

Goonyella Coal Producers - Submission on NQXT Declaration

1 Introduction and Overview

This submission is made in the context of the Queensland Competition Authority's consideration of the declaration application regarding the coal handling service provided by North Queensland Export Terminal (**NQXT**) at the Abbot Point Coal Terminal.

It is made on behalf of the following, which are each coal producers and users of coal handling services at ports in Queensland, principally the Dalrymple Bay Coal Terminal (**DBCT**):

- (a) Anglo American;
- (b) Foxleigh;
- (c) Peabody Energy;
- (d) Pembroke;
- (e) TerraCom; and
- (f) Whitehaven,

(the **Submitters**).

The Submitters note that certain stakeholders, particularly Dalrymple Bay Infrastructure (**DBI**) and NQXT, are making submissions to the QCA in the NQXT process that:

- (g) are inconsistent with fact findings that the QCA made in the recent 2019-2020 Dalrymple Bay Terminal declaration review process (the **DBCT Declaration Review**); and
- (h) if accepted, would have very serious implications for the future declaration reviews in respect of the coal handling service provided at DBCT.

We appreciate the access criteria in the *Queensland Competition Authority Act 1997* (Qld) (the **QCA Act**) will be applied to the services provided by NQXT in this process. However, the factual circumstances concerning the relevant markets have not changed since the QCA made factual findings (informed by significant evidence provided by stakeholders) during the DBCT Declaration Review.

Accordingly, the Submitters have felt it necessary to correct the record so that such submissions by DBI and NQXT receive appropriate scrutiny, which the Submitters are confident will reveal they are not supported by economic analysis or observable commercial reality.

In particular, the Submitters submit that for the reasons set out below:

- (a) the relevant market for the purposes of criterion (b) is confined to the market for provision of coal handling services to the northern mines only;
- (b) for the purposes of criterion (a), declaration will promote a material increase in competition in various coal tenement markets in that northern mines region;
- (c) for the purposes of criterion (c), the relevant facility, is clearly of significance to the State; and
- (d) for the purposes of criterion (d), declaration will promote the public interest given the limited costs of declaration, inefficiencies created by monopoly pricing and the vertical integration issues present in the NQXT coal supply chain.

2 Criterion (b)

2.1 Geographic scope of the market

For Criterion (b) to be met the Minister must be satisfied that: *the facility for the services could meet the total foreseeable demand in the market –*

- (i) *over the period for which the service would be declared; and*
- (ii) *at the least cost compared to any 2 or more facilities (which could include the facility for the service).¹*

Assessing criterion (b) necessarily requires a definition of the relevant market in which NQXT provides services.

The geographic dimension of that market is one of the major subjects of contention in this process, and in particular whether there is:

- (a) a market for the service in an NQXT catchment (i.e. what the QCoal Users' application describes as the '*market for NQXT's coal handling service for mines that connect directly to the Goonyella to Abbot Point extension (GAPE), Carmichael rail line or the Newlands system, which we refer to collectively as 'northern mines'²*); or
- (b) a broader market including other coal mines (framed as *the market for coal export handling services central Queensland* by NQXT³ or the market extending to include Goonyella System miners by DBI⁴).

2.2 Market confined to the NQXT catchment of the 'northern mines'

The Submitters consider it clear that the market for NQXT's coal handling service is confined to the northern mines or NQXT catchment (and that DBCT and other coal terminals are not close substitutes).

The Submitters are particularly well positioned to provide that view as they are operators of mines in the Goonyella system which is connected to the GAPE rail link which in turn is connected to the Newlands system which provides transport to the NQXT terminal. There is a theoretical route for their coal to be exported via NQXT, yet none of the Submitters currently export coal through NQXT or consider it a substitute for the coal handling service provided by Dalrymple Bay Terminal. As the QCA correctly noted in its final recommendation in the DBCT declaration review process (the **DBCT Final Recommendation**):⁵

The QCA is of the view that market definition is purposive. Thus, the QCA has focused on what is actually happening in the market as part of determining whether other terminals provide a competitive constraint on DBCT Management, by virtue of providing a substitute service to the coal handling service at DBCT.

Accordingly, the Submitters not using NQXT when surplus capacity has been available and DBCT capacity has been difficult to obtain, is important commercial evidence of the geographic dimension of the market.

The Submitters also note the QCA's findings (accepted by the Treasurer) in the DBCT declaration review process that the relevant market was the market for DBCT's coal handling service in the

¹ Section 76(2)(b) Queensland Competition Authority Act 1997 (Qld)

² QCoal Submission, at

³ NQXT Submission, 26 August 2025 at 9

⁴ DBI Submission, 22 August 2025 at 7

⁵ QCA, Final Recommendation, Part C: DBCT Declaration Review, March 2020 at 14

Goonyella system⁶ (which is consistent with a northern mines market – but clearly inconsistent with the broader market definitions DBI and NQXT assert).

The QCA's reasons for that finding included:⁷

- (a) the significantly higher supply chain costs (once below rail and above rail costs were taken into account) for mines to export coal through less proximate ports;
- (b) below and above rail network differences – including the smaller rollingstock consists on the Newlands system relative to the Goonyella system and that the Newlands system only supports diesel trains (with higher costs of diesel locomotives being passed through to coal producers);
- (c) mine specific infrastructure issues – where a number of mines in the Goonyella system have turn-out angles configured to only support transport to DBCT;
- (d) co-shipping opportunities for metallurgical coal being much greater at DBCT given that it predominantly handles metallurgical coal;
- (e) greater blending opportunities and facilities at DBCT which would impose switching costs on producers that were able to obtain sales or higher prices through blending;
- (f) to the extent there was evidence of limited usage of other terminals (including NQXT) by Goonyella users that was not substitution in response to price or non-price factors but acquiring a different service for other strategic reasons (such as risk mitigation and flexibility to overcome supply chain outages); and
- (g) any scope for or evidence of marginal substitution for a select group of mines in particular circumstances does not demonstrate close substitutability between terminals.

The Submitters submit that all of those factual findings are just as valid in 2025 as they were in 2020.

2.3 Reaction to significant price rise at DBCT

Conventionally, competition regulators and courts have employed a 'SSNIP' test to assist in defining markets, i.e. how would customers react to a small but significant, non-transitory increase in price by a hypothetical monopolist. Any goods or services that are switched to are considered likely to be close substitutes and in the same market.

The QCA, rightly, considered the application of the SSNIP test in determining that DBCT and NQXT's coal handling services were in different markets.⁸

If further proof was needed of the monopoly position that each coal terminal in Queensland holds, it is the reaction to the significant increase in prices at DBCT that followed the QCA's decision to cease requiring a reference tariff for the DBCT coal handling service.

As DBI announced, the resulting pricing outcome imposed reflected a 23% increase (for 2021/22) and a 29% increase (for 2022/23) to the Terminal Infrastructure Charge.⁹ The proportion of those increases is well beyond anything that is typically considered a SSNIP.

Yet, years later, despite there being underutilised capacity at NQXT, there is no evidence of switching away from DBCT.

⁶ QCA, Final Recommendation, Part C: DBCT Declaration Review, March 2020 at 13

⁷ QCA, Final Recommendation, Part C: DBCT Declaration Review, March 2020 at 18 - 33

⁸ QCA, Final Recommendation, Part C: DBCT Declaration Review, March 2020 at 14

⁹ Dalrymple Bay Infrastructure, ASX Announcement, DBI Announces 10 Year Pricing Agreement and Significant Increase in Distribution Guidance, 11 October 2022

The Submitters submit that a real world application of the SSNIP test has played out in public, and it could not be clearer from the lack of substitution in response that NQXT and DBCT provide coal handling services in different markets.

2.4 DBI reference to particular mines

DBI's submissions about Goonyella users utilising NQXT are misleading, and should not be understood as supporting any conclusion that NQXT and DBCT are close substitutes.

DBI references the conduct of three particular customers which they assert provides evidence of substitution. However, the Submitters wish to draw the QCA's attention to the following information which demonstrates that their use of NQXT capacity is not evidence of substitution.

- (a) Stanmore – the Submitters understand that Stanmore was forced to seek other capacity in connection with its acquisition of mines from BMA, where BMA was unwilling to provide any capacity at the BMA operated Hay Point Coal Terminal which those mines (in the Goonyella system) had previously used under BMA ownership. Where DBCT was fully contracted and unable to offer any immediate capacity to Stanmore, it is understood that Stanmore had to contract capacity at other terminals. It had no opportunity to wait for a potential DBCT expansion given it needed immediate replacement capacity for existing operating mines, such that contracting of NQXT capacity was not as an alternative or substitute to DBCT capacity;
- (b) Whitehaven – the Submitters note that an approval document which mentions multiple coal terminals is not evidence of substitution or a broader market, given such documentation always intentionally keeps the potential export pathways of mines as broad as possible. The more compelling evidence as to nature of the market is that when Whitehaven acquired a Goonyella mine (BMA's Daunia mine), it obtained capacity at DBCT; and
- (c) Middlemount – for which the Submitters note that the QCA has already assessed (in the DBCT declaration review process)¹⁰ that Middlemount's previous contracting of NQXT did not provide evidence of substitution between NQXT and DBCT – and instead was a case of proceeding to contract for capacity at NQXT where DBCT was fully contracted and not offering any capacity at the time.

The CEG Report that NQXT refers to on this issue is so heavily redacted that the Submitters consider that other stakeholders have not been provided natural justice in relation to the asserted basis for NQXT/CEG's proposed market definition. However, from the limited wording that was disclosed publicly it appears that NQXT has fallen into the same fallacy as DBI did during the previous DBCT Declaration Review process. In particular, NQXT is effectively asserting that any contracting of capacity by a Goonyella mine of NQXT capacity is evidence of substitution.

As the QCA has, correctly, previously concluded:¹¹

The QCA notes that a user within the Goonyella system may have contracts with, or utilise, terminals other than DBCT for commercial and strategic reasons—and that such use is evidence that these mines have the ability to use alternative terminals. However, the information provided by DBCT Management does not demonstrate that these users will regard coal handling services at other terminals as close substitutes for the DBCT service—in that it is not evident that the

¹⁰ QCA, Final Recommendation, Part C: DBCT Declaration Review, March 2020 at 29-30, 48, 282

¹¹ QCA, Final Recommendation, Part C: DBCT Declaration Review, March 2020 at 29

relevant entities identified by DBCT Management have switched to alternative terminals in response to price or quality incentives.

The Submitters consider it is clear that use of NQXT's service by any Goonyella system mines is either not evidence of substitution (it is instead acquiring a different service for risk mitigation or supply chain flexibility purposes) or is at most marginal substitution which falls well short of demonstrating Goonyella mines being customers in the same market.

2.5 Conclusions

It follows from the analysis above that:

- (a) the market in which NQXT's service is provided is the market for provision of coal handling services to the 'northern mines' (as contended for by QCoal); and
- (b) the foreseeable demand for the purposes of criterion (b) must be assessed based on the foreseeable demand from those northern mines (and not Goonyella system mines), and excluding from their contract expiry any Goonyella system customers who have been forced to contract at NQXT due to lack of DBCT capacity but for which it is anticipated will be able to obtain DBCT capacity on expiry; and
- (c) the conclusion reached by NQXT that the NQXT terminal cannot service total foreseeable demand is flawed and incorrect – because it is based on demand from Goonyella mines that clearly do not form part of the relevant market.

3 Criterion (a)

3.1 Definition of dependent markets

For Criterion (a) to be met the Minister must be satisfied that *access (or increased access) to the service, on reasonable terms and conditions, as a result of a declaration of the service would promote a material increase in competition in at least 1 market (whether or not in Australia), other than the market for the service.*¹²

It is easy to focus on markets for metallurgical coal and thermal coal, and markets in the logistics supply chain like rail haulage and rail access, as dependents markets.

However, while the QCA should obviously consider each of those markets, the potentially relevant dependent markets go well beyond that.

The QCA made important findings in relation to the definition of dependent markets in coal handling services in the context of the DBCT Declaration Review process that the Submitters consider would apply equally here as set out below.

3.2 Coal Tenements Markets

In the DBCT Declaration Review, the QCA considered that there were three functionally distinct dependant markets for each of:

- (a) development stage coal tenements;
- (b) exploration stage coal tenements; and
- (c) operating coal mines,¹³

within the Goonyella system.

¹² Sections 76(2)(a) Queensland Competition Authority Act 1997 (Qld)

¹³ QCA, Final Recommendation, Part C: DBCT Declaration Review, March 2020 at 111 and 117-118

The QCA came to the conclusion based on material evidence of true tenement sales transactions (as distinct from coal production sales), and the precedent from the Australian Competition Tribunal's decision in the Pilbara access cases (where iron ore tenements markets were found to exist).

One major user of NQXT is Bravus, which is also part of the Adani Group.

Where Bravus, due to that vertical integration (discussed further below) is likely to have the potential to obtain differential terms or be operationally preferenced at the NQXT terminal, it seems likely to the Submitters that this would result in them being a materially advantaged buyer in terms of the tenements markets in the absence of ring-fencing and other regulatory controls. Other potential buyers, effectively have to provide a discount to their valuation and proposed purchase price due to facing risks that Bravus does not face.

Accordingly, regulation by declaration would promote a material increase in competition in one or more of these markets.

NQXT's submissions appear to suggest that such markets do not exist because of what they perceive as a lack of transactions. That ignores:

- (a) the judicial and regulatory precedents for tenements markets;
- (b) the competition law jurisprudence regarding a market being an area of potential rivalry that can exist without transactions; and
- (c) that, by their nature, transactions in this space will happen less frequently than in retail or consumer markets.

3.3 Vertical integration

It is well recognised by economic regulators that vertical integration will provide economic incentives for an infrastructure owner to discriminate in favour of its related operator.

Vertical integration is the most obvious scenario in which declaration will promote a material increase in competition in dependent markets, by assisting to provide a more level playing field in the relevant dependent market where the related operator trades. It cannot be assumed in such scenarios that the infrastructure provider will be motivated to contract available capacity (as the National Competition Council found in the various Newcastle shipping channel declaration and revocation application processes), particularly where NQXT's related coal producer (Bravus) is understood to be proceeding to expand its production to 16 mtpa following the royalty deferral arrangements announced with the State government.

Vertical integration is a concern squarely raised by the QCoal Users and, in terms of consistency of treatment, by Aurizon Network, in their submissions in this process.

The Submitters are not users of NQXT and so cannot speak to whether there are examples of operational discrimination currently occurring at NQXT.

However, they can note that a concern about the risks of some discrimination on this basis has been a factor that is considered by coal producers when assessing investing in coal projects in the 'northern mines' region or contracting NQXT capacity.

4 Criterion (c)

For Criterion (c) to be met, the Minister must be satisfied that *the facility for the service is significant, having regard to its size or its importance to the Queensland economy*.¹⁴

The Submitters consider that criterion (c) is clearly satisfied given NQXT:

¹⁴ Section 76(2)(c) *Queensland Competition Authority Act 1997* (Qld)

- (a) is a 50 million tonnes per annum capacity terminal;
- (b) has significant size in terms of land area; and
- (c) is important to the State's economy in numerous ways including by facilitating significant coal exports (and related investments in coal mines in the northern mines region, employment, indirect economic impacts, State royalties)

While the nature of this criteria is that it has to be applied to the particular facts and circumstances of each facility, the Submitters note that each of the factors referred to above were considered important by the QCA in respect of the DBCT Declaration Review.

5 Criterion (d)

For Criterion (d) to be met the Minister must be satisfied that *access (or increased access) to the service, on reasonable terms and conditions as a result of declaration of the service would promote the public interest*.¹⁵

5.1 DBI Submissions on Form of Regulation

DBI's submissions suggest that their experience of light handed 'negotiate-arbitrate' regulation should somehow lead to the conclusion that 'less regulation is beneficial for all stakeholders'.¹⁶

The Submitters could not more strongly disagree with that statement.

As noted, by DBI's own estimates, users at DBCT now pay nearly 30% more than they would have with a reference tariff (which reflected what the QCA considered was efficient pricing that already provided a reasonable return on and of capital and recovered all efficient costs). That is not a benefit to coal producers or the public. That is only a benefit to DBI.

No amount of potential flexibility at the margins compensates users properly for that super-inflated pricing, particularly absent any change in service quality.

A significant value transfer to a single monopoly infrastructure provider is not a public benefit.

5.2 Relevant costs of regulation

The submissions from DBI on criterion (d) are largely irrelevant to the current question of whether criterion (d) is satisfied in respect of a facility in any case.

The Submitters acknowledge that the costs of regulation are relevant to the assessment of what would promote the public interest for the purposes of criterion (d).

However, what the QCA is currently considering is whether NQXT should be declared (not the form of regulation as it would be if it was considering an undertaking). Declaration of itself, only results in the lightest handed form of regulation – negotiate-arbitrate without a requirement for undertakings or reference tariff. Consequently, the costs taken into account in applying this criteria should be limited to the costs of light handed regulation only.

That requires consideration of the actual costs and a comparison to anticipated benefits – not the simplistic analysis in DBI's submissions that less regulation results in lesser costs.

Finally, DBI cannot reasonably contend that delays to 8X are a result of declaration. That project faces significant challenges in terms of both sufficient connecting rail capacity and future demand from coal producers being sufficient to justify such an expansion. Those are challenges that would exist both with and without declaration of DBI's coal handling service.

¹⁵ Section 76(2)(d) *Queensland Competition Authority Act 1997* (Qld)

¹⁶ DBI Submission at 3

5.3 NQXT submissions

The NQXT submissions are heavily redacted such that it is difficult to discern the evidence they are seeking to rely on to assert that declaration is contrary to the public interest.

However, the Submitters note that there is a difference between the public interest and the interests of the Adani Group. It does not follow that the unregulated character of the terminal facilitating investment by the Adani Group elsewhere in the supply chain is a public benefit. There is also no analysis provided to demonstrate that this investment would not have been able to be made by the Adani Group, or that similar levels of investment would not have been made by third parties, if the terminal was regulated.

5.4 Benefits from regulation

The Submitters strongly believe that there are significant efficiency benefits derived from declaration and the resulting regulation that are not recognised by NQXT, in terms of:

- (a) pricing being set at more efficient levels rather than monopoly pricing – so that an efficient level of the service is provided and consumed (without the 'deadweight' loss that monopoly pricing gives rise to);
- (b) confidence that monopoly pricing will not be imposed at the point of the initial user agreement expiring (while the user has made an investment in a mine that has a number of years of mine life remaining) – the potential for which, the Submitters suggest, is currently having a chilling effect on potential investment in dependent markets
- (c) correcting or mitigating information asymmetry – so that more efficient transacting and investment choices can be made by potential users of the service or participants in dependent markets; and
- (d) protection against anti-competitive behaviour which vertical integration incentivises – through ring-fencing and regulation of discriminatory terms of access or decision making processes – so that efficient outcomes occur in dependent markets.

6 Conclusions

For the reasons set out in these submissions the Submitters consider that:

- (a) Criterion (b) should be considered on the basis of the relevant market being the market for the provision by NQXT of the coal handling market to the northern mines (i.e. the market for the provision of the coal handling service to the northern mines);
- (b) Criterion (a) should be considered particularly carefully in respect of the various coal tenements markets and the context of the vertical integration between NQXT and Bravus Mining providing incentives for differential access terms and operational favouritism or discrimination;
- (c) Criterion (c) is clearly met given the NQXT terminal's capacity, physical size and importance to facilitate coal exports from the northern mines; and
- (d) Criterion (d) should be assessed with careful scrutiny of the submissions made by NQXT and DBI as to the costs of regulation, given the limited costs that are incurred in respect of DBCT, and a recognition of the clear benefits that declaration provides.

We appreciate the DBCT Declaration Review process and resulting final recommendations by the QCA is not legally binding precedent that must be followed. However, where it was only decided 5 years ago with the support of significant evidence and economic analysis, and the facts have changed little in the interim, the Submitters consider it would require particularly compelling evidence to reach the different conclusions NQXT and DBI are seeking in this process.

If you have any queries on this submission, please do not hesitate to contact John Hedge of Allens on (07) 3334 3171 or John.Hedge@allens.com.au.