



Submission in response to QCoal Pty Ltd and Byerwen Coal Pty Ltd's application for a recommendation to declare the coal handling service at the North Queensland Export Terminal

26 August 2025



Confidentiality Key:

Category A

Category C

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1 Executive Summary

- 1 This submission by North Queensland Export Terminal Pty Ltd (**NQXT**) responds to the application by QCoal Pty Ltd and Byerwen Coal Pty Ltd (the **QCoal Users**) requesting a recommendation by the Queensland Competition Authority (**QCA**) to declare the coal handling service provided by NQXT at the North Queensland Export Terminal at the Port of Abbot Point (the **Terminal**).
- 2 This submission is supported by:
 - (a) the expert report of Mr Jason Ockerby and Dr Tom Hird of Competition Economics Group (**CEG Report**) at **Annexure A**;
 - (b) the expert report of Mr Jeff Balchin of Incenta Economic Consulting (**Incenta Report**) at **Annexure B**; and
 - (c) lay evidence statements from Mr Mark Smith (General Manager, NQXT), Mr Damien Dederer (General Manager, Abbot Point Operations) and Mr Brendan Lane (General Manager, Bowen Rail Company and Carmichael Rail Network) at **Annexure C**, **Annexure D** and **Annexure E**, respectively.

The Terminal and the commercial context for the QCoal Users' declaration request

- 3 The Terminal forms an important part of the Queensland's coal export supply chain. NQXT is a multi-user, open access facility that has, for more than forty years, facilitated export of metallurgical and thermal coal from central Queensland.
- 4 Located at the Port of Abbot Point, the Terminal is operated under a 99-year lease by NQXT (part of the Adani Group) acquired in 2011.
- 5 The Terminal forms part of the Adani Group's wider Queensland operations, which have included the greenfield development of the Carmichael Rail Network linking the Carmichael coal mine in the Galilee Basin with the Aurizon rail network for export through the Terminal.
- 6 Prior to privatisation, in or around 2009-10, the Ports Corporation of Queensland (**PCQ**) entered several long term, take or pay user agreements (**Legacy User Agreements**) with coal producers. These Legacy User Agreements underwrote the capital costs of a major 50 mtpa expansion of the Terminal.
- 7 The Legacy User Agreements are due to expire over the period [REDACTED].
- 8 The declaration request from the QCoal Users, themselves legacy users, occurs in the context of NQXT [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

The current renewal process highlights the benefit and flexibility of unregulated commercial negotiations between NQXT and users

- 9 The current renewal cycle provides an insight into the benefits associated with the commercial flexibility which can be achieved through the unregulated Terminal. Evidence of [REDACTED]
[REDACTED] over the last two years have highlighted:

- (a) a flexible approach by NQXT to [REDACTED] often involving [REDACTED]¹
- (b) [REDACTED]²
- (c) the ability for commercial negotiation to deliver increased transparency for users over operational matters and costs through [REDACTED]³
- (d) improved internal structural and compliance commitments from NQXT;⁴
- (e) [REDACTED]⁵ Indeed, NQXT has offered [REDACTED]⁶ and
- (f) as well as the [REDACTED], NQXT has been prepared to [REDACTED]⁷

10 [REDACTED]⁸

11 [REDACTED]. The reasonableness of NQXT's standard terms is also apparent from a comparison with other regulated and unregulated access terms (e.g. DBCT, Australian Rail Track Corporation (**ARTC**) and Aurizon Network (**AN**) access agreements and gas pipeline agreements).⁹

12 QCoal, by contrast, has failed to engage meaningfully with NQXT prior to commencing its declaration application and seeks simply to have the coal handling service at the Terminal declared on the apparent promise of better access terms through regulation by the QCA.

13 This promise would likely not eventuate. Applying access regulation to a market which is dynamic and subject to substantial demand uncertainty creates substantial challenges. As Mr Balchin explains in the Incenta Report, standard access regulation has most often been applied in industries and during periods of relatively stable demand and which therefore did not raise such substantial and asymmetrical stranding or pricing risks.¹⁰

14 Moreover, declared terms of access for all Terminal users would often need to be set at the 'lowest common denominator' – a position in terms of both price and non-price terms that is acceptable for all Terminal users. This inevitably creates inflexibility and tends to lead to a standard regulatory product, for a standard regulated price. By contrast, under the unregulated

¹ See section 3.12(c), paragraphs 120, 267-271.

² See sections 3.14 and 3.15.

³ See section 3.4, paragraphs 120, and 157.

⁴ See section 3.5, paragraph 312.

⁵ See section 3.13, and paragraphs 89-92, 120, 267.

⁶ See section 3.12(b).

⁷ See section 3.12(c) and paragraph 271.

⁸ See section 3.12(a).

⁹ See paragraph 156.

¹⁰ Incenta report, paragraphs 83-88.

model, NQXT [REDACTED]

The renewal process highlights the strong economic incentives for NQXT to secure new or renewed user agreements, including responding to the competitive threat of DBCT

- 15 NQXT is seeking to renew its contracts with legacy users against a backdrop of significant risk and commercial uncertainty regarding the future utilisation of the Terminal's capacity:
- (a) Since privatisation in 2011, the Terminal has remained consistently and significantly underutilised. The Terminal has consistently operated with at least [REDACTED] of uncontracted available capacity (i.e. the legacy users' current contracted 'take or pay' volumes total [REDACTED]).
 - (b) Increased use of the Terminal (by Adani or any other user) is constrained by inadequate below rail capacity on the Newlands System. As of June 2025, the maximum system capacity of the Newlands System was independently assessed as only being 38.6 mtpa, a 7% deterioration in available system capacity from 2024.¹¹ This 'existing capacity deficit' (ECD) is expected to continue well beyond 2030 – even then, any improvement will result from a gradual reduction in contractual entitlements rather than any physical expansion of rail capacity. There is no apparent intention by Aurizon Network to expand capacity on the Newlands System over the next decade.
 - (c) Longer term investment and developing of mines is subject to heightened uncertainty around the long-term growth prospects of the global thermal coal market as well as financing, insurance and other commercial challenges associated with the coal sector in Queensland given environmental, social, and governance (ESG) concerns and approval risks.¹²
 - (d) Finally, and critically, a number of legacy users of the Terminal can switch volumes to DBCT. [REDACTED]
[REDACTED]
[REDACTED]. Several users 'multi-home' with user rights across both terminals.
- 16 The threat posed by underutilisation and [REDACTED] has driven NQXT to [REDACTED]
[REDACTED]
[REDACTED]. This has included:¹³
- (a) support for [REDACTED]
 - (b) [REDACTED]
[REDACTED]
[REDACTED]
 - (c) [REDACTED]; and
 - (a) [REDACTED].

¹¹ Coal Network Capacity Co, ACAR25: *Annual Capacity Assessment Report*, 18 June 2025, page 19 (gca.org.au/wp-content/uploads/2025/06/acar25-report_redacted.pdf). This report is prepared by the independent expert under Aurizon's access undertaking (UT5). A copy is also attached as Annexure BL2 to the Statement of Brendan Lane.

¹² See paragraphs 81-88.

¹³ See paragraph 301.

The QCoal Users' application fails to identify or establish market failure

- 17 In the face of these strong economic incentives, competitive constraint from DBCT and evidence of [REDACTED], the QCoal Users have failed to point to, or establish, any entrenched market power or market failure.
- 18 The QCoal Users' application instead principally rests on the following assumptions:
- (a) the QCA should adopt the same approach, and reach the same conclusions, as occurred in the redeclaration process for DBCT in 2019-20; and
 - (b) the existence of vertical integration in the corporate structure of the Adani Group should, of itself, be enough to demonstrate market failure.
- 19 First, the current application is the first of its kind to be undertaken by the QCA. It is fundamentally different to the statutory task which faced the QCA in the context of the redeclaration inquiries, which involved assets that had been subject to longstanding statutory declaration.
- 20 In the case of redeclaration, the QCA had no evidence of what likely commercial terms would apply for access, absent regulation. This necessitated an analysis of the extent to which Dalrymple Bay Infrastructure (DBI), as the owner of the DBCT terminal, would be likely to be constrained by other factors such as countervailing power of users, commercial arrangements with the State, and the threat of regulation, if declaration was removed.
- 21 DBCT is also a 'cargo assembly' terminal with limited stockpiling, which operates in an entirely different manner to the Terminal.¹⁴
- 22 Within this context, the QCA cannot merely replicate its earlier approach or assumptions in this process and it would be inappropriate for it to do so. The starting point for any assessment of the reasonableness of terms of access in this case should be based on the extensive evidence that is available to the QCA of the terms of access that apply, or have been offered, by NQXT in real world commercial engagement and the manner in which the Terminal actually operates, including:
- (a) the terms of access that have already been offered to QCoal [REDACTED];
 - (b) evidence of the unregulated operation of the Terminal over the ~14-year period of its ownership by Adani, including whether there has been any indication of self-preferencing or foreclosure;
 - (c) [REDACTED]
 - (d) [REDACTED]
 - (e) [REDACTED] and
 - (f) [REDACTED], as discussed at sections 3.13 and 3.14.

¹⁴ Statement of Damien Dederer, paragraph 46.

- 23 The difficult hypothetical exercise required to be undertaken by the QCA in the current process instead relates to what terms of access might look like in the future, if declaration occurred. As Mr Balchin points out in the Incenta report,¹⁵ there are a range of complex challenges associated with seeking to apply access regulation in the context of the current coal market. Standard access regulation has been most often applied in industries and during periods of relatively stable demand and which therefore did not create substantial and asymmetrical stranding or pricing risks.
- 24 The kinds of complex challenges which the QCA would need to wrestle with include:
- (a) An initial asset valuation of the Terminal itself. The QCA (like other regulators) has historically shown a preference for determining an opening asset base using a depreciated optimised replacement cost (**DORC**) valuation. However, a number of unique questions arise in the context of the Terminal which would need to be resolved: How does optimisation occur when demand risk and uncertainty are so great? What rate of interest during construction is appropriate when estimating replacement costs (given the well-publicised challenges and costs of financing coal projects)? How should demand uncertainty be reflected in the depreciation component?
 - (b) In the pricing model itself, facing significant demand risk, consideration would need to be given to issues such as asset lives and stranding as well as the approach to adopt to any future depreciation profile. This has been the model adopted, for example, in the Australian gas industry in recent times.¹⁶
 - (c) How the unique service offering at the Terminal, [REDACTED], ought to be reflected. For example, the cargo assembly mode of operation at DBCT necessarily involves [REDACTED].
- 25 Second, despite private ownership by Adani for 14 years, there has been no historical incidence of self-preferencing, foreclosure of discrimination identified by the QCoal Users or otherwise.
- (a) The history of operation at the Terminal demonstrates equitable, efficient and non-discriminatory operations.
 - (b) [REDACTED]
[REDACTED]
[REDACTED] This is consistent with evidence of NQXT's commercial conduct.
 - (c) [REDACTED]
[REDACTED]
[REDACTED]
 - (d) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED].¹⁷
- 26 Finally, a degree of vertical integration between a user and terminal operations pre-dates privatisation. Glencore was both the largest user and operator of the Terminal from 2000 to 2016, during the period when the Legacy User Agreements were struck.

¹⁵ See Incenta Report, paragraphs 83-88.

¹⁶ See paragraph 128 and Incenta Report paragraphs 8-9.

¹⁷ See section 3.5, paragraphs 120, 157.

The criteria for declaration are not satisfied

- 27 The *Queensland Competition Authority Act 1997* (QLD) (**QCA Act**) sets a high bar for declaration. The QCA can only recommend declaration of the service if all access criteria in section 76 of the QCA Act are satisfied. In the case of the coal handling service at the Terminal, NQXT submits that the evidence demonstrates overwhelmingly that none of criteria (a), (b) and (d) are satisfied:

Criterion (a) - declaration would not promote a material increase in competition in any relevant downstream market

- 28 The QCoal Users (and their expert, Mr Greg Houston) fail to identify the basis upon which any terms of access through declaration would differ from those which are the product of recent and successful commercial negotiations in relation to contract renewals.
- 29 To the contrary, the substantial evidence above highlights the extent to which the terms of access developed and offered by NQXT to QCoal (and others) reflect the product of competitive constraint and NQXT's strong economic incentives to attract and retain user volumes.
- 30 The terms offered to QCoal and other users are at least as reasonable, if not preferable, to those under the DBCT access agreement, which appears to be the 'benchmark' that Mr Houston and the QCoal Users' rely on for assuming what regulated terms of access might look like.
- 31 The fulcrum of the QCoal Users' application and Mr Houston's report is a claim that, in a world without declaration, there would be less certainty for third party users of the Terminal. Mr Houston assumes that there would be greater certainty provided by declaration, and that this increased certainty would lead to a promotion of competition. These claims entirely ignore the facts and context in which the application has been made:

- (a) [REDACTED]. There is simply no basis for the claim that, in the current unregulated environment, there is material uncertainty for users of the Terminal.
- (b) Moving to a regulated pricing model would not improve certainty for users. In fact, in the current environment, imposing regulation would reduce certainty as it would require matters such as the initial asset value, depreciation and volume risk to be addressed within a regulated pricing model, and would likely expose users to periodic price resets. The uncertainty created by imposing price regulation is well recognised – for example this was acknowledged by the Australian Energy Regulator in its recent decision to not impose price regulation for the South-West Queensland Pipeline.

The market for 'late-stage coal tenements in the northern mines area'

- 32 Declaring the coal handling service at the Terminal would not promote a material increase in competition in the so-called market for late-stage coal tenements in the 'northern mines' area.
- 33 First and foremost, the task of market definition is purposive and must engage with commercial reality. For a real market to exist, it is necessary to be able to demonstrate a field within which competitive rivalry occurs.¹⁸ The final product of the exercise must not be contrived.¹⁹
- 34 The evidence does not support the existence of a commercially realistic market for late-stage tenements in the relevant region. Over the past 13 years, Mr Houston is only able to identify two transactions involving late-stage tenements in the northern mining area, both by existing

¹⁸ *Queensland Co-operative Milling Association Ltd, Re* (1976) 8 ALR 481, 513.

¹⁹ *Air New Zealand Ltd v ACCC* (2017) 262 CLR 207, [60] (Gordon J).

users of the Terminal, and one of which (involving QCoal) was better characterised as the acquisition of an interest in an operating mine rather than a tenement.

- 35 There is also no evidence that the unregulated characteristics of NQXT have prevented competition for late-stage tenements from emerging here, or anywhere else. [REDACTED]
[REDACTED]
[REDACTED].
- 36 In the case of tenements for metallurgical coal, the regulation has almost no meaningful effect, given that the 'northern mines' area identified by Mr Houston accounts for only ~2% of metallurgical coal produced in Queensland.
- 37 In terms of thermal coal production, any future investment in the development of new or expanded mines (for which any impact of tenements would be relevant) is far more directly influenced by factors including:
- (a) heightened uncertainty around the long-term growth prospects of the global thermal coal market;²⁰
 - (b) the ECD in the Newlands System and the associated lack of long-term below rail capacity;²¹
 - (c) financing, insurance and other commercial challenges associated with the coal sector in Queensland given ESG concerns;²²
 - (d) the timing and other risks associated with environmental and other approvals which limit or disincentivise new or expanded coal production, including in Queensland;²³ and
 - (e) Queensland state coal royalty payments – additional tiers of royalty payments introduced in July 2022, tied to higher coal prices, also makes future investment less attractive.²⁴
- 38 By contrast, the remarkable chain of assumptions and unsupported conclusions relied upon by the QCoal Users and Mr Houston to seek to support their findings is simply and plainly not supported by any evidence (as set out in sections 2 and 3).
- 39 Any suggestion that declaration would promote competition in this market therefore does not accord with evidence or commercial reality.

Global seaborne metallurgical coal market

- 40 The theory advanced by the QCoal Users and their expert, Mr Houston, is that Adani could expand its use of the Terminal and displace metallurgical coal volumes, to a level that would materially affect global seaborne metallurgical coal pricing.
- 41 This analysis fails for a number of reasons:
- (a) First, the evidence demonstrates that the Terminal is underutilised [REDACTED]
[REDACTED]
[REDACTED].
 - (b) Second, there is no likelihood that any displacement of volumes at the Terminal would be sufficient to have any effect on global prices for metallurgical coal.

²⁰ See paragraphs 82 and 83.

²¹ See paragraphs 93-96.

²² See paragraphs 86 and 88.

²³ See paragraph 85.

²⁴ See paragraphs 105 and 106.

- (c) Third, as noted, the majority of metallurgical coal volumes handled by NQXT are sourced from mines closer to DBCT and the overall volume of metallurgical coal sourced from the Newlands and Galilee regions is extremely small as a percentage of total Queensland metallurgical coal exports (estimated by the QCA in 2020 to be 1%²⁵ and calculated by NQXT to be ~2% for FY25).
- (d) Fourth, and finally, even if such displacement were feasible (which it is not), declaration would not prevent Adani from doing so, given that Part 5 of the QCA Act ensures that a facility owner can use capacity required to meet their own reasonably foreseeable requirements.

42 There is simply no basis to find that declaration would promote competition in the metallurgical coal market, as these volumes can be cost-effectively exported through other terminals.

Below rail services

- 43 Declaration would not promote competition in markets for below-rail services in the Galilee Basin.
- 44 The suggestion that declaration would facilitate entry of new below-rail networks, effectively duplicating the Carmichael Rail Network, is commercially unviable. The Carmichael Rail Network, which is operated by Bowen Rail, [REDACTED] and is available for third-party access under a deed of access agreed with the Queensland Government.
- 45 There is no evidence of any access seeker or investor seriously considering establishing a mine in the Galilee Basin over the proposed term of declaration and further exploration and development in the region is widely accepted to be commercially unviable.

Rail haulage

- 46 Declaration would not increase competition in markets for rail haulage services.
- 47 The Terminal is currently serviced by two competing haulage providers – Aurizon and Pacific National. Bowen Rail does not operate or compete in this market and is limited to servicing only volumes from the Carmichael mine.
- 48 To the extent that any action by NQXT or the Terminal Operator (APO) favoured the rail services of Bowen Rail, this would therefore affect both Aurizon and Pacific National equally. It would not have any effect on competitive conditions in the market for rail haulage.
- 49 Operationally, and [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] This is a matter addressed in the Statement of Mr Damien Dederer at section C.7.

50 The market for coal haulage in Queensland is already competitive, and declaration of the Terminal service would not alter the existing dynamics or promote additional competition.

Other markets

- 51 There is no evidence that declaration would promote competition in any other relevant market.
- 52 Indeed, the interconnected nature of the Central Queensland Coal Network (CQCN) and the presence of multiple terminals already provide users with alternatives and competitive tension,

²⁵ QCA, *Final Recommendation – Part C: DBCT Declaration Review*, March 2020, pages 131-132 ([Part C: DBCT declaration review](#)).

further negating any argument that declaration would materially increase competition in any other market.

Criterion (b) – the Terminal is not a natural monopoly

- 53 It is clear from an orthodox application of criterion (b) and market reality that the Terminal is not a natural monopoly. NQXT operates within a market that by necessity is served by multiple terminals.
- 54 Any other conclusion would be contrary to the clear intent of criterion (b) and irrational in light of commercial realities. Criterion (b) was intentionally framed as a market-based test, designed to avoid declaration of facilities that face effective competition from other facilities. The Terminal, which faces direct competition from other coal handling facilities in central Queensland, manifestly fails the natural monopoly test.

The market in which the service is provided

- 55 The first and most important step in the natural monopoly assessment is to identify the market in which NQXT's coal handling service is provided. The approach adopted by the QCoal Users and Mr Houston is inconsistent with legal precedent and well-accepted economic techniques for defining locational markets. It also results in a conclusion that is manifestly absurd and divorced from commercial reality – Mr Houston's analysis finds that half of NQXT's current customers are not in the market for NQXT's coal handling service.
- 56 Properly framed, the market in which NQXT's services are offered is the market for coal export handling services in central Queensland.
- 57 This market necessarily extends to include customers in the Goonyella system at least as far south as Middlemount. Within this market, evidence shows [REDACTED]
[REDACTED]. In this market, NQXT's services compete with those of DBCT and other terminals in central Queensland including RG Tanna Coal Terminal (**RGCT**) and Wiggins Island Coal Export Terminal (**WICET**) (both at the Port of Gladstone).
- 58 The CEG Report provides an orthodox economic framework for understanding the market in which NQXT's services are provided: the Hotelling model of spatial competition.²⁶ Unlike Mr Houston's analysis, this model accounts for the different locations and preferences of customers. It is therefore more apt to explain the dynamics of competition between coal export terminals in central Queensland.
- 59 Applying the Hotelling model, CEG explains that the market that a firm operates in is at least as wide as the demand that it could profitably serve if it had no competitors, and that while adding competitors into that market will shrink the number of customers actually served, the wider market is unchanged.²⁷
- 60 This approach to market definition is also consistent with evidence of significant and direct competitive constraints on NQXT. NQXT clearly competes with DBCT and other terminals in seeking to attract and retain volumes – across and price and non-price elements of service.

Total foreseeable demand in the market

- 61 CEG estimates foreseeable demand over the period for which declaration is sought based on forecasts of demand from each of the mines that could profitably be served by NQXT. These forecasts are based on independent projections of throughput for each mine provided by Wood Mackenzie.

²⁶ CEG Report, section 5.

²⁷ CEG Report, paragraph 132 and section 5.3.

62 On a conservative view, which includes demand from Goonyella mines such as Middelmount, Lake Vermont, and Clermont that have contracted with NQXT, in addition to Newlands system mines, CEG estimates foreseeable demand in the market over the period for which declaration is sought to be approximately [REDACTED] – see **Figure 21** in section 6.2 below.

NQXT cannot service total market demand at least cost compared to multiple terminals

63 Even on a conservative view of foreseeable demand in the relevant market, [REDACTED]
[REDACTED]
[REDACTED]

64 NQXT alone is therefore clearly not the least cost option to serve foreseeable demand in the market. [REDACTED]
[REDACTED].

65 CEG observes that the least cost solution is for the QCN to be run as an interconnected system with multiple terminals feeding the network of Queensland mines – precisely as it operates.²⁸

Criterion (d) – declaration would not promote the public interest

66 Criterion (d) places a legal onus on the QCoal Users to demonstrate that:

- (a) declaration of NQXT would result improved terms and conditions of access, compared to a future without declaration; and
- (b) that this improvement in the terms of access would promote the public interest.

67 First, the QCoal Users have entirely failed to demonstrate that the terms of access likely to exist in the event of declaration would be any different, or more reasonable, than those that have already been agreed or proposed by NQXT.

68 The QCoal Users also cannot point to any sense in which declaration of NQXT now, a decade and a half after it was privatised, would promote the public interest.

69 To the contrary:

(a) Operation of NQXT as an unregulated terminal has delivered significant benefits for the coal sector and the State of Queensland. [REDACTED]
[REDACTED]
[REDACTED]

(b) The unregulated character of the Terminal has supported substantial investment by the Adani Group (in the order of more than \$7 billion) across the coal export supply chain – including major investments in rail and mine infrastructure, as well as investment at the Terminal itself.

(c) Declaration would impose significant and unnecessary direct costs and inflexibility on NQXT and the coal industry. [REDACTED]
[REDACTED]
[REDACTED]

[REDACTED] It is therefore remarkable that the QCoal Users seek to push the Terminal back into this kind of dispute-driven regulatory model.

(d) The downside costs and risk of access regulation is amplified in periods of high uncertainty or demand risk. These risks would be amplified in the case of NQXT at this

²⁸ CEG Report, paragraph 189.

time, given the complex global and local market conditions within which the Terminal is operating.

- (e) This is a fundamentally different commercial and political environment to the one that existed when the Terminal was first privatised in 2011 at the height of the commodity super cycle and where the industry held great confidence about stable and growing long term demand. If the State Government (rightly) identified that declaration was not in the public interest in that context, it is difficult to see how declaration would be seen to be in the public interest now.
- (f) Imposing heavy-handed access regulation on a private terminal in this uncertain environment would also be a complex and challenging task,²⁹ with significant risk of unintended costs and consequences.
- (g) NQXT is a privatised facility that has been operated efficiently and equitably by Adani for 14 years. [REDACTED]. This has also occurred within the context of evident competition between NQXT and DBCT. For the QCA to recommend, or the Queensland Government to impose, declaration on private infrastructure under Part 5 of the QCA Act for the first time in this context would send a powerful and adverse signal regarding regulatory and sovereign risk for prospective investors in Queensland infrastructure.
- (h) Finally, an important feature of the Queensland coal industry is that it operates as an interconnected network of export terminals, linked by the CQCN, and servicing over 50 mines. This network allows mines optionality and resilience – providing an attractive feature of the industry for customers and investors. It would be perverse for a regulatory decision to be based on a finding by the Queensland Government and the QCA that each coal terminal instead operates as an isolated economic monopoly.

Conclusion

- 70 The Terminal operates in a competitive, interconnected market for coal export services in central Queensland, where users have genuine alternatives and exercise real choice between NQXT and other terminals such as DBCT. [REDACTED]
[REDACTED] Moreover, there is no past or current evidence of discrimination, self-preferencing, or market failure.
- 71 The evidence demonstrates unequivocally that declaration of the coal handling service at the Terminal does not satisfy the statutory criteria. Specifically:
- (a) Declaration would not promote a material increase in competition in any relevant market. The terms of access offered by NQXT are reasonable, [REDACTED] and are at least as favourable as those available under regulated regimes. Evidence of this is apparent in [REDACTED]. The commercial incentives on NQXT to attract and retain users are also strong and effective.
 - (b) Several markets identified by the QCoal Users simply do not exist and assumptions relied upon by them (based on vertical integration) are not supported by market realities – in which Adani does not need to, and therefore does not, participate in relevant downstream markets. Moreover, [REDACTED].
 - (c) The market is not characterised by natural monopoly conditions. To the contrary, there is clear evidence of rivalry, switching, and multi-homing by users across multiple terminals.

²⁹ See Incenta Report, paragraph 10 and section 2.5.

- (d) Finally, there is no positive, public interest case for declaration. Indeed, the QCoal Users' have entirely failed to even attempt to do so.
- 72 By contrast, the current unregulated character of NQXT has supported significant investment, operational flexibility, and resilience in the Queensland coal export supply chain. Declaration would introduce unnecessary regulatory costs, inflexibility, and sovereign risk, undermining investment confidence at a time of heightened uncertainty for the coal sector. The risks and costs of regulation far outweigh any speculative benefits.
- 73 In summary, the application for declaration fails to satisfy the statutory criteria and would not deliver any material benefit to competition or the public interest.
- 74 The QCA should recommend that the coal handling service at the Terminal not be declared, preserving the benefits of commercial flexibility, competition, and investment confidence for users, the industry, and the State of Queensland.

2 Context for the QCA's assessment

In summary:

- This process is the first of its kind to be undertaken by the QCA. Other applications have related to redeclaration of assets that have been subject to longstanding (and statutory) declaration or have otherwise not been substantive.
- The QCA's process is also occurring at a time when NQXT is [REDACTED] and faces [REDACTED] as well as long term, structural risks facing the Queensland thermal coal industry.
- NQXT submits that several important principles follow from this regulatory and commercial context:
 - *First:* Any assessment of whether there is 'market failure' that warrants access regulation under the Part 5 criteria is not a hypothetical exercise. It cannot merely be assumed based on the earlier redeclaration decision at DBCT or because of the vertically integrated character of Adani's operations. The relevant 'factual' for this analysis is how the Terminal has operated to date and the process and terms on which access has been offered.
 - *Second:* It follows that the QCA must have regard to the substantial evidence which is available of the efficient and equitable operation of the Terminal and the commercial dynamics that have occurred during renegotiation of user agreements by NQXT over recent years. These demonstrate both [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED].
 - *Third:* The challenging only relevant 'hypothetical' task for the QCA is determining how, if at all, the approach to access would differ *under regulation*. It cannot be assumed (as has been done by QCoal) that the QCA could simply apply DBCT-style regulation or access terms in a 'cookie cutter' approach. Indeed, the question of how access regulation ought to apply in the context [REDACTED] is extremely complex as can be seen both in other regulatory processes in the coal sector and others (e.g. gas).

This context is informed by the detailed factual background that follows in section 3.

2.1 Historical regulatory context

- 75 Unlike other coal infrastructure in Queensland (notably DBCT and the Aurizon CQCN), the Terminal has never been subject to declaration under the QCA Act or Part IIIA of the *Competition and Consumer Act 2010* (Cth) (CCA).
- 76 Indeed, unlike DBCT, the Queensland Government elected not to apply access regulation at the Terminal at the time of its privatisation in 2010. Instead, the Terminal was expanded by the State Government shortly before this time and at the height of a coal 'super cycle'.
- 77 Facing this surging, long term demand for export infrastructure across the Central Queensland coal sector, PCQ underwrote the major capacity expansion (to 50 mtpa) through a series of [REDACTED] take or pay user agreements (the Legacy User Agreements) with [REDACTED]

users (each a **Legacy User**), [REDACTED] of which today access the Terminal under a Legacy User Agreement:

- (a) [REDACTED]
- (b) [REDACTED]
- (c) [REDACTED]
- (d) [REDACTED]
- (e) [REDACTED]
- (f) [REDACTED]
- (g) [REDACTED]
- (h) [REDACTED]

78 The Legacy User Agreements all operated over an approximately 15-year period with [REDACTED] The TIC was [REDACTED] The TIC process also involved [REDACTED].

79 Terminal operations at NQXT have always been undertaken by an operator with an interest in a coal mine that utilises the Terminal. Glencore operated the Terminal until 2016, when Adani acquired APB and took over operations [REDACTED]

80 The following conclusions can be drawn from this regulatory history:

- (a) Unlike DBCT, the State Government considered but chose not to regulate the Terminal at the time of privatisation.

- (b) Access has therefore been managed since that time through a stable set of contracts throughout the last 14 years of privatised operations. [REDACTED]
- (c) Terminal operations have also remained largely unchanged over this period and have always involved a degree of vertical integration with a coal producer.

2.2 Market context – uncertainty and competitive constraint

- 81 The Terminal currently operates in an environment that is characterised by significant uncertainty that is outside the control of NQXT.

