# Further submission in response to submissions on the QCA's Draft Recommendation not to declare the coal handing service at the North Queensland Export Terminal

**21 July 2026**

**Confidentiality Key:**

QCA only

Category A

Category B

Category C

# Contents

# 1 Executive summary

1 NQXT welcomes this opportunity to respond to the matters raised by the QCoal Users and their expert, Mr Houston, in their submission dated 12 June 2026 as well as the submission of Aurizon Network of the same date.

**Any Final Recommendation should adopt an approach to market definition that ensures incentives for NQXT, DBT and Aurizon to deliver the lowest overall cost, cross-system supply chain solutions**

2 A statutory objective of Part 5 of the Queensland Competition Authority Act 1987 (QCA Act) is to promote "*the economically efficient operation of, use of and investment in, significant infrastructure*".[1]

3 For the reasons set out in Section 2, NQXT submits that the QCA's Final Recommendation will come at an important time in the evolution of the Queensland coal industry, which faces an inflection point. Given the shift towards stable and potentially declining volumes over the long term, the focus of infrastructure operators must now be to identify the overall lowest cost and most efficient means of facilitating use of existing infrastructure capacity and spare capacity.

4 This requires a change of emphasis and approach in the regulatory settings from those adopted by the QCA in 2019-2020 when finding that criterion (b) was satisfied for Dalrymple Bay Terminal (**DBT**).

5 Both Aurizon and NQXT agree that:

> [redacted].[2]

6 The lowest cost means of absorbing and handling expected future demand and growth in the Goonyella System is not by means of DBT (including 8X) but through targeted investment in expansion of the Newlands System and use of existing excess capacity across both NQXT and DBT.

7 [redacted] Work undertaken by Create Advisory, and provided with this submission, further develops and demonstrates this is the case (see Section 7 of this submission).

8 In summary, this work shows that:

(a) [redacted]

(i) [redacted]

[1] *Queensland Competition Authority Act 1997*, section 69E.

[2] [redacted].

(ii) [redacted].

[redacted]

(b) [redacted]

[redacted]

9 This analysis highlights that when all contestable incremental tonnes and appropriate costs are considered (whether facilitating the full capacity of the queue immediately or staged on an incremental basis), the lowest cost and most efficient expansion path for the Queensland coal industry involves a combination of investment and expansion across both NQXT and DBT.

10 Whether NQXT retains a degree of pricing power in negotiations with an individual user at any point in time, including as a result of geographic proximity to that user, is, with respect, beside the point.

11 When all *market demand* is taken into account, there is no reasonable basis to find NQXT is a natural monopoly facility within the meaning of criterion (b). Indeed, doing so would send strong and distortionary regulatory signals for future infrastructure investment and use at a critical time within the coal sector.

12 **QCoal Users's case and Mr Houston's evidence are speculative, inconsistent with all available evidence and internally inconsistent**

13 In responding to the Draft Recommendation, the QCoal Users' submissions continue to rely almost entirely on speculative and assumption-laden theories regarding potential harm that might arise in a future without declaration. There is an almost complete absence of real evidence.

14 Examples include:

(a) The QCoal Users concede that they are "*not aware of actual and potential transactions in the tenements markets*"[3] and have not been able to produce or point to any evidence of a party acquiring or trading in late-stage tenements as a discrete product – as an intermediary or speculator – at any point in the last 13-years.

(b) The QCoal Users have not produced any evidence of any hold up risk associated with the status quo at NQXT and have instead claimed that there is a "*paucity of primary evidence*". This is incorrect, of course. There is substantial evidence regarding the reasons miners have not invested in new or expanded mines over the last decade. This evidence was provided with NQXT's earlier submission dated 12 June 2026. The difficulty for QCoal is that all of the available evidence demonstrates that the regulatory status of NQXT is not a factor that has ever been material to such decisions.

(c) The QCoal Users have no evidence to support their claim that the Adani Group may seek to acquire in-catchment tenements rather than develop its existing tenements. Again, this conjecture [redacted] and the strong economic incentive for Adani to utilise existing and sunk assets and investments.

