenario involves QR continuing to earn a return of, and on, stranded assets West of Macalister. This would be an inappropriate and unsustainable outcome and QR would be forced, whether by regulatory decision or commercial reality, to adopt pricing which is more in line with the '5.0Mtpa with optimisation' scenario. We estimate that the 'with optimisation' case will involve QR ceasing to recover any return on around \$80 million of existing investment (written down value) West of Macalister, plus any further capital expenditure incurred in that section. In NHG's assessment, the high tariffs being sought in all scenarios are an 'own goal' by QR as they are likely to result in loss of volumes and lower commercial returns for QR than could have been achieved with affordable tariffs.

## 2.2 Tariff building blocks

NHG remains optimistic that a critical examination of all elements of the tariff 'building blocks' could result in an affordable tariff which allows QR to earn an acceptable return on its existing RAB and on necessary capital expenditure. This will require, for each item, a reassessment made in the context that the current proposed values result in a tariff which customers are unlikely to pay. Our views on the WACC, the risks of accelerating depreciation, and operating maintenance costs have been provided in previous submissions. Nothing learned through recent consultation changes our views on those matters.

QR has recently provided additional information on the effect of the proposed accelerated depreciation. The data indicates that the acceleration contributes \$6.48/000gtk to the 7.5Mtpa tariff of \$37.86/000gtk. This has been proposed to mitigate QR's long term asset stranding risk but is likely to bring that long term risk forward and convert it into a near term reality. Our key concern is that QR's realisation of this reality will occur after mine closure decisions have been locked in, such that the situation will be unrecoverable.

## 2.3 Recovery of capitalised loss

Given that the tariffs discussed in Section 2.1 are, in all volume scenarios, unaffordable, NHG considers that there is no 'headroom' available to further increase tariffs in order to provide for recovery of any AU2 capitalised loss. The expectation, at the time of implementing the capitalisation of losses under AU2, was that, if volume increases of the magnitude which are now likely were to eventuate, revenues would be sufficient to provide QR with full cost recovery, plus recovery of capitalised losses over a period of time, with tariffs remaining at the 'affordable' level determined under AU2 (or lower). That expectation has clearly not materialised, due to the increases in opex, maintenance and, most importantly, capital expenditure, which QR believes is required to support the higher tonnage scenarios. The capital expenditure program in particular is a surprise to industry. The 7.5Mtpa case requires \$256M of capital expenditure to rail tonnages which have been achieved in the past (7.8Mt was railed in 2011/12)<sup>1</sup>. The QCA's February 2020 Decision on AU2 noted (page 20) that:

*"Our view, subject to further consultation and consideration when the matter comes up, is that the capitalised losses should have a limited life, to prevent the accumulated amount in the under recovery account from ballooning to a level at which there is no reasonable prospect of recovery. This is to address our concern—shared by Queensland Rail and its stakeholders—about the effect on future demand of a large overhang of capitalised losses.*

*Under such an approach, each year's under- or over-recovery would remain at full value in the under-recovery account for five years, after which it would be fully depreciated over the next five*

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<sup>1</sup> QCA February 2020 Decision on QR 2020 DAU , page 11

*years. This 10-year life—five years of accumulation, then five years of 'depreciation'—would help mitigate the accumulation of losses while giving Queensland Rail a reasonable amount of time to find new customers to recover its forgone revenue. The 10-year life would reduce any distortionary inter-temporal effects where past costs are borne by future users, by placing a natural limit on the amount that can be rolled forward to future periods.”*

The 'limited life' concept described in this decision was not reflected in the drafting of AU2. This is understandable, given that, under the QCA's approach (five years of accumulation then five years of depreciation) was not possible to reach the depreciation phase within the five-year term of the undertaking.

Unless elements of the building blocks can be reduced, and reduce tariffs to a level which is affordable, and which provides headroom for the repayment of capitalised losses while remaining affordable, then we suggest that the QCA's approach should be implemented from the commencement of AU3.

### **3 Consultation on QR's capital expenditure program**

Over recent months QR has provided greater transparency with regard to current and future capital projects than has been historically provided, which NHG appreciates. This represents a step in the right direction, however further work is needed to expand on this process in order to develop a robust business case structure, and subsequently seek alignment and agreement on each material capital project.