Global coal market uncertainty

- 82 Demand for services at the Terminal is ultimately determined by global demand for coal. While coal consumption is expected to increase in emerging and developing economies over the short to medium term, other economies that have historically heavily relied on coal are expanding their uptake of renewable energy options. For example, China's consumption of coal is expected to plateau in the short term, driven by lower power sector demand and the rapid acceleration of renewables.³⁰ In its July 2024 'Australia coal supply summary' report, Wood Mackenzie note that they [REDACTED].³¹
- 83 Uncertainty of coal demand can also be seen in substantial swings in global spot prices for thermal coal. The price for high-quality Hunter Valley thermal coal exported through the Port of Newcastle is the main benchmark price reference for physical thermal coal contracts in the Asia-Pacific seaborne market. Newcastle coal traded at a peak of around US\$439 per tonne in September 2022 but fell sharply in early 2023 and has traded below US\$200 per tonne since then. As shown in **Figure 1**, as of the date of this submission Newcastle coal it is trading around US \$111 per tonne. Thermal coal mined at the Carmichael mine, [REDACTED], typically sells at a lower price than Newcastle thermal coal.

Figure 1 Newcastle thermal coal, 2021-2025 (\$USD/tonne)



Source: Trading Economics

³⁰ Paolo Agnolucci and Nikita Makarenko, 'Weakening demand, steady supply: What's driving coal's price decline in 2025?' *World Bank Group* (2 June 2025) (<https://blogs.worldbank.org/en/opendata/weakening-demand-steady-supply-what-s-driving-coal-s-decline-i>).

³¹ Wood Mackenzie, *Australia Coal Supply Summary*, July 2024, page 2. A copy of this document is attached as Tab 10 to NQXT's Index of Supporting Documents.

Coal mine life and difficulties obtaining expansion approval

- 84 Moreover, coal mines typically have long economic lives often exceeding 30 years, and a number of the mines which use the Terminal are approaching the end of their economic life over the next decade or have initial leases expiring sooner.
- 85 Producers also face substantial barriers to expanding their coal mining operations, due to regulatory and ESG factors (as well as third party challenges to expansion applications and approvals on environmental and human rights grounds). Recent examples include:
- (a) in July 2025, the Australian Conservation Foundation and Mackay Conservation Group lodged an application in the Land Court of Queensland objecting to Whitehaven Coal's Winchester South project, a proposed \$1 billion greenfield coal project in the Bowen Basin, which is expected to produce 17 million tonnes of coal per annum if approved ; and
 - (b) in 2022, the Queensland Land Court recommended the refusal of Waratah Coal's applications for a mining lease and environmental authority for a proposed Galilee Basin coal mine. This decision was based on the mine's likely impact on the Bimblebox Nature Refuge, its contribution to climate change (including scope 3 emissions), and its potential infringement on human rights. Waratah Coal subsequently discontinued its appeal to the Supreme Court of Queensland regarding the Land Court's decision.

Financing risks

- 86 This long-term and structural uncertainty in relation to global thermal coal demand and wider geo-political concerns regarding sustainability and carbon reduction have also reduced the readiness of lenders and insurers to support fossil fuel infrastructure. In its July 2024 'Australia coal supply summary' report, Wood Mackenzie observed:³²

[REDACTED]

- 87 These macroeconomic and ESG-driven constraints have raised the cost of capital for coal-linked assets and introduced heightened refinancing risk, particularly for infrastructure reliant on long-term throughput commitments from coal producers.

- 88 [REDACTED]

Underutilisation of the Terminal and short- and long-term demand risk

- 89 Since privatisation in 2011, the Terminal has been [REDACTED].
- 90 As discussed in section 3.11 below, actual throughput at the Terminal has been [REDACTED] in the Terminal's nameplate capacity (which has been 50 mtpa since 2011). Over the past 10 years, actual throughput has [REDACTED] as shown in Figure 11. Throughput has also fallen short of contracted capacity and the Terminal

³² Wood Mackenzie, *Australia Coal Supply Summary*, July 2024, page 2.

has consistently operated with at least [REDACTED]
[REDACTED]

91 All of the Legacy User Agreements are due to expire between [REDACTED]

92 The [REDACTED] of the Legacy User Agreements, and the headwinds facing thermal coal more broadly, has resulted in [REDACTED]
[REDACTED]
[REDACTED].

Newlands Rail System capacity constrains the Terminal

93 Amongst other things, [REDACTED]
[REDACTED]
[REDACTED].

94 As of June 2025, the maximum system capacity of the Newlands System was independently assessed as only being 38.6 mtpa, a 7% deterioration in available system capacity from 2024.³³ The Newlands and GAPE systems will have an ECD of 1,518 train paths in FY26, equivalent to 9.8 mtpa at median expected payload, and the ECD will continue until at least 2030 – even then, resulting from a gradual reduction in contractual entitlements rather than any physical solution.

95 There is no apparent resolution to this ECD over the next decade.

96 The ECD on the Newlands system and the lack of reliable rail access to the Terminal has the following implications:

(a) [REDACTED]
[REDACTED]
[REDACTED] and

(b) as explained in Mr Lane's statement in section 6.2, [REDACTED]
[REDACTED]
[REDACTED] While Bravus recently announced it would, subject to approvals, increase production at the Carmichael mine to 16 mtpa over the next four years, as described in paragraphs 100-103 below, [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

In an environment with substantial excess Terminal capacity, DBCT is an active competitive constraint

97 DBCT is an 80 mtpa multi-user coal terminal accessible to coal producers throughout the Goonyella and Newlands systems. DBCT also proposes to significantly expand its capacity to 99 mtpa. This will be achieved through DBCT's '8X Project' which will be underwritten by users with costs socialised among existing users and those accessing the expanded capacity.

98 DBCT provides capacity to users through both a primary and secondary trading market.

99 There is substantial evidence of the real-world commercial and competitive constraint which DBCT places upon NQXT, as explained in the statement of Mr Smith.³⁴ For example:

³³ Coal Network Capacity Co, ACAR25: *Annual Capacity Assessment Report*, 18 June 2025, page 19.

³⁴ Statement of Mark Smith, paragraphs 121-122.

- (a) **There are a number of mines that currently utilise both the Terminal and DBCT.**

[REDACTED]

As shown in Figure 10, these mines are substantially closer to DBCT – for example,

[REDACTED]

Any renewal negotiations with these customers must actively have regard to the [REDACTED]

- (b) [REDACTED]

- (i) [REDACTED]

- (ii) [REDACTED]

[REDACTED]

- (c) **NQXT has** [REDACTED].

As well as [REDACTED]
[REDACTED]. While these interactions have not [REDACTED]
[REDACTED], they demonstrate the dynamic that is available
to mines across the CQCN:

- (i) [REDACTED]

- (ii) [REDACTED]

³⁵ NQXT understands that Lake Vermont Resources does not have an access contract with DBCT but has utilised the secondary trading market.

³⁶ Statement of Mark Smith, paragraph 197(c).

(iii) [REDACTED]
[REDACTED]
[REDACTED]

Limitations on Adani's (Bravus') expansion

100 While NQXT has contracted with Adani's own coal entity, Bravus, to handle coal produced from the Carmichael mine, Bravus' ability to increase production from current levels is [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]⁷

101 As noted in paragraph 208 below, thermal coal from Bravus' Carmichael coal mine must travel along the Carmichael Rail Network before being transported a further ~164km on the Newlands System to the Terminal. Bravus currently has contracted access rights on the Newlands System for approximately [REDACTED]. For production above this level, [REDACTED]
[REDACTED]³⁸ [REDACTED]
[REDACTED]
[REDACTED]

102 The Carmichael mine currently produces approximately 12.5 mtpa and has [REDACTED] contracted with NQXT.

103 On 18 August 2025, Bravus announced a decision to make a capital investment to increase production at the Carmichael mine to around 16 mtpa, subject to regulatory approvals.³⁹ [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

104 [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]⁴¹ [REDACTED]
[REDACTED]⁴²

State royalty payments may disincentivise future mine investment

105 In July 2022, the Queensland government introduced new coal royalty payment tiers tied to coal prices, retaining the existing royalty tiers of 7% for coal prices ≤\$100 per tonne, 12.5% for coal prices \$100-\$150 per tonne and 15% for prices >\$150 per tonne, but introducing additional tiers of 20% for coal prices >\$175 per tonne, 30% for prices above \$225 per tonne and 40% for prices above \$300 per tonne.

106 Notwithstanding that these prices were introduced during the peak of the 2022 coal cycle, and that the price for thermal coal has since dropped substantially, these additional revenue tiers disincentivise further investment in the Queensland coal industry. The Minerals Council of Australia described the new royalty tiers as having *"the potential to scare off investors in all*

³⁷ Statement of Brendan Lane, section 6.2.

³⁸ Statement of Brendan Lane, paragraphs 39-40.

³⁹ Bravus Mining & Resources, 'Bravus Mining and Resources commits to major investment to increase mine production in central Queensland' *Bravus Mining Website* (19 August 2025) (<https://www.bravusmining.com.au/bravus-mining-and-resources-commits-to-major-investment-to-increase-mine-production-in-central-queensland/>).

⁴⁰ Statement of Brendan Lane, paragraphs 39-41.

⁴¹ Statement of Brendan Lane, paragraph 42.

⁴² Ibid.

115 Other than [REDACTED] [REDACTED] [REDACTED]
[REDACTED].

116 [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED].

117 [REDACTED] [REDACTED]
[REDACTED]
[REDACTED]

2.4 Terms of the New User Agreements (and the New Standard Agreement offered to QCoal) are reasonable

118 Leaving aside the commercial conduct of QCoal's peers – who have demonstrated a willingness to [REDACTED] [REDACTED] (in circumstances where they have a [REDACTED] – NQXT submits that an objective assessment of the [REDACTED] confirms that the terms being negotiated by NQXT through this cycle are reasonable.

119 Similarly, the terms offered to [REDACTED] are consistent with those [REDACTED], reflect the current commercial environment, and are [REDACTED] and with terms found across comparable regulated and unregulated infrastructure agreements (including within the coal industry).

Terms of access agreed under the New User Agreements

120 [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]:

(a) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED];

(b) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED];

(c) [REDACTED]
[REDACTED];

(d) [REDACTED]
[REDACTED];

- (e) [REDACTED]
- (f) [REDACTED]
- (g) [REDACTED]

Consistency with existing Legacy User Agreements

- 121 The terms in the New Standard Agreement are [REDACTED], as explained in more detail in paragraph 259 and shown in **Annexure F**.
- 122 As outlined at section 3.12(a), NQXT has sought to provide users with continuity and confidence that the Terminal will continue to be operated in the same manner following the expiry of the Legacy User Agreements.
- 123 In correspondence with QCoal prior to the declaration application, QCoal [REDACTED]. In response to QCoal's concerns, NQXT [REDACTED]

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Consistent with other infrastructure agreements in workably competitive markets

- 124 The terms of the New Standard Agreement are also broadly consistent with other access agreements in relation to infrastructure, including gas pipelines and below rail access agreements. In the case of gas pipelines, the industry standard pricing model involves long-term agreements with locked-in tariffs subject to annual CPI increase mechanisms. Agreements in this form reflect the outcome of competition.

2.5 There is no evidence that a regulated outcome would be materially different to the commercially negotiated terms of the New User Agreements

- 125 The QCoal Users' application fails to address the manner by which declaration would change the terms of access for QCoal or other users. To the contrary, the QCoal Users' application appears to assume that the terms of access that would be adopted by the QCA would mimic those under the DBCT access agreement.
- 126 The QCoal Users (and their expert, Mr Houston) do not attempt to explain how likely tariffs resulting from declaration would differ from those that have already been commercially offered by NQXT [REDACTED]
- 127 Indeed, it is far from clear that the outcome of that process would result in access terms more favourable to users. To the contrary, in the face of [REDACTED] any regulatory process in respect of NQXT would require the QCA to wrestle with a number of significant and complex issues, including:
- (a) **Determination of the initial regulatory asset base.** There is no single or universally accepted methodology for setting the initial RAB.⁴⁸ The QCA could not simply adopt the historic asset base under the existing Legacy User Agreements, which is flawed in

⁴⁷ Statement of Mark Smith, section H.3.

⁴⁸ For example, analogously, in the context of section 15 of the *Independent Pricing and Regulatory Tribunal Act 1992* (NSW), IPART has observed that "There is no universal acceptance of a particular approach to setting the initial regulatory asset base": see IPART, Discussion Paper, *Rolling Forward the Regulatory Asset Bases of the Electricity and Gas Industries*, January 1999 (https://www.ipart.nsw.gov.au/sites/default/files/documents/discussion_paper_-_rolling_forward_the_regulatory_asset_bases_of_the_electricity_and_gas_industries_-_january_1999.pdf).

significant respects (including because, as noted in paragraph 408 below, the current RAB does not allow for NPV=0, as [REDACTED] and the Supreme Court of Queensland). The initial RAB for DBCT when first declared in the early 2000s was ultimately based on a DORC valuation following extensive submissions, expert evidence and lengthy proceedings. A similarly complex process would be required here.

- (b) **Treatment of depreciation.** Access regulation is best suited to the regulation of existing assets, with stable and relatively predictable demand profiles that provide confidence regarding the recovery of capital costs. [REDACTED]. In this context, a coal terminal facing declining or volatile demand may require an accelerated or altered depreciation profile to ensure recovery of sunk capital costs. As part of determining appropriate allowances for depreciation, consideration would need to be given to remaining economic life of terminal assets and the appropriate profile of cost recovery over that remaining life. This is recognised in the pricing principles under the QCA Act and is an issue that has been recognised in other regulatory processes.⁴⁹
- (c) **Rate of return.** The QCA would be required to determine a rate of return that reflects the commercial risks faced by NQXT. These risks are materially different from those faced by typical regulated utilities. Decisions on asset beta, debt risk premiums, and other parameters would involve a high degree of discretion and are likely to be contested.

128 In the Incenta Report, Mr Balchin observes:⁵⁰

Applying price regulation to assets that are part way through their economic lives has always been challenging as a range of initial settings needs to be established, most notably the initial regulatory asset base. This was a key matter of contention during all of the first round regulatory determinations for energy networks, during the initial imposition of price regulation of DBCT, and in setting the initial regulatory asset base (RAB) for the Port of Newcastle.

Declaration would also imply imposing price regulation to the Terminal right at the time that [REDACTED]. How best to regulate facilities that are subject to material demand uncertainty – whilst preserving the incentive to invest – is the issue that is currently confronting regulators of gas networks, and was an issue that was faced early on in relation to high-risk greenfields gas pipelines. The standard regulatory model may result in prices that are very high (as acceleration of depreciation is the principal tool that is used to address stranded asset risk), and potentially volatile (as uncertainty in demand leads directly to uncertainty in price). Regulators of gas networks do not have an enduring solution to the problems with setting regulated prices in an environment of demand uncertainty, and the consensus solution to the issue of greenfields gas pipelines was that cost-based regulation should not be applied to such projects.

It follows that extending price regulation to the Terminal (via declaration) would be requiring the QCA to confront complex regulatory issues, including those that currently do not have an enduring solution in other sectors (i.e., dealing with material demand uncertainty), and be moving contrary to the one solution that has been applied (i.e., withdrawing – rather than imposing – price regulation). It also follows that the QCA cannot simply assume that its methods will result in a price that is any more reasonable than what the parties may negotiate.

⁴⁹ For example, this is discussed at length by the Australian Energy Regulator in relation to gas pipeline regulation in its November 2021 information paper: Australian Energy Regulator, *Regulating gas pipelines under uncertainty: Information paper*, November 2021 ([AER Information Paper - Regulating gas pipelines under uncertainty - 15 November 2021.pdf](#)). Recognising the prospect of uncertain and declining demand, the Australian Energy Regulator has allowed accelerated depreciation in some recent access arrangement decisions.

⁵⁰ See Incenta Report, paragraph 9-10.

129 Moreover, a declared service is subject not only to initial regulatory determinations but to periodic resets, typically every five years. Users are exposed to pricing risk at each reset. Where demand for a service is declining, unit prices are likely to increase as fixed costs are recovered over a shrinking volume base. In such a scenario, users may well be worse off under declaration than under the current arrangements.

130 Finally, access regulation tends to lead to relatively inflexible and standardised terms of access. Declared terms of access for all Terminal users are often set at the 'lowest common denominator' – a position in terms of both price and non-price terms that is appropriate and acceptable for all Terminal users, but which in effect reduces the incentive of users and NQXT to negotiate more efficient outcomes that reflect the individual requirements and preferences of a user. By contrast, under the current unregulated model, NQXT has the flexibility to meet each individual access seeker's needs in terms of both price and non-price terms. [REDACTED]

[REDACTED] There is a significant risk that this would be lost or reduced through declaration.

2.6 Vertical integration is not a basis for assumptions regarding declaration

131 Central to the QCoal Users' application is a claim that declaration is needed in order to protect miners from risks created by the integration of NQXT with other parts of the Adani Group (notably its mining and rail operations).⁵¹ Mr Houston asserts, without evidence, that NQXT could seek to disadvantage third-party access seekers relative to Bravus, including by raising prices charged by Abbot Point Bulkcoal Pty Ltd (APB) such as project management costs that are passed on to users.⁵²

132 The example relied upon by Mr Houston is not possible for two reasons:

- (a) [REDACTED]
- (b) [REDACTED]

133 [REDACTED]

134 More broadly, the QCoal Users' unfounded assumption does not engage with the considerable history of operations at the Terminal, clear economic incentives or the evidence of non-discriminatory conduct by NQXT.

135 Specifically, the QCoal Users' application fails to engage with the fact that:

- (a) despite private ownership by Adani for ~14 years, there has been no historical incidence of any self-preferencing, foreclosure of discrimination identified, as discussed in section 5.3. If there was a strong incentive and ability to self-preference, then there ought to be evidence of Adani having done so;
- (b) the examples given by the QCoal Users of harmful conduct relate specifically to the price resets and socialisation of the Legacy User Agreement's pricing mechanism. [REDACTED]

⁵¹ QCoal Users' Declaration Request, paragraph 3(b).

⁵² Houston Criterion (a) Report, paragraph 39(a)(iii).

- [REDACTED]
- [REDACTED]
- (c) structural and commercial arrangements have been put in place for a long time, [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
- (d) current and forecast utilisation of the Terminal remains [REDACTED]. As such, Adani has no incentive to engage in foreclosure, as outlined in the report of Mr Balchin and section 5.3; and
- (e) finally, the emphasis on NQXT's vertical integration, particularly with Bravus, carefully ignores the fact that, from 2000 to 2016, the terminal Operator (APB) was owned by Glencore and contracted by PCQ, which was the founding user of the Terminal and, on average since privatisation and previously, its largest exporter by volume. Glencore sold APB to the Adani Group in 2016, five years after NQXT was granted the lease for the Terminal. NQXT is not aware of any concerns being raised about Glencore's privatisation during these previous years where a miner was vertically integrated with the Terminal's operations.

3 Background

In summary:

- QCoal's application must be assessed in light of the detailed factual matrix relating to the Terminal, its history and current operations.
- The key aspects of that factual matrix set out in this section include:
 - A comprehensive account of the Terminal, tracing its evolution from a government-developed facility to its current status as a privately operated, multi-user export terminal at the Port of Abbot Point – including the Terminal's origins under the PCQ, the major capacity expansions in response to surging global coal demand and the introduction of long-term, take-or-pay Legacy User Agreements that underwrote these investments;
 - The privatisation process, including the State's decision not to declare the Terminal for regulatory access at the time of sale, the subsequent transfer of Legacy Agreements to NQXT and details of the Terminal's 99-year lease to NQXT – as well as the post-privatisation structure and responsibilities of the Terminal Operator (APO) and the enduring operational model of the Terminal based on open access, multi-user principles, and equitable Terminal Regulations;
 - The Terminal's integration within Queensland's interconnected coal export supply chain, highlighting the role of the CQCN and the competitive dynamics between NQXT and other major export terminals such as DBCT, Hay Point, and the Gladstone terminals. NQXT outlines the commercial and regulatory arrangements that have governed access and operations for over 14 years, including [REDACTED].
 - The Terminal's [REDACTED] since privatisation, the impact of below-rail capacity constraints (notably the Existing Capacity Deficit on the Newlands System), and the significant commercial and market uncertainties facing the coal sector in Queensland. These matters provide context for the [REDACTED] and the broader debate regarding the necessity and impact of regulatory declaration.
- The factual matters set out in this section underpin the analysis of market dynamics, competitive constraints, and the rationale for maintaining a commercially negotiated, flexible, and unregulated access regime at the Terminal.

3.1 History of the Terminal and NQXT

136 The Terminal is a deep-water export terminal located within the Port of Abbot Point, approximately 25km north of Bowen in Queensland. The Terminal is a multi-user, open access facility used to export metallurgical and thermal coal. The Terminal was leased to NQXT under a 99-year lease in 2011 for total consideration of \$1.829 billion.

137 NQXT is an entity within the Adani Group, which in addition to the Terminal holds other interests and assets across the coal supply chain in Central Queensland, each operated by independent businesses (as outlined further in section 3.15 below):

- (a) the Carmichael Coal Mine – a thermal coal mine in the Galilee Basin operated by Bravus;

- (b) the Carmichael Rail Network – a 189 km railway which connects the Carmichael Mine and Galilee Basin to the CQCN, operated by Bowen Rail Company Pty Ltd (**Bowen Rail**);
 - (c) Bowen Rail coal haulage service – an above-rail coal haulage service which operates on the Carmichael Rail Network on a dedicated basis to transport coal from Bravus' Carmichael Mine to the Terminal; and
 - (d) APO – which manages the day-to-day running the Terminal under an Operating and Maintenance Contract (**OMC**).
- 138 The current nameplate capacity of the Terminal is 50 mtpa. At a high level, it comprises the following infrastructure:
- (a) a rail in-loading facility, including two dump stations used to receive coal from trains;
 - (b) three coal handling and stockpiling areas with six stacker reclaimers;
 - (c) a 2.8-kilometre trestle jetty and conveyors connecting to two off-shore berths; and
 - (d) two ship-loaders.
- 139 The Terminal forms part of an interconnected system of five export terminals used to handle coal produced in mines across northern and central Queensland, the other four being:
- (a) DBCT at the Port of Hay Point, which is owned by Dalrymple Bay Infrastructure Limited;
 - (b) Hay Point Coal Terminal (**HPCT**) at the Port of Hay Point, which is owned by BHP Billiton Limited (**BHP**) and Mitsubishi; and
 - (c) **RGTCT** at the Port of Gladstone, which is owned by Gladstone Ports Corporation.
- 140 **WICET** at the Port of Gladstone, which is owned by a consortium of coal producers including Glencore, Coronado and Yancoal.
- 141 Figure 2 illustrates the location of the five interconnected coal terminals. All are connected to and serviced by the CQCN, which is the regulated below-rail infrastructure operated by Aurizon Network. The CQCN is discussed further in section 3.7.

Figure 2 Northern and Central Queensland's Coal Terminals



- 142 The Terminal was originally developed and managed by the Queensland State Government through PCQ. When originally developed, the Terminal could handle up to 15 mtpa and serviced a single user until around 2005 (Mount Isa Mines, which later became Glencore).
- 143 However, following a rapid increase in global demand for both thermal and metallurgical coal in the 1990s and early 2000s, the Terminal undertook several expansions to accommodate increased demand:
- (a) in around 2007, major upgrade works and additional stockyard space increased the Terminal's capacity to 21 mtpa;
 - (b) in around 2008, further major upgrade works were completed to increase the Terminal's capacity to 25 mtpa; and
 - (c) in around 2011, a significant \$820m project was completed to expand the Terminal's capacity to its current nameplate capacity of 50 mtpa (the **X50 Expansion**). This included developing a second shipping berth, additional stockyard capacity and a jetty conveyor system.
- 144 As noted above, these expansions were undertaken against the backdrop of sustained growth in the coal sector during the global commodities 'super cycle' which significantly increased demand for Queensland coal and export capacity.
- 145 The X50 Expansion was supported by the construction of below rail infrastructure linking the Goonyella and Newlands rail systems (a project referred to as the Goonyella Abbot Point Expansion (or **GAPE**) Project). Also referred to as the 'Missing Northern Link', this connection allowed mines and producers located within the Goonyella System to access and use the Terminal (rather than being limited to DBCT and RGTCT in Gladstone).

146 In addition to the GAPE infrastructure, Aurizon also undertook works to the Newlands System which were intended to ensure that the system could support 50 mtpa rail volume and provide 'end to end' alignment across the rail and port supply chain operated with a consistent and aligned capacity of 50 mtpa (being the Terminal's expanded nameplate capacity).

3.2 Potential future capital expansion of the Terminal

147 As explained in Mr Smith's statement at section I.3, over the years there have been several early-stage proposals to expand coal export capacity at the Terminal beyond its current nameplate capacity of 50 mtpa, however none of these have been commenced and are not likely to proceed:

- (a) First, there was a proposal to expand the Terminal's capacity to 60 mtpa (**X60 Expansion**). The proposed X60 Expansion would involve expanding the capacity of one of the berths and shiploaders at the Terminal and increasing conveyor handling speeds.
[REDACTED]
- (b) Second, there was a conceptual proposal for the Adani Group to construct and operate a new and separate terminal located adjacent to the Terminal at the Port of Abbot Point (**T0 Expansion**). On 10 December 2013, the Federal Government gave environmental approval to the T0 Expansion under sections 130(1) and 133 of the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (**EPBC Act**), which has effect until 30 November 2053. At present, [REDACTED]
[REDACTED]
- (c) Third, there was an early-stage proposal by BHP to develop a second terminal at the Port of Abbot Point referred to as the **T2 Expansion**. In 2012, BHP announced that it was abandoning the T2 Expansion.
- (d) Fourth, there was an early-stage proposal in 2012 by GVK Limited to construct and operate a second coal export Terminal at the Port of Abbot Point with capacity up to 60 mtpa (referred to as the **T3 Expansion**). This proposal was also not progressed.

148 As such, while there is a theoretical pathway to increase coal export capacity at the Port of Abbot Point beyond its current capacity, none of the X60, T0, T2 or T3 expansions set out above [REDACTED]. This is especially the case given [REDACTED]
[REDACTED]

3.3 Role of the Operator and Terminal Regulations

(a) History

149 The day-to-day aspects of running the Terminal are managed independently from NQXT by APO under the OMC. The history of APO and its responsibilities in operating the Terminal are explained further in the statement of Mr Dederer.

150 [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

151 While APO is a company within the Adani Group, it operates separately to NQXT and other Adani related entities, [REDACTED]
[REDACTED] as outlined further at section 3.5 below. The separation of NQXT and APO,

including reporting relationships within the broader Adani Group, are further outlined in Mr Smith's Statement at sections D and E.3 and Mr Dederer's Statement at C.6.

(b) Payment for the Operator's services

152 APO incurs a range of costs in operating and maintaining the Terminal, including:

- (a) [REDACTED]; and
- (b) [REDACTED].

153 The Operator recovers these costs from users through [REDACTED]. Under the existing Legacy User Agreements, [REDACTED].

154 In this regard, [REDACTED].

155 However, as noted in paragraph 269, under the New Standard Agreement [REDACTED].

156 This approach to cost-based pass through of operational costs is also consistent with both commercial and regulatory models for infrastructure assets, including:

- (a) **Aurizon Network** – which involves a multi-part tariff that separately identifies and recovers AN's variable costs;
- (b) **ARTC** and **WICET** – with the operator's fixed and variable actual costs are fully passed through to users; and
- (c) **DBCT** – NQXT understands the operator's fixed and variable actual costs are fully passed through to users plus a margin of 10%.

157 The process for determining the handling charges each year occurs as follows:

- (a) [REDACTED].
- (b) [REDACTED]⁵³.

158 For 2024-25, the Operator's budgeted operating costs were [REDACTED]. By comparison, [REDACTED].

159 As attested in the statement of Mr Smith in paragraphs 63 and 73, in the 14 years since privatisation, and in particular in the nearly 10 years since 2016 that APO has operated the terminal, [REDACTED].

⁵³ Statement of Mark Smith, paragraph 181.

[REDACTED]

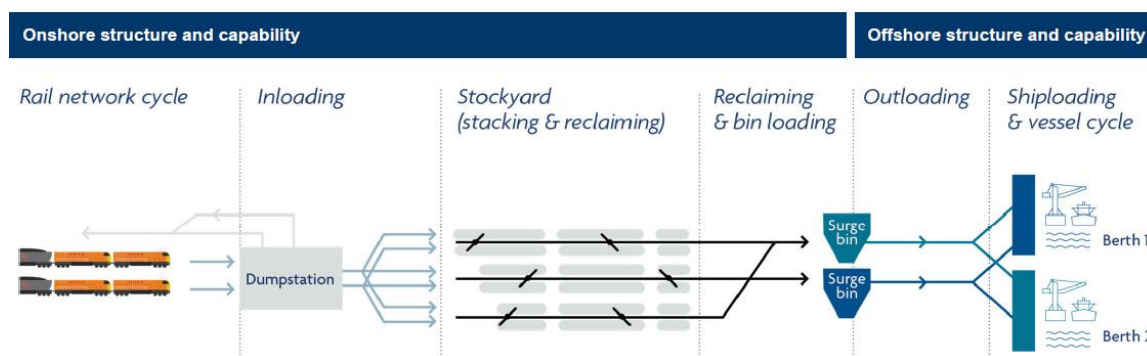
(c) **Operator's role and obligations under the OMC**

160 Under the OMC, the Operator handles coal through the following sequence of events, in accordance with the OMC and Terminal Regulations established by the Operator in consultation with users (explained separately below):

- (a) First, coal is delivered to the Terminal by rail – users access the Terminal via the interconnected rail systems which form the CQCN. Trains unload coal at one of two in-loading facilities along a balloon rail loop which is the interface between the Terminal's infrastructure and Aurizon's CQCN network. [REDACTED]
[REDACTED]
[REDACTED].⁵⁴
- (b) Second, the coal is moved from the rail loop to stockpiles by a conveyor system. [REDACTED]
[REDACTED]
[REDACTED].⁵⁵
- (c) Third, coal is blended to users' specifications and transferred from the stockpiles using one of six stacker reclaimer machines when ready to be shipped. [REDACTED]
[REDACTED]
[REDACTED].⁵⁶
- (d) Fourth, coal is moved to a large surge bin and carried by conveyor along a trestle jetty to vessels waiting at one of two berths. The arrival of vessels is overseen by Maritime Safety Queensland.
- (e) Finally, the coal is loaded into the ship's cargo hold using one of two shiploaders. [REDACTED]
[REDACTED]
[REDACTED].⁵⁷

161 **Figure 3** below visually demonstrates the sequence of exporting coal through the Terminal.

Figure 3 Sequence of exporting coal through the Terminal



⁵⁴ OMC, Sch 3, cl 2.1(a) and cl 3.3

⁵⁵ Ibid cl 3.4.

⁵⁶ Ibid cl 3.5.