(d) Mr Houston's various claims, such as that the Adani Group may have economic incentives to retain spare capacity (including as some form of 'option value') are not grounded in any evidence and are inconsistent with the extensive evidence of NQXT's to the contrary, which demonstrates its laser-focused attempts to renew or contract this capacity. Indeed, applying Mr Houston's own assumptions regarding the elasticity of demand and supply for coal, the data shows it would ***not*** be economically rational for the Adani Group to restrict access to uncontracted capacity at the Terminal. Incenta has provided a further Memorandum in support of this submission (**Incenta Memorandum**)

[3] QCoal Users 12 June Submission, [77].

which estimates that doing so would lead to an adverse cost to NQXT of between [redacted].[4]

(e) The QCoal Users argue that any 'spare capacity' at NQXT will be absorbed over the next decade. Again, the only evidence for this is heavily qualified work by Wood Mackenzie. To the extent that the Wood Mackenzie forecasts suggest any tightening in capacity:

(i) this occurs only *after* the end of the proposed 10-year declaration period (i.e., 2038-9);

(ii) relies upon an unrealistic assumption that a substantial increase in volumes from the Carmichael mine (from 18.5Mt to 27.5Mt) will occur at this point, which Wood Mackenzie itself qualifies heavily and which does not reflect operational reality;[5] and

(iii) Wood Mackenzie admits its forecast is entirely based on 'demand-led base modelling' and makes no allowance for physical constraints, such as rail infrastructure.[6] Aurizon has made clear that it does not anticipate rail capacity being available to support full utilisation of NQXT at any time in the future, at least to FY38 (if not beyond).[7]

(f) The three supposed examples of conduct by NQXT that are said to demonstrate Adani acting with an incentive not to maximise utilisation of the Terminal are misleading and factually wrong (these are addressed in detail in the further statement of Mark Smith, as discussed at paragraph 61 of this submission).

15 The QCoal Users' position on the terms of access to NQXT are also internally inconsistent:

(a) First, the QCoal Users accept that the terms under which they have had access to the Terminal for the past 15 years are reasonable.[8] NQXT has demonstrated that [redacted]

(b) Second, the QCoal Users argue that the relevant "market" should not include users with access to DBT because those volumes are contestable and not subject to the exercise of market power. However, [redacted].

(c) Third, the QCoal Users (and Mr Houston) suggest that NQXT's [redacted] is evidence of the exercise of market power. However, fixed-term contracts are a relatively standard feature of infrastructure access arrangements across the coal industry and other analogous industries, including gas transportation, energy infrastructure, port leases and other port terminals. [redacted] In any event, it is not clear why this is relevant to QCoal Users, who have a right to access the Terminal today [redacted]

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[4] Incenta Memorandum, 20 July 2026, Table 1.

[5] Wood Mackenzie, *Competition Declaration – North Queensland Export Terminal Facility*, June 2026, page 10.

[6] Ibid, page 9.

[7] Further Supplementary Statement of Mark Smith at [45] and Annexure MBS-8 at page 6.

[8] QCoal Users' 12 July 2026 submission, [103]-[104].

[redacted]

(d) Fourth, the QCoal Users cannot explain why or how the terms of access in the future (following the expiry of the Legacy User Agreements) would be significantly different from the status quo.[9] [redacted]

**Conclusion**

16 In conclusion, the QCoal User's arguments rely upon the QCA finding a promotion of competition in respect of a so-called, "late-stage Northern tenements market" which is hypothetical, unsubstantiated and that, if it exists at all, is one in which there have been no more than three transactions over the last 13 years. The applicant itself cannot point to any practical or competitive benefit accruing to itself in the market which it claims is most relevant.

17 [redacted].[10]

18 This new user agreement has been offered for a term of [redacted], offering both operational and pricing certainty with no risk of subsequent dispute once agreed.[11] Any negotiated outcome for the QCoal Users from this point could only *improve* on this baseline commercial position.

19 Against this commercial reality, and on the applicant's own arguments, it is not clear what benefit could possibly arise for any party from declaration in the short term or, indeed, over the proposed declaration period – other than to enable the QCoal Users to refer a price arbitration to the QCA [redacted].