NHG strongly advocates that a transparent consultative approach is required. Under our proposed approach, final decisions on all matters relating to the capital expenditure program will remain with QR, so that efforts to obtain customer support for projects cannot put capacity, efficiency or safety at risk.

A key progressive step which has been taken as part of the consultative approach is some scenario modelling by QR of the capital program relative to various potential volume outcomes (i.e. 9.6Mtpa, 7.5Mtpa, 5.0Mtpa and 2.5Mtpa). This has resulted in QR amending its capital program for the lower volume scenarios, highlighting and reinforcing the need for a transparent and consultative process moving forward. In particular, having the ability to re-calibrate the capital program in response to material changes in circumstances is critical.

The collaborative process has not yet provided the required detail for NHG to gain the necessary comfort in relation to the overall proposed capital program, nor the proposed maintenance expenditure, noting the interrelationship between the two.

Information on the 24 capital projects that QR has provided as part of the collaborative process, in early September and then in late October, was limited to:

- Examples of 'business case' summaries (titled 'Concept/Development Commencement Briefs' and Works Management Summaries') that seek to provide initial visibility of five current capital projects that have already been initiated by QR, at various stages of project feasibility;
- Four examples of 'business case' summaries for past projects that indicate the form that future 'business case' summaries for some uncommitted projects may take (i.e. scope and drivers);
- Some general information supporting slide packs and email correspondence; and
- A one-page summary table providing rationale for all 24 capital projects, totaling ~\$240 million (7.5Mtpa volume scenario).

In comparison to the “*four key elements of a robust business case*” set out in the QCA’s Draft Decision<sup>2</sup>, the limited information provided by QR is somewhat unstructured, incomplete and misaligned across some data points. As a result, it is difficult for NHG to provide specific meaningful feedback on the information provided, however the following general comments and observations are provided against the QCA’s four key elements:

1. Demonstrated need:
  - a. A reasonable level of detail has been provided demonstrating a need for the projects, however this generally lacks qualitative/quantitative historical data (e.g. history of formation failures or TSRs) demonstrating the consequences of alternative, such as ‘do nothing’.
  - b. Limited evidence of the capital program being part of a prudent long-term strategy (i.e. 20-year financial analysis, focus on maximising train services and customer revenue without reference to balancing acceptable cost and risk, etc.).
  - c. Limited detail explaining the required timing of the project or triggers for investment.
2. Consultation with customers:
  - a. No customer consultation was undertaken on the five projects for which business case summaries were provided (which are now in various stages of commitment).
  - b. No indication of consideration of lower volume scenarios.
3. Demonstrated consideration of options:
  - a. Partial evidence of alternative options considered.
  - b. Limited evidence of considered qualitative/quantitative analysis to explain how and why the proposed approach was adopted.
4. Efficient cost:
  - a. Limited evidence/demonstration of cost efficiency.

As mentioned above, NHG appreciates QR’s efforts in starting to share information in relation to the proposed capital program, however, it reiterates that there is some way to go to achieve alignment on process and content expectations in arriving at robust business cases for all future material capital projects, and associated maintenance programs. Given this is a road well-travelled in relation to the CQCN and Hunter Valley rail networks, there are existing established processes that coal producers and QR can collaboratively leverage to accelerate this process.

In terms of focusing efforts on specific projects, priority ought to be given to the more material projects early in the program over those later in the program or of lesser value. Noting, in the absence of completed agreed robust business cases NHG (and QR) cannot be confident that the projects are necessary or are optimised.

## **4 Standard Access Agreement**

### **4.1 Insurance**

Arising from discussions between QR and haulage operators, QR has provided amendments to clause 16 regarding the insurance an operator is required to obtain and the claims on such insurance that must be notified to QR.

Where the changes appear to provide operators greater flexibility in terms of insurance coverage and confine notification to where relevant to QR, and are supported by the operators, NHG is supportive of those amendments.

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<sup>2</sup> Figure 7, Section 8.3.2 ‘Capital expenditure approval process’, PDF page 84 (<https://www.qca.org.au/wp-content/uploads/2024/06/qca-draft-decision-on-queensland-rail-2025-dau.pdf>).

#### 4.2 Aligning dispute timetables

Arising from discussions between QR and haulage operators, QR has provided amendments to clause 19.2 to seek to align the timing of disputes with that provided in the Access Undertaking. NHG is supportive of that proposal.

#### 4.3 Rescheduling of Timetabled Train Paths

Arising from discussions between QR and haulage operators, QR has provided the Producers with proposed drafting for a new clause 21.2 regarding rescheduling of timetabled train paths.

As NHG understands it, the intention of the new drafting is to allow QR to reschedule timetabled train paths where a train service is consistently running early or late rather than to time, principally with the intention of being implemented in respect of the North-Coast Line, where there may be additional value in running at particular times.

NHG does not consider that provision workable or beneficial in relation to the West Moreton system where:

- (a) difficulties running to timetable are highly likely to be attributable to interactions with the Metropolitan system;
- (b) changes to the timetabling of West Moreton coal services are likely to be challenging given the complex timetabling of passenger services in the Metropolitan systems; and
- (c) there should be no real difference in value of two coal West Moreton / Metropolitan train paths (assuming both are at time that allow the train service to continue into the Metropolitan system without stopping).

However, NHG has no objection to the clause applying to access agreements on other parts of the QR network to the extent that is supported by QR and haulage operators.

Resolving this could be as simple as amending the proposed clause 21.2(a) as follows:

- (a) *This clause 21.2 applies to Timetable Train Services (other than services with an origin in the West Moreton System).*

#### 4.4 Reduction of Access Rights

Arising from discussions between QR and haulage operators, QR has provided the Producers with proposed drafting for a new clause 21.3 regarding the resumption of access rights where a train service has consistently failed to be operated or the Access Holder no longer has right of access or use of private infrastructure necessary for the service.

NHG's concern is that in the West Moreton system where there is currently a single operator of coal haulage services, and that haulage operator is experiencing issues which are preventing use of the access rights, it would not be appropriate for a coal producer (who had coal to be railed) to have access rights resumed.

NHG therefore has reservations about changing the references from 'a sustained requirement for the Access Rights' to 'a sustained requirement for and ability to utilise the Access Rights'.

#### 4.5 Assignment by Queensland Rail

In its initial DAU3 submission, QR sought to amend the SAA provision to give QR broad rights to assign the agreement without consent where it no longer has or expected to no longer have a right to operate all or any part of the network.

Arising from discussions between QR and the West Moreton coal producers (following submissions from both West Moreton coal producers on this issue), QR has proposed amendments to the clause in respect of assignment by QR.



The revised paragraph (a) (as shown below) resolves the concerns NHG had with QR's original proposal, subject to the minor proposed amendments to paragraph (c) shown below. NHG also considers the references to the QCA Act and the undertaking should be reinstated – as the declared service is the use of the relevant network, such that the Assignee would still be providing the declared service. Below is the QR drafting, marked up with our suggested further amendments:

- (a) *If Queensland Rail will no longer have a right to operate the Network or any part of the Network relevant to providing the Access Rights under this Agreement it will Assign all or part of its rights or obligations under this agreement corresponding to the parts of the Access Rights which Queensland Rail can no longer provide to an Assignee who:*
- (i) *will have the right to operate the relevant parts of the Network; and*
  - (ii) *has the expertise, the financial resources and other relevant resources to enable it to provide the relevant Access Rights,*
- without the prior consent of the other Parties, provided that Queensland Rail procures the Assignee to covenant by deed with the other Parties to provide the Access Rights to the extent of the rights and obligations Assigned to the Assignee.*
- (b) *Queensland Rail may Assign all or part of its rights or obligations under this agreement to an Assignee who has the expertise, the financial resources and other relevant resources to enable it to discharge the obligations of Queensland Rail under the QCA Act, the Access Undertaking and this agreement without the prior consent of the other Parties provided that Queensland Rail procures the Assignee to covenant by deed with the other Parties to be bound by and to perform the obligations of Queensland Rail under the QCA Act, the Access Undertaking and this agreement to the extent of the rights and obligations Assigned to the Assignee.*
- (c) *Before exercising its right under clause 22.1(a) or 22.1(b), Queensland Rail will:*
- (i) *give the Access Holder and the Operator no less than 21 Business Days notice; and*
  - (ii) *use its best endeavours to secure the cooperation of the Assignee to:*
    - (A) *provide information requested by the Access Holder or the Operator to confirm that it has expertise, financial resources and other relevant resources to enable it to provide the relevant Access Rights; and*
    - (B) *negotiate and enter into an interface agreement (as defined in the RSNL) with the Operator.; and*
    - (C) *in the case of a partial assignment under clause 22.1(a), provide aligned scheduling for through-running services which operate across the QR and the Assignee's networks.*

#### **4.6 Other Access Agreement Issues**

NHG has had recent experience with negotiating a short-term access agreement with QR. Our experience raises issues which we have not raised in previous submissions, and which are therefore discussed below. We acknowledge that this information is not in response to collaboration with QR.

Our recent experience with negotiating short term access was that the standard access agreement was presented on a take it or leave it basis and NHG was not able to negotiate minor amendments. QR indicated on numerous occasions it was not willing to vary clauses from the

standard access agreement. While some of the amendments sought were specific to New Acland's circumstances, the majority were more generally applicable minor changes.

Below are examples of items that NHG submits would clearly be appropriate to change in the standard access agreement, but which we were unable to negotiate:

- (a) In 7.3(a)(vii) (Compliance), the requirement to comply with the Access Undertaking should clearly refer to the charges, as compliance with reference tariffs should be contractually required:
- the Access Undertaking, to the extent that the Access Undertaking relates to Queensland Rail's charges under performance of its obligations or exercise of its rights under, this agreement;*
- (b) in 8.7(a)(ii) (Alterations to Train Services), the Queensland Rail obligation to reschedule should be amended as follows so it is not excluded because of immaterial or minor costs which the Access Holder is willing to pay/reimburse for:
- if the Operator has complied with clause 8.7(a)(i), then Queensland Rail will use reasonable endeavours to provide an Alternative Schedule Time for the relevant Train Service unless this would:*
- (A) *alter the Scheduled Times for other Train Movements; or*
- (B) *result in Queensland Rail incurring additional costs or expenses that Queensland Rail considers material (acting reasonably) and which the Access Holder has not agreed to compensate Queensland Rail for.*
- (c) in 13.6 (Claims in respect of non-provision of access), paragraph (c) should be amended as follows so that Queensland Rail's exclusion of liability for non-provision of access is dependent on rescheduling a path expected to be utilised – not a theoretical but practically unworkable path – so as to incentivise real efforts by QR to facilitate such rescheduling;
- a Train Service is cancelled due to Queensland Rail failing to make the Network available for the Operator to operate the Train Service at the Scheduled Time and Queensland Rail was not able to offer a reasonable Alternative Schedule Time that could reasonably be expected to be utilised by the Access Holder.*
- (d) in 14.1 and 14.2 (Suspension) notices to be provided by Queensland to the Operator or Access Holder (respectively) should have a copy also provided to the other – given that both the Operator and Access Holder need to know immediately if a suspension will be occurring;
- (e) in 17.3 (Review of Security) 'at any time' should be replaced with '*where Queensland Rail has reason to believe there has been a material adverse change in Access Holder's or Operator's financial position or the Access Holder has defaulted in its payment obligations*' – so the required extent of security can only be reviewed where that is actually justified;
- (f) in the definition of Force Majeure Event the 'and includes' wording should instead say '*and includes where the circumstances meet the requirements in paragraphs (a) and (b)*', so that the requirement in all cases is that the event is beyond the reasonable control of, and not reasonably able to be prevented or overcome by due diligence of, the Affected Party; and
- (g) paragraph (a) of the definition of Repeated Breach should have a carve out like '*which are not the subject of a bona fide Dispute unless and until that Dispute has been*

*determined in Queensland Rail's favour'* given the drastic consequences (i.e. termination) that can arise from an alleged but disputed breach.

## **5 Access Undertaking Issues**

### **5.1 Independent Capacity Assessment (Proposed Part 4A)**

In its initial submission in respect of QR's DAU3 submission, NHG sought the inclusion of an independent capacity assessment regime for the West Moreton System.

It acknowledges that since that submission, the QCA has engaged Arcadis to undertake a capacity assessment – although the results of that, and the extent of transparency it may provide, are not yet known.

In recognition of feedback QR provided during the collaboration process, NHG and Yancoal have revised their proposed drafting inclusions in relation to this issue (where their initial submissions had envisaged largely copying Part 7A of the Aurizon Network UT5 access undertaking).

The revised drafting proposal is included as schedule A of this submission. As the QCA will see, it is significantly shorter and simpler than the Part 7A mechanism, with key differences including:

- (a) The assessment is limited to capacity to provide West Moreton coal services;
- (b) It envisages a single assessment, and further assessments can only be requested if there are material changes in capacity (and creates the potential for QR and access holders to agree an assessment is not needed); and
- (c) It is purely a transparency measure in that there are no consequences such as limiting the capacity QR can contract or requirements for QR to invest capital.

While what is proposed may not have the 'teeth' or consequences of Part 7A in UT5, NHG considers that a transparency measure of this type is an important step to facilitate QR and other West Moreton supply chain participants having more informed discussions about the network, how it operates and future capital investment, and hopefully finding more common ground on those issues.

We submit that in this narrower form the anticipated benefits and reduced costs relevant to the previous proposal, justify its inclusion.

### **5.2 Inclusion of Nominated Operators (Schedule F)**

Arising from discussions between QR and haulage operators, QR has provided proposed amendments to Schedule F so that notices currently given by or to Access Holders are given to and can be given by the Access Holder's Nominated Rolling Stock Operator.

Given the operational nature of these matters, NHG is supportive of this change.

### **5.3 Removal of Ad Hoc Planned Possessions (Schedule F and Definitions)**

QR has provided proposed drafting that deletes the concept of Ad Hoc Planned Possessions.

NHG is not currently convinced that deletion is appropriate. It appears to NHG that the concept of an Ad Hoc Planned Possession as currently defined is only redundant if there are no possessions (other than Urgent Possessions or Emergency Possessions) that are not entered into the Master Train Plan. If that is actually the position, then the Network Management Principles should specifically prohibit possessions (other than Urgent Possessions or Emergency Possessions) unless the process in the undertaking has been followed for changes to the MTP to include such possessions.

#### **5.4 Disputes in relation to Possessions (Schedule 4, 2.4)**

NHG understands from the mark-ups provided by QR that QR remain apart from all other stakeholders in its desire to delete the provision that provides for changes to the Master Train Plan or scheduling of Ad Hoc Planned Possessions to not take effect until any bona fide dispute has been resolved.

Consistent with its previous submissions, NHG remains concerned that without this safeguard there is a real risk of adverse impacts from MTP changes and possessions in circumstances not permitted by the network management principles in Schedule F.

NHG continues to believe that if the QCA considers QR's submissions regarding this safeguard preventing efficient changes and involving additional costs due to rescheduling where disputes are raised, rather than deletion:

- (a) the time frame for raising a dispute should be reduced from the 30 days currently provided; and
- (b) a specific compressed time frame / expedited process should be provided for resolution of this type of dispute.

#### **5.5 Other Drafting Issues in Access Undertaking**

To the best of NHG's knowledge, QR is not proposing drafting to resolve other issues of concern raised in NHG's February 2024 submission.

NHG continues to consider the other positions set out in its February 2024 submission regarding drafting issues in the Access Undertaking remain appropriate.

In particular, NHG continues to:

- (a) seek a volume trigger that is bi-directional. NHG provided suggested drafting in the February 2024 submission. QR, in discussions with customers, committed to provide revised drafting, but this has not been received at the time of this submission;
- (b) seek customer involvement in capex planning and approval. NHG provided suggested drafting in the February 2024 submission. NHG has indicated to QR in consultation that it would be open to the customer approval process being modified to fit logically into QR's existing internal capital approval process and understands QR may be looking at drafting to achieve that, but this has not been received at the time of this submission;
- (c) seek renewal rights for coal carrying services. QR, in discussions with customers, committed to provide revised drafting, but this has not been received at the time of this submission;
- (d) seek a capital expenditure reconciliation with tariff adjustments during the term for material variances. NHG provided suggested drafting in the February 2024 submission. QR, in discussions with customers, committed to provide drafting, but this has not been received at the time of this submission;
- (e) oppose QR's deletion of reporting requirements from the Quarterly report; and
- (f) oppose the deletion of the loss capitalisation regime.

for the reasons referred to in pages 27 to 28 and 33 to 38 of its February 2024 submission and submits that the drafting proposed in those sections remains appropriate.

## 6 Conclusion and way forward

NHG appreciates the opportunity which the QCA provided to develop collaborative submissions with QR. This document has explained the extent to which this has been successful. In some areas, such as developing agreed drafting on the matters discussed in Sections 4 and 5, we intend to continue to work with QR and will inform the QCA if further progress is made. In the crucial area of West Moreton tariffs, we see little prospect of making progress until the QCA provides clear guidance in the form of position papers or an updated draft decision.

Our July 2024 submission made the following comments:

*Negotiations between stakeholders are greatly enhanced when the likely views of the QCA are understood by all parties. For example, the negotiations which led to the Aurizon Network UT5 DAAU, which proposed a range of customer-supported reforms to the approved undertaking, were conducted after the QCA had released a draft decision on the undertaking. That draft decision contained clear positions on all important issues. This provided a baseline outcome from which customers and Aurizon Network could consider agreed variations. For example, the negotiation of WACC was based on the QCA draft decision number, with an uplift based on additional negotiated reforms, while the operating cost allowance was based on the QCA's draft decision number, with negotiation of an escalation mechanism. In the absence of a clear draft decision, it is unlikely that an effective negotiation could have proceeded.*

Our experience over recent months reinforces our view that progress on West Moreton tariff matters is dependent upon clear guidance from the QCA. We consider that an affordable tariff which prevents a loss of utilisation of the West Moreton system and stranding of QR assets could be achieved if:

- QR's proposal to accelerate depreciation, being a proposal designed to mitigate asset stranding risk which will have the opposite effect, is abandoned.
- Capitalised losses at the end of the AU2 term are depreciated as discussed in the QCA's February 2020 decision, rather than recovered, unless reductions in other building block elements reduce tariffs to a level at which repayment is possible within an affordable tariff.
- Capital expenditure is critically examined ahead of project commitment to ensure that the proposed scope is the optimal solution to the identified need, that the procurement methodology is optimised and that the tonnage assumptions underpinning investment are sound.
- Operating and maintenance costs are re-examined in the context of the tariff affordability challenge.

While we continue to have concerns about the proposed WACC (particularly the proposed uplift) and value of the asset base (as discussed in previous submissions), an affordable tariff is the priority, and we are hopeful that this could be achieved with a combination of the above adjustments.

## Attachment A: Capacity Assessment Drafting

### Part 4A: Capacity Assessment for West Moreton System

#### 4A.1 Intent

The purpose of this Part 4A is to provide for the independent and realistic assessment of the West Moreton System Coal Capacity.

#### 4A.2 West Moreton System Coal Capacity

**West Moreton System Coal Capacity** means the capacity of the West Moreton System expressed as the maximum number of Train Paths (calculated on a Monthly and annual basis) for coal services that can be utilised in the West Moreton System, taking into account the operation of the West Moreton System, having regard to:

- (a) the way in which the West Moreton System operates in practice;
- (b) reasonable requirements in respect of planned maintenance and a reasonable estimate of unplanned maintenance, repair, renewal and Expansion activities on the Rail Infrastructure;
- (c) reasonably foreseeable delays or failures of Rollingstock occurring in the relevant supply chain, both planned delays and failures and a reasonable estimate of unplanned delays and failures;
- (d) reasonably foreseeable delays associated with any restrictions (including speed restrictions, dwell times within Train Services and between Train Services and other operating restrictions) affecting the Rail Infrastructure;
- (e) the context in which the Rail Infrastructure interfaces with other facilities forming part of, or affecting, the relevant supply chain (including loading facilities, load out facilities and coal export terminal facilities);
- (f) the need for Queensland Rail to comply with its obligations to provide access to non-coal traffic under Access Agreements, Passenger Priority Obligation or Preserved Train Path Obligations;
- (g) the supply chain operating mode (including at the loading facilities, load out facilities and coal export terminal facilities);
- (h) interfaces between West Moreton System and the Metropolitan System and scheduling of through running services across both systems; and
- (i) the terms of Access Agreements (including the number of Train Service Entitlements for each origin and destination combination) relating to Train Services operating in the West Moreton System.

#### 4A.3 Engagement of Capacity Modeller

- (a) Queensland Rail and West Moreton System Access Holders will (except to the extent unanimously agreed by those entities) use their best endeavours to jointly appoint a Capacity Modeller for conducting capacity assessments in accordance with this Part 4A (including developing and amending system operating parameters):
  - (i) following the Approval Date; and
  - (ii) if at any other time during the Term, no Capacity Modeller is appointed other than due to the unanimous agreement of Queensland Rail and the West Moreton System Access Holders.
- (b) The Capacity Modeller's appointment under this clause 4A.3 expires at the completion of the Term or in such different timing or circumstances as specified in the contract of appointment.
- (d) If Queensland Rail and the West Moreton System Access Holders cannot unanimously agree on:

- (i) the appointment of the Capacity Modeller within 30 days after the Approval Date; or
- (ii) a new Capacity Modeller under clause 4A.3(a)(ii) within 30 days of the cessation of the previous appointment,

the appointment of the Capacity Modeller under this Part 4A must be referred for resolution as a Dispute under clause [4] of this Undertaking.

- (e) On the resolution of the dispute under clause 4A.3(d) Queensland Rail and the West Moreton System Access Holders will use their best endeavours to jointly appoint a Capacity Modeller to fulfil the obligations as set out in this Undertaking and on the terms provided for in this Part 4A.

#### **4A.4.1 Capacity Assessment**

- (a) As soon as reasonably practicable and by no later than ten (10) Business Days after its appointment, the Capacity Modeller must commence its initial assessment of the West Moreton System Coal Capacity as at the Approval Date in accordance with the procedure outlined in this clause 4A.4 (**Initial Capacity Assessment**).
- (b) As part of the Initial Capacity Assessment, the Capacity Modeller must develop the system operating parameters for the West Moreton System having regard to the way in which the West Moreton System operates in practice. The Capacity Modeller must seek to ensure that the system operating parameters:
  - (i) include a consideration of the factors set out in the definition of West Moreton System Coal Capacity as such factors apply as at the date the system operating parameters are developed; and
  - (ii) would not place Queensland Rail in breach of its obligations under this Undertaking or any Access Agreement (assuming that any Access Agreement could be amended to reflect the system operating parameters),

having regard to (among other things) the information received from Queensland Rail, Access Holders, Access Seekers and Train Operators.

- (c) The Capacity Modeller must seek to consult with, and seek submissions from, Queensland Rail, Access Holders, Access Seekers, Train Operators and all supply chain participants for the West Moreton System on:
  - (i) subject to any confidentiality restrictions, information that relates to the operation of coal Train Services in the West Moreton System and the actual performance of the West Moreton System for the purpose of the Initial Capacity Assessment (including the development of the model required to undertake the West Moreton Coal System Coal Capacity analysis); and
  - (ii) the proposed system operating parameters,

and the Capacity Modeller will seek to obtain such information from supply chain participants by the date the earlier of the date that is 2 months after the appointment of the Capacity Modeller or the Approval Date.

- (d) Queensland Rail must promptly do everything reasonably requested by the Capacity Modeller to assist the Capacity Modeller in carrying out an Initial Capacity Assessment under this **clause 4A.4.1**, including providing or making available to the Capacity Modeller, as soon as reasonably practicable, all information and materials in its possession or control relevant to those matters listed in the definition of West Moreton System Coal Capacity and otherwise requested by the Capacity Modeller by the earlier of the date that is 2 months after the appointment of the Capacity Modeller or the Approval Date.
- (e) The Initial Capacity Assessment must:

- (i) include a West Moreton System Coal Capacity analysis based on a model developed by the Capacity Modeller (to be owned by the Capacity Modeller) that reflects how the West Moreton System operates in practice to determine the West Moreton System Coal Capacity. Subject to any confidentiality and intellectual property restrictions, the Capacity Modeller must provide a copy of the model developed by the Capacity Modeller to Queensland Rail and the QCA in a non-hard coded form for use by Queensland Rail and the QCA for internal purposes only;
- (ii) set out the system operating parameters for the West Moreton System as determined by the Capacity Modeller in accordance with **clause 4A.4.1(b)**;
- (iii) include consideration of:
  - (A) outcomes of any consultation by the Capacity Modeller with Queensland Rail, Access Holders, Access Seekers and Train Operators, and any other supply chain participants for the West Moreton System in relation to that assessment; and
  - (B) any information received from Queensland Rail under **clause 4A.4.1(d)**;
- (iv) include a report that sets out:
  - (A) the Capacity Modeller's assumptions affecting West Moreton System Coal Capacity and relied upon for the Initial Capacity Assessment which:
    - (1) must address each of the assumptions contained in the definition of West Moreton System Coal Capacity and the system operating parameters, and be used to develop the model required to undertake the West Moreton System Coal Capacity analysis; and
    - (2) may include such other assumptions as are reasonably considered relevant by the Capacity Modeller to its assessment of West Moreton System Coal Capacity (including any assumptions regarding Rollingstock, section run times and loading and unloading times);
  - (B) any constraints the Capacity Modeller has identified which have reduced or are likely to reduce the West Moreton System Coal Capacity, including:
    - (1) any constraints identified within the supply chains operating within that West Moreton System and Metropolitan System (including in respect of loading facilities, load out facilities and coal export terminal facilities); and
    - (2) any constraints identified within the whole of the Rail Infrastructure; and
  - (C) if the Capacity Modeller identifies in the Initial Capacity Assessment that there is an existing capacity deficit relative to capacity contracted under Access Agreements for coal services, specify the location in the West Moreton System or Metropolitan System where the existing capacity deficit has arisen (and the quantum of any such deficit); and
- (v) if the Capacity Modeller identifies a specific cause or causes of any such existing capacity deficit:
  - (A) specify the Access Holders affected by the existing capacity deficit; and
  - (B) include in reasonable detail, solutions which could effectively and efficiently address the existing capacity deficit.
- (f) As soon as reasonably practicable, the Capacity Modeller must make:



- (i) the outcomes of the Initial Capacity Assessment, including its assumptions affecting West Moreton System Coal Capacity and relied upon for the Initial Capacity Assessment (**Initial Capacity Assessment Report**); and
  - (ii) the system operating parameters,  
available to Queensland Rail, and the QCA on an unredacted basis and to Access Holders, Access Seekers and Train Operators in respect of the West Moreton System on a redacted basis (to protect the confidentiality of commercially sensitive information of Access Holders or Train Operators, as applicable).
- (g) Subject to clause 4A.4.1(i), Queensland Rail and the QCA must promptly publish on its website (as applicable):
- (i) the Initial Capacity Assessment Report in a redacted form that does not disclose information that is confidential to an Access Holders, Access Seekers or Train Operator and unable to be disclosed; and
  - (ii) the System Operating Parameters for coal services on the West Moreton System.

#### **4A.4.3 Outcomes of Capacity Assessments**

- (a) If, after the Initial Capacity Assessment Report is published by the QCA on its website as contemplated by **clause 4A.4.1(g)**, Queensland Rail or all West Moreton System Access Holders (acting unanimously) reasonably consider that the capacity of the West Moreton System available to coal services has materially changed since the Initial Capacity Assessment Report, such that an updated assessment will facilitate more efficient and prudent investment, pricing and contract outcomes in respect of the West Moreton System, they can give notice to the Capacity Modeller requiring that the West Moreton System Coal Capacity assessment is updated by the Capacity Modeller for any changed circumstances, with this **clause 4A** applying to such update with references to the Approval Date being deemed to be references to the date such an update is referred to the Capacity Modeller
- (b) Queensland Rail and an Access Seeker (and Train Operator as applicable) may, acting reasonably and in good faith, negotiate Access Agreements for non-coal carrying Train Services that do not reflect the system operating parameters, and for the purposes of engaging in such negotiations Queensland Rail will not be bound by the system operating parameters which are developed by the Capacity Modeller as part of a Capacity Assessment referred to in **clause 4A.4.3(d)**.