⁵⁷ Ibid cl 3.7(c).

162 At each phase, the OMC operates based on the following principles:

- (a) [REDACTED]⁵⁸
- (b) [REDACTED]⁵⁹
- (c) [REDACTED]
 - (i) [REDACTED]⁶⁰
 - (ii) [REDACTED]
 - (A) [REDACTED]⁶¹ and
 - (B) [REDACTED]⁶²
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]
 - (iii) [REDACTED]⁶³

163 [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

164 [REDACTED]

- (a) [REDACTED]
- (b) [REDACTED]
- (c) [REDACTED]

165 [REDACTED]. However, as explained in Mr Dederer's statement at paragraph 21, [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

⁵⁸ OMC, cl 3.1(a)-(b).

⁵⁹ OMC, cl 4.1.

⁶⁰ OMC, cl 3.1(g).

⁶¹ OMC, cl 10.2(b).

⁶² OMC Sch 3, cl 3.1.

⁶³ OMC, cl 3.1(e).

⁶⁴ Statement of Damien Dederer, paragraph 18.

⁶⁵ Statement of Damien Dederer, paragraph 19.

of [REDACTED]
[REDACTED].

(d) Terminal Regulations

166 Along with the OMC, the Operator carries out its functions in accordance with a set of Terminal Regulations, [REDACTED]

[REDACTED].⁶⁶

167 The Terminal Regulations are established by the Operator, with NQXT's consent. Under the Legacy User Agreements, [REDACTED]

[REDACTED].⁶⁷

168 [REDACTED]
[REDACTED]:

(a) [REDACTED]
[REDACTED].⁶⁸

(b) [REDACTED]
[REDACTED]
[REDACTED].⁶⁹

169 The current Terminal Regulations [REDACTED]
[REDACTED]. They are based on three important principles:

(a) [REDACTED].

(b) [REDACTED]; and

(c) [REDACTED].⁷⁰

170 As the Terminal Regulations are functioning efficiently, [REDACTED]
[REDACTED]
[REDACTED]t, including through the [REDACTED]
[REDACTED].⁷¹

171 The Terminal Regulations supplement the Operator's obligations under the OMC and broadly deal with how the Operator must conduct the following:

(a) [REDACTED]
[REDACTED]
[REDACTED].⁷²

(b) [REDACTED]
[REDACTED]
[REDACTED].⁷³

⁶⁶ For example, see [REDACTED] See also statement of Damien Dederer, paragraph 24.

⁶⁷ Ibid cl 4.7(d).

⁶⁸ New Standard Agreement, cl 3.6(c).

⁶⁹ New Standard Agreement, cl 3.6(e).

⁷⁰ Statement of Damien Dederer, paragraph 26.

⁷¹ New Standard Agreement, cl 22.2.

⁷² Terminal Regulations, cl 3.5(b).

⁷³ Terminal Regulations, cl 5.1.

(c) [REDACTED]
[REDACTED].⁷⁴

172 Once coal is received at the Terminal, users are allocated stockpile space within the Terminal. The coal is held in the stockpile until the user's complete consignment tonnage is received and their nominated vessel is accepted for loading at the Terminal. Vessels are berthed and loaded at the Terminal in order of arrival, except in limited circumstances.

173 The Terminal has a history of efficient operational performance and equitable provision of services. As outlined in Damien Dederer's statement, and contrary to the speculative assertions of the QCoal Users and Mr Houston, [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]:

(a) **Rail unloading** – [REDACTED]
[REDACTED], as explained by Mr Dederer in his statement in section D.1.

(b) **Stockpile allocations** – [REDACTED]
[REDACTED], as explained by Mr Dederer in his statement in section D.2. [REDACTED]
[REDACTED].

(c) **Vessel queues** – [REDACTED]
[REDACTED], as explained by Mr Dederer in his statement in section D.3.

174 This is consistent with Mr Smith's evidence (statement at paragraph 63) that there has been no dispute raised by users regarding the adequacy of the services provided by the Terminal, including in relation to the efficiency or non-discriminatory nature of the Terminal's operation, since APO commenced as Operator of the Terminal.

⁷⁴ Terminal Regulations, cl 6.7.

Figure 4 [REDACTED]

175 [REDACTED]
[REDACTED]
[REDACTED]

176 In this Figure 4, [REDACTED]
[REDACTED]
[REDACTED].

177 [REDACTED]
[REDACTED] As evidenced in Mr Dederer's statement in section D.2, APO's [REDACTED]
[REDACTED]

[REDACTED]

3.4 User Committee

- 178 As the operator of the Terminal, APO also participates in a quarterly user committee [REDACTED]
[REDACTED]
[REDACTED] (User Committee). [REDACTED]
[REDACTED]
[REDACTED].⁷⁵
- 179 [REDACTED]
[REDACTED].
- 180 The User Committee provides users with the ability to [REDACTED]
[REDACTED]. The types of matters that the User Committee provides the Operator with a forum to discuss include:
- (a) [REDACTED].
 - (b) [REDACTED]
[REDACTED].
 - (c) [REDACTED]
[REDACTED]
[REDACTED] and
 - (d) [REDACTED].⁷⁷
- 181 Further, NQXT understands that only the user owned companies of DBCT Pty Ltd (the operator of DBI) are provided with detailed cost information, whereas NQXT makes that information transparent to all users.

3.5 Internal ring-fencing arrangements

- 182 Since 2017, NQXT and APO have also operated subject to an [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
- 183 [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED].
- 184 [REDACTED]
[REDACTED]
[REDACTED].

⁷⁵ For example, see [REDACTED]. See also, [REDACTED]

⁷⁶ Statement of Damien Dederer, paragraph 35.

⁷⁷ Statement of Damien Dederer, paragraph 36.

185 As explained in Mr Dederer's statement in section C.6, under [REDACTED]:⁷⁸

- (a) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
- (b) [REDACTED]
[REDACTED] [REDACTED] :
- (i) [REDACTED]
[REDACTED]
- (ii) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
- (c) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

3.6 DBCT

186 DBCT is located 40 kilometres south of Mackay at the Port of Hay Point. It is Queensland's largest common-user coal export terminal. Since its commissioning in 1983, DBCT has provided coal handling services to the coal industry in central Queensland.⁷⁹

187 The terminal is owned by the Queensland Government through a wholly government controlled entity, DBCT Holdings Pty Ltd (**DBCT Holdings**). In 2001, DBCT Holdings leased the terminal to DBCT Management Pty Ltd and the DBCT Trustee (**DBCT Management**). DBCT Management has the option to extend the lease, which expires in 2051, for a further 49-year period.⁸⁰

188 Coal producers contract directly with rail operators and DBCT Management for relevant rail and terminal service access rights.⁸¹ A range of coal producers hold user agreements at the terminal. The terminal's user agreements provide users with the ability to ship coal through the terminal, assign some or all of their access rights to a third party and/or permit another user or third party to ship coal through the terminal using their access rights. The user agreements also include 'evergreen' rights to renew contracts.⁸²

189 The coal handling service at DBCT was declared for third party access in 2001 in the context of the long-term lease of the terminal by the Queensland Government to DBCT Management. The regulatory framework for the existing declaration is currently governed by the QCA Act, and the 2021 access undertaking, which was approved by the QCA and took effect on 1 July 2021. The 2021 access undertaking sets out the terms and conditions under which DBCT Management provides access to the service.

⁷⁸ See also, Statement of Mark Smith, section D.3.

⁷⁹ QCA, *Final Recommendation – Part C: DBCT Declaration Review*, March 2020, page 1.

⁸⁰ QCA, *Final Recommendation – Part C: DBCT Declaration Review*, March 2020, page 2.

⁸¹ Ibid.

⁸² QCA, *Final Recommendation – Part C: DBCT Declaration Review*, March 2020, page 3.

190 DBCT, which provides the declared service under the undertaking, is defined in s 250(5) of the QCA Act as follows:

Dalrymple Bay Coal Terminal means the port infrastructure located at the port of Hay Point owned by Ports Corporation of Queensland or the State, or a successor or assign of Ports Corporation of Queensland or the State, and known as Dalrymple Bay Coal Terminal and includes the following which form part of the terminal –

- (a) loading and unloading equipment;
- (b) stacking, reclaiming, conveying and other handling equipment;
- (c) wharfs and piers;
- (d) deepwater berths;
- (e) ship loaders.

191 DBCT currently has nameplate capacity of 85 mtpa and contracted capacity of at least 84 mtpa until 2028.

192 DBCT currently has an access queue with users seeking ~20 mtpa in 2026, steadily increasing to approximately 30 mtpa in 2029. To accommodate this demand, DBCT has proposed a capacity expansion to 99.1 mtpa through the '8X Project' which is planned to occur through four incremental phases to be commissioned between 2024 and 2028. This will involve new and upgraded infrastructure, including a new shiploader, stacker reclaimer, stockyard and up to two berths. More detail about the 8X project is available in DBCT's 2023 Master Plan.⁸³

193 As outlined in the statement of Mr Smith at section G.2(a), the 8X Expansion has progressed to including:

- (a) a 2023 feasibility study underwritten by access seekers;
- (b) executed condition access agreements for at least 15 mtpa of the additional capacity;
- (c) executed underwriting agreements; and
- (d) a QCA determination allowing the cost of the 8X project to be socialised among existing and future users of the DBCT terminal (which will likely increase the TIC payable at DBCT).

194 DBCT has a different operating model to the Terminal. As explained in Mr Dederer's statement at section C.7, DBCT operates on a 'cargo assembly' basis – i.e. it operates with relatively limited stockpiles and requires coal to be railed to the DBCT terminal only when a vessel has berthed that is ready to receive that coal. As such, the Terminal makes greater use of long-term stockpiling.

195 DBCT operates as a 'pull' model in which the operator at DBCT necessarily plays a central role in rail scheduling and has direct input into the rail plan, coordinating the railing of coal when vessels are ready to be loaded. By contrast, the [REDACTED]

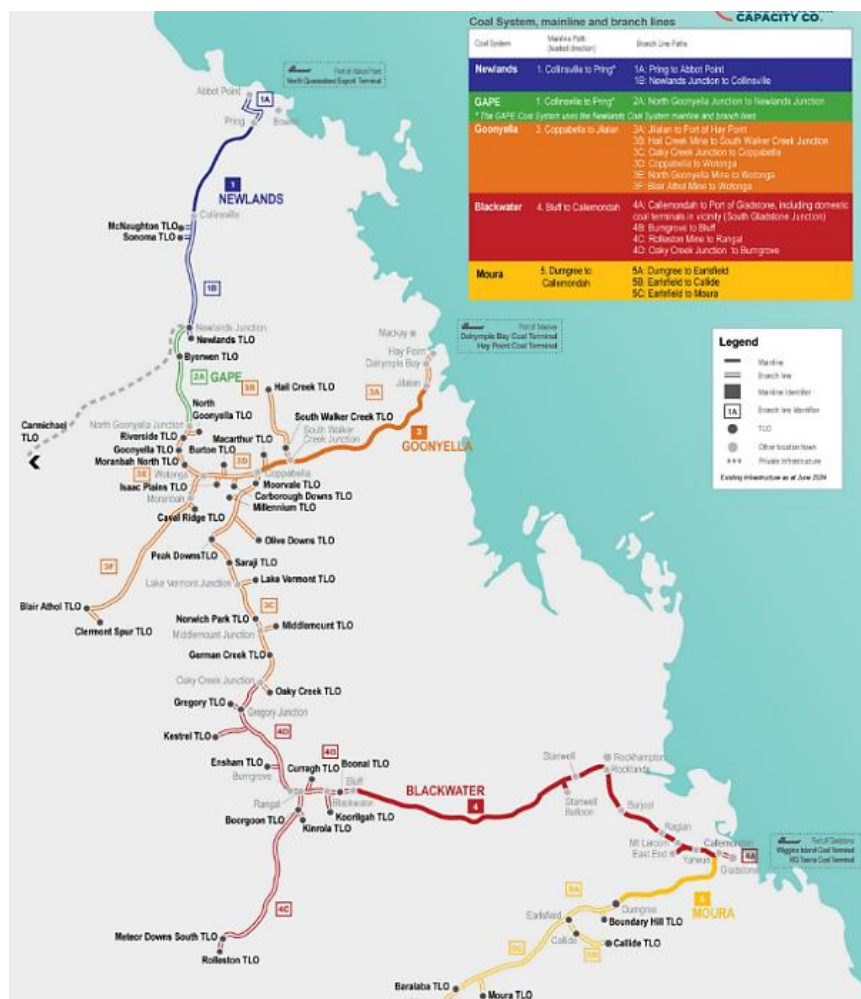
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
In section C.7, Mr Dederer explains that [REDACTED]
[REDACTED]

⁸³ See DBCT, 2023 DBCT Master Plan, sections 5.4 and 5.5 (<https://dbinfrastructure.com.au/dalrymple-bay-terminal/terminal-overview/#master-plan>).

3.7 Below rail connectivity to the Terminal – Newlands system and CQCN

- 196 The Terminal is accessed via the Newlands System, which is one of five interconnected rail systems that together form the CQCN.
- 197 The CQCN connects more than 50 mines to five coal export terminals and comprises ~3,000 km of below rail infrastructure. As the below-rail provider, Aurizon Network is responsible for granting of access rights to coal producers as well as train scheduling, signalling and maintenance.

Figure 5 Central Queensland Coal Network



The Newlands system is capacity constrained

- 198 As noted above at paragraphs 140 and 145, the Newlands system is itself connected to the rest of the CQCN via the 69 km GAPE System which joins the Newlands and Goonyella systems. The Goonyella System connects mines in the Bowen Basin to DBCT and, in the case of mines operated by BHP or associated joint venture entities, HPCT. The Goonyella System also runs south to Oak Creek Junction where it connects to other systems linking the CQCN to the WICET and RGTCT coal terminals at the Port of Gladstone.

- 199 Although the GAPE System was designed to align with the X50 Expansion and facilitate the Terminal operating at its nameplate capacity of 50 mtpa, this has never been delivered.⁸⁴
- 200 Following the introduction of an independent capacity assessment process in 2021 as part of Aurizon's access undertaking approved by the QCA (**UT5**), the extent of the ECD has been monitored and reassessed annually.⁸⁵ The most recent 2025 Annual Capacity Assessment Report (**2025 ACAR**) was released on 18 June 2025. The 2025 ACAR indicates, for the Newlands and GAPE systems:⁸⁶
- (a) the maximum system capacity of the Newlands System is 38.6 mtpa, a 7% deterioration in available system capacity from 2024;
 - (b) deliverable network capacity (**DNC**) in FY26 of 5,951 train paths, compared to committed capacity of 7,468 train paths;
 - (c) an ECD of 1,518 train paths in FY26, equivalent to 9.8 mtpa at median expected payload; and
 - (d) an expectation that an ECD will continue until at least FY30 (the ACAR does not extend beyond FY30).
- 201 While the QCA has recently approved further investment from the Aurizon Network to reduce this deficit, the expansion is expected to bring capacity to only ~45 mtpa.
- 202 As such, while Aurizon Network has undertaken some limited capital improvement works, these have been insufficient to meaningfully improve capacity,⁸⁷ and the deficit is expected to continue until at least FY30 (see Figure 6 below). Even then, the 'solution' for the ECD results from a gradual reduction in contracted entitlements over the relevant period and not from any material improvement in the capacity which Aurizon Network expects to make available.

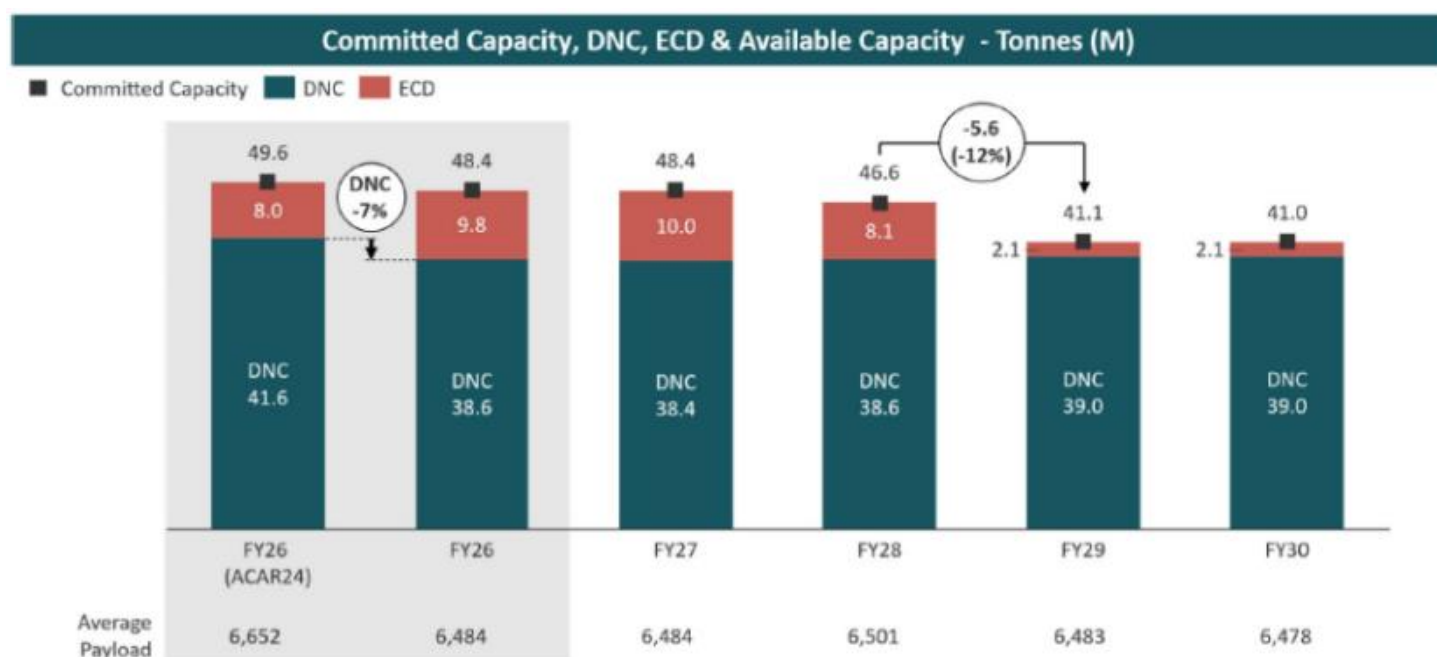
⁸⁴ Since the commissioning of the X50 project, NQXT has engaged an independent capacity assessment at least every two years and this has consistently determined that the available capacity of NQXT has been 50 mtpa.

⁸⁵ Coal Network Capacity Co, *Initial Capacity Assessment Report*, 27 October 2021 (<https://www.qca.org.au/wp-content/uploads/2021/11/coal-network-capacity-co-initial-capacity-assessment-report-redacted.pdf>).

⁸⁶ Coal Network Capacity Co, *ACAR25: Annual Capacity Assessment Report*, 18 June 2025, page 19.

⁸⁷ See for example, the most recent project which delivered less capacity than expected: Coal Network Capacity Co, *Independent Expert Report Expansion Capacity Assessment for RCS Project*, 28 January 2025 ([250128_expansion-capacity-assessment_post-implementation.pdf](#)).

Figure 6 Newlands/GAPE Deliverable Network Capacity (DNC) and Existing Capacity Deficit (ECD)⁸⁸



203 Competing export terminals are situated on other rail systems which do not face the same below-rail capacity constraints. For example, DBCT is on the Goonyella system which is expected to have at least 3 mtpa of available capacity (beyond currently contracted entitlements) in 2026.

204 [REDACTED]. The Carmichael Mine has a very large amount of available coal reserves. According to the most recent Wood Mackenzie asset report for the Carmichael Mine:⁸⁹

- (a) [REDACTED]
- (b) [REDACTED]

Role of Aurizon Network

205 Aurizon Network owns and operates the CQCN below rail infrastructure subject to the UT5 Undertaking.⁹⁰

206 Once users have below-rail access, they must submit orders to Aurizon Network for train paths which are scheduled routes and times that a train is allocated to travel between points on the network. The scheduling of train paths is managed by Aurizon Network, based on path requests by users, and in accordance with scheduling rules set out in Schedule G of UT5.

⁸⁸ Ibid, page 19.

⁸⁹ Wood Mackenzie, *Asset Report for Carmichael Mine*, June 2025, page 6. A copy of this document is attached to Brendan Lane's Statement as Confidential Annexure BL3.

⁹⁰ The Aurizon Network 2017 Access Undertaking, commonly known as 'UT5'. A copy of the current UT5 is available on Aurizon's website at <https://www.aurizon.com.au/what-we-do/network/central-queensland-coal-network/cqcn-information>.

207 Neither APO nor NQXT have any role under Schedule G and are considered only as stakeholders for the purposes of consultation in the operation of the network and delivery of services connecting the terminal.

Carmichael Rail Network

208 Production from the Carmichael mine is transported using the Carmichael Rail Network which connects Carmichael Mine to Aurizon's Newlands rail system south of Collinsville. From the point at which the Carmichael Rail Network joins the Newlands rail system, trains can either run north approximately 164km to the Terminal, or south to DBCT at the Port of Hay Point via the interconnected GAPE and Goonyella rail systems. The Carmichael below rail infrastructure is owned and operated by Bowen Rail, a related entity in the Adani Group. Bowen Rail operates independently of NQXT and other entities in the Adani Group, as outlined at section 3.15 below.

209 As explained in Mr Lane's statement, the nameplate capacity of the Carmichael Rail Network is approximately [REDACTED], however [REDACTED].⁹¹

210 The Carmichael Rail Network currently only has one user (Bravus), which transports approximately [REDACTED], meaning the Carmichael Rail Network has spare capacity.

211 The Carmichael mine is currently the only active mine operating in the Galilee Basin and there are no immediate or material prospects of additional mines being developed.

Above rail (coal haulage services)

212 Coal rail haulage services operating across the CQCN include the following:

- (a) competitive services offered by each of Aurizon and Pacific National, which operate across the CQCN;
- (b) Bowen Rail which, as explained in Mr Lane's statement in section 4, provides a dedicated haulage service for Bravus from the Carmichael Mine to the Terminal, and therefore utilises both the Carmichael Rail Network and the Newlands System; and
- (c) BMA Rail which provides dedicated internal haulage services between mines operated by BHP (and its associated joint venture entities) and terminals used by these mines, which include both DBCT and HPCT.

213 The market for coal haulage services within the CQCN is outlined further at section 5.8.

3.8 Terminal rail loop and dumpstation

214 Above-rail haulage providers travel into the Terminal's rail loop and dumpstation, which is the physical interface between the Terminal and Aurizon's below-rail network.

215 The trains which service the Terminal utilise bottom-dump wagons in which coal is discharged by opening doors beneath wagons into a below ground hopper at the dumpstation. The coal is then placed onto a belt conveyor system so it can be stockpiled or directly loaded.

216 **Figure 7** shows the components of the inloading system, including the balloon rail loop, dumpstation and conveyors.

⁹¹ Statement of Brendan Lane, paragraph 13.

Figure 7 Terminal areas



217 As with all day-to-day aspects of the Terminal, [REDACTED]
[REDACTED].

218 The Terminal Regulations [REDACTED]
[REDACTED]
[REDACTED].⁹²

219 [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED].⁹³

220 The Operator is also required to work with above-rail providers to [REDACTED]
[REDACTED]

(a) [REDACTED]

(b) [REDACTED]
[REDACTED].⁹⁴

221 Under the OMC, the Operator [REDACTED]
[REDACTED]
[REDACTED].⁹⁵

3.9 Stockpiling

222 The stockyard at the Terminal provides temporary storage for coal in preparation for shipping. Separate stockpiles are built to segregate coal by user and product type; however, the OMC requires the Operator to [REDACTED].

⁹² Terminal Regulations, cl 3.3.

⁹³ Statement of Damien Dederer, paragraphs 28-30.

⁹⁴ Terminal Regulations, cl 3.5.

⁹⁵ OMC Sch 3, cl 3.3.

223 Stacker reclaimer machines receive incoming coal from conveyors and build stockpiles. The machines later 'reclaim' the coal for transport by discharging it onto the conveyor system for transport via the jetty to awaiting vessels. The six stacker reclaimer machines at the Terminal are each mounted to a set of rails which enables them to travel in linear rows within the stockyard.

224 The stockyard currently provides approximately [REDACTED] linear metres of stockpiles, arranged in six rows. This is equivalent to [REDACTED] of storage capacity.

225 Under the Terminal Regulations, [REDACTED]
[REDACTED]
[REDACTED]^{.96}

226 The OMC also requires the Operator to [REDACTED]
[REDACTED]^{.97}

227 **Figure 8** below shows the Terminal's stockpiling facilities:

Figure 8 Stockpiles at the Terminal



3.10 Vessel management and loading

228 The outloading operation at the Terminal transfers coal from the stockyard to the holds of bulk cargo ships which berth at the end of the Terminal's jetty (see **Figure 9** below).

229 Ship movements in and out of the Port of Abbot Point are controlled by the Australian Maritime Safety Authority and Maritime Safety Queensland.

230 Once ships enter the Port, the vessel queue and berthing process is managed by the Operator, in accordance with the Terminal Regulations.

⁹⁶ Terminal Regulations, cl 5.1.

⁹⁷ OMC Sch 3, cl 3.4.

- 231 The Terminal Regulations [REDACTED]
[REDACTED]
[REDACTED].⁹⁸ QCoal has raised some concerns about the application of the Terminal Regulations in this respect, but [REDACTED]
[REDACTED] (as explained further in Mr Smith's statement).¹⁰⁰
- 232 Users notify the Operator of their incoming vessels at least 14 days prior to scheduled arrival. Under the Terminal Regulations, [REDACTED]
[REDACTED]
[REDACTED].¹⁰¹
- 233 The OMC also requires the Operator to [REDACTED]
[REDACTED]
[REDACTED]

Figure 9 Terminal outloading infrastructure



3.11 Customers of the Terminal and their access agreements

- 234 As previously described at section 2.1, since the X50 Expansion access has been made available to users on non-discriminatory terms by way of a standard [REDACTED]
[REDACTED]
- 235 The Legacy User Agreement was structured to underwrite the State's investment in the X50 Expansion with customers agreeing to [REDACTED]

⁹⁸ Terminal Regulations, cl 6.1.

⁹⁹ For example, the Terminal Regulations at WICET, which is owned by a group of coal producers, recognise that "geared vessels can pose a significant risk to terminal infrastructure and throughput capacity": WICET, *Terminal Rules Standard*, 11 December 2024 (<https://core.opentext.com/pdfs/web/viewer.html?shortLink=857399b35941593731265a480dea86d2bbb0ecdef18579cf>).

¹⁰⁰ Statement of Mark Smith, sections G.2(b) and H.3(b).

¹⁰¹ Terminal Regulations, cl 6.7.

[REDACTED]. At the time the Legacy User Agreements were developed, the Terminal, and Queensland's coal sector more broadly, were characterised by:

- (a) rapid and strong growth in the coal market which saw high global demand and prices, primarily driven by the industrialisation of emerging economies such as China and underinvestment in domestic export capacity over the previous decade;
- (b) pressure on supply chain capacity, which resulted in NQXT rapidly over several expansions undertaken during the 2000s to meet this growing demand;
- (c) an accepted model in the sector to underwrite major capacity investments (including those at the Terminal) through long term 'take or pay' contracts;
- (d) alignment of the Terminal's capacity and timing of the X50 Expansion with the introduction of the / GAPE rail project by Aurizon Network; and
- (e) user agreements at the Terminal being entered into with PCQ.

236 The terms of the Legacy User Agreements reflect this combination of factors through the following characteristics:

(a) **Charges** – each user is subject to the following charges:

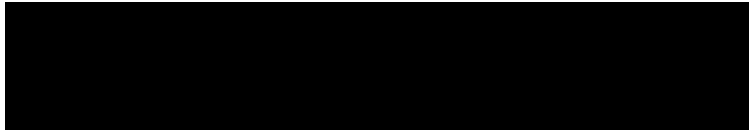
- (i) the [REDACTED]
[REDACTED];
- (ii) [REDACTED]
[REDACTED]; and
- (iii) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

(b) **TIC and TPC pricing model** – [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] This pricing model is discussed further below at section 3.12(b).

(c) **Arbitration** – [REDACTED]
[REDACTED]
[REDACTED]

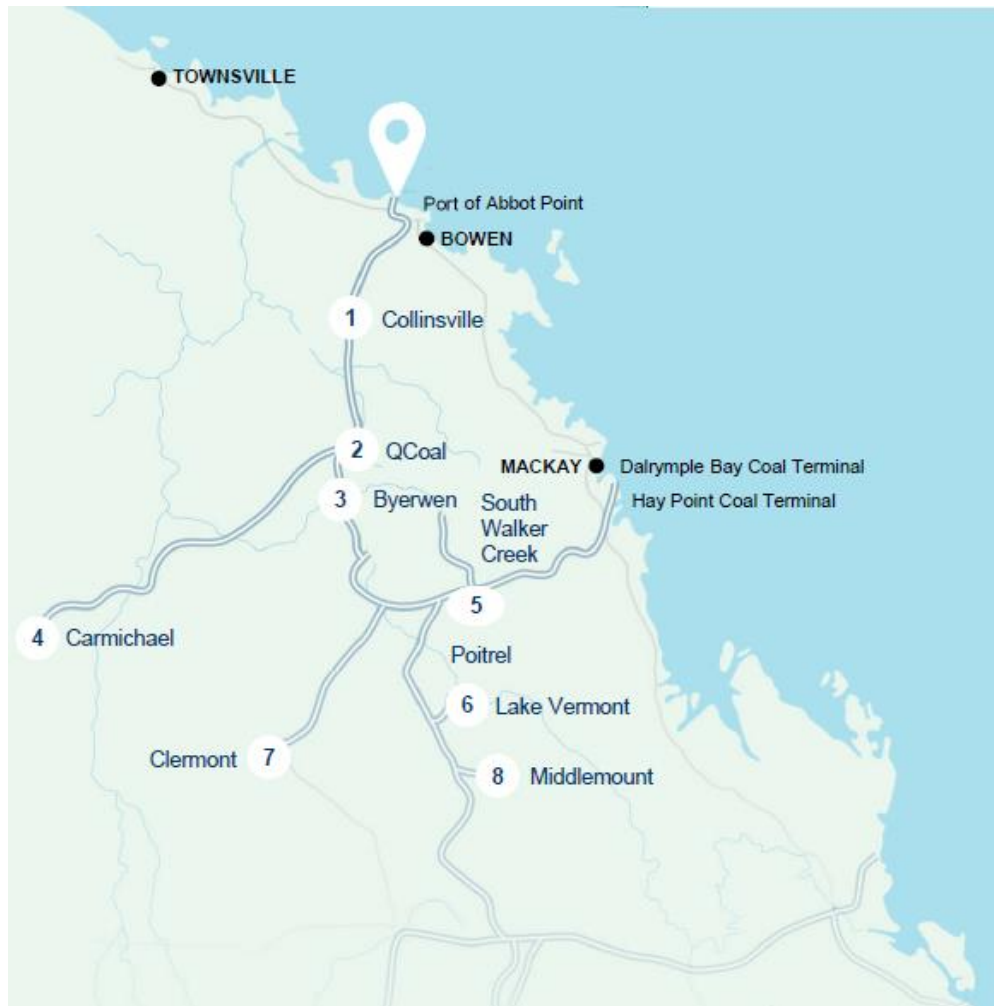
(d) **Initial Term** – Consistent with their use [REDACTED]
[REDACTED], the Legacy User Agreements generally have terms of [REDACTED] and expire between [REDACTED]

(e) **Additional Term** – [REDACTED]
[REDACTED]
[REDACTED]



241 The Legacy Users are each connected to NQXT via the CQCN as shown in **Figure 10** below.

Figure 10 Location of NQXT'S existing customers



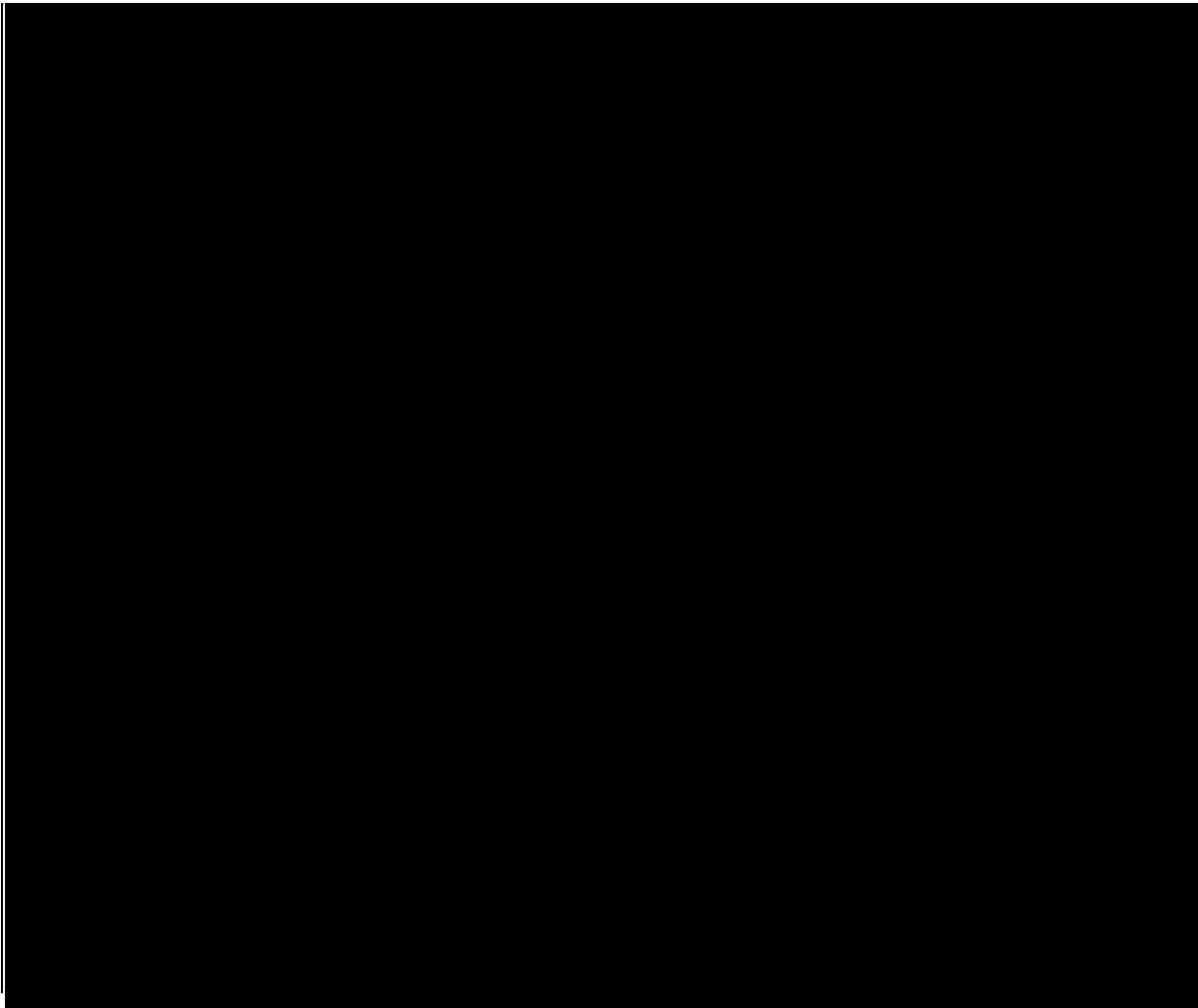
242 The approximate share of throughput at the Terminal in FY25 for the eight Legacy Users was:

[Redacted]

243 **Table 2** below shows the historic throughput of the Terminal by user over the past ten financial years, including several coal producers who no longer export through the Terminal: [Redacted]

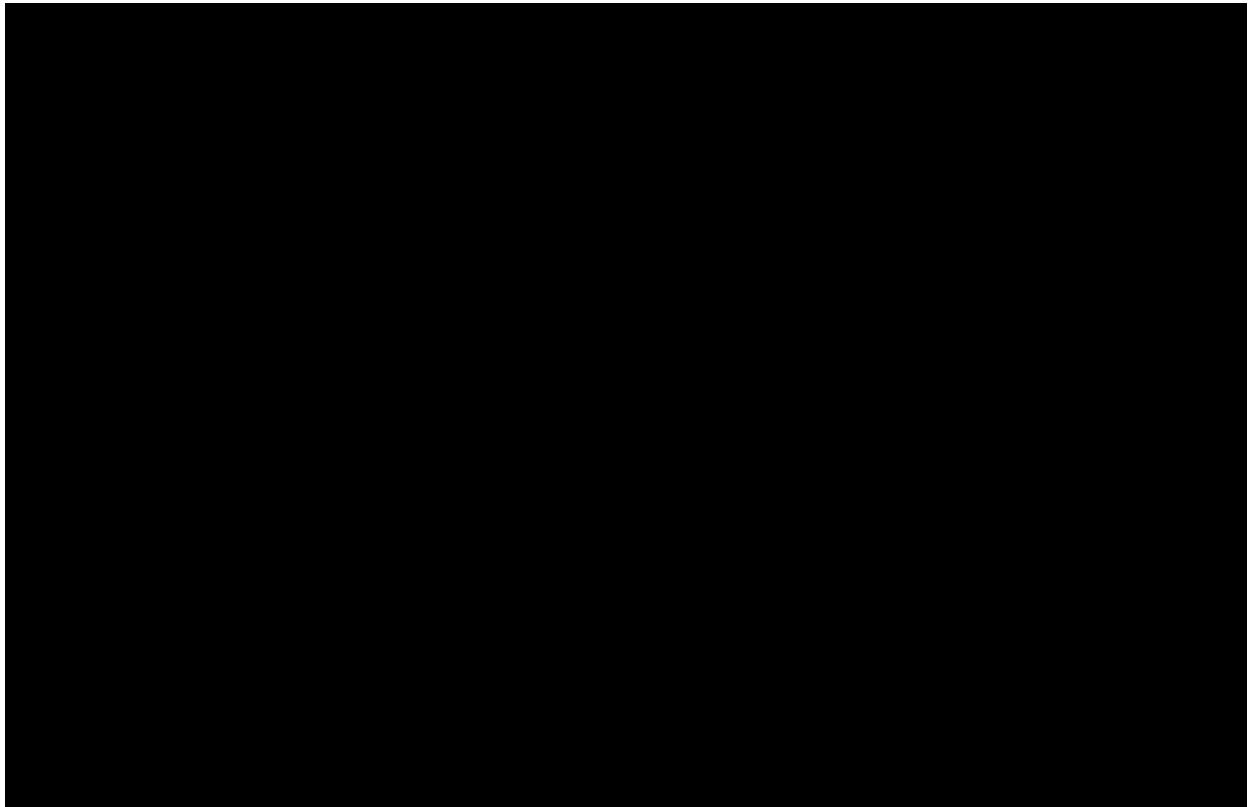
[Redacted]

Table 2



244 **Figure 11** below visually demonstrates the data in Table 2 and maps this utilisation against the Terminal's nameplate capacity of 50 mtpa, which as demonstrated has exceeded actual throughput.

Figure 11



245 The Legacy Users' current contracted 'take or pay' volumes total for FY25 is [REDACTED]. This means that since privatisation, the Terminal has always operated with [REDACTED].

246 As shown in Table 2, the largest annual volume of coal actually handled by the Terminal (in actual throughput) was [REDACTED] in the [REDACTED] financial year.

247 While the coal volumes serviced at the Terminal since privatisation have been contracted by the Legacy Users under their [REDACTED] agreements, these arrangements are all due to expire between [REDACTED].

248 **Figure 12** below shows NQXT's contracted capacity against available capacity from FY26 to FY32, reflecting the fact that [REDACTED]

[REDACTED]
[REDACTED].

Figure 12 [REDACTED]



3.12 Commercial arrangements for access to the Terminal following expiry of Legacy User Agreements

249 As identified in paragraph 77 above, the Legacy User Agreements are all due to expire between [REDACTED]

250 The volume at NQXT's Terminal that is up for renewal during the [REDACTED] is [REDACTED]

251 As a result, [REDACTED] and process prescribed by the Legacy User Agreement.

252 As well as seeking [REDACTED].

253 Under the terms of the Legacy User Agreement, NQXT is required to [REDACTED]. In 2024, NQXT [REDACTED].

254 The matters which NQXT considered in [REDACTED], including the various commercial and competitive risks facing the Terminal, are further outlined in Mr Smith's statement at section G.2. [REDACTED]. As described in section 2.2, these changes include:

- (a) [REDACTED];
- (b) [REDACTED];
- (c) [REDACTED];
- (d) [REDACTED];
- (e) [REDACTED];
- (f) [REDACTED];
- (g) [REDACTED];

255 However, the fundamental approach to providing access for customers remains unchanged. In a number of respects, the updating and further development of the Standard Agreement reflects benefits for users, including significantly reducing their exposure to socialised contract risk (discussed below).

256 To assist the QCA, NQXT has provided a comprehensive comparison of the Legacy User Agreement and the terms of the New Standard Agreement at **Annexure F**.

(a) Commercial terms of NQXT's New Standard Agreement

257 There is a high degree of consistency in the non-price terms offered to renewing users.

258 Like the Legacy User Agreements, the New Standard Agreement provides [REDACTED]
[REDACTED]
[REDACTED].¹⁰⁴

259 The following central non-price features are [REDACTED]
[REDACTED]:

(a) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED].¹⁰⁵

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED].

(b) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED].

(c) [REDACTED]
[REDACTED]
[REDACTED].¹⁰⁷

(d) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED].¹⁰⁹

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED].¹¹⁰

¹⁰⁴ New Standard Agreement, cl 3.1.

¹⁰⁵ New Standard Agreement, cl 3.2.

¹⁰⁶ New Standard Agreement, cl 3.4.

¹⁰⁷ Ibid.

¹⁰⁸ New Standard Agreement, cl 3.6.

¹⁰⁹ Ibid.

¹¹⁰ New Standard Agreement, cl 3.5.

_____. 111

(e) [REDACTED]

(f) [REDACTED]

(g) [REDACTED]

(i) [REDACTED]

(ii)

Item	Value
(ii)	118

¹¹¹ New Standard Agreement, cl 3.6.

¹¹² New Standard Agreement, cl 22.

¹¹³ New Standard Agreement, cl 12.

¹¹⁴ New Standard Agreement, cl 5.

¹¹⁵ Legacy Standard Agreement, cl 24.

¹¹⁶ New Standard Agreement, cl 20.

¹¹⁷ WICET Access Policy, 24 May 2010 (updated 12 February 2018, paragraph 7.2(d) (<https://core.opentext.com/pdfjs/web/viewer.html?shortLink=0ec49faeada366a660e528666f304f93f382471b1db4ba20>)).

¹¹⁸ Item 4 Aurizon UT5 Standard Access Agreement, cl 6.3 and Sch 1 (<https://media.aurizon.com.au/-/media/files/what-we-do/network/central-queensland-coal-network/cqcn-information/cqcn-customer-access-forms/ut5-standard-access-agreement.pdf?rev=a2f05698ee5d4fc9a5b49054c4d378ef>).

(b) Price terms in NQXT's New Standard Agreement

260 The [REDACTED]
[REDACTED] has never operated effectively and has been a source of periodic disputes. Indeed, almost all of the complaints raised by the QCoal Users in their declaration request refer to disputes related to the operation of the legacy pricing framework.

261 Historically, tariffs in the Legacy User Agreement have been based on [REDACTED]
[REDACTED]. Under this model, [REDACTED]
[REDACTED]. The revenue requirement was then
[REDACTED]

262 This model provided a [REDACTED]
[REDACTED]. The [REDACTED] has also given rise to disputes that have resulted in significant litigation such as the lengthy proceedings in the Supreme Court of Queensland, and subsequently on appeal in the Queensland Court of Appeal, during the period 2020-2021 involving AAPT (now NQXT), Lake Vermont Resources and QCoal.

263 Those proceedings were commenced by AAPT in response to Lake Vermont Resources and QCoal refusing to pay 50% of the handling charges invoiced by AAPT since 1 July 2017 (as the users were entitled to do under the terms of their Legacy User Agreements in the event of a dispute) on the basis that AAPT had not demonstrated that the charges were reasonable as required by clause 7.6(b) of the Legacy User Agreements (noting that Lake Vermont Resources and QCoal did not argue that the charges were *unreasonable* per se, only that AAPT did not *demonstrate* that they were reasonable having regard to the efficient operation of the Terminal). The argument that AAPT had not demonstrated the costs were reasonable was successful at first instance,¹¹⁹ but subsequently overturned on appeal by the Queensland Court of Appeal.¹²⁰ Special leave to appeal the Queensland Court of Appeal's decision was refused by the High Court of Australia on 17 June 2022.¹²¹

264 The period of approximately four years from when Lake Vermont Resources and QCoal ceased paying 50% of the invoices handling charges until the final resolution of the appeal in August 2021 [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED].

265 The historical approach to price setting under the Legacy User Agreement that was established by PCQ (and not NQXT) has therefore been problematic for both NQXT and its users over the last decade, including because:

- (a) as noted above at paragraph 236(b), the [REDACTED]
[REDACTED]
[REDACTED];
- (b) because it operates [REDACTED]
[REDACTED]
[REDACTED];
- (c) the model has [REDACTED]
[REDACTED]; and

¹¹⁹ *Adani Abbot Point Terminal Pty Ltd v Lake Vermont Resources Pty Ltd & Ors* [2020] QSC 260.

¹²⁰ *Adani Abbot Point Terminal Pty Limited v Lake Vermont Resources Pty Limited and Ors* [2021] QCA 187.

¹²¹ *Lake Vermont Resources Pty Limited v Adani Abbot Point Terminal Pty Limited & Ors; QCoal Pty Limited & Ors v Adani Abbot Point Terminal Pty Limited & Anor* [2022] HCATrans 110.

- (d) the process inevitably relies upon [REDACTED] (as referred to by the QCoal Users in their declaration request).¹²²

266 In its [REDACTED]
[REDACTED]
[REDACTED].

267 This increasingly means that [REDACTED]
[REDACTED]
[REDACTED] offered as part of the New Standard Agreement involves the following components:

- (a) **Annual Access Charge ('Port Charge')** which is the [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]. This is consistent with other take or pay models (e.g. Aurizon and ARTC).

- (b) **Handling Charge** which covers the [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED].

- (c) **Miscellaneous service charges.** As outlined in further detail below, the Terminal is seeking to [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

- (d) **Post Delivery and Handling Window Charge** which is a charge for [REDACTED]
[REDACTED].

268 Unlike the current Legacy User Agreements, this model provides much greater price certainty to users.

269 The New Standard Agreements clarify what can and cannot be charged to users. Importantly,
[REDACTED]
[REDACTED]
[REDACTED]

270 The pricing model under the New Standard Agreement also [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

¹²² QCoal Users' Declaration Request, paragraphs 52-53.

271 While this is the standard pricing structure, [REDACTED]
[REDACTED], including:

(a) [REDACTED]
[REDACTED]

(b) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

(c) [REDACTED]
[REDACTED]
[REDACTED]

272 As this demonstrates, and for the first time, [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

273 This kind of [REDACTED] reflects the strong incentives on NQXT to secure renewed volumes and the constraints and competitive threats which it faces in trying to do so.

(c) NQXT's negotiations with renewing users

274 [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

275 [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

276 [REDACTED]
[REDACTED]
[REDACTED]

277 [REDACTED]
[REDACTED]

(a) [REDACTED]

(b) [REDACTED]
[REDACTED]
[REDACTED]

(c) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

- (k) [Redacted]
- (l) [Redacted]
[Redacted]
[Redacted]
- (m) [Redacted]
[Redacted]
- (n) [Redacted]
[Redacted]
- (o) [Redacted]
[Redacted]
[Redacted]
- (p) [Redacted]
[Redacted]
- (q) [Redacted]
[Redacted]
- (r) [Redacted]
[Redacted]
[Redacted]

[Redacted]

282 [Redacted]
[Redacted]

283 [Redacted]
[Redacted] [Redacted]
[Redacted]

284 [Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]

285 [Redacted]
[Redacted]

- (a) [Redacted]
- (b) [Redacted]
[Redacted]
- (c) [Redacted]
[Redacted]
[Redacted]
- (d) [Redacted]
[Redacted]
[Redacted]

- (e) [REDACTED]
- (f) [REDACTED]
- (g) [REDACTED]
- (h) [REDACTED]
- (i) [REDACTED]
- (j) [REDACTED]
- (k) [REDACTED]

[REDACTED]

286 [REDACTED]

287 [REDACTED]

[REDACTED]

288 [REDACTED]

289 [REDACTED]

290 [REDACTED]

3.13 Implications of contract renewals and demand uncertainty on forecast revenue

291 The combination of renewal uncertainty and longer-term demand risks [REDACTED]
[REDACTED]. NQXT has undertaken [REDACTED]
[REDACTED]

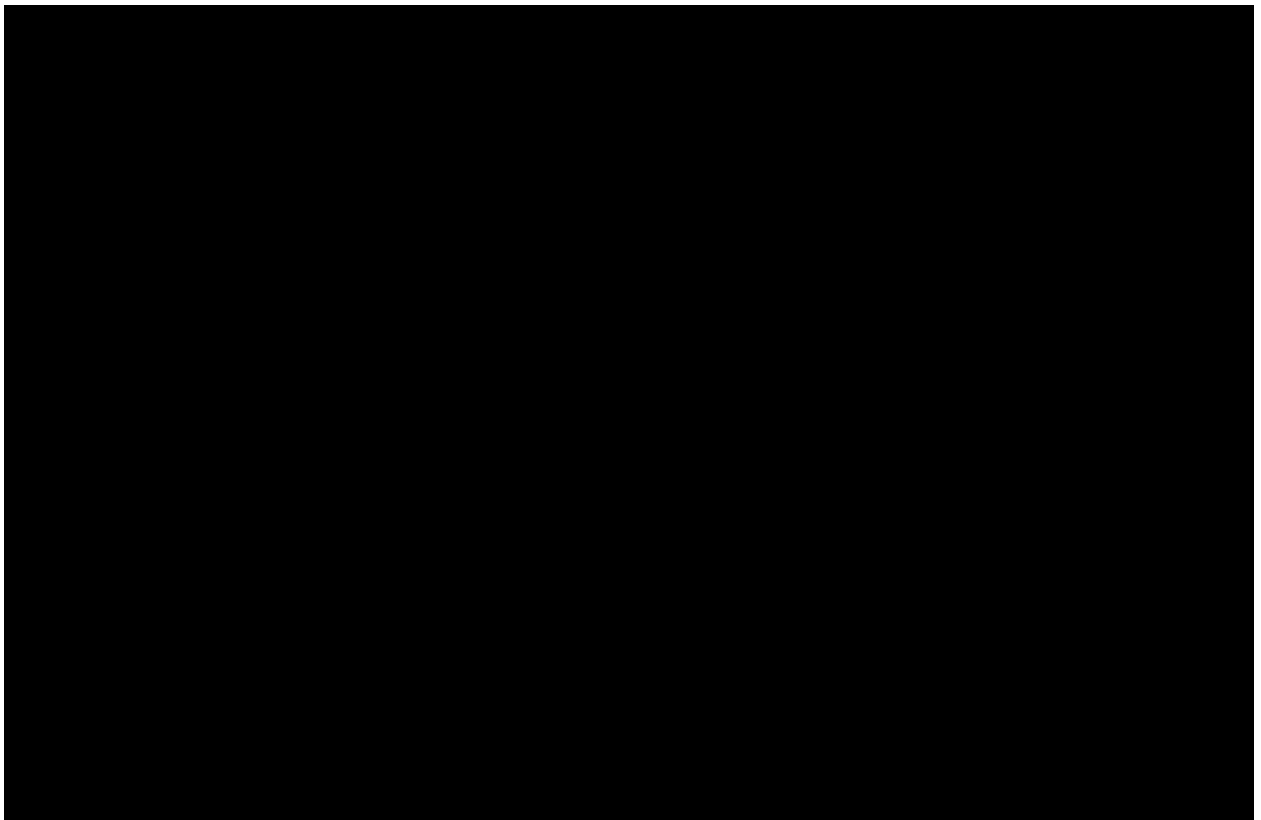
- (a) [REDACTED]

¹²³ See statement of Mark Smith, section I.2.

- (b) [REDACTED]
- (c) [REDACTED]

292 These [REDACTED] are shown in **Figure 13** below.

Figure 13 [REDACTED]



293 [REDACTED] is shown in **Figure 14** below. [REDACTED]

294 [REDACTED]

Figure 14 [REDACTED]



295 [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

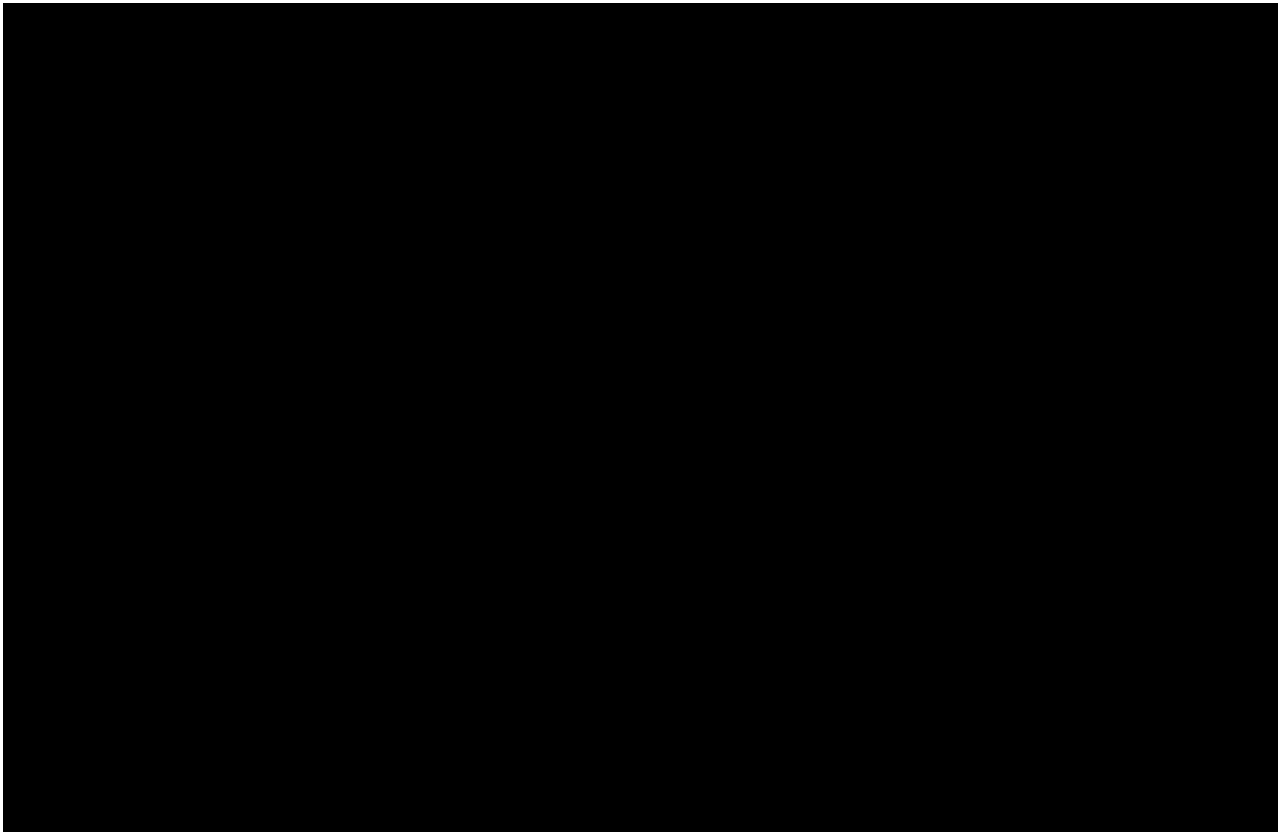
296 However as discussed above, [REDACTED]
[REDACTED]
[REDACTED].

297 [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

(a) [REDACTED]
[REDACTED]

(b) [REDACTED]
[REDACTED].

Figure 15



298 The above projections [REDACTED]
[REDACTED]. [REDACTED] NQXT faces a very
strong commercial imperative to secure contracts with users.

299 It also illustrates that, [REDACTED]
[REDACTED]
[REDACTED]

3.14 Development in the services provided at the Terminal [REDACTED]

300 As well as pricing, [REDACTED], NQXT is also actively
exploring how it can further develop and expand its operational arrangements [REDACTED]
[REDACTED]
[REDACTED]

301 This work includes the following:

(b) [REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

(c) [REDACTED]
[REDACTED]

[REDACTED]

(d) [REDACTED]

(e) [REDACTED]

(f) [REDACTED]

As noted in Mr Dederer's statement at section C.7, [REDACTED]

302 [REDACTED] is addressed in more detail in Mr Smith's Statement in section G.2.

303 [REDACTED]¹²⁴

- (a) [REDACTED]
- (b) [REDACTED]
- (c) [REDACTED]
- (d) [REDACTED]
- (e) [REDACTED]

3.15 Support for individual users as a feature of service quality

304 As will be apparent from the above, terminal services at a coal expert terminal are not a 'one size fits all' product. There are important differences in coal products and supply chain arrangements that impact upon the way in which a coal producer prefers to use the Terminal.

¹²⁴ Statement of Mark Smith, paragraphs 122-124.

305 A good example of this in the context of the Terminal is [REDACTED]
[REDACTED]
[REDACTED]. This is explained by Mr Dederer as follows (at paragraphs 55 to 59):

The rate at which coal can be unloaded and loaded from the Terminal is impacted by the quality and type of coal that is delivered. For example, some thermal coal is a larger, hydrophobic coal, whereas coking coal is smaller, more moisture-absorbing coal. Coking coal, in absorbing more moisture than thermal, can become “stickier” and that can mean that it doesn’t flow as freely out of the wagons during the inloading process. Consequently, it naturally can have a lower Nett and Gross Unload Rate than thermal coal.

[REDACTED]. As can be seen from Figure 3 below, the Operator maintains a Quality Management System Events (QMSE) register, which records the number of disruptions and events to the inloading and outloading process. The QMSE data shows that, over the 2024-25 financial year,

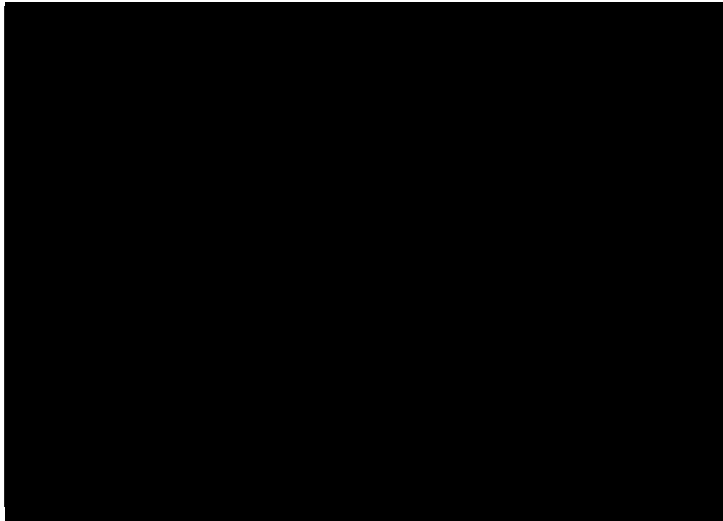
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

The difference between those who deliver thermal coal and those that deliver coking coal largely explains difference in unloading rates. [REDACTED]
[REDACTED]
[REDACTED]

The QMSE data in Figure 3 also highlights the way in which we work with customers to improve end to end supply chain efficiency. During 2024, the [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] (as shown in Figure 3). We have worked in a similar way with other customers to address issues, such as exploring ways to reduce the incidence of sticky coal.

Figure 3



306 As this experience demonstrates, there is material commercial benefit from enabling NQXT to respond to and support users individually in developing their supply chain to optimise throughput and lower costs. It also demonstrates that the QCoal Users, more than others, have benefited from additional servicing by the Terminal (provided historically at no additional cost) to help manage their requirements.

3.16 Relationship between NQXT and other entities within the Adani Group

The Adani Group

307 The Adani Group comprises a group of entities operating under a publicly listed Indian conglomerate company, Adani Enterprises Limited. The Adani Group was established in 1998 by its chairman, Gautam Adani and is still largely controlled by the Adani family.

308 Within the Adani Group, NQXT sits under Adani Ports and Special Economic Zone Ltd (**APSEZ**) which acquired NQXT in April 2025 following an internal restructure. APSEZ is an Indian multinational port operator and logistics company but does not acquire or trade coal.

309 In relation to the Terminal, [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

310 As explained at section 3.5, in 2017, the Adani Group established an [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] is further explained in Mr Smith's statement in section D.2, but at a high level, it:

- (a) [REDACTED]
- (b) [REDACTED]
- (c) [REDACTED]
[REDACTED]
[REDACTED]

311 NQXT takes a range of steps each year to [REDACTED]
[REDACTED], including:

- (a) [REDACTED]
- (b) [REDACTED]
- (c) [REDACTED]

312 Through the course of [REDACTED]. In response to some of these concerns, and as explained in section 3.5 above and Mr Smith's statement at section D.3, [REDACTED].

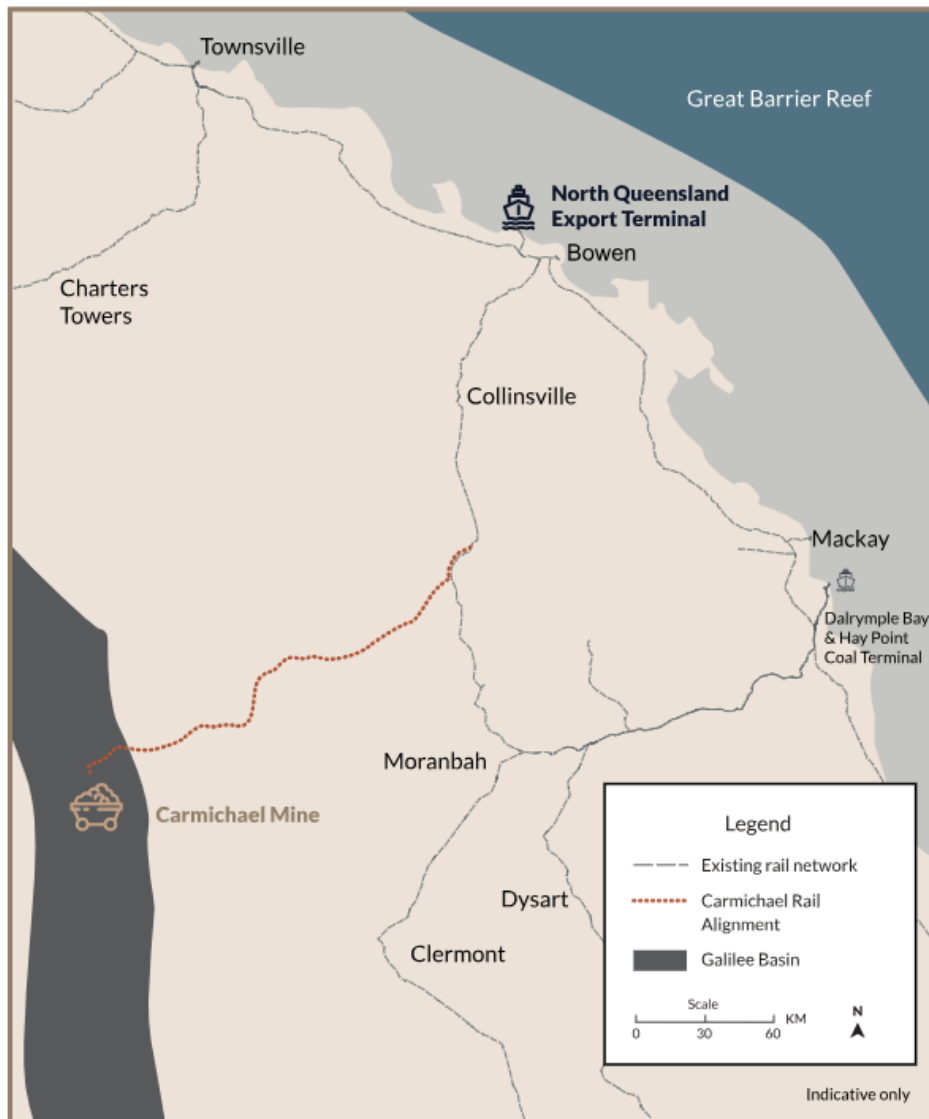
313 In user negotiations, NQXT has indicated that [REDACTED]

Carmichael Rail Network and Bowen Rail Company

314 One of the most significant investments by the Adani Group in Queensland's coal sector was the ~\$2.5 billion Carmichael Mine and Rail Project which was completed in 2021.

315 To connect the Carmichael mine and broader Galilee Basin to export facilities, the Adani Group constructed ~189km of new railway infrastructure, running from the Carmichael mine to Aurizon's Newlands rail system south of Collinsville as shown in **Figure 16** below. This project opened the Galilee Basin for commercial operations by establishing the first coal mine in the region and, more importantly, an open access rail network to connect the area to existing rail infrastructure and NQXT.

Figure 16 Carmichael Rail Network



- 316 From the point at which the Carmichael Rail Network joins the pre-existing Newlands rail system, trains can either run north to the Terminal or south to DBCT at the Port of Hay Point via the GAPE and Goonyella rail systems (or further south to Gladstone).
- 317 The nameplate capacity of the Carmichael Rail Network is [REDACTED], however [REDACTED].¹²⁵ The CRN currently only has one user (Bravus) and [REDACTED].
- 318 As explained in Mr Lane's statement in section 5, the Carmichael Rail Network is open-access and operates under an Access Policy approved by the State Government.¹²⁶ The Access Policy operates as a deed poll which access seekers may accede to, enabling them to directly enforce their rights under the deed. [REDACTED]

¹²⁵ Statement of Brendan Lane, paragraph 13.

¹²⁶ Carmichael Rail Network Access Policy, December 2021. A copy of this document is attached as Annexure BL1 to the Statement of Brendan Lane.

As a result, currently the only user of these below-rail services is Bravus.

319 In addition to constructing the below rail infrastructure, the Adani Group also invested in locomotives and rolling stock to operate a dedicated, internal haulage service for the Carmichael mine (referred to as Bowen Rail).

8

320 With its current fleet of rolling stock, Bowen Rail has approximately of above rail capacity, of which is reserved for Bravus' forecast production for this year. The excess is considered 'sprint capacity', reserved for times when it is needed by Bravus for additional ad hoc haulage.¹²⁹

321 services run each day from Carmichael mine to the Terminal. One round trip from the Carmichael Mine to the Terminal takes approximately 23 hours, including loading and unloading time.

322 More information on Bowen Rail is set out in the statement of Mr Lane.

Bravus Mining and Resources

323 Bravus operates the Carmichael mine, which produces thermal coal ~160km northwest of Clermont and is the only mine operational in the Galilee Basin. The Carmichael mine has significant coal reserves:

324 The Carmichael mine currently has capacity to produce up to but currently produces around . As noted above, Bravus has a user agreement with NQXT due to expire in , under which Bravus has contracted capacity at the Terminal. Bravus' actual throughput at the Terminal in recent years has been .

325 Bravus has regulatory approvals to incrementally develop the mine to produce up to 60 mtpa but, as explained in paragraphs 100 to 104 above, Bravus has recently announced a decision to make a capital investment to increase production at the Carmichael mine to around 16 mtpa, subject to regulatory approvals.

.¹³⁰

326

¹²⁷ Statement of Brendan Lane, paragraph 27.

¹²⁸ Statement of Brendan Lane, paragraphs 15-17.

¹²⁹ Statement of Brendan Lane, paragraph 18.

¹³⁰ Statement of Brendan Lane, paragraphs 39-41.

327

328 Notwithstanding the recent announcement to moderately increase production at the Carmichael mine, the QCoal Users are wrong when they contend that NQXT “*has the ability and incentive to restrict throughput of metallurgical coal and instead favour thermal coal mined by Bravus Mining*” or may “*refuse to deal with its mining rivals and instead serve only [Carmichael]*” when the Legacy User Agreements expire.¹³³ NQXT does not have any such ability or incentive. Over the proposed declaration period, [REDACTED]
[REDACTED]
Consequently, [REDACTED]
[REDACTED]. NQXT therefore has strong incentives to seek to renew contracts with all users (thermal and metallurgical) and this is [REDACTED], as set out in section 3.12 above.

¹³¹ Statement of Mark Smith, paragraph 211.

¹³² Statement of Brendan Lane, paragraph 42.

¹³³ QCoal Users’ Declaration Request, paragraph 91, and Houston Criteria (a) Report, paragraph 96.

¹³⁴ Bravus Mining & Resources, “Bravus Mining and Resources commits to major investment to increase mine production in central Queensland”, *Bravus Mining*, 19 August 2025 (<https://www.bravusmining.com.au/bravus-mining-and-resources-commits-to-major-investment-to-increase-mine-production-in-central-queensland/>).

4 Market definition

In summary:

- A commercially realistic view of the market in which NQXT provides coal handling services is critical for a proper application of the declaration criteria under the QCA Act. This informs the assessment of:
 - total foreseeable demand in the market for the service, and whether this demand can be met at least cost by a single facility (criterion (b)); and
 - the extent to which, absent declaration, terms of access to the service would be constrained competition (relevant to whether declaration would either promote competition in any relevant market or promote the public interest).
- Any approach to market definition must be *purposive*, with a focus on the task under the declaration criteria. It needs to provide a clear frame of reference for identifying foreseeable market demand and the competitive constraints faced by NQXT in servicing that demand.
- The QCoal Users' application and Mr Houston's reports fundamentally misconceive the task of market definition. The approach adopted by the QCoal Users and Mr Houston is inconsistent with recent case law and longstanding economic approaches for defining locational markets. Worse, it results in a conclusion that is manifestly absurd and divorced from commercial reality: Mr Houston's analysis finds that approximately half of NQXT's current customers are not in the market for NQXT's coal handling service.
- The market in which NQXT's services are offered is correctly framed as the market for coal export handling services in central Queensland. This market includes customers in the Goonyella system at least as far south as Middelmount. Within this market, customers can and do readily switch between terminals and often 'multi-home' across multiple terminals to meet their overall need for coal handling services. In this market, NQXT's services compete with those of DBCT and other terminals.
- This section:
 - sets out relevant legal and economic principles relating to market definition and in particular the legal imperative to focus on commercial reality;
 - responds to the approach to market definition advanced by the QCoal Users and Mr Houston which incorrectly focuses on substitutability in a narrow and theoretical sense suited to unilateral effects analysis in merger clearance, rather than by reference to actual evidence of competitive constraint applicable to access regulation;
 - provides a summary of the expert economic evidence of Mr Jason Ockerby and Dr Tom Hird of CEG in their report at **Annexure A**, which includes the relevant economic principles for definition of locational markets and how they apply to the market for coal export handling services in central Queensland; and
 - drawing on the dynamics of competition between NQXT and DBCT (discussed in section 3, and broader features of the Central Queensland coal supply chain, concludes that there is a market for coal handling services in central Queensland which is *at least* as broad as NQXT and DBCT and may incorporate other terminals within the CQCN.

4.1 Legal principles governing market definition

- 329 The principles of market definition in competition law in Australia are well-established.
- 330 Market definition is a question of fact¹³⁵ and the relevant exercise is both descriptive and purposive.¹³⁶ The process of identifying the relevant market must be carried out keeping in mind the object of doing so,¹³⁷ but not in a vacuum,¹³⁸ and requires examination of the pattern and structure of trading, the possibility of substitution, barriers to entry and related matters.¹³⁹
- 331 There is longstanding precedent that recognises market definition as a ‘focusing exercise’ that needs to reflect both commercial realities and the purpose of the legislative regime in question. As French J observed in *Taprobane*:¹⁴⁰

“[Market definition] is a focusing process and the Court must select what emerges as the clearest picture of the relevant competitive process in the light of commercial reality and the purposes of the law.”

- 332 That focusing process “may lead to the drawing of different lines in different circumstances depending upon the purpose of the [legislative] provision in question”,¹⁴¹ and even “lead to different market definitions in relation to the same industry”.¹⁴²
- 333 In relation to the imperative to focus on the ‘commercial realities’ of the market and competition,¹⁴³ in *Air New Zealand* Nettle J observed that “where sellers are engaged in marketing their goods and services, or perceive themselves to be competing, in areas beyond the area in which they are located, commercial reality is likely to dictate that the market includes those further areas”.¹⁴⁴
- 334 In the same case, Gordon J noted that the identified market must have “economic and commercial reality” and “not be artificial or contrived”.¹⁴⁵ Her Honour concluded that “[t]he identification of the market must therefore ‘accurately [and] realistically describe and reflect the interactions between, and perceptions and actions of, the relevant actors or participants in the alleged market, that is, the commercial community involved’”.¹⁴⁶
- 335 Gordon J further cautioned against focusing too closely on substitutability tests which may obscure commercial realities:¹⁴⁷

Focusing too closely on the concept of substitutability can obscure the proper identification of the market and undermine the purpose of the relevant statutory provisions.

¹³⁵ *Air New Zealand Ltd v Australian Competition and Consumer Commission; PT Garuda Indonesia Ltd v Australian Competition and Consumer Commission* [2017] HCA 21; 262 CLR 207 (*Air New Zealand*) at [39] (Nettle J).

¹³⁶ *Singapore Airlines Ltd v Taprobane Tours WA Pty Ltd* (1991) 33 FCR 158 (*Taprobane*) at 174 (French J).

¹³⁷ *Australian Meat Holding Pty Ltd v Trade Practices Commission* (1989) ATPR 50,082 (*Australian Meat Holdings*) at 50,104 (Pincus J), applying *Queensland Wire Industries Pty Ltd v Broken Hill Pty Co Ltd* (1989) ATPR 40-810; 167 CLR 171 (*Queensland Wire*) at CLR 187 (Mason CJ and Wilson J).

¹³⁸ *Air New Zealand* at [57] (Gordon J).

¹³⁹ *Australian Meat Holdings* at 50,091 (Davies J, Sheppard J agreeing)

¹⁴⁰ *Taprobane* at 177-178.

¹⁴¹ *Singapore Airlines* (1991) 33 FCR 158 at 175; *Air New Zealand* at [62] (Gordon J).

¹⁴² *Air New Zealand* at [62] (Gordon J).

¹⁴³ See *Taprobane* at 174, 178-179 (French J); *Australian Meat Holdings* at 50,091 (Davies J, Sheppard J agreeing); *Queensland Wire* at ATPR 48,812.

¹⁴⁴ *Air New Zealand* at [40] (Nettle J).

¹⁴⁵ *Air New Zealand* at [60].

¹⁴⁶ *Air New Zealand* at [61] (Gordon J), citing *ANZ Banking Group* (2015) 236 FCR 78 at 108 [138].

¹⁴⁷ *Air New Zealand* at 242. This passage was cited by the Full Federal Court in *Australian Competition and Consumer Commission v Pfizer Australia Pty Ltd* (2018) 356 ALR 582 at [277]-[278].

336 And a similar sentiment was expressed by the leading Full Court decision in *ACCC v ANZ*:¹⁴⁸

Whilst a market is an analytical or economic tool designed to analyse the particular asserted anti-competitive conduct, a market definition must nonetheless be based on findings of fact. The premise of that proposition is that it has economic and commercial reality. It must accordingly not be artificial or contrived. Economists frequently construct economic models to analyse complex commercial or economic events or scenarios. But a model is unlikely to be a useful analytical tool if based on unrealistic assumptions that materially depart from the real world facts and circumstances involving commercial behaviour in which the events to be analysed occur. A court should be loathe to accept or act on a market definition which is an artificial construct that does not accurately or realistically describe and reflect the interactions between, and perceptions and actions of, the relevant actors or participants in the alleged market, that is, the commercial community involved.

(Citations omitted)

337 The High Court itself criticised the primary market definition relied upon by the ACCC in *Flight Centre* on the basis it reflected “*economic theory doing violence to commercial reality*”.¹⁴⁹

338 These judicial observations are relevant in relation to the present application. Mr Houston applies a “SSNIP-style analysis”.¹⁵⁰ For reasons discussed below, this SSNIP analysis is ill-suited to defining locational markets of the kind relevant to a declaration assessment under Part 5 of the QCA Act. More fundamentally, however, it leads to a definition of the market that is entirely misaligned with commercial reality.

4.2 Recent application of market definition principles to locational port markets

339 The decision of Jagot J in *NSW Ports*,¹⁵¹ which was handed down after the QCA’s re-declaration recommendation in relation to DBCT, cautioned against the risk of focussing narrowly on SSNIP tools when undertaking a broadly analogous exercise of market definition involving neighbouring port terminals (in that case, container terminals).

340 It had been argued in that case that, if a container terminal were to be developed at the Port of Newcastle, it would be in a separate market to the existing terminal at Port Botany. This was based on the application of the hypothetical monopolist test involving a SSNIP, which indicated that the two ports would not be close substitutes. It was argued that given the locations of Port Botany and the Port of Newcastle, the overwhelming determining factor for using one port rather than the other would be land transport costs, and small but significant changes to port charges (wharfage) could not affect the decisions of customers to use one or other port.¹⁵²

341 Her Honour rejected expert economic evidence based on a narrow and “orthodox” SSNIP analysis which suggested that the two container terminals (at Newcastle and Port Botany) would operate as monopoly businesses in separate markets. Her Honour found that this approach was “*not well-adapted to the circumstances*” and led to “*implausible*” results.¹⁵³

342 A key concern with application of the SSNIP test in *NSW Ports* was that it assumed each terminal was functionally equivalent (or an assumption that “all things are equal”), meaning that land transport costs would be the sole factor in determining the decisions of customers. Her Honour found that this was based on an economic assumption that “*bears no resemblance to*

¹⁴⁸ *Australian Competition and Consumer Commission v Australia and New Zealand Banking Group Limited* (2015) 236 FCR 78, [138], quoted in *Australian Competition and Consumer Commission v Pfizer Australia Pty Ltd* (2018) 356 ALR 582, at [265].

¹⁴⁹ *Australian Competition and Consumer Commission v Flight Centre Travel Group Ltd* (2016) 261 CLR 203, 229 [71] (Kiefel and Gageler JJ), 243 [123] (Nettle J agreeing).

¹⁵⁰ Houston Criterion (b)-(d) Report, paragraph 125.

¹⁵¹ *Australian Competition and Consumer Commission v NSW Ports Operations Hold Co Pty Ltd* [2021] FCA 720 (***NSW Ports***)

¹⁵² *NSW Ports*, at [474].

¹⁵³ *NSW Ports*, at [509], [569]-[570].

reality”.¹⁵⁴ Her Honour observed that decisions of customers would be more complex and multi-faceted, having regard to various dimensions of port functionality, not just land transport costs.

343 Contrary to what the SSNIP analysis indicated, Jagot J defined a market for Container Port Services in *NSW Ports*. This market definition was grounded in evidence regarding the commercial reality of competition between ports and with a clear view to the *purpose* of the market definition exercise.

4.3 Approach to market definition in the QCoal Users’ application and the evidence of Mr Houston

344 The QCoal Users submit, supported by the expert evidence of Mr Houston, that the market for the Service is “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’”.¹⁵⁵ Mr Houston clarifies that ‘northern mines’ “includes the Byerwen coal mine (and any future mines with a similar, direct connection to the GAPE), since it is the only mine with direct connection to the GAPE; and excludes all mines located in the Goonyella system.”¹⁵⁶

345 This market definition is premised on application of the QCA’s methodology in the DBCT redeclaration application, which Mr Houston summarises as:

- (a) being based on a “SSNIP-style analysis”;¹⁵⁷
- (b) adopting as its starting point the narrowest potential scope of the market, and then contemplating the consequence of broadening the market to include all services that were closely substitutable with the coal handling service at DBCT;¹⁵⁸
- (c) assessing the degree of constraint imposed on DBCT by potentially substitutable services by focusing on “what is actually happening in the market”;¹⁵⁹ and
- (d) resulting in the QCA’s view that “considering the substitutability of articular user groups, based on rail systems in the CQCN, is appropriate.”¹⁶⁰

346 Mr Houston concludes that the application of this methodology establishes that:¹⁶¹

- (a) the relevant market for criterion (b) is the market for NQXT’s coal handling service for mines that connect directly to the GAPE, Carmichael Rail Network or the Newlands system, i.e., northern mines; and
- (b) there are no close substitutes to NQXT’s coal handling service for mines in this market, and NQXT is the dominant coal handling facility in this market.

347 The key reasons for this conclusion are said to be that:¹⁶²

- (a) all northern mines have contracted capacity at only NQXT;

¹⁵⁴ *NSW Ports* at [495].

¹⁵⁵ QCoal Users’ Declaration Request at paragraph 75; Houston Criterion (b)-(d) Report at section 4.2.5; Houston Criteria (a) Report at section 3.2.

¹⁵⁶ Houston Criteria (a) Report, paragraph 61.

¹⁵⁷ Houston, Criterion (b)-(d) Report, paragraph 125.

¹⁵⁸ Houston, Criterion (b)-(d) Report, paragraph 126.

¹⁵⁹ Citing QCA, *Final recommendation Part C: DBCT declaration review*, 2020, page 14.

¹⁶⁰ Citing QCA, *Final recommendation Part C: DBCT declaration review*, 2020, page 14.

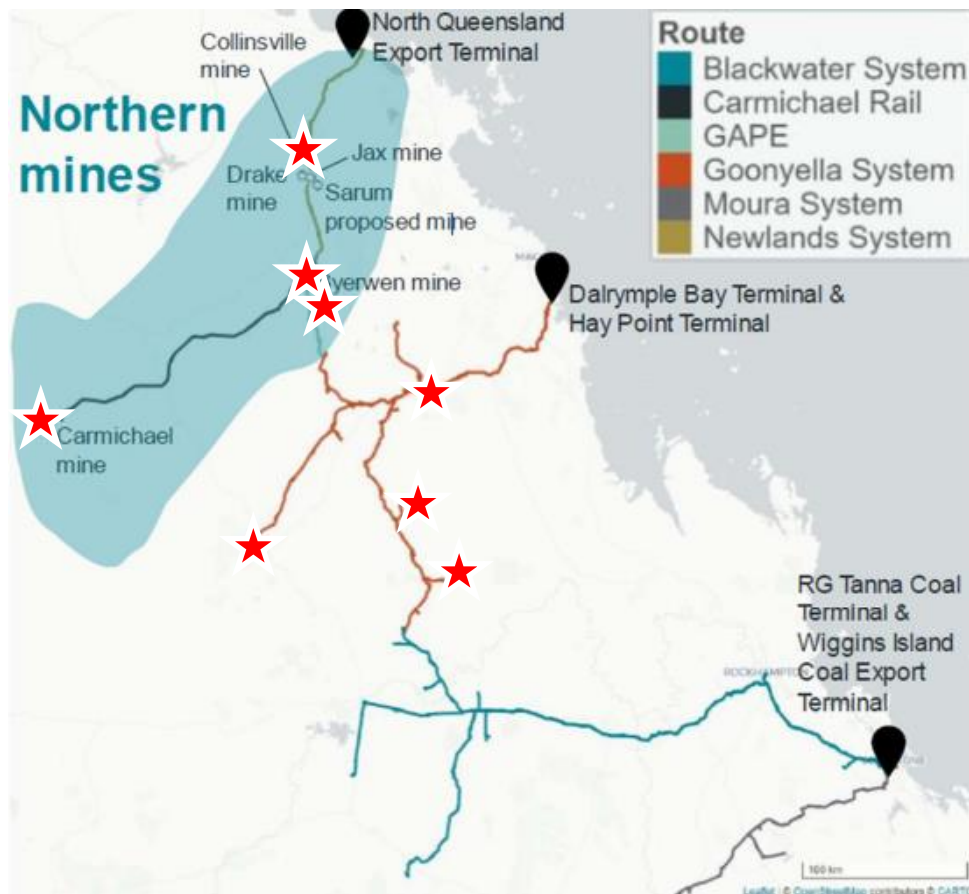
¹⁶¹ Houston Criterion (b)-(d) Report, paragraph 171.

¹⁶² Houston Criterion (b)-(d) Report, paragraph 172.

- (b) the majority of NQXT's contracted capacity is from northern mines;
- (c) northern mines are unlikely to seek coal handling services from terminals other than NQXT in response to price or quality incentives, i.e., other terminals do not provide a close substitute to NQXT; and
- (d) mines located in the Goonyella system are unlikely to seek use of NQXT's coal handling service in response to price or quality incentives, i.e., NQXT does not provide a close substitute to other terminals.

348 Mr Houston's analysis leads to the absurd conclusion that half of NQXT's current customers are not in the market for NQXT's coal handling service: only four of the eight current mines handled through the Terminal would be within the 'market' as defined by Mr Houston. The other four [REDACTED] sit well outside Mr Houston's market boundary, as shown in **Figure 17** below.

Figure 17 Mr Houston's view of the market for NQXT's coal handling service (blue area) vs actual location of customers using NQXT's coal handling service (red stars)



349 In relation to those customers sitting outside his market boundary, Mr Houston dismisses their relevance on the basis that their choice must reflect "strategic or commercial reasons".¹⁶³ The suggestion seems to be that only the results of SSNIP analysis should be relevant to market definition, and any other "strategic or commercial reasons" for customer decisions ought to be disregarded.

¹⁶³ Houston Criterion (b)-(d) Report, paragraph 166.

350 Such an approach, which abandons commercial context in favour of a narrow SSNIP analysis, is clearly erroneous and in conflict with the approach rightly adopted by Jagot J in *NSW Ports* and the earlier jurisprudence.

351 Simply, Mr Houston's conclusions are undermined by his focus on substitutability in a narrow or theoretical sense, rather than by reference to the realities of competitive constraints faced by NQXT from competing terminals. Mr Houston ignores evidence of actual switching by miners and gives disproportionate weight to the assertion of its impracticality, ignoring the fundamental imperative in the QCA's previous methodology that the purposive nature of the market definition exercise requires focusing on "*what is actually happening in the market*".¹⁶⁴

352 As shown at paragraph 99 above, the commercial reality is that that miners in Central Queensland can and do use a combination of both NQXT and other terminals (in particular DBCT) to export their coal.

4.4 There is a market for coal handling services in central Queensland

353 NQXT submits that the evidence supports assessing the current application with regard to the market for coal export handling services in central Queensland. Geographically, this is at least as broad as NQXT and DBCT, and potentially broader (although, as will be shown, the QCA does not need to reach a concluded view on the precise geographic boundaries of the market).

Dynamics of competition between NQXT and DBCT

354 DBCT operates as a strong competitive constraint on NQXT and [REDACTED]

355 This competitive dynamic is obvious from the trend of [REDACTED]. In particular, as between [REDACTED]

(a) [REDACTED]
[REDACTED]
[REDACTED] – and as noted in paragraph 112 above, [REDACTED]
[REDACTED].

(b) [REDACTED]
[REDACTED]
[REDACTED].

(c) [REDACTED]
[REDACTED].

(d) [REDACTED]
[REDACTED]
[REDACTED] (see section 3.14).

356 [REDACTED]
[REDACTED]
[REDACTED]

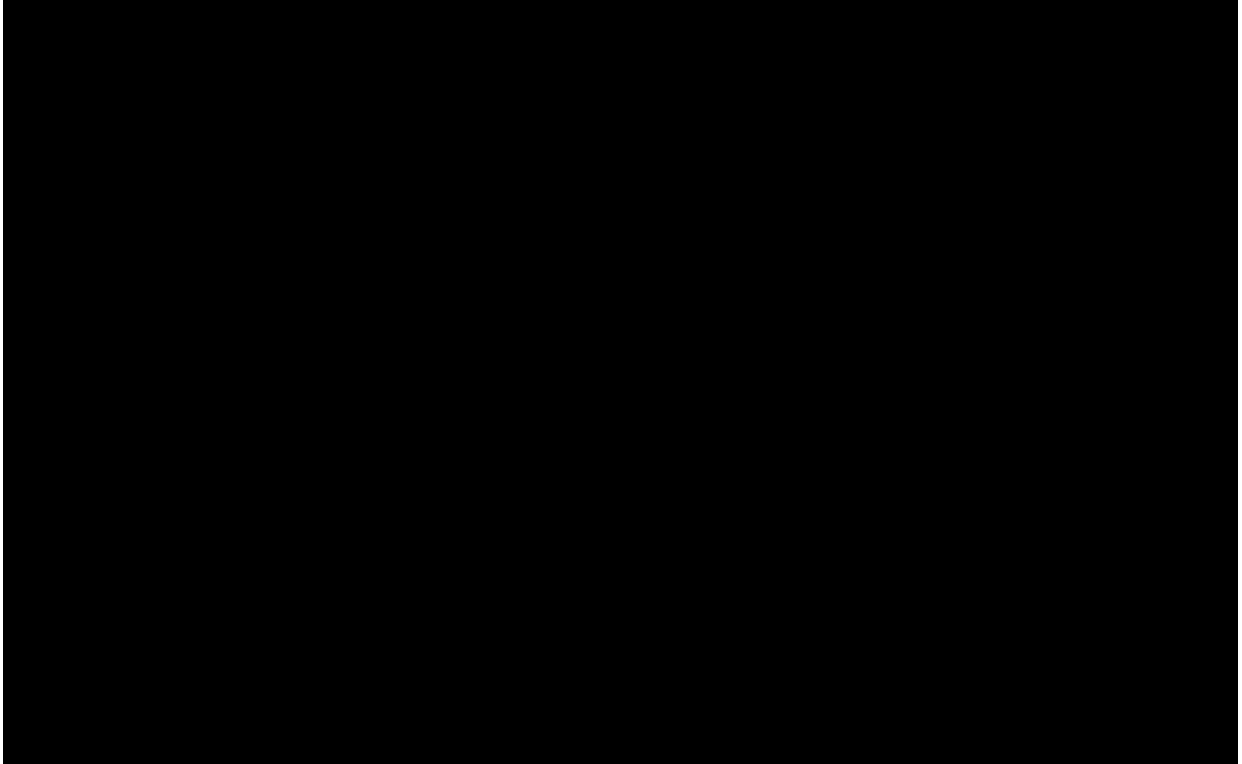
¹⁶⁴ Citing QCA, *Final recommendation Part C: DBCT declaration review*, 2020, page 14.

¹⁶⁵ As noted in footnote 35 above, NQXT understands Lake Vermont Resources has exported volume through DBCT using the secondary market.

[REDACTED]

Figure 18

[REDACTED]



357 The competitive constraint exerted by DBCT is most acutely demonstrated by [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] For example, as explained in section 3.12(c) above, [REDACTED]
[REDACTED]

(a) [REDACTED]

(b) [REDACTED]

358 NQXT and DBCT also seek to differentiate themselves. As outlined in section 3.12 and 3.14
above, [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

(a) [REDACTED]

(b) [REDACTED]

(c) [REDACTED]

(d) [REDACTED]
[REDACTED]

(e) [REDACTED]

(f) [REDACTED]

(g) [REDACTED];

(h) [REDACTED];

(i) [REDACTED]
[REDACTED]

(j) [REDACTED].

359 Moreover, as described at section 3.14, NQXT has been focused on improving and differentiating its service by offering a tailored range of features at the Terminal, including [REDACTED]
[REDACTED].

A series of 'monopoly' coal terminals is inconsistent with the way in which the interconnected Central Queensland coal system operates

360 The competitive dynamics between NQXT and DBCT are one part of a wider competitive process between the coal export terminals servicing the CQCN as shown in Figure 2.

361 Queensland benefits from a fully interconnected coal system in which the CQCN links all mines to all potential export ports. This contrast, for example, with the position in the Hunter Valley coal chain which has a single viable export port in the Port of Newcastle.

362 This means that across the CQCN, volumes move both north and south and access various terminals (often from the one mine). Any attempt to try to define a market by reference only to a particular part of that system or to seek to argue that NQXT operates as a standalone 'monopoly' facility is both not sensible and does not reflect the commercial reality of the operation of the Queensland market.

363 This versatility and interconnectedness are evidenced in a variety of ways:

(a) As noted already, [REDACTED]
[REDACTED]
[REDACTED]

(b) Others export through a combination of other terminals – for example, NQXT understands that Glencore and Anglo American (for their respective Oaky Creek and German Green mine complexes) have both shipped coal from both DBCT and RGTCT, and BMA formerly shipped from HPCT and RGTCT (it now ships solely through HPCT).

(c) The two competing rail haulage operators do not market their supply of services in relation to transport within individual 'terminal markets' or even in relation to separate rail systems. Aurizon promotes the CQCN as servicing central Queensland by "*connecting more than 50 mines to five major export terminals, plus many domestic consumers*".¹⁶⁶ Notably, Pacific National and Aurizon do not price differently for haulage depending on the mine of origin of the terminal of destination, it is predominately based on distance and train size.

364 Recent commercial developments also demonstrate the risk inherent in assumptions about future contracting which err on the side of this kind of single-terminal usage. For example, as noted above, [REDACTED]. However, in its Final Recommendation in 2020 for the DBCT redeclaration application, in respect of criterion (b) the QCA concluded that [REDACTED]

¹⁶⁶ See Aurizon, *Central Queensland Coal Network*, (<https://www.aurizon.com.au/what-we-do/network/central-queensland-coal-network>).

4.5 An orthodox economic framework that aligns with the commercial reality

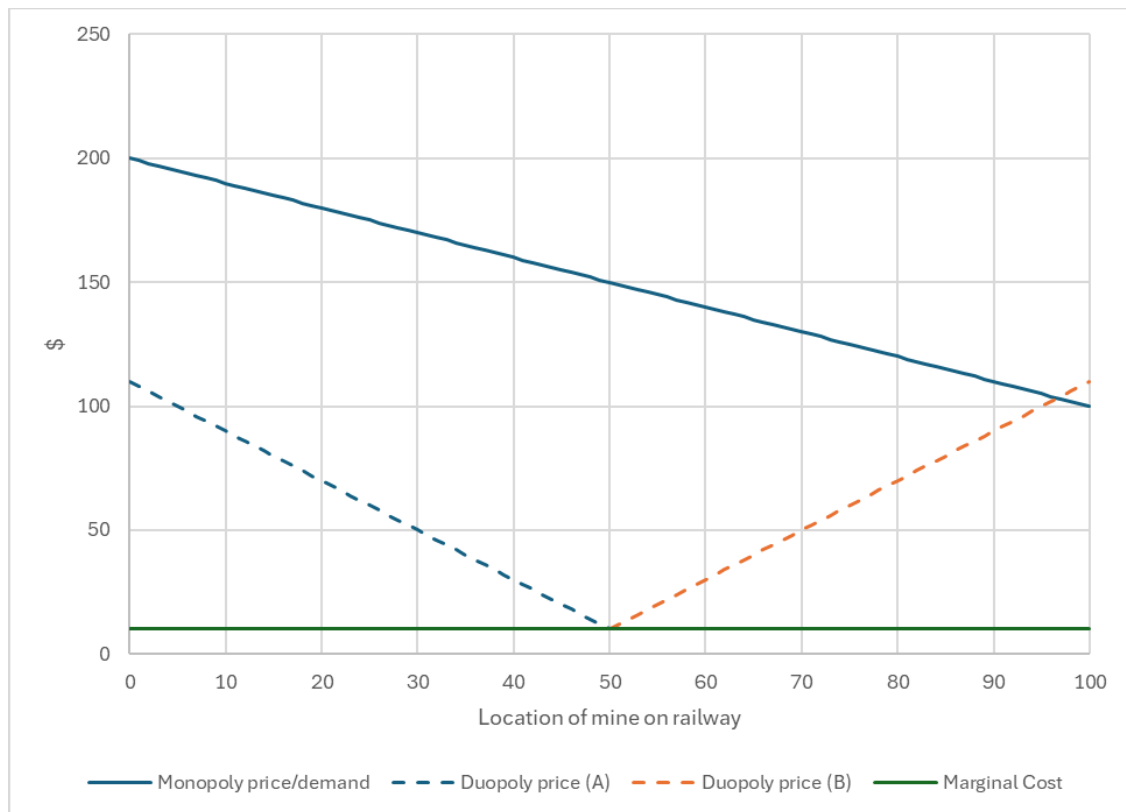
- 365 CEG sets out an economic framework for defining the market in which NQXT provides coal handling services. CEG's approach, unlike Mr Houston's, leads to a conclusion that aligns with commercial reality and provides a frame of reference that is suited to the purpose of a declaration inquiry.
- 366 CEG applies the Hotelling model of spatial competition. This model is much better suited to the task at hand, as it accounts for differences in location or characteristics of suppliers, and differing customer preferences.¹⁶⁸
- 367 The Hotelling model therefore overcomes the main shortcoming of the SSNIP tool in the context of analysing port competition, as identified by Jagot J in *NSW Ports*. Unlike the SSNIP tool, the Hotelling model accounts for differences in functionality and location of suppliers and the fact that some customers may prefer one over the other.
- 368 In a stylised application of the Hotelling model, potential customers are spaced evenly along a road or train line. The Hotelling model then allows for analysis of market dynamics where there is either a single supplier or multiple suppliers at different points along the line. A key insight from the Hotelling model is that while the presence of more suppliers along the line will affect market outcomes (including prices), it does not change the size of the market in which the relevant services are provided. This is illustrated in **Figure 19** below, taken from CEG's report.¹⁶⁹

¹⁶⁷ QCA, *Final Recommendation – Part C: DBCT Declaration Review*, March 2020, page 31.

¹⁶⁸ CEG Report, section 5.

¹⁶⁹ CEG Report, Figure 5-5.

Figure 19 CEG illustration of Hotelling model with two suppliers at either end of a railway



369 CEG explains that:¹⁷⁰

- (a) The market that a firm operates in is at least as wide as the demand that it could profitably serve if it had no competitors. While adding competitors into that market will shrink the number of customers actually served, the wider market is unchanged – put another way, having more suppliers results in smaller market shares but not a smaller market.
- (b) Even though customers may be expected to generally buy from their most preferred (closest) supplier, the price that supplier can charge is constrained by the existence of the competitor.
- (c) Customers are better off (customer costs are lower) with additional competitors if the markets within which the suppliers operate overlap.

370 The insights from the Hotelling model can be applied directly to the provision of port services to mines in central Queensland. When assessing foreseeable demand in the market served by any individual port, the question is: *what demand could be profitably served by that port if it had no competitors?*

371 In other words, imagine a world in which the relevant port is the only one available to mines in central Queensland and identify the demand that could profitably be served by that port.

372 CEG demonstrates that the demand that can profitably be served by NQXT – and therefore the market in which NQXT provides its services – extends at least as far south as Middlemount, and likely further south.¹⁷¹ This is demonstrated by CEG's modelling of NQXT's ability serve mines in the Goonyella and Newlands systems. It also aligns with the commercial reality of mines

¹⁷⁰ CEG Report, paragraph 132.

¹⁷¹ CEG Report, section 6.

within the Goonyella system actually using NQXT's services and the interconnected nature of the Queensland industry, discussed above.

- 373 Purposely, this approach to market definition is also better aligned with the objective of defining a 'market for the service' under criterion (b). This task allows for identification of all market demand, including demand that is served by other facilities. To ignore potential demand for NQXT that is currently served by DBCT (as Mr Houston has done) fundamentally misconstrues the task of market definition required under criterion (b).
- 374 This CEG approach also provides an economic framework that is aligned with the decision of Jagot J in *NSW Ports*. In that case, her Honour rejected the idea that the entry of a new competitor (i.e. a new container terminal at Newcastle) would effectively split the existing market into two.¹⁷² Similarly in this case, the existence of another terminal that is serving part of the market demand does not mean that a separate market exists, but merely that each has different (and smaller) market shares, based on their locational and other advantages.

4.6 Conclusions on market definition

- 375 For the reasons set out above, the market in which NQXT provides services is a market for coal handling in central Queensland – a market that extends at least as far south as Middlemount, and likely further south.
- 376 At least for the purposes of criterion (b), it is not necessary to precisely determine *how far* south of Middlemount the relevant market extends. This is because, even if the market boundary is conservatively drawn at Middlemount, foreseeable demand in that market far exceeds what could be served by NQXT alone at least cost.
- 377 NQXT clearly competes with other terminals to service demand in this market. The closest competitor is DBCT and at least part of the market demand can be (and currently is) serviced by other terminals including HPCT (at the Port of Hay Point), RGTCT and WICET (both at the Port of Gladstone).
- 378 Moreover, insofar as the QCA must consider the question of market definition in the context of criterion (a), as expanded on in section 5 below it is similarly not sensible or appropriate to adopt the arbitrary and narrow SSNIP-based market definitions for dependant coal tenement markets proposed by the QCoal Users.

¹⁷² *NSW Ports*, at [476].

5 Declaration would not promote competition in any relevant market (criterion (a))

In summary:

- The QCoal Users' arguments in relation to criterion (a) are not supported by the evidence.
- In assessing criterion (a), the correct approach is to compare the likely terms and conditions of access with and without declaration, focusing on real-world evidence rather than hypothetical concerns.
- The evidence shows that NQXT already provides access on reasonable and competitive terms, demonstrated by [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED].
- The Queensland coal export market is highly interconnected, with users able to switch between NQXT and other terminals like DBCT. This dynamic ensures that NQXT faces strong competitive constraints and has clear incentives to attract and retain users. There is no evidence of entrenched market power, self-preferencing, or discrimination by NQXT. In fact, [REDACTED], further motivating NQXT to maximise throughput from all users.
- Purely hypothetical concerns raised by the QCoal Users and Mr Houston about vertical integration and potential foreclosure are not supported by market evidence or the operational history of the Terminal. [REDACTED]
[REDACTED]
[REDACTED]
- The prevailing commercial environment, the effectiveness of unregulated negotiations, and the presence of real competition from other terminals mean that declaration would not materially improve access terms or promote competition in any of the markets claimed by the QCoal Users. Instead, it risks introducing unnecessary rigidity and cost, undermining the flexibility that currently benefits users and the broader coal export sector.

5.1 Overview of the approach to applying statutory test

379 Section 76(2)(a) of the QCA Act requires the QCA to 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 one market (whether or not in Australia), other than the market for the service itself.

380 As the QCA is aware, this test was reframed in 2017 following the Harper Review reforms. The context of those changes is important because they bear upon both the approach that the QCA should take in applying the criterion as well as the emphasis that it is intended to have.

381 The changes to criterion (a) recommended by the Harper Review were themselves drawn from the 2013 Productivity Commission review of the operation of Part IIIA of the CCA.¹⁷³ In that report, the Productivity Commission recommended as follows (emphasis added):¹⁷⁴

Criterion (a) should be amended so that it is only satisfied where access to an infrastructure service on reasonable terms and conditions through declaration (rather than access per se) would promote a material increase in competition in a dependent market. This amended criterion would require a comparison of the future state of competition under the status quo (including where access may already be available under the status quo) against the future state of competition where access is granted on reasonable terms and conditions through declaration.

*A declaration-focused competition test is the most effective way to target the economic problem that the Regime is intended to address. **This competition test would not be satisfied where there is already effective competition in dependent markets. It would also not be satisfied where access is already granted to all third parties on reasonable terms and conditions, as declaration would not be expected to alter the terms and conditions of access.***

382 When applying this new test, the Australian Competition Tribunal (the **Tribunal**) has emphasised that a forward-looking, counterfactual assessment is needed. When looking at the world ‘without declaration’, the focus must include the reasonableness of current commercial terms and associated arrangements and commercial constraints.

383 The Tribunal found as follows:¹⁷⁵

On its plain terms, the amended criterion no longer requires a comparison of access and no access. The relevant enquiry has become: what effect would access to the service on reasonable terms and conditions as a result of a declaration of the service have on the promotion of competition in a dependent market? That enquiry invites a comparison of (i) access on reasonable terms and conditions as a result of a declaration of the service and (ii) the circumstances that would be likely to prevail with respect to access in the absence of declaration. While the enquiry is forward looking, the prevailing circumstances relating to access (in particular, whether access is presently given and on what terms) will be relevant to the required forward looking comparison.

...

The foregoing review of the legislative history and text supports the following propositions:

- (a) *Criterion (a) requires an assessment of the effect of access (or increased access) to the service on reasonable terms and conditions as a result of declaration.*
- (b) *The criterion requires that such access would promote a material increase in competition in at least one market other than the market for the service. A material increase in competition is promoted if the conditions, opportunities or environment for competition are improved in more than a trivial way.*
- (c) ***The criterion necessitates a forward looking analysis focussed upon the effect of access as a result of declaration. The necessary comparator is the commercial environment without declaration.** An important consideration in applying the criterion is whether access will be, or is likely to be, available without declaration and the commercial features of such access including the nature and scope of access, the terms and conditions of access and any capacity limitations to access. The existing availability of access will be relevant to assessing the likely*

¹⁷³ Productivity Commission, *Report on National Access Regime*, No. 66, 25 October 2013.

¹⁷⁴ Productivity Commission, *Report on National Access Regime*, No. 66, 25 October 2013, page 249.

¹⁷⁵ *Application by New South Wales Mineral Council (No 3) Re [2021] ACompT at [46] and [51].*

future availability of access. However, due consideration must also be given to the prospect of future changes in the commercial, regulatory and economic circumstances that might alter the incentives, and likely behaviour, of the service provider.

- 384 NQXT therefore makes the following observations regarding the approach which it submits the QCA should adopt in applying this test:
- (a) First, as noted by both the Tribunal and the Productivity Commission, the test is properly focused on the likely effect of declaration on the *terms of access* to the service and not the fact of access itself.
 - (b) Second, the test requires a counterfactual analysis of what (if any) difference would be likely to be arise in the reasonableness of the terms of access arising from declaration. In this case, any consideration of the 'factual' (i.e. the terms without declaration) must be informed by evidence of matters such as:
 - (i) the terms that have been offered by NQXT and the extent to which these are consistent with the terms that have been in place historically (as originally developed by PCQ);
 - (ii) whether any new or amended terms have been accepted by others and the extent to which these processes demonstrate a commercially reasonable approach by NQXT to negotiations;
 - (iii) the extent to which the proposed terms of access reflect competitive or other commercial or legal constraints; and
 - (iv) how the existing terms of access compare with terms for access to similar terminals or infrastructure (i.e. do they reflect a reasonable and balanced 'market' position on key commercial points).
 - (c) Third, the assessment should not be based on hypothetical questions of market power or economic incentives (and should not include any *a priori* assumptions).¹⁷⁶ The focus should be on the reasonableness of the commercial terms that already exist absent declaration and what, if any, change might arise from declaration.
 - (d) Fourth, and finally, in identifying the effect of declaration on any related markets, the QCA should adopt an approach to market definition and competitive rivalry consistent with longstanding precedent that recognises this as a 'focusing exercise' that needs to reflect commercial realities.
- 385 As noted in section 4, it would be inappropriate for the purpose of criterion (a) to become preoccupied with distinctions based on narrowly framed assessments of substitutability or theoretical SSNIP tests that ultimately fail to reflect commercial reality or evidence.
- 386 Any assessment must reflect real world evidence and focus on markets in which there is real and observable rivalry. That is, for the purpose of criterion (a), whether there exists a downstream market or markets in which real and effective rivalry occurs today. If so, the question is whether access to regulated terms of access through declaration at NQXT (instead of the currently available or likely commercial terms) would materially improve the competitive conditions and outcomes achieved from that rivalry.
- 387 For the reasons set out below, the answer to that question must be 'no'.

¹⁷⁶ *Application by New South Wales Minerals Council (No 3), Re [2021] ACompT 4 at [169].*

5.2 The effect of declaration on the reasonableness of terms and conditions of access

388 At the outset, NQXT notes that the counterfactual assessment of the terms of access in this case is fundamentally different to the exercise that was undertaken by the QCA in relation to the redeclaration of DBCT.

389 In that case, the counterfactual exercise was reversed because the existing state of DBCT was that the terminal was declared (and had been since privatisation). The QCA therefore had no evidence of what the likely commercial terms would be absent declaration. This necessitated an analysis of the extent to which DBI, as the owner of the terminal, would be constrained by other factors such as countervailing power of users, commercial arrangements with the State, and the threat of regulation, if declaration was removed.

390 The QCA does not need to replicate this approach in this case, and it would be inappropriate to do so. The starting point for any assessment of the reasonableness of terms of access in this case should be based on the extensive evidence that is available to the QCA of what the terms of access are, and would be likely to be, absent declaration.

391 Specifically, this can be identified from:

- (a) The terms of access that have already been [REDACTED] as well as [REDACTED]
[REDACTED]
- (b) Evidence of the unregulated operation of the Terminal over the 14-year period of its ownership by Adani, including whether there has been any indication of self-preferencing or foreclosure.
- (c) The evidence of NQXT's approach to undertaking negotiation with users and the basis upon which it has developed its commercial offers (both pricing and non-price terms), including evidence of real and material rivalry and competitive constraint.
- (d) Evidence of the real-world risks and incentives that face NQXT in developing and trying to secure renewal of contracted capacity, as discussed above at section 3.13.

392 As discussed in sections 2 and 3 of this submission, in relation to these issues, the evidence available to the QCA demonstrates the following:

- (a) [REDACTED]
[REDACTED]
[REDACTED]¹⁷⁷
- (b) [REDACTED]
[REDACTED]
[REDACTED].¹⁷⁸ Indeed, in the case of [REDACTED] the QCA has previously assumed that [REDACTED]
[REDACTED].¹⁷⁹
- (c) The [REDACTED] offered by NQXT does no more than [REDACTED]
[REDACTED].¹⁸⁰ Indeed, to the contrary, the [REDACTED]
offered by NQXT provides [REDACTED]

¹⁷⁷ See section 3.12(a), 3.12(c).

¹⁷⁸ See section 3.12(c).

¹⁷⁹ QCA, *Final Recommendation – Part C: DBCT Declaration Review*, March 2020, page 31.

¹⁸⁰ See sections 3.13, and paragraphs 89-92, 120, 267.

- [REDACTED]
[REDACTED].¹⁸¹
- (d) As well as the [REDACTED], NQXT has been prepared to [REDACTED]
[REDACTED]
[REDACTED].¹⁸²
- (e) The terms of access are [REDACTED]
[REDACTED].¹⁸³ The reasonableness of those terms is also apparent from a comparison with other regulated and unregulated access terms (e.g. DBCT, ARTC and AN access agreements and gas pipeline agreements).¹⁸⁴ Despite private ownership by Adani for approximately 14 years, there has been [REDACTED]
[REDACTED]
[REDACTED]
- (f) The history of operation at the Terminal demonstrates equitable, efficient and non-discriminatory operations. Indeed, [REDACTED]
[REDACTED]
[REDACTED].¹⁸⁵
- (g) NQXT has [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED].¹⁸⁶

5.3 Relevance of vertical integration and foreclosure risks

393 While it is not strictly necessary to do so (for the reasons above), the QCoal Users and their expert have made a number of submissions relating to the related activities of the Adani Group and the implications this may have for any QCA analysis under criterion (a). In particular, Mr Houston appears to assume that the existence of *any* vertical integration is determinative of a material foreclosure risk, without considering or addressing:

- (a) the strong short and long-term economic incentives which exist for NQXT to seek to maximise the capacity made available to third party users of the Terminal; or
- (b) the real-world limitations which would prevent Adani from being able to profitably take advantage of a foreclosure strategy over the proposed declaration period (i.e. 10-years), even if it was economically incentivised to do so.

394 Moreover, the primary basis that Mr Houston appears to use to establish that criterion (a) is established involves the potential for future displacement of metallurgical coal volumes by thermal coal volumes exported by Adani's mining operations. This analysis is flawed in a number of respects, including because:

- (a) the extent of any such displacement is speculative and, even if it was assumed to occur (to some extent), this would not have any effect on the relevant global market; and

¹⁸¹ See section 3.12(b).

¹⁸² See section 3.12(c) and paragraph 271.

¹⁸³ See section 3.12(a).

¹⁸⁴ See paragraph 156.

¹⁸⁵ See paragraphs 157, 181.

¹⁸⁶ See section 3.5, paragraphs 120, 157, 310-312.

- (b) in any event, this displacement would occur with and without declaration, given that declaration does not prevent Adani from meeting its reasonably anticipated requirements of terminal handling services.

Despite use of the Terminal by Bravus, NQXT retains strong economic incentives to ensure utilisation of the Terminal is maximised

395 As set out in section 3:

- (a) The current and forecast utilisation of the Terminal remains [REDACTED], given factors such as the ECD and longer-term structural risks to the thermal coal market (which limit the development and expansion of new mines).¹⁸⁷
- (b) NQXT has actively sought to [REDACTED], including [REDACTED]. This is consistent with it facing strong commercial incentives to seek to secure continued throughput.
- (c) NQXT's incentives are heightened by the competitive risk associated with current users [REDACTED].¹⁸⁸
- (d) Any strategy of foreclosure that resulted in an increased 'hold up' risk for future mines would only act to reduce the potential future contracted volumes for NQXT, further increasing its long-term contracting risk.

396 As Mr Balchin concludes at paragraph 63 of the Incenta Report:

I conclude that, notwithstanding the vertical integration of the Adani entities, those entities (and hence the Terminal) do not have any incentive to frustrate access, but rather have a strong incentive to act in a manner that maximises the short term and long term growth of the Users of the Terminal in order to maximise the long term profit from the Terminal, and also to maximise the potential for third-party use of the Carmichael railway line. I note that the incentives of the Adani entities in this regard are no different in this respect from those of the Port of Newcastle and the Dalrymple Bay Coal Terminal, for which the Tribunal/NCC and the QCA, respectively, observed would be unlikely to lead to a reduction in competition in related markets

There is no commercially realistic ability for NQXT to profit from any foreclosure strategy

397 Even if NQXT had the ability to foreclose access to the Terminal to users, there is no way in which it would be able to profit from doing so over any relevant timeframe.

398 This is because:

- (a) First, for a typical foreclosure strategy to be sensible, the upstream party with market power must be able to extract increased profit from the downstream market (by preventing competitors from accessing that market). In this case, any reduction in coal throughput at NQXT by third parties would have no impact on downstream thermal coal prices and so would make no difference to Bravus' profitability.
- (b) Second, the Terminal is and will likely [REDACTED] over the next decade (being the proposed declaration period). In these circumstances, and absent the

¹⁸⁷ See sections 3.11 and 2.2.

¹⁸⁸ See paragraph 99.

ability to influence downstream prices, any foreclosure strategy will simply involve giving away incremental profit.

- (c) Third, and relatedly, the Newlands System ECD means that [REDACTED]
[REDACTED]
[REDACTED] That is, [REDACTED]
[REDACTED]
[REDACTED] (see section 3.7).

399 Simply, in both the short and long term, a foreclosure strategy is not practically possible as well as not being profit maximising.

No evidence of foreclosure or self-preferencing

400 If Adani and NQXT had a strong incentive and ability to favour its related mining activities, then it has had that incentive and ability for over a decade and there ought to be evidence of it having done so. In fact, the evidence of operational activities at the Terminal support the opposite conclusion – that NQXT faces competitive and other constraints which highly motivate it to operate in a non-discriminatory and equitable manner as between users.

401 The evidence already set out in section 3 of this submission shows the following:

- (a) The [REDACTED]
[REDACTED].¹⁸⁹
- (b) [REDACTED]
[REDACTED].¹⁹⁰
- (c) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED].¹⁹¹
- (d) Under the New Standard User Agreement, NQXT is responsible for [REDACTED]
[REDACTED]
While there is some flexibility in the Terminal Regulations, where users and NQXT may agree to arrangements to meet individual requirements, [REDACTED]
[REDACTED].
Further, while the Terminal Regulations may be amended from time to time, [REDACTED]
[REDACTED].

5.4 The counterfactual – i.e. what would be the implication of declaration on the reasonableness of any terms of access?

402 The extensive evidence above and in section 3 sets out the likely world if the Terminal remains unregulated. Unlike the QCA's task during the redeclaration processes, the more difficult and hypothetical exercise for it in this case is how, if at all, any regulatory terms and conditions associated with arbitration (under Part 5) would differ from those existing terms.

¹⁸⁹ Statement of Damien Dederer, sections D.1 and D.3.

¹⁹⁰ Statement of Damien Dederer, section D.2.

¹⁹¹ Statement of Mark Smith, paragraphs 63 and 73.

403 Declaration is a heavy-handed form of market intervention. Criterion (a) requires that the regulator be confident that the impact of declaration on the terms of access will be sufficiently significant that it will result in a material change in the downstream competitive conditions.

Price terms

404 The primary basis for the QCoal Users' application is that NQXT's offer involved a new Port Charge to take effect from 1 July 2027 of [REDACTED] and that this was unreasonable.

405 Neither the QCoal Users nor Mr Houston endeavour to identify the basis upon which they say any price outcome following declaration would be different or lower. They seem content to simply assume this will be the case based on the following:

- (a) This amounts to an increase of [REDACTED] from the TIC last set in an arbitration in 2022, of [REDACTED] per tonne.¹⁹²
- (b) The TIC at DBCT will be substantially lower – the QCoal Users estimate it will be [REDACTED] for the contract year commencing 1 July 2027.
- (c) The TIC is in addition to “*significant legal costs*” which QCoal indicate they have incurred undertaking periodic arbitrations in relation to the TIC and following Supreme Court litigation in which QCoal unsuccessfully attempted to challenge the reasonableness of an increase to its TIC.

406 With respect, none of these claims are valid or establish that the Port Charge offered by NQXT is unreasonable or would be materially different or lower if determined by the QCA following declaration.

First, a continuation of the existing pricing model would not occur under declaration

407 QCoal's underlying comparison of the TIC last set under the Legacy User Agreement in 2022 and any future Port Charge agreed commercially or through arbitration overseen by the QCA, is flawed.

408 For the reasons set out in section 3.12(b), there are significant problems with the [REDACTED] and which both arbitrators and the Supreme Court have acknowledged does not deliver an NPV = 0 outcome. The model and DAV used in that process are unreliable and could not simply be adopted or applied by the QCA.

Second, the price delivers total forecast revenue consistent with historical pricing (i.e. it does not reflect a material increase in forecast revenue)

409 The [REDACTED] proposed by NQXT does no more than provide for it to maintain existing total revenue over the next decade, in the face of falling volumes.¹⁹³

Third, the comparison of the NQXT Port Charge with the DBCT TIC is disingenuous

410 Any attempt to undertake a simplistic comparison between NQXT and DBCT is flawed, given the differences in the two terminals, their cost structure and customer base. However, [REDACTED], consistent with it viewing DBCT as a competitive constraint.

411 In doing so, however, NQXT has regard to the 'total cost of use' of DBCT which involves a combination of both the TIC and the relevant handling charges as well as other costs

¹⁹² NQXT Partial Final Award, 10 December 2024. A copy of this document is attached as Tab 19 in the Index of Supporting Documents to the QCoal Users' Request).

¹⁹³ See section 3.13.

associated with demurrage (which is higher at DBCT because it operates as a cargo assembly terminal) as discussed at paragraphs 49 and 301. This is ultimately the 'real world' commercial comparison that a user would make when assessing which terminal it chooses to use.

412 [REDACTED]
[REDACTED]
[REDACTED]

Figure 20 [REDACTED]



413 [REDACTED]

- (a) [REDACTED]
[REDACTED]
- (b) [REDACTED]
[REDACTED]
- (c) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
- (d) [REDACTED]
 - (i) [REDACTED]
[REDACTED]
[REDACTED]
 - (ii) [REDACTED]
[REDACTED]
- (e) [REDACTED]

414 [REDACTED]
[REDACTED]

194 [REDACTED]
[REDACTED]
[REDACTED]

195 [REDACTED]
[REDACTED]
[REDACTED]

Fourth, the pricing is likely to be lower than a regulatory outcome, given the implications of asset valuation and any response to demand risk

415 As Mr Balchin points out in the Incenta report,¹⁹⁶ there are a range of complex challenges associated with seeking to apply access regulation in the context of the current coal market. Standard access regulation has been most often applied in industries and during periods of relatively stable demand and which therefore did not create substantial and asymmetrical stranding or pricing risks.

416 The kinds of complex challenges which the QCA would need to wrestle with include the following:

- (a) An initial asset valuation of the Terminal itself. The QCA (like other regulators) has historically shown a preference for determining an opening asset base using a DORC valuation. However, a number of unique questions arise in the context of the Terminal which would need to be resolved: How does optimisation occur when demand risk and uncertainty is so great? What rate of interest during construction is appropriate when estimating replacement costs (given the well-publicised challenges and costs of financing coal projects)? How should demand uncertainty be reflected in the depreciation component?
- (b) In the pricing model itself, facing significant demand risk, consideration would need to be given to issues such as asset lives and stranding as well as the approach to adopt to any future depreciation profile. This has been the model adopted, for example, in the Australian gas industry in recent times.¹⁹⁷

417 This combination of factors can mean that unregulated pricing may be lower than a regulated price because there is more future flexibility for the facility owner to bear short term demand risk (given that they retain the likely future ability to deal with it flexibly through pricing).

418 As Mr Balchin concludes:¹⁹⁸

In contrast, if unregulated, it is possible for an access provider to assume a longer recovery period when setting prices, as it knows that it will benefit from the “upside” if demand proves more resilient than expected, and so be compensated for the downside risk of demand falling away faster than expected. It is also possible for an unregulated provider to lock in its price offering over an extended period and so bear the uncertainty of demand in both the near and longer terms rather than passing this risk through to Users. These two conditions – a long-term price offering that is independent of demand outcomes – are key parts of the NQXT price offering discussed above.

419 Indeed, this is what has occurred. [REDACTED]

Fifth, the reasonableness of the price offered by NQXT is reflected in real commercial outcomes, including other coal producers accepting this TIC following commercial negotiations

420 As described above at section 3.12(c), NQXT has engaged in a lengthy a period of [REDACTED]

¹⁹⁶ Incenta Report paragraph 9.

¹⁹⁷ See paragraph 128 and Incenta Report, paragraphs 8-9.

¹⁹⁸ Incenta Report, paragraph 88.

Finally, declaration will not remove the cost of arbitration

421 The primary complaint raised by the QCoal Users in relation to the operation of the Legacy User Agreement appears to relate to the fact that pricing under it has typically involved costly price arbitrations every 5 years. This is true.

422 However, it is evident that declaration will not remove this costly requirement for complex and periodic pricing arguments but instead would be likely to *entrench* it as a fixed regulatory feature of the Terminal as had been the case at DBCT until price regulation was removed. A pricing dispute will either take the form of periodic arbitrations overseen by the QCA or complex and costly regulatory processes (usually every 5-years or so) under an undertaking.

423 In either case, the outcome involves more cost and substantially more uncertainty than what is proposed by NQXT under the terms of the New Standard Agreement [REDACTED].

Conclusions in relation to price terms

424 For these various reasons, the QCoal Users' and Mr Houston's approach does not establish that the pricing proposed by NQXT is unreasonable merely because it is unregulated or [REDACTED].

425 To the contrary, [REDACTED]
[REDACTED]
[REDACTED]

426 The reasonableness of this pricing is further evidenced by it being [REDACTED]
[REDACTED] In that sense, the price reflects the genuine competitive constraint that NQXT faces from DBCT and the real and urgent economic incentive it has to seek to recontract volumes through the Terminal.

427 While it is extremely difficult to predict what a regulatory outcome would be in the context of such a dynamic and uncertain market, NQXT submits that the pricing offered to QCoal (and others) is likely to be materially *lower* than would be determined by the QCA in the circumstances.

Non price terms

428 NQXT has already noted the extent to which the non-price terms included in the standard agreement are reasonable (see sections 2.4 and 3.12(a)).

429 Simply, the QCoal Users and Mr Houston do not demonstrate how regulation of NQXT through declaration would deliver any material improvement to the reasonableness of the non-price terms and conditions of access. To the contrary, there is a real risk that regulation will reduce the degree of flexibility available to parties in negotiating commercial terms.

430 The benefit of a flexible, unregulated approach to commercial negotiations can already been seen in the [REDACTED]
[REDACTED]
[REDACTED].¹⁹⁹ In each case, these have been [REDACTED]
[REDACTED]

¹⁹⁹ See paragraph 120.

431 This conclusion is itself sufficient to demonstrate that criterion (a) cannot be satisfied in respect of NQXT. Nonetheless, for completeness, we make the following final observations regarding the particular derivative markets identified by Mr Houston for the purpose of his criterion (a) analysis.

5.5 No material impact on competition in markets for late stage coal tenements

432 It appears that Mr Houston's primary criterion (a) case in relation to tenements rests on the following:

- (a) Mr Houston largely relies upon the analysis and findings of the QCA in the redeclaration process, over five years ago, to argue for a similar finding of a market for late-stage development tenements. However, unlike the QCA, Mr Houston notes that this probably includes operating mines as well as tenements.²⁰⁰ He would also prefer that any such 'market' extends to both metallurgical and thermal coal tenements.²⁰¹ No doubt this is because only ~2% of Queensland metallurgical coal is produced from the Newlands and Galilee regions.²⁰²
- (b) Applying his typically narrow and circular hypothetical monopolist test to identify the geographic boundaries of this market, Mr Houston finds that there is a geographic market for late-stage tenements in the "*northern mine area*", principally because he finds that tenement holders in other areas (such as the Goonyella) would have access to other export facilities. Mr Houston cannot point to any actual rivalry or competitive behaviour that supports such a market. Instead, he assumes this is the case by reference to only two transactions involving late-stage tenements in the northern mining area over the last 13 years, both by existing users of NQXT²⁰³ (and one of which, Glencore, has recontracted with NQXT for terminal access on a commercially negotiated basis).
- (c) Mr Houston then assumes that Adani is a vertically integrated participant in this market despite it not having been involved in any late stage tenement transactions and having no need for any further or additional tenements in relation to its mining operations over the foreseeable future.²⁰⁴
- (d) Having assumed both the existence of a market and vertical integration within that market, both without evidence, Mr Houston concludes:

*"In other words, the 'without declaration' world is likely to reflect a less certain and less favourable world for third party users than the current state of the world – which already presents significant challenges for those third-party users in their ongoing interactions with NQXT."*²⁰⁵

None of this is explained or justified by reference to the actual history of commercial engagement or Terminal operations, extensively canvassed in section 3.

- (e) As to the impact of declaration on the terms of access, Mr Houston – again, without acknowledging the substantial volume of clear evidence to the contrary, finds that absent declaration there would be "*significant risk of no or poor-quality access*". He has no basis

²⁰⁰ Houston Criteria (a) Report, paragraph 134 (see also footnote 6).

²⁰¹ Houston Criteria (a) Report, paragraph 142.

²⁰² As noted above, the QCA formerly assessed in 2020 that the "Newlands catchment" mines accounted for 1% of Queensland metallurgical coal output. NQXT used the same data source as the QCA's 2020 analysis (Queensland government coal industry review statistical tables) to calculate that the output from the Collinsville, Drake, Jax and Byerwen mines was 2.33% of total Queensland metallurgical coal output in FY25. NQXT notes that the Queensland government has not reported output of the Sonoma mine since 2022, so that volume is not included in this calculation. However, the overall percentage is expected to remain *de minimis*.

²⁰³ Houston Criteria (a) Report, paragraph 122.

²⁰⁴ Houston Criteria (a) Report, paragraph 221.

²⁰⁵ Houston Criteria (a) Report, paragraph 14.

for such a conclusion, which runs contrary to all experience over the life of the privatised Terminal.

- (f) Mr Houston goes on to also hypothesise that the terms of access at NQXT that would be determined by the QCA are substantially similar to the DBCT standard access agreement (last approved by the QCA in 2017). He then concludes, without considering the actual terms of DBCT access agreements, that this would offer a material improvement to the terms that would be commercially negotiated – which, for the reasons set out above in section 5.4, is not the case.
- (g) Drawing on this assumed market, assumed factual and assumed counterfactual, none of which align with available evidence, Mr Houston confidently finds that there would be a “*substantial differential*” between other users and Adani’s own mining operations, absent declaration resulting in third parties being unwilling to undertake *any* transactions involving late-stage mining tenements in the Newlands and Galilee.

433 This remarkable chain of assumptions and unsupported conclusions does not align with the available evidence (as set out above at sections 2 and 3).

434 As well as referring the QCA to the substantial body of evidence that is clearly inconsistent with the arguments and conclusions of Mr Houston, NQXT makes the following additional observations in response.

Market definition

435 As previously noted in section 4, the task of market definition is both purposive and must engage with commercial reality.

436 For a real market to exist, it is necessary to be able to demonstrate a field within which competitive rivalry occurs.²⁰⁶ The final product of the exercise must not be contrived.²⁰⁷ In this case, Mr Houston (and the QCoal Users) can point to only two transfers of ‘late-stage tenements’ over the last 13 years. One of these transfers, QCoal’s acquisition of Cliffs Australia Coal’s share of the Sonoma Mine, is better characterised as the acquisition of an interest in an operating mine (not a tenement). This is hardly the basis for a commercially realistic market.

437 To the extent that Mr Houston suggests that this market has not developed because of the unregulated characteristics of NQXT, he provides no basis for this assumption. To the contrary, it seems far more likely that the lack of transactions in relation to tenements in the area is a combination of:

- (a) the long term structural and global challenges facing the global thermal coal market;
- (b) the well-known challenges facing the approval and financing of new or expanded coal mines in Queensland; and
- (c) the additional cost challenge for thermal coal development in the Galilee, in particular, given the lower quality of thermal coal from that region and the distance and rail costs associated with export.

438 The collapsing of metallurgical and thermal coal tenements is also not explained by Mr Houston. It is notable that the ‘northern mining region’ comprises only approximately 2% of Queensland’s total metallurgical coal production (and was calculated by the QCA to be only 1% in 2020).²⁰⁸ It

²⁰⁶ *Queensland Co-operative Milling Association Ltd, Re* (1976) 8 ALR 481 at 513.

²⁰⁷ *Air New Zealand Ltd v ACCC* (2017) 262 CLR 207 at [60] (Gordon J).

²⁰⁸ QCA, *Final Recommendation – Part C: DBCT Declaration Review*, March 2020, pages 131-132.

follows that there is likely to be no meaningful market for metallurgical coal tenements in the region identified by Mr Houston.

439 Finally, as previously noted in sections 4.2 and 4.3, the approach adopted to geographic market definition is circular. To the extent that any functionally separate market for late-stage thermal coal tenements exists (which is disputed), it is not enough to define the geographic extent of that market by reference to the facility which is the subject to the application. Coal mines throughout the northern mining region are not constrained to NQXT and are likely to be able to profitably access DBCT and potentially terminals as far south as Gladstone (see section 4.6).

440 Overall, NQXT submits that there is no commercially realistic market of the kind that Mr Houston relies upon.

Adani is not vertically integrated in this market

441 [REDACTED]

- (a) Bravus' existing tenement holdings and the scope to expand the Carmichael mine up to 60 mtpa, as well as the potential to develop an underground mine;
- (b) the ECD on the Newlands System [REDACTED]
[REDACTED]; and
- (c) while there have been other proposed projects in the Galilee Basin floated over the years, these have not progressed. This suggests that it is not commercially viable to acquire further tenements and establish new projects in the Galilee Basin. Wood Mackenzie also notes that they [REDACTED]
[REDACTED]²⁰⁹

442 There is therefore no basis to assume that Adani has any incentive to 'hold up' or foreclose access to NQXT and no evidence of it doing so today. To the contrary, as noted above, any hold up strategy would put at risk future production from the region which is critically important to NQXT [REDACTED]

Effect of declaration on terms of access

443 The reasonableness of the non-price terms has already been addressed in detail at sections 2.4 and 3.12(a). Indeed, for the reasons set out in section 5.4, the evidence demonstrates that the terms of access that would be commercially negotiated between NQXT and QCoal (or any other new or renewing producer) are more likely to be flexible and reasonable than any regulated alternative arbitrated by the QCA.

Promotion of competition

444 It follows from the above, that there cannot be any realistic prospect of a promotion of competition in any market for tenements of the type proposed by the QCoal Users and Mr Houston.

445 However, even if the QCA determined that there was likely to be any material difference in the price or non-price terms at NQXT arising from declaration, it is necessary to properly establish that this difference would be sufficient to promote a material increase in competition in that

²⁰⁹ Wood Mackenzie, *Australia Coal Supply Summary*, July 2024, page 10.

market. As the Harper Review made clear, the impact of declaration on downstream competition cannot be minor or speculative, it needs to be evident and material.²¹⁰

446 In relation to this final point, NQXT makes the following observations:

- (a) Given that the QCoal Users and Mr Houston have not been able to demonstrate that there has been *any* meaningful competition in the market for late-stage tenements (which has been limited to two transactions over a 13-year period), it is not clear that declaration would have any impact and certainly not a material one.
- (b) It is not a response to suggest that Adani's ownership of the Terminal has prevented competition for late-stage tenements from emerging given that [REDACTED]
- (c) Moreover, other factors are much more significant in shaping investment decisions concerning the long-term development of thermal coal projects in the region identified by Mr Houston, including the matters outlined in section 2.2. It is entirely unrealistic to suggest that the regulatory status of NQXT has any meaningful influence on such decisions.

Conclusion in relation to coal tenements markets

447 For all these reasons, there is no commercially realistic basis to conclude that declaration of the coal handling service at the Terminal would promote a material increase in competition in any supposed market for late-stage coal tenements in the northern mining area. The evidence demonstrates that such a market is, at best, extremely limited, with only two relevant transactions in over a decade and no indication that the regulatory status of the Terminal has constrained competition or investment in tenements. [REDACTED], while the real barriers to further development in the region are global market conditions, regulatory and financing challenges, and rail capacity constraints – not access to the Terminal. Even if declaration were to result in marginally different access terms, there is no credible evidence that this would have any material effect on competitive conditions for tenements, given the overwhelming influence of external factors. Accordingly, criterion (a) cannot be satisfied in respect of any market for late-stage coal tenements.

5.6 No material impact on competition in the global metallurgical coal market

448 Mr Houston and the QCoal Users' conclusion in relation to the global coal market rests on a 'displacement theory' in which Mr Houston contends that Adani would expand its use of the Terminal over time and, in doing so, may displace an unknown volume of metallurgical coal volumes. While Mr Houston appears to accept that declaration would have no effect on global thermal coal markets, he nonetheless concludes that declaration may have a material effect on the global market for metallurgical coal.

449 The analysis undertaken by Mr Houston is internally inconsistent, fails to appreciate the legal limitations of declaration and is commercially unrealistic.

450 Specifically:

- (a) First, as noted in paragraphs 41 and 394 above, declaration of NQXT would do nothing to limit or prevent 'displacement' of third-party volumes by Adani. If this were to occur, Part 5 of the QCA Act ensures that Adani can continue to utilise the Terminal to provide capacity to support its own reasonable foreseeable demand. While any such displacement [REDACTED] declaration would not prevent it from occurring.

²¹⁰ Competition Policy Review, *Final Report*, March 2015, page 432 ([Competition Policy Review Final Report, March 2015](#)).

This is the reason, for example, that HPCT can be used on a single-user basis by its owner, BHP (and JV parties) to service its own production.

- (b) Second, almost all of the metallurgical coal volumes which are handled by NQXT are closer to DBCT. The volume of metallurgical coal sourced from mines in the Newlands and Galilee is extremely small (~2% of total Queensland exports). There is no basis for the QCA to find that declaration of NQXT would promote competition in the metallurgical coal market, when almost all of this coal is closer to, and therefore able to be cost-effectively exported through, a different terminal.
- (c) Third, even if Mr Houston's assumptions were valid (which they are not), he has failed to demonstrate that there is any likely effect on global metallurgical coal prices. Mr. Houston's analysis indicates that there will always be spare capacity at the Terminal, and that the Carmichael mine will not require the capacity that is contracted to third party thermal and metallurgical coal exporters. As such, NQXT's incentive will be to renew contracts with existing third-party exporters of both thermal and metallurgical coal. In these circumstances, there is no reason to expect any impact on competition in the international metallurgical coal export market.²¹¹

5.7 No material impact on competition in any market for below rail services

451 The QCoal Users submit that declaring the Terminal service would provide users the certainty of access needed to underwrite entry of further below-rail services connecting the Galilee Basin to the CQCN, promoting an increase in competition for these services.²¹² In this respect, Mr Houston makes three arguments, none of which are supported by the evidence:

- (a) Declaration would *"allow for entry by new users into the Galilee Basin"*.²¹³
- (b) Any entry would be sufficient to underwrite investment in additional below rail infrastructure (which would effectively duplicate the existing Carmichael Rail Network) and this threat would constrain Bowen Rail when providing rail access.
- (c) Bowen Rail has the ability and incentive to foreclose third-party access to the Carmichael Network, and is not otherwise required to provide access on reasonable terms.²¹⁴

452 Once again, Mr Houston's assumptions and findings are inconsistent with commercial reality and available evidence.

There is no evidence of likely further development activity in the Galilee over the proposed period of declaration, but Bowen Rail's incentive is to provide access to spare capacity on commercial terms even if this were to occur

453 There is no evidence of any access seeker or investor seriously considering establishing a mine in the Galilee Basin, whether supported by the Carmichael Rail Network or other below-rail infrastructure.

454 Further exploration and development in the region is now widely accepted as commercially unviable, potentially for the next 30 years and certainly over the proposed declaration period. Wood Mackenzie, for example, does "[REDACTED]".²¹⁵ As outlined in [REDACTED]

²¹¹ Incenta Report, section 4.2.4.

²¹² QCoal Users' Declaration Request, paragraphs 90(d)(i), 100(b).

²¹³ Houston Criteria (a) Report, paragraph 279.

²¹⁴ Houston Criteria (a) Report, paragraphs 278 and 289.

²¹⁵ Wood Mackenzie, *Asset Report for Carmichael Mine*, June 2025, page 10. A copy of this document is attached to Brendan Lane's Statement as Confidential Annexure BL3.

section 5 of Mr Lane's Statement, [REDACTED]

455 However, the Adani Group would welcome and promote any opportunity to provide third-party access to the Carmichael Rail Network as this would represent an important source of additional revenue for both Bowen Rail and the Terminal. This is particularly so given that [REDACTED]

456 Bowen Rail's commercial incentive is to provide access to this capacity on reasonable terms. This was recognised by the Hon Angus Taylor MP when Adani first developed the Carmichael project *"Under the Queensland Government's plan for the Galilee Basin, the Carmichael rail line will be open access to other miners... Adani has always supported this approach and want to attract greater use of their rail and port infrastructure"*.²¹⁶ This remains the case today.

457 [REDACTED]
[REDACTED].²¹⁷

458 In relation to Mr Houston's far-fetched suggestion that declaration may facilitate entry of a new below-rail network, effectively duplicating the Carmichael Rail Network, this would be commercially unviable. The Carmichael Rail Network remains available [REDACTED] and there would need to be significant development in the Galilee Basin, with proven tenement viability, to underwrite investment in a second and duplicate rail link connecting Galilee to the CQCN.

459 While a second rail option for the Galilee Basin was previously proposed by GVK and Aurizon, this required over ~495km of below-rail infrastructure and is not expected to be developed due to its environmental impact and expected market demand.²¹⁸

460 To the extent that there are barriers to competition for below-rail services in the Galilee basin, these are not related to access to the Terminal but rather significant regulatory, commercial and other barriers that would exist with or without declaration of the Terminal service. [REDACTED]
[REDACTED] Declaration of the Terminal would be irrelevant.

461 In NQXT's view, it is now accepted that there will only be one rail line in the Galilee Basin at least over the proposed declaration period.²¹⁹

Bowen Rail has no ability to foreclose access or discriminate

462 Bowen Rail operates the Carmichael Rail Network subject to an Access Policy approved by the State Government in December 2021 and which establishes an open-access framework.²²⁰ The Access Policy operates as a deed poll enabling access seekers to directly enforce their rights to negotiate with Bowen Rail regarding terms of access.

463 The State had several important objectives in mind when approving the Access Policy, which are outlined in the deed itself. These include:²²¹

- (a) the development of an open-access, multi-user railway between the Galilee Basin and Aurizon's Newlands and Goonyella systems;

²¹⁶ The Hon Angus Taylor MP, *What is the Government's position on the Adani Carmichael project?*, (<https://www.angustaylor.com.au/content/what-government%E2%80%99s-position-adani-carmichael-project>).

²¹⁷ Wood Mackenzie, *Asset Report: Carmichael Coal Mine*, June 2025, page 10.

²¹⁸ Wood Mackenzie, *Asset Report: Carmichael Coal Mine*, June 2025, page 9.

²¹⁹ Wood Mackenzie, *Australia Coal Supply Summary*, July 2024, page 12.

²²⁰ Carmichael Rail Network Access Policy, December 2021.

²²¹ Carmichael Rail Network Access Policy, December 2021, Schedule C, definition of State Objectives.

- (b) below-rail access provided to third parties on fair and reasonable terms, including efficient and transparent pricing mechanisms; and
- (c) construction, operation and maintenance of the network undertaken in a manner which efficiently meets the projected demand of prospective users other than entities within the Adani Group.

464 To that end, the Access Policy:

- (a) ensures access is provided in a manner that does not unfairly differentiate between Access Holders (i.e. Bravus) or Access Seekers to their competitive detriment;
- (b) facilitates the negotiation of access agreements, with clear processes which are timely, commercial and non-discriminatory;
- (c) provides guidance in relation to pricing and terms of access;
- (d) establishes principles for planning expansions and negotiating the terms for funding feasibility studies;
- (e) provides an efficient and binding dispute resolution mechanism; and
- (f) contains ringfencing measures to ensure that information provided to Bowen Rail by access seekers or holders is kept confidential and not used for any other purpose (including by the Adani Group more broadly) other than providing access.

465 The Access Policy is in place until 2056 and requires agreement from the Queensland Government's Treasury Department to be terminated. Treasury must also approve any amendments.

5.8 No material impact on competition in markets for rail haulage

466 The Terminal is currently serviced by two competing haulage providers – Aurizon and Pacific National. Bowen Rail also transports coal to the Terminal on a dedicated basis for Bravus.

467 Other terminals and the CQCN more broadly are serviced by four coal haulage providers:

- (a) **Aurizon Operations** – Aurizon is Australia's largest coal haulage provider, handling ~133 million tonnes of coal on the CQCN in FY2024,²²² or ~64% of total volumes moved on the network,²²³ with a fleet of ~700 locomotives which service all Queensland coal terminals. Aurizon Operations is a related entity of Aurizon Network which owns and operates the below-rail infrastructure on the CQCN.
- (b) **Pacific National** – a major supplier of coal haulage services with approximately 113 locomotives and 3300 wagons in Queensland.²²⁴ In Australia more widely, Pacific National has ~575 locomotives and ~11,500.
- (c) **One Rail** – entered Queensland in 2020 to service Glencore, which established X-Rail / GRail to self-supply coal haulage services. These Glencore businesses later became the

²²² Aurizon, FY24 Results Presentation, page 42 (<https://media.aurizon.com.au/-/media/files/investors/reports-and-webcasts/2024/full-year-results/fy2024-results-presentation.pdf?rev=9d40a2972f0c49ba8c0323bb11615507>).

²²³ Based on total forecast CQCN volumes of ~208 Mt in 2024-25. See QCA, Annual review of reference tariffs, page 4 (<https://www.qca.org.au/wp-content/uploads/2024/05/aurizon-network-review-of-reference-tariffs-2024-25-decision-notice-final.pdf>).

²²⁴ Pacific National, Submission to the Queensland Competition Authority on the Declaration Review of the Dalrymple Bay Coal Terminal, 30 May 2018, page 3 (https://qcapatch.qca.org.au/wp-content/uploads/2019/05/33698_9-Pacific-National-Submission-2.pdf).

core of One Rail's haulage operations, but it has since won work with other coal producers in the Bowen Basin.

- (d) **BMA Rail** – commenced in 2014 as part of BMA's fully integrated supply chain. BMA Rail exclusively services BMA related mines, including those which export through HPCT which BMA also owns. BMA Rail provides approximately one quarter of the above rail services used by BMA.²²⁵

468 Aurizon Operations transports up to 70% of volumes on the CQCN, with the balance reflecting Pacific National's (~25%) and BMA Rail (~5%).²²⁶ These market shares are similar for coal haulage in Queensland more broadly.²²⁷

- (a) Aurizon: 60-70%
- (b) Pacific National: 25-30%
- (c) BMA Rail: 5-10%
- (d) One Rail: 0-5%

469 Declaration of the Terminal will not change the existing, and long standing, market structure described above or have any influence on the conditions for competition in the market for coal haulage services within the CQCN. NQXT is not aware of any investments by Aurizon or Pacific National in the Queensland coal haulage market in response to or as a result of the redeclaration of DBCT in 2020.

470 Bowen Rail does not compete in the market for rail haulage services within the CQCN. It was established solely to service Bravus' internal needs and does not supply third parties.

471 The QCoal Users' submission is that the vertical relationship between NQXT and Bowen Rail means it has an incentive and ability to alter the Terminal Regulations or to otherwise operate the interface between the Terminal and rail providers in order to unfairly preference Bravus or Bowen Rail.

472 In response to this argument, NQXT notes:

- (a) There is also no practical scope for Bowen Rail or NQXT to preference Bravus in the market for haulage services. On the Newlands system, rail pathing is regulated by Aurizon subject to its Access Undertaking. On the Carmichael Rail Network, if third-party users were to seek access, Bowen Rail would have no ability or incentive to preference its above-rail haulage service or Bravus.

- (b) This is additionally the case because, unlike DBCT, the Terminal operates [REDACTED]
[REDACTED]
[REDACTED] Mr Dederer explains (at paragraphs 46 to 47):

DBCT operates on a "cargo assembly" basis. This means that the Terminal operates with relatively limited stockpiles and requires coal to be railed to the Terminal only when a vessel has berthed that is ready to receive that coal. A couple of things follow from this, in relation to the way that DBCT operates that are different to our Terminal.

²²⁵ BHP, Submission to the Queensland Competition Authority on the Declaration Review of the Dalrymple Bay Coal Terminal, 16 July 2018, page 2 (https://www.qca.org.au/wp-content/uploads/2019/05/34424_18-BHP-Cross-Submission-2.pdf).

²²⁶ QCA, Final Recommendation, Aurizon Network Redeclaration Review (March 2020), page 12.

²²⁷ Australian Competition and Consumer Commission, *Statement of Issues, Aurizon – proposed acquisition of One Rail*, 9 June 2022, page 8 (<https://www.accc.gov.au/system/files/public-registers/documents/Aurizon%20One%20Rail%20-%20Statement%20of%20Issues%20-%209%20June%202022.pdf>).

First, this means that DBCT operates as a “pull” model in which the operator at DBCT necessarily plays a more central role in rail scheduling than we do at APO. The operator at DBCT needs to have direct input into the rail plan, coordinating the railing of coal when vessels are ready to be loaded. On the other hand, [REDACTED]

[REDACTED]. This means that users of the Terminal (i.e. coal producers) [REDACTED]

*[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]*

- (c) If there was any such incentive or ability for the Terminal to preference Bravus (or Bowen Rail) in operating the rail in-loading infrastructure or interface with Aurizon’s network, there would be evidence of that conduct to date.
- (d) Even if it occurred, the conduct would not have any effect on the rail haulage market – because both Pacific National and Aurizon would be equally affected (and Bowen Rail does not participate in that market). At most, it might be said to have an influence on the downstream thermal coal market, in which Bravus would have a minor advantage in terms of the speed or efficiency of coal handling. This advantage would be irrelevant to global thermal market conditions.

5.9 Other markets

473 The QCoal Users’ application suggests, in very vague terms, that “*declaration may also promote an increase in competition in the secondary capacity markets and other “derivative markets” such as such as [sic] port services, coal shipping services and various mining inputs and services markets*”.²²⁸ Neither the QCoal Users’ application nor Mr Houston provide any detail on:

- (a) definition of the markets in which they claim that there may be a promotion of competition;
- (b) the current state of competition in these markets; or
- (c) how, if at all, competition in these markets might be affected by declaration of a coal handling services at NQXT.

474 Clearly, criterion (a) cannot be satisfied on the basis that competition may be promoted in some vaguely identified and undefined secondary or derivative market. In order to recommend declaration, the QCA must be satisfied that declaration would promote a material increase in competition in at least one clearly defined market.

475 Regarding the claimed ‘secondary capacity market’, neither the QCoal Users nor Mr Houston are able to even confirm that such a market exists, let alone identify an impact on competition. Mr Houston acknowledges that:²²⁹

- (a) “*I do not have detailed information regarding the demand for and supply of secondary capacity at NQXT*”; and
- (b) “*it is difficult to assess... whether declaration would promote a material increase in competition in this market.*”

²²⁸ QCoal Users’ Declaration Request, paragraph 92.

²²⁹ Houston Criterion (a) Report, paragraphs 296, 301.

- 476 This is unsurprising because, in fact, [REDACTED]
[REDACTED] [REDACTED] However, [REDACTED]
[REDACTED]. It is entirely unclear how declaration of a coal handling service at NQXT would promote competition in a 'market' with no demand.
- 477 Regarding the 'derivative' markets referred to by the QCoal Users, while not clearly defined these would all appear to be markets that are at least workably competitive. These are referred to as "*port services, coal shipping services and various mining inputs and services markets*". Markets such as shipping and mining services are typically highly competitive, supplied by large global players. It is entirely implausible that declaration of a coal handling service at NQXT could materially impact competition in these 'derivative' markets.

6 NQXT is not a natural monopoly (criterion (b))

In summary:

- The Terminal does not satisfy the natural monopoly test under criterion (b) of the QCA Act.
- The relevant market is the market for coal export handling services in central Queensland, which is inherently served by a network of multiple export terminals. This interconnected system is underpinned by the CQCN, which links over 50 mines to these terminals and was purposefully designed to enable producers to access a range of export options, thereby fostering competition and resilience across the sector.
- Expert economic evidence from CEG, applying the Hotelling model of spatial competition, demonstrates that the market demand for coal handling services in this region is far greater than the capacity of any single terminal, including NQXT. Even on a conservative view, foreseeable demand over the relevant period is estimated at approximately 150 mtpa – well in excess of the Terminal's nameplate and operational capacity. CEG's evidence further shows that the least-cost solution for meeting this demand is the continued use of multiple terminals, rather than attempting to channel all volumes through a single facility, which would require inefficient and costly duplication of infrastructure.
- The Terminal faces direct and ongoing competitive constraints from other terminals, particularly DBCT, as evidenced by [REDACTED]. The CQCN's structure, including the GAPE expansion, was specifically developed to facilitate this competition and to avoid the emergence of a single-facility monopoly.
- Properly viewed in light of market evidence and the correct frame of economic reference, it is clear that the Terminal is not a natural monopoly: it cannot meet total foreseeable market demand at least cost compared to two or more facilities, and it operates in a market where effective competition is both present and actively shaping commercial outcomes.
- As such, the statutory threshold for declaration under criterion (b) is not met, and there is no economic or policy justification for imposing access regulation on NQXT on the basis of natural monopoly concerns.

478 Criterion (b) was substantially amended following the Productivity Commission's 2013 review of the national access regime. The Productivity Commission review recommended changes several of the declaration criteria in Part IIIA of the CCA, which were essentially replicated in amendments to Part 5 of the QCA Act.

479 The Productivity Commission's recommendation was that criterion (b) be framed as a test of whether the facility is a 'natural monopoly' – i.e. whether the facility could meet the total foreseeable demand in the market over the relevant period at the least cost compared to any 2 or more facilities.

480 In framing the 'natural monopoly' test, the Productivity Commission emphasised that the assessment of foreseeable demand must include market demand being served by alternative facilities. This was seen as important to avoid declaration of facilities that face effective competition.

481 The Productivity Commission explained the approach as follows:²³⁰

A market-based approach

The Commission's considers that criterion (b) should direct decision makers to test whether a facility can meet total foreseeable market demand for the infrastructure service — including the demand for any substitute services provided by facilities serving that market — at least cost. To do so, the costs from a facility meeting total foreseeable market demand should be compared with the costs from that demand being met by two or more facilities.

Including the demand for substitute services in criterion (b) would better target the Regime at the economic problem. In infrastructure markets, an enduring lack of effective competition will usually occur where the incumbent facility can meet total market demand for the infrastructure service at least cost. If a facility can meet total market demand at least cost it would likely hold a strong position in the market for the infrastructure service, given it could draw on its lower costs to deter competitors that threaten its market position. Allan Fels noted that an incumbent natural monopoly could deter entry if it could credibly threaten a 'price war' (sub. 40, p. 53). Accounting for total foreseeable market demand would direct criterion (b) toward identifying the most likely source of an enduring lack of effective competition in infrastructure service markets.

A market-based test in criterion (b) could avoid declaration of services that face effective competition from other facilities — effective duopolies or oligopolies

482 Application of the natural monopoly test involves the following steps:

- (a) identification of the market in which NQXT's coal handling service is provided;
- (b) estimation of foreseeable demand in that market over the period for which the service would be declared; and
- (c) analysis of whether that market demand could be met by NQXT at least cost compared to any two or more facilities.

483 The QCoal Users' application and the analysis of Mr Houston are misdirected from the outset. They fail to properly identify the market in which NQXT's coal handling service is provided – an error which infects their entire analysis of criterion (b). Mr Houston's analysis is in fact not a 'natural monopoly' analysis at all, as it fails to properly identify total market demand for the service. Instead, Mr Houston focuses on that part of the market that might prefer to use NQXT's service and ignores all market demand that is currently using (or might be assumed to prefer) substitute services.

484 CEG provides a proper analysis of criterion (b), based on a more realistic view of market demand as set out in section 4.5 above. This clearly shows that NQXT cannot serve market demand at least cost compared to two or more facilities. This conclusion aligns with the market realities, including the fact that:

- (a) an interconnected network of multiple facilities are currently being used across the CQCN to service demand for coal handling services from over 50 mines in central Queensland; and
- (b) the CQCN itself has been constructed and substantially augmented over time to facilitate use of multiple coal handling facilities – including the \$1.2 billion GAPE expansion

²³⁰ Productivity Commission, *National Access Regime: Inquiry Report No. 66*, 25 October 2013, page 167.

designed specifically to allow customers in the Goonyella system to ship through NQXT.²³¹

485 This section summarises key elements of the CEG analysis.

6.1 The market in which NQXT provides coal handling services

486 As explained in section 4 above, CEG applies the Hotelling model to identify the market in which NQXT provides its coal handling service. The Hotelling model is directly applicable to situations of spatial competition, where customers are positioned differently in terms of their geographic location and/or preferences. This model is most appropriate for the task under criterion (b) as it allows identification of all foreseeable demand in the market – including demand from customers that are currently using (or might be assumed to prefer) substitute services, due to their location.²³²

487 CEG explains that in order to identify the market served by any individual terminal, the question is: what demand could be profitably served by that terminal if it had no competitors?

488 CEG demonstrates that the demand that can profitably be served by NQXT – and therefore the market in which NQXT provides its services – extends at least as far south as Middlemount, and likely further south. CEG notes that it is not necessary to precisely determine how far south of Middlemount the relevant market extends. This is because, even if the market boundary is conservatively drawn at Middlemount, foreseeable demand far exceeds what could be served by NQXT alone at least cost (reflected in the fact that there are at least three terminals handling this demand – NQXT, DBCT and Hay Point).²³³ In other words, this conservative market definition is more than sufficient to establish that criterion (b) is not satisfied.

489 As CEG concludes:²³⁴

Evidence shows that NQXT and DBCT

Our modelling of duopoly competition using Hotelling the spatial competition model confirms that overlapping markets between NQXT and DBCT result in lower prices and greater consumer surplus compared to monopoly supply (even absent regulation of DBCT). The implication is that NQXT does not hold natural monopoly characteristics: its market is contestable, and efficient outcomes rely on the presence of multiple terminals.

490 The results of CEG's analysis:

- (a) align with the commercial reality within the Goonyella system – ; and
- (b) are consistent with the evidence referred to in sections 2 and 3 of significant competitive constraints on NQXT. NQXT clearly competes with other terminals, including DBCT, to attract and retain contracted volumes within the market identified by CEG.

6.2 Foreseeable demand in the market

491 CEG estimates foreseeable demand over the period for which declaration is sought based on forecasts of demand from each of the mines that could profitably be served by NQXT. These

²³¹ CEG Report, paragraph 6.

²³² CEG Report, section 5.

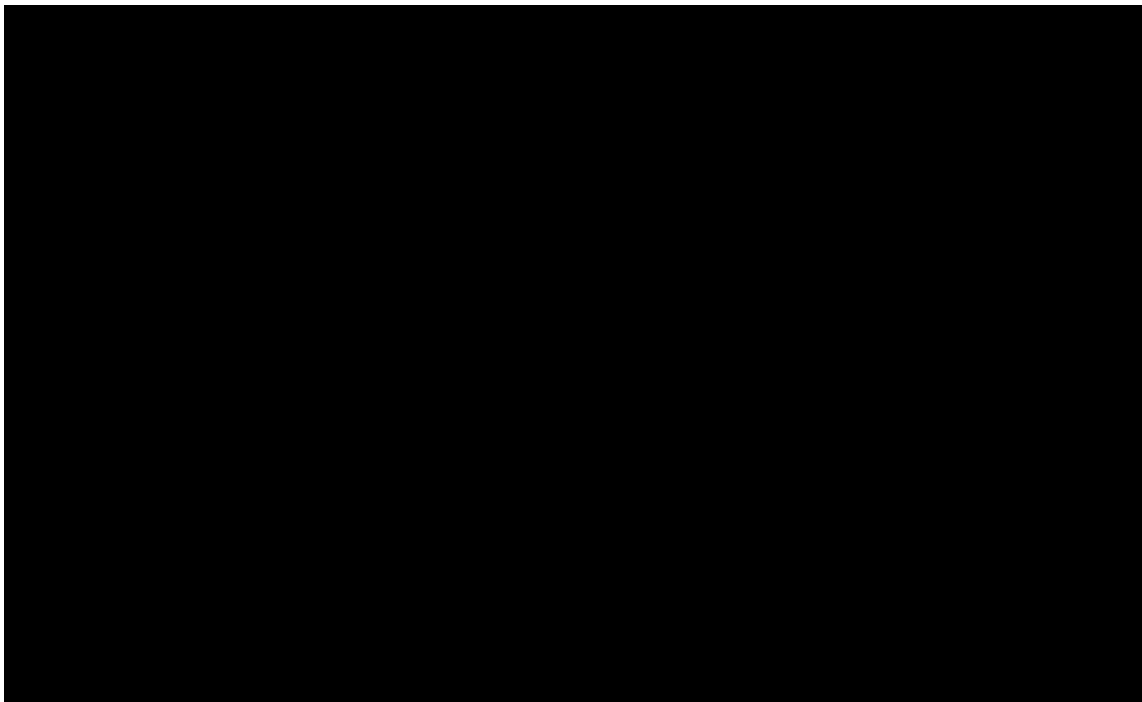
²³³ CEG Report, section 6.

²³⁴ CEG Report, paragraph 14.

forecasts are based on independent projections of throughput for each mine provided by Wood Mackenzie.

- 492 CEG's analysis produces a demand curve for NQXT's coal handling service (reproduced as **Figure 21** below). This represents the willingness to pay of each mine that could economically be serviced by NQXT. This is ordered from highest to lowest willingness to pay, with the volume of each mine (including an allowance for contracting capacity at NQXT above throughput) representing each flat portion of the curve (e.g. volumes from large mines, like [REDACTED] represent long flat portions of the demand curve).
- 493 CEG's demand curve could be further extended to the right to include additional southern mines that could economically be serviced by NQXT. However, for the purpose of criterion (b), it is unnecessary to extend beyond Middlemount, the furthest south mine current serviced by NQXT.
- 494 On this conservative view, CEG estimates foreseeable demand in the market over the period for which declaration is sought to be approximately [REDACTED]
[REDACTED]

Figure 21 [REDACTED] [REDACTED]



6.3 A single facility could not meet market demand at lower cost compared to the current use of multiple facilities

- 495 Even on a conservative view of foreseeable demand in the relevant market, this demand far exceeds NQXT's current capacity and the rail system's current capacity to deliver coal to NQXT.
- 496 The current commercial reality is that multiple facilities are needed to serve market demand across the CQCN. This includes NQXT, DBCT, HPCT, WICET and RGTCT.
- 497 NQXT alone is clearly not the least cost option to serve all foreseeable demand in the market. Even if it were feasible for NQXT to be expanded to meet this total market demand alone, the cost of this would be far exceed the cost of multiple facilities. It would require large investments

²³⁵ CEG Report, Figure 6-4.

in upgrading rail and port capacity at NQXT and, in doing so, unnecessarily duplicating existing CQCN rail and port capacity that already exists.

498 CEG observes that the least cost solution is for the CQCN to instead operate as an interconnected system with multiple terminals – precisely as it is currently structured.²³⁶ This allows most mines to send most of their coal export volumes most of the time to the closest export terminal and with rail and port capacity optimised to support that outcome.

499 However, customers also have the ability to divert volumes to other terminals where this is efficient and/or pro-competitive – [REDACTED]. The benefits to coal miners of having this substitution between DBCT/HPCT and NQXT are precisely why the GAPE investment was funded by Goonyella miners – including miners like Lake Vermont and Middlemount who are further from NQXT than DBCT.

6.4 Conclusion

500 Criterion (b) was intentionally framed by the Productivity Commission as a market-based test, designed to avoid declaration of facilities that face effective competition from other facilities. NQXT, which faces direct competition from other coal handling facilities in central Queensland, manifestly fails the natural monopoly test.

501 It is clear from both an orthodox application of criterion (b) and the intuitive logic of the current market structure that NQXT is not a natural monopoly. NQXT operates within a market for current and potential customers that by necessity is served by multiple terminals.

²³⁶ CEG Report, paragraphs 189-192.

7 NQXT is a facility of state economic significance (criterion (c))

In summary:

- The Terminal is a facility of State significance. In light of all the reasons why the other declaration criteria are not satisfied, this reinforces why the Terminal should not be declared.

502 NQXT acknowledges that the Terminal is a facility of state economic significance and that criteria (c) is satisfied as a result. However, that very significance reinforces the case against declaration.

503 Where a facility plays a pivotal economic role, the risks of unnecessary and complex regulatory intervention are amplified. Introducing regulated oversight (and associated access disputes and arbitration) as a standing feature of access at NQXT, absent clear market failure, would impose rigidity, uncertainty and cost in a sector that depends on flexibility and long-term investment confidence. Regulation by way of declaration should be reserved for circumstances where there is market failure giving rise to *clear and material* competition concerns in related markets.

504 Regulation should not be seen as a default market setting for export terminals, even where there is vertically integrated ownership. The statutory criteria for declaration reflect the gravity of this step and must be applied with caution, grounded in the commercial realities of how the market actually functions.

505 The economic significance of the Terminal to Queensland merely serves to highlight what is at risk by inappropriate access regulation – a matter explored further in response to criterion (d).

8 Declaration would not promote the public interest (criterion (d))

In summary:

- Declaration of NQXT would not promote the public interest.
- The QCoal Users have failed to identify any clear or material public benefit that would arise from regulation, nor have they shown that declaration would result in improved access terms or outcomes for users.
- The current unregulated regime has delivered substantial benefits for Queensland, including commercial flexibility, individually negotiated terms, increased transparency, and significant private investment across the coal export supply chain.
- In contrast, declaration would impose unnecessary regulatory costs, reduce flexibility for both NQXT and users, and introduce greater investment and sovereign risk at a time of heightened market and demand uncertainty. There is no evidence that declaration would deliver broader community or economic benefits.

8.1 Background to the criterion

506 Criterion (d) has a distinct and important role to play within section 76 of the QCA Act.

507 Criterion (d) requires a separate policy consideration of whether declaration would promote the public interest in any relevant sense. The public interest criterion reflects a recognition that significant costs are associated with access regulation. In order for those costs to be acceptable, there must be a demonstrable public interest in declaration. It is not enough that any benefit is identified in a trivial or marginal market or which has an uncertain or speculative economic benefit.

508 This was explained by the Productivity Commission in its review of the national access regime, referring to what was then criterion (f):²³⁷

Given the costs associated with access regulation, the package of declaration criteria should work together to deny declaration applications that would produce only trivial or ambiguous gains if successful....

Criterion (f) provides the only opportunity for a decision maker to consider the overall consequences of declaration. The purpose of criterion (f) should be to require that the community as a whole is likely to be better off as a result of declaration.

509 One of the Productivity Commission's recommendations was to make criterion (f) (now (d)) a test that must be affirmatively satisfied – i.e. an applicant needs to positively demonstrate that declaration would promote the public interest, not just that declaration would not be contrary to the public interest. This recommendation was adopted in the subsequent amendments to the declaration criteria in the national access regime, which were mirrored in the QCA Act.

510 Criterion (d) therefore places an onus on the QCoal Users to positively demonstrate that:

- (a) declaration of NQXT would result improved terms and conditions of access, compared to a future without declaration; and

²³⁷ Productivity Commission, *National Access Regime: Inquiry Report No. 66*, 25 October 2013, pages 175-176.

- (b) such an improvement in the terms of access would clearly and unambiguously promote the public interest.

511 The QCoal Users clearly have not done this. Indeed, the QCoal Users have not even sought to identify how the terms of access to NQXT would be in any different in a future with declaration, nor can it point to any meaningful promotion of the public interest.

8.2 The QCoal Users cannot point to any public interest in declaration

512 As noted in section 2.1, when NQXT was privatised, a policy decision was made by the Queensland Government to not impose access regulation. This contrasts with DBCT, where the terminal was declared as part of the privatisation process.

513 The QCoal Users cannot point to any sense in which declaration of NQXT now, a decade and a half after it was privatised, would promote the public interest. The suggestion by the QCoal Users and Mr Houston that regulation of access to NQXT would lead to increased investment is at best speculative – there is no evidence of how a change in the terms of access to NQXT (if there were to be a change) would affect investment by anyone. The suggestion that regulation would lead to increased investment by NQXT is entirely implausible.

514 The fact that the QCoal Users cannot identify any meaningful public benefit in declaration of NQXT is unsurprising. There is simply nothing to be gained, in terms of the public interest, from regulating the terms of access to NQXT.

515 Clearly, the QCoal Users are hoping that if NQXT is declared then QCA would determine a slightly lower price than what it could achieve through commercial negotiation. NQXT does not accept that this would necessarily be the case. However, even if this was to be the result of declaration, this would not promote the public interest. It would only serve the private interests of the QCoal Users.

8.3 Operation of NQXT as an unregulated terminal has delivered significant benefits for the coal sector and the State of Queensland

516 The current renewal cycle provides the first practical insight into the benefits associated with the commercial flexibility which can be achieved through NQXT as an unregulated Terminal.

Evidence of [REDACTED] :²³⁸
[REDACTED]

(a) a flexible approach to [REDACTED] ²³⁹

(b) [REDACTED]
[REDACTED] ²⁴⁰

(c) the ability for commercial negotiation to delivery increased transparency for users over operational matters and costs through [REDACTED] ²⁴¹

(d) improved internal structural and compliance commitments from NQXT;²⁴²

²³⁸ Section 3.12.

²³⁹ See paragraph 268.

²⁴⁰ See sections 3.12(c), 3.14, 3.15.

²⁴¹ See section 3.4, paragraphs 120, and 157.

²⁴² See section 3.5, paragraph 312.

(e) an approach to pricing that [REDACTED].²⁴³

517 These recent benefits are in addition to the historical economic benefits that have accrued to Queensland from operation of NQXT as an unregulated export terminal, including supporting substantial investment by the Adani Group (in the order of more than \$7 billion) across the coal export supply chain – including major investments in rail and mine infrastructure, as well as investment at the Terminal itself. Activity at the Port of Abbot Point has been estimated to have contributed almost \$10 billion to the Queensland economy each year, supporting more than 8,000 jobs across mining, construction transport and wholesale industries.²⁴⁴ The Adani Group has also paid over \$232 million in Government royalties over the last 5 years.²⁴⁵

518 All of these benefits will continue to accrue if NQXT remains unregulated.

8.4 By contrast, declaration would impose significant and unnecessary direct costs and inflexibility on NQXT and the industry

519 To the extent that any hypothetical future regulation of the Terminal was to occur, it seems likely to be characterised by the following features which amount to access based on the ‘lowest common denominator’:

- (a) a tendency for access to be undertaken on a common set of terms of access (usually through a standard access agreement) and while scope may exist for negotiation around these terms, in practice this seldom (if ever) occurs;
- (b) the declared service itself will typically be defined, limiting scope to develop and agree alternative or flexible service offerings for individual customers (with different and bespoke pricing);
- (c) a common TIC and handling charge will typically apply, with limited scope for alternative models to be agreed with individual customers such as volume discounts, cap and collar socialisation or other commercial and risk sharing structures; and
- (d) the infrastructure tariff will generally be subject to periodic review and revision (usually every 5 years), either through arbitration before the QCA or under an access undertaking.

520 The history of the Terminal under the tariff process in the Legacy User Agreements already highlights the [REDACTED]. Indeed, a focus of many of the complaints raised by the QCoal Users in their declaration application relates to past TIC arbitrations. It is therefore remarkable that it seeks to move back towards a regulatory model that forces the parties into precisely this model.

521 The direct costs of periodic arbitration or QCA pricing reviews are also substantial.

²⁴³ See section 3.12(b).

²⁴⁴ North Queensland Bulk Ports, *Economic Impact Study 2025*, 2025 (https://nqbp.com.au/_data/assets/pdf_file/0026/48860/NQBP30483-EIS-CAMPAIGN_BOOKLET_WEB.pdf).

²⁴⁵ These figures are based on annual financial statements submitted to the Australian Securities and Investments Commission over the last five financial years.

8.5 Declaring NQXT in the context of current global coal market uncertainty would carry significant downside risk

522 The costs and risks associated with access regulation are well recognised in the economic literature. These include significant risk to investment due the prospect of returns being truncated and/or regulatory error.²⁴⁶

523 These risks would be amplified in the case of NQXT at this time, given the complex global and local market conditions within which the Terminal is operating, as discussed at section 2.2 above, [REDACTED]:

- (a) [REDACTED]
[REDACTED],²⁴⁷
- (b) [REDACTED]
[REDACTED],²⁴⁸
- (c) [REDACTED]
[REDACTED],²⁴⁹
- (d) f [REDACTED]
[REDACTED],²⁵⁰ and
- (e) [REDACTED]
[REDACTED],²⁵¹

524 This is a fundamentally different commercial and political environment to the one that existed when the Terminal was first privatised in 2010 at the height of the commodity super cycle and where the industry held great confidence about stable and growing long term demand. If the State Government (rightly) identified that declaration was not in the public interest in that context, it is difficult to see how declaration would be seen to be in the public interest now.

525 As noted in section 2.5 above, imposing heavy-handed access regulation on a private terminal in this uncertain environment would also be a complex and challenging task,²⁵² with significant risk of unintended costs.

8.6 Broader risks for investment perceptions in Queensland

526 Finally, any declaration of NQXT would send a message to potential investors in Queensland.

527 NQXT is a privatised facility that has been operated efficiently and equitably by Adani for over 14 years. NQXT is in the process of undertaking a [REDACTED], which has demonstrated the [REDACTED] associated with an unregulated approach to negotiation. This has also occurred within the context of [REDACTED].

²⁴⁶ Some of the economic costs associated with access regulated are discussed in the Productivity Commission's 2013 review of the national access regime: Productivity Commission, *National Access Regime: Inquiry Report No. 66*, 25 October 2013, section 3.4.

²⁴⁷ See paragraphs 82-83.

²⁴⁸ See paragraphs 89-92.

²⁴⁹ See paragraph 94.

²⁵⁰ See paragraphs 86-88.

²⁵¹ See paragraph 85.

²⁵² Incenta Report, paragraph 9.

- 528 For the Queensland Government to impose declaration on private infrastructure under Part 5 of the QCA for the first time ever in this context would send powerful and adverse signals regarding regulatory and sovereign risk for prospective investors in Queensland infrastructure.
- 529 A decision of this kind would also fail to reflect or respect the valuable structure of the Queensland coal sector. As noted at paragraphs 139 to 140 above, an important feature of the Queensland coal industry is that it operates as an interconnected network of export terminals, linked by the CQCN, and servicing over 50 mines. This network allows mines optionality and resilience – providing an attractive feature of the industry for customers and investors, which does not exist in other regions such as the Hunter Valley.
- 530 For example, in late March 2017, Tropical Cyclone Debbie made landfall near Airlie Beach, Queensland, as a Category 4 severe tropical cyclone. The CQCN was temporarily shut down due to widespread flooding, landslips, and infrastructure damage.²⁵³ The Goonyella rail system was particularly affected, with heavy rain and flooding disrupting train services to DBCT until early May 2017.²⁵⁴ During this period, [REDACTED]
[REDACTED]
[REDACTED] [REDACTED] [REDACTED]
[REDACTED].
- 531 Where the optionality and interconnected nature of Queensland export terminals is one of its defining and most valuable features, it would be perverse for a regulatory decision to instead be based on a finding by the Queensland Government and the QCA that each coal terminal instead operates as an isolated economic monopoly.

8.7 No public benefit

- 532 Against these considerations and risks, the QCoal Users have been unable to point to any tangible public benefit that would be likely to arise from declaration and has failed to satisfy the criterion.

²⁵³ Ben Creagh, “Aurizon begins repairs to coal rail systems following Cyclone Debbie” *Australian Mining*, 3 April 2017, (https://www.australianmining.com.au/aurizon-begins-repairs-coal-rail-systems-following-cyclone-debbie/?utm_source).

²⁵⁴ Mark Carter, “Cyclone Debbie hits Aurizon coal traffic” *International Railway Journal*, 11 April 2017, (https://www.railjournal.com/freight/cyclone-debbie-hits-aurizon-coal-traffic/?utm_source).

9 Conclusions

- 533 The evidence before the QCA is clear and compelling: there is no justification for the declaration of the coal handling service at the Terminal because criteria (a), (b) and (d) are not satisfied. The commercial realities of the market, as well as the recent history of access and negotiation at the Terminal, overwhelmingly do not support the imposition of heavy-handed regulatory intervention.
- 534 **The Terminal operates in a competitive environment, not as a natural monopoly.** NQXT faces direct and substantial competition from other coal export terminals in central Queensland, most notably DBCT. Users have [REDACTED], and [REDACTED]. The interconnected nature of the CQCN ensures that mines have genuine alternatives, and the market for coal handling services is defined by real, observable rivalry rather than theoretical constructs.
- 535 **There is no evidence of market failure to justify regulatory intervention.** The Terminal has a long and successful history of providing open, non-discriminatory access on commercially negotiated terms. The [REDACTED] has further demonstrated the benefits of this approach, with [REDACTED]. There is no evidence of self-preferencing, foreclosure, or discrimination by NQXT. The vertical integration of the independently operated Adani Group companies within the central Queensland coal supply chain has not resulted in any adverse outcomes for third parties, and the structural and operational safeguards in place ensure continued equitable treatment for all users.
- 536 **Declaration would not promote a material increase in competition in any relevant market.** The Terminal operates in a genuinely competitive environment, with users [REDACTED]. The terms of access offered by NQXT [REDACTED] and are at least as reasonable as, and often preferable to, those available under regulated alternatives. There is no evidence that declaration would deliver any improvement in the conditions for competition in any dependent market, whether for coal tenements, coal exports, below-rail or haulage. The counterfactual is clear: declaration would not alter the competitive landscape or the terms of access in any way that would materially enhance competition.
- 537 **Declaration would not be in the public interest.** The flexibility and commercial responsiveness of the unregulated operation of the Terminal have delivered tangible benefits to users and the State of Queensland. In contrast, declaration would impose unnecessary costs, inflexibility, and regulatory risk, undermining investment confidence and threatening the very dynamism that has underpinned the Terminal's success. The public interest is not served by heavy-handed intervention in a market that is already functioning effectively.
- 538 **Finally, the broader context cannot be ignored.** The Queensland coal industry is facing significant uncertainty, including from global market volatility, ESG-driven financing constraints, and long-term demand risks. In this environment, regulatory intervention would be not only unwarranted but potentially damaging, sending a negative signal to investors and jeopardising the resilience and optionality that are hallmarks of the Queensland export coal supply chain.
- 539 For all these reasons, the QCoal Users' application for declaration fails on every substantive ground. The Terminal should remain unregulated, allowing the benefits of commercial flexibility, competition, and investment confidence to continue to flow to users, the industry and the State. As such, the QCA should recommend that the Minister **not** declare the service.

Glossary

2025 ACAR	2025 Annual Capacity Assessment Report released on 18 June 2025
AAPT	Adani Abbot Point Terminal
APO	Abbot Point Operations Pty Ltd
APSEZ	Adani Ports and Special Economic Zone Ltd
AN	Aurizon Network
APB	Abbot Point Bulkcoal Pty Ltd
ARTC	Australian Rail Track Corporation
BHP	BHP Billiton Limited
BMA	BHP Mitsubishi Alliance
BMC	BHP Mitsui Coal
Bowen Rail	Bowen Rail Company Pty Ltd
Bravus	Bravus Mining & Resources
Byerwen	Byerwen Coal Pty Ltd
CCA	<i>Competition and Consumer Act 2010</i> (Cth)
Clermont	Clermont Coal Mines Ltd
Collinsville	Collinsville Coal Company Pty Ltd
CQCN	Central Queensland Coal Network
DBCT	Dalrymple Bay Coal Terminal
DBCT Holdings	DBCT Holdings Pty Ltd
DBCT Management	DBCT Management Pty Ltd and the DBCT Trustee
DBI	Dalrymple Bay Infrastructure, the owner of the DBCT terminal
DNC	Deliverable Network Capacity
DORC	Depreciated Optimised Replacement Cost
ECD	Existing Capacity Deficit
EPBC Act	<i>Environment Protection and Biodiversity Conservation Act 1999</i> (Cth)
ESG	Environmental, social, and governance
FY	Financial Year
GAPE	Goonyella Abbot Point Expansion
HCF	Fixed handling charge
HCV	Variable handling charge
HPCT	Hay Point Coal Terminal at the Port of Hay Point
Lake Vermont	Lake Vermont Resources Pty Ltd
Legacy User	One of the [REDACTED] coal producers that had Legacy User Agreements
Legacy User Agreements	Long term, take or pay user agreements entered into with coal producers by Ports Corporation of Queensland in or around 2009-10
Middlemount	Middlemount Coal Pty Ltd
New Protocol	Updated NQXT Information Security and Ringfencing Protocol

New Standard Agreement	A new standard form of user agreement developed by NQXT in 2024
New User Agreements	Long term, take or pay user agreements entered into with coal producers by NQXT following the expiry of the Legacy User Agreements
NQXT	North Queensland Export Terminal Pty Ltd
OMC	Operating and Maintenance Contract
Operator	Abbot Point Operations Pty Ltd (see also APO)
PCQ	Ports Corporation of Queensland
Protocol	Information security and ring-fencing protocol established in 2017 between NQXT and APO which documents the separation of its mining, rail and terminal businesses
QCA	Queensland Competition Authority
QCA Act	<i>Queensland Competition Authority Act 1997</i> (QLD)
QCoal	QCoal Group
QCoal Users	QCoal and Byerwen Coal Pty Ltd
QCPL	Queensland Coal Pty Ltd
RAB	Regulatory Asset Base
RG TCT	RG Tanna Coal Terminal at the Port of Gladstone
Stanmore	Stanmore SMC Pty Ltd
T0 Expansion	A conceptual proposal for the Adani Group to construct and operate a new and separate terminal located adjacent to the Terminal at the Port of Abbot Point
T2 Expansion	An early-stage proposal by BHP to develop a second terminal at the Port of Abbot Point
T3 Expansion	An early-stage proposal in 2012 by GVK Limited to construct and operate a second coal export Terminal at the Port of Abbot Point
Terminal	North Queensland Export Terminal at the Port of Abbot Point
Terminal Regulations	Regulations for the Terminal, which the Operator and users of the Terminal have agreed to observe under their user agreements
Tribunal	Australian Competition Tribunal
TIC	Terminal Infrastructure Charge
TPC	Take or Pay Component
UT5	Aurizon's access undertaking approved by the QCA
WACC	Weighted Average Cost of Capital
WICET	Wiggins Island Coal Export Terminal at the Port of Gladstone
X50 Expansion	A \$820m project that was completed in 2011 to expand the Terminal's capacity to its current nameplate capacity of 50 mtpa
X60 Expansion	A proposal to expand the Terminal's capacity to 60 mtpa

Annexure A: Expert report of Mr Jason Ockerby and Dr Tom Hird of CEG

Annexure B: Expert report of Mr Jeff Balchin of Incenta

Annexure C: Statement of Mark Smith, NQXT

Annexure D: Statement of Damien Dederer, APO

Annexure E: Statement of Brendan Lane, Bowen Rail

Annexure F: Key terms and conditions of the Current Standard Agreement and the Legacy User Agreement

Key feature of agreement	Legacy User Agreement (PCQ)	New Standard Agreement (NQXT)	Material differences in new agreement
Payment obligation			
Handling Charges (Operator's costs)			
TIC / Port Charge			

Key feature of agreement	Legacy User Agreement (PCQ)	New Standard Agreement (NQXT)	Material differences in new agreement
Payment Terms			
Credit Support from User			

Key feature of agreement	Legacy User Agreement (PCQ)	New Standard Agreement (NQXT)	Material differences in new agreement
Handling Charges Dispute			
Termination by Owner			

Key feature of agreement	Legacy User Agreement (PCQ)	New Standard Agreement (NQXT)	Material differences in new agreement
Termination by User			
Renewal Rights			

Key feature of agreement	Legacy User Agreement (PCQ)	New Standard Agreement (NQXT)	Material differences in new agreement
Provision and Operation of the Terminal			
Terminal Regulations			

Key feature of agreement	Legacy User Agreement (PCQ)	New Standard Agreement (NQXT)	Material differences in new agreement
User Committee			
Assignment of capacity			
Provision of Access			

Key feature of agreement	Legacy User Agreement (PCQ)	New Standard Agreement (NQXT)	Material differences in new agreement
Rate of Presenting Coal			
Detrimental Practices in Presenting Coal			

Key feature of agreement	Legacy User Agreement (PCQ)	New Standard Agreement (NQXT)	Material differences in new agreement
Confidentiality			