20 There is no material public benefit in imposing heavy-handed price regulation for a decade on critical export infrastructure merely to suit the short-term preferences of an individual user in current commercial negotiations. Doing so would bring the declaration process under Part 5 into disrepute. This is especially so, when the arguments made in support of doing so are premised on a range of speculative matters that, if they occur at all, are at least 10+ years away and do not support a declaration request made today.

21 The evidence is clear that a decision to declare NQXT would certainly not offer any benefit to wider mining investment or development or act to reduce 'hold up' in any way. To the contrary, such a decision risks creating a regulatory distortion which may impact wider investment in supply chain infrastructure across the CQCN – including promoting the efficient use of existing spare capacity at NQXT by Goonyella users. This has significant potential consequences for the Queensland industry and economy.

22 In these circumstances, NQXT maintains that none of criteria (a), (b) or (d) can be found to be satisfied.

[9] QCoal submission dated 12 June 2026 in response to QCA Draft Recommendation, [101]-[107].

[10] QCA Draft Recommendation, section 2.6.2.

[11] NQXT, *Submission in response to QCA's Draft Recommendation not to declare the coal handling service at the North Queensland Export Terminal*, 12 June 2026, [225].

# 2 Why it matters that the QCA's final recommendation recognises coal industry infrastructure as an integrated system and not a series of islanded monopolies

23 The QCA's Final Recommendation in this process comes at an important time.

24 The QCA's approach to market definition in the Draft Recommendation substantially mirrors the approach it took in the redeclaration process for DBT in 2019-20. In essence, this adopts a regulatory view of the Queensland coal industry as a series of separate, monopolised "terminal markets", each with a discrete catchment and serviced by a separate rail system – and where cross-system contestability is assumed not to exist or to be extremely limited.

25 This is anchored in a "SSNIP-based" analysis, which itself is heavily reliant on assumptions about short term pricing for existing users accessing existing capacity at existing terminals and with limited regard to wider rail and other costs or the total supply chain costs associated with new capacity.

26 With respect, given the market environment that now faces the coal industry, any regulatory approach in 2026 must be nuanced enough to reflect the emerging challenges facing the efficient use of coal infrastructure in Queensland over coming years and decades. This is especially relevant to a declaration process under Part 5, where the statutory objective is to ensure promotion of "*the economically efficient operation of, use of and investment in, significant infrastructure*".[12]

27 Given global market trends, substantial greenfield expansion of the Queensland coal industry is unlikely. **The focus of the regulatory environment therefore needs to shift from encouraging and promoting the efficient expansion of capacity to instead ensuring the most efficient and lowest cost utilisation of existing capacity across the CQCN and targeting investment in any expansion of capacity in a way that achieves the greatest overall benefits to the industry, at lowest cost**.

28 The approach adopted in the Draft Recommendation to criterion (b) would suggest that the QCA considers expansion of coal volumes in the Goonyella System would necessarily be serviced at lowest cost through an expansion of the Goonyella System and DBT and not through utilisation of NQXT. Both Aurizon and NQXT consider this is not the case.

29 By contrast, both NQXT and Aurizon stress the importance of QCA providing regulatory settings that facilitate and incentivise the use of excess capacity at NQXT.

30 Following the Draft Recommendation, [redacted]. This reinforces and highlights the concern previously raised by NQXT[13] regarding the danger of approaching terminals as separate and monopoly "markets":[14]

> [redacted].

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[12] *Queensland Competition Authority Act 1997*, section 69E.

[13] See for example NQXT, *Submission in response to QCA's Draft Recommendation not to declare the coal handling service at the North Queensland Export Terminal*, 12 June 2026, [111].

[14] [redacted].

[redacted]

[redacted].

31 The QCA's approach to developing and applying its SSNIP test in the Draft Recommendation proceeds on the basis that the 8X expansion will occur and that any resulting pricing will be socialised in line with its earlier Price Ruling. The Draft Recommendation does not have regard to whether any rail infrastructure investment would be required to facilitate 8X or what this would mean for the overall cost of the project.

32 Aurizon, in their response to the Draft Recommendation, makes the following observations:

(a) All of the tonnes that are presently in the DBT queue need to be considered as part of any "market" for access at NQXT, if defined in the manner proposed by the QCA – and not only tonnes of existing NQXT users.

(b) There is a reasonable prospect that the 8X expansion will not proceed at all and any approach to market definition should not assume that it does (given that there is a real question regarding the continued prudency of the project).

(c) Even if 8X were to proceed, there is a strong likelihood that socialisation of the costs of the expansion would no longer be justified.

(d) The approach adopted by the QCA (and QCoal Users) fails to have regard to the substantial rail expansion costs and other costs that would be associated with any expansion of capacity at DBT. The direct cost of the 8X expansion itself is only one part of this overall equation.

33 NQXT agrees with the above.

34 NQXT joins with Aurizon in calling on the QCA to revise its approach to the issue of market definition in the Final Recommendation and adopt an approach which evolves with market circumstances and is appropriate to reflect the statutory objective of ensuring efficient investment in, and utilisation of, coal infrastructure across the CQCN. While the QCA refers to the need to maximise allocative efficiency,[15] it must acknowledge that the most important means of doing so is for regulatory settings to ensure that volumes are incentivised to use the lowest cost overall infrastructure solution available. Put differently, existing rail and terminal capacity should be utilised before assuming investment in capital intensive new capacity.[16]

35 Criterion (b) has this efficiency concern at its heart. It is not focused on catering to the commercial preferences of individual users by creating a series of 'monopolies' based on the lowest short-term prices for transporting product from individual mines, but rather on ensuring

[15] QCA Draft Recommendation, section 3.4.1 page 55.

[16] A point made also by Aurizon Network in its submission in response to the Draft Recommendation, at page 8.

regulation is applied only to genuine ***natural monopolies***, being facilities which can satisfy all market demand at the lowest total cost.

36 In the case of the Queensland coal sector, Aurizon [redacted] (and its response to the Draft Recommendation) that it agrees that Goonyella volumes, including the volumes currently in the DBT queue, can be transported most economically and at lowest cost to NQXT and not through DBT. [redacted]:[17]

> [redacted]
>
> [redacted]
>
> [redacted]
>
> [redacted]

37 NQXT has commissioned Create Advisory to build on this recommendation by undertaking more granular analysis of the relative total infrastructure costs (rail and port) associated with accommodating current Goonyella capacity unable to access DBT as well as future growth through DBT and NQXT, respectively. The findings of this work are discussed in more detail at Section 7 of this submission.

38 NQXT respectfully but firmly submits that in the interests of the ongoing and efficient development of the Queensland industry, and investment in key regulated infrastructure in particular, any Final Recommendation must acknowledge that NQXT does not operate as a 'natural monopoly'. Rather, NQXT is one part of an interconnected set of facilities that, collectively, facilitate the handling and export of volumes from Central Queensland.

39 While this has always been the case, it is particularly important moving forward during a period when demand growth is less certain and therefore any capital-intensive investment in new or expanded capacity must be targeted and efficient. As Aurizon has made clear, the most efficient and lowest cost means of servicing current producers in the Goonyella System (as well as any new or expanded demand) over the next decade and beyond will be through utilisation of currently spare capacity at NQXT, potentially supported by targeted investment by Aurizon in the Newlands System.

40 Declaration of NQXT, and criterion (b) specifically, cannot be legally satisfied within this economic and legislative context.

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[17] [redacted]

# 3 QCoal's submissions continue to be based on speculative theories that are unsupported by evidence and untethered from commercial reality

41 The QCoal Users' submissions in response to the Draft Recommendation continue to rely almost entirely upon speculative theories regarding potential harm that might arise in a future without declaration.

42 The QCoal Users accept that they do not have evidence of any actual or identifiable harm to competition over the long period that NQXT has operated as an unregulated terminal owned by the Adani Group. The QCoal Users instead urge the QCA to speculate that the future without declaration will be materially different to this lived experience and invite the QCA to issue compulsory notices (at this late stage) to search for evidence that the applicants themselves have been unable to produce.

43 The Further HoustonKemp Report leans towards advocacy and is similarly focused on theories of harm that are unsupported by evidence and do not withstand scrutiny. In the absence of evidence demonstrating actual or likely competitive harm, the QCoal Users submissions ask the QCA to prefer conjecture over observed market outcomes in making a recommendation.

44 Legally, the declaration criteria under the QCA Act *cannot* be satisfied on that basis.

45 All of the additional theories and arguments raised by QCoal Users and Mr Houston in response to the Draft Recommendation suffer from the same problem:

(a) **Impact of NQXT access arrangements on activity in tenements markets**. The QCoal Users concede that they have no knowledge or evidence regarding any actual or potential transactions in a so-called "late-stage Northern tenements market".[18] Moreover, even if such a market exists, they have no evidence that transactions (or the lack of them) have been influenced by the regulatory status of NQXT. As noted in the evidence of Mark Smith,[19] the infrastructure issue most directly affecting development and expansion of mining in the Newlands System remains the rail infrastructure capacity deficit. [redacted].[20]

(b) **Hold up risk**. The QCA expressly called for submissions and evidence regarding potential hold-up risk and its impact on investment decisions. The QCoal Users have not produced any evidence on this issue and have suggested there is a "*paucity of primary evidence*". This is incorrect. There is substantial evidence regarding the reasons for miners not investing in new or expanded mines over the last decade. This evidence was provided with NQXT's earlier submission dated 12 June 2026. The difficulty for QCoal is that all of the available evidence demonstrates that the regulatory status of NQXT is not a factor that has ever been material to such decisions.

(c) **Adani's incentives to acquire in-catchment tenements**. The QCoal Users claim that the Adani Group may seek to acquire in-catchment tenements rather than develop its existing tenements. This provides the foundation for their theory that that Adani Group could engage in "*active foreclosure of the tenements market to facilitate the purchase of*

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[18] QCoal Users 12 June Submission, [77].

[19] Supplementary Statement of Mark Smith, Section C; Further Supplementary Statement of Mark Smith, Section D.

[20] [redacted]

*such tenements at a lesser price*".[21] Again, [redacted].[22] Moreover, the absence of sufficient below rail capacity on the Newlands system to transport any increased volumes makes the point irrelevant.

(d) **HoustonKemp's theory regarding Adani Group incentives to restrict access to spare capacity**. Mr Houston claims that that, notwithstanding the availability of spare capacity at NQXT, there may be an incentive for the Adani Group to restrict access to this spare capacity for third party users.[23] For reasons that are explained in Section 4 below, this theory does not withstand scrutiny. Indeed, Mr Houston did not complete the maths that he relies upon. Applying Mr Houston's own assumptions regarding the elasticity of demand and supply for coal, the data shows it would ***not*** be economically rational for the Adani Group to restrict access to uncontracted capacity at the Terminal. [redacted]. Evidence has been provided of this throughout the process, including in NQXT's 12 June 2026 submission. Further evidence is provided with this submission in the further statement of Mark Smith.[24]

(e) **HoustonKemp's novel 'option value' theory**. A novel argument raised by Mr Houston is that NQXT may refuse to contract spare capacity to third parties in order to retain 'option value' for the wider Adani Group – i.e. that spare capacity could be kept to allow Bravus to ramp up its own coal production, including at times of elevated coal prices. This argument is addressed in more detail in Section 4.2 below. In short, first, the "option value" argument assumes rail infrastructure is available to facilitate such 'burst' volumes by Adani (which it is not). Second, the theory [redacted]. Third, if Bravus had a reasonably foreseeable need for future capacity, even in cases of 'burst' requirements, it would be legally entitled to reserve capacity for that purpose. That is to say, declaration could not limit or restrict NQXT from undertaking this activity, even if it did wish to do so (which it does not).

46 In respect of criterion (a), the QCA must be positively satisfied that access to the service (or increased access), on reasonable terms and conditions as a result of a declaration, would promote a material increase in competition in at least one market.

47 This necessarily requires the QCA to form a view, *based on the evidence before it*, of:

(a) how declaration would be likely to alter the terms on which the service is provided; and

(b) how any such change in the terms of access would promote competition in a relevant and related market.

48 The QCA's investigation has been on foot for more than 12 months during which time it has invited submissions from industry participants on multiple occasions and specifically sought evidence on the issues now relied upon by the QCoal Users. Neither the QCoal Users nor any other market participant has produced evidence of any actual or likely competitive harm arising from the continuation of the status quo.

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[21] QCoal Users 12 June Submission, [78]-[79].

[22] Statement of Michael Crowe dated 27 August 2026, [15].

[23] Further HoustonKemp Report, [171]-[176].

[24] Further Supplementary Statement of Mark Smith, Section B.

# 4 Criterion (a) – evidence in relation to spare capacity at NQXT

## 4.1 The Wood Mackenzie forecasts do not support the QCoal Users' conclusion

49 The QCoal User arguments in response to the draft recommendation rely heavily upon a contention that NQXT will become capacity constrained during the next decade. This, they argue, is supported by certain Wood Mackenzie forecasts.

50 As set out below, the Wood Mackenzie forecast commissioned and relied upon by the QCoal Users support the opposite conclusion and are consistent with the QCA's finding: substantial excess capacity is expected to persist throughout almost the entirety of the proposed declaration period.

51 To the extent that the Wood Mackenzie forecasts suggest any tightening in capacity:

(a) this occurs only *__after__* the end of the proposed 10-year declaration period [redacted]). Wood Mackenzie expects throughput at NQXT to [redacted],[25] with the Terminal only "*operating near its 50 Mt capacity in 2038*".

(b) is entirely based upon an unrealistic assumption that a substantial increase in volumes from the Carmichael mine ([redacted]) will occur at this point, which Wood Mackenzie itself qualifies heavily and which does not reflect operational reality;[26] and

(c) the forecast is entirely based on 'demand-led base modelling' and makes no allowance for physical constraints, such as rail infrastructure. [27] [redacted].[28]

52 The clear effect of the QCoal Users' own evidence is that, for the entirety of the proposed declaration period, there is no capacity constraint capable of giving rise to the incentives claimed.

53 NQXT has previously provided evidence that [redacted] given the Existing Capacity Deficit (**ECD**) which is forecast to remain until at least FY30.[29]

54 Mr Crowe has also stated that:

(a) [redacted];

(b) [redacted]; and

(c) [redacted]

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[25] Wood Mackenzie, *Competition Declaration – North Queensland Export Terminal Facility*, June 2026, section 2.2 page 4.

[26] Ibid, page 10.

[27] Ibid, page 9.

[28] [redacted]

[29] Statement of Brendan Lane dated 22 August 2025, page 7; Statement of Michael Crowe dated 27 August 2025, page 2.

[redacted].[30]

55 As also previously mentioned by NQXT, even the Terminal's current nameplate capacity of 50mtpa cannot be utilised given these rail constraints, with deliverable capacity on the Newlands / Gape System of only approximately 39.8 mtpa.[31]

56 [redacted]

[redacted]

[redacted]

57 [redacted].[32]

58 In circumstances where the forecasts relied upon by QCoal Users themselves demonstrate ample spare capacity throughout the proposed declaration period and any tightening after the declaration period is both marginal and contingent on assumptions which do not reflect infrastructure constraints, the QCA is well placed to maintain its conclusion that spare capacity will continue to exist at NQXT over *at least* the proposed declaration period, and likely beyond.

59 Finally, the Legacy User Agreements [redacted]. If the QCoal Users recontract for the [redacted]

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[30] Statement of Michael Crowe dated 27 August 2025, pp 2-3.

[31] NQXT, *Submission in response to QCA's Draft Recommendation not to declare the coal handling service at the North Queensland Export Terminal*, 12 June 2026, p 23

[32] [redacted]

[redacted],[33] the issue of capacity can be more properly addressed at the end of this period ahead of the next renewal period. At that time, the status of the Newlands rail deficit and any expansion of Carmichael will be far better understood. Any declaration decision now based on capacity assumptions in 2038 and for a period beyond that is premature and unwarranted.

### 4.2 A novel "option value" theory does not overcome the NQXT's economic incentive to continue to contract and maximise the use of capacity

60 The novel "option value" theory advanced by Mr Houston, to the effect that NQXT has the operational ability and incentive to "hold back" capacity in order to preserve strategic optionality for the Adani Group, is not plausible and certainly does not displace NQXT's clear and demonstrated commercial incentive which the QCA Draft Recommendation acknowledges to contract, and maximise utilisation of, its spare capacity.

61 As explained by Mr Smith in his supplementary statement dated 12 June 2026, NQXT's [redacted] and NQXT has been specifically directed to deal with Bravus strictly on an arm's length basis.[34]

62 [redacted][35] [redacted].[36]

63 This is behaviour inconsistent with the "option value" theory. However, Mr Houston ignores this evidence and cannot otherwise explain why NQXT continues to act in this way.

64 The three supposed examples of conduct by NQXT that are said to be inconsistent with maximising throughput from the QCoal Users are both misleading and factually wrong.

(a) **Rio Tinto termination of terminal user agreement (2016)**

The arrangements concerning the former Queensland Coal Pty Ltd (a Rio Tinto subsidiary) capacity have been explained on multiple occasions in NQXT's submissions to date.[37] The repeated and tired attempts by the QCoal Users to re-litigate a commercial transaction which the Supreme Court found consistent with legitimate commercial conduct are irrelevant.[38]

The QCoal Users contend that the 2016 arrangements entered into between NQXT and Rio Tinto prevented 9.3 mtpa of capacity being used by third parties during FY18 to FY22. This is simply wrong. The tonnes released by Rio Tinto ***were*** made available for

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[33] Statement of Mark Smith dated 22 August 2025, p 36.

[34] Supplementary statement of Mark Smith dated 12 June 2026, pp 12-13.

[35] NQXT response to QCA Draft Recommendation, 12 June 2026, pp 14-17.

[36] NQXT response to QCA Draft Recommendation, 12 June 2026, pp 27-28.

[37] NQXT Submission to QCA, 26 August 2025, [262]-[264]; Statement of Mark Smith dated 22 August 2025, [97(d)]; NQXT Response to Draft Recommendation, 12 June 2026, p 9.

[38] *Adani Abbot Point Terminal Pty Ltd v Lake Vermont Resources Pty Ltd & Ors* [2021] QCA 187. The conduct was found to be reasonable and was neither a misuse of market power nor unconscionable. An application seeking leave to appeal to the High Court was rejected.

this period [redacted]
QCoal at the time was already contracted on a long-term basis [redacted].

The QCoal Users' attempt to recast legitimate, judicially endorsed commercial arrangements as evidence of some kind of capacity hoarding is confected and must be rejected.

(b) [redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

(c) [redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

65 Simply, there is no evidence to support any suggestion – as assumed by Mr Houston – that NQXT has not remained laser-focused on renewing and attracting volumes to NQXT, to the maximum extent possible.

66 Mr Houston's option value theory also rests on the assumption that Bravus could obtain sufficient below rail capacity to utilise any spare "burst" capacity at the Terminal. For the reasons set out above, the evidence indicates that the rail capacity deficit will continue to constrain Bravus from doing so.

### 4.3 The assumptions on which Mr Houston's option theory is based are not commercially realistic

67 The Incenta Memorandum notes that the operating assumption on which any "option value" is based, is that the Carmichael mine would be capable of quickly increasing output during periods of time when coal prices were high. This also, and wrongly, assumes that substantial additional below rail capacity would also be available during these periods.

68 Incenta states (at page 2):

> *Mr Houston considers that Adani has an incentive to capture real option value by holding a reserve of capacity in order to take advantage of spikes in the thermal coal price. However that is not how coal mines work. As noted by QCoal's consultant Wood Mackenzie:*
>
> > *"While high prices can create an incentive for producers to lift output, the short-run supply response is usually constrained because most mines are already operating close to practical capacity to minimise unit costs, contracted volumes limit discretionary sales, expansion requires planning, labour, equipment and approvals, and the producers best placed to respond may be exposed to the same weather, rail, port or regulatory disruption causing the shortage."*
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> *The very reason that price spikes last for 12 months or more in the coal market is that mines unaffected by the weather-related events causing the spikes cannot materially raise their output in the short term to meet market demand. As Wood Mackenzie notes, it is normal practice for miners to operate mines "close to practical capacity".*
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> *This reflects the economic incentive for the Carmichael mine to maximise production to the extent possible, as long as the coal price received exceeds variable cost. It would be contrary to this economic incentive for the Carmichael mine to operate well below its practical capacity and reserve capacity at NQXT in order to take advantage of price spikes.*

### 4.4 Mr Houston's own analysis, if applied, demonstrates the incentive for Adani to continue to maximise access to the Terminal by third parties

69 The further HoustonKemp report seeks to argue that, notwithstanding the availability of spare capacity at NQXT, there may be an incentive for the Adani Group to restrict access to this spare capacity for third party users. Mr Houston claims that reductions in supply of thermal coal from low-cost third-party users of NQXT can be expected to result in a higher market price than would otherwise be the case, given inelasticity of demand and supply for coal at the point where the market clears. The suggestion appears to be that the Adani Group would benefit through higher coal prices if it were to restrict access to spare capacity at NQXT.

70 Mr Houston does not present any evidence to suggest that this would be a profitable or economically rational strategy for the Adani Group. He simply says that it should not be assumed that the Adani Group has an overriding incentive to increase access to uncontracted capacity.[39]

71 Applying the assumptions in the further HoustonKemp report, this proposition can be easily tested.

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[39] Further HoustonKemp Report, [176].

72 Incenta used Mr Houston’s own pricing assumptions to test the following:

> *We have sought to test whether such an incentive is plausible by examining how the profits to the Adani Group would change from an access denial for plausible scenarios. In both cases we assume that a new access seeker that is seeking to reserve capacity of 5 mtpa, that the access price is* [redacted]*. Therefore the potential access revenue is* [redacted] *per annum, which is the cost to the Adani Group from denying access. We further assume that a reduction in reserved capacity of 5 mtpa would imply a reduction in coal production of approximately 4.5 mtpa.*

73 Incenta concludes that based on any reasonable assessment of global demand, Adani would be between [redacted] and [redacted] for denying 5mtpa capacity.

[redacted]

74 Incenta’s analysis demonstrates that, even applying Mr Houston’s own assumptions regarding future prices and the elasticity of demand and supply for coal, it clearly would not be rational for the Adani Group to restrict access to uncontracted capacity at the Terminal. Any marginal benefit that it may receive through movement in the coal price would be outweighed by the loss of Terminal revenue.

75 This strongly supports the QCA’s conclusion that the Adani Group does have an incentive to provide access to spare capacity at the Terminal on reasonable terms. Mr Houston’s theory that Adani would have an incentive to restrict is without economic foundation.

### 4.5 Finally, declaration would not prevent Adani from retaining capacity for its future reasonably foreseeable use, if this was its intention

76 Finally, the option value theory is inconsistent with the QCA Act.

77 To the extent that Adani has a reasonably foreseeable need for capacity at the Terminal, it is legally entitled to reserve that capacity for its own use and declaration cannot interfere with this right.[40] Section 119 of the QCA Act relevantly provides:

> *(2) Also, the authority must not make an access determination that would have any of the following effects—*
>
> *(a) reduce the amount of the service able to be obtained by an access provider;*
>
> *…*
>
> *(3) Despite subsection (2)(a), the authority may make an access determination reducing the amount of the service able to be obtained by an access provider if—*
>
> *…*
>
> *(b) the reduction does not prevent the access provider from obtaining a sufficient amount of the service to be able to meet the provider's reasonably anticipated requirements, as assessed by the authority, as at the time the access dispute notice was given; and*

78 As Incenta explains, the QCA Act "*specifically prevents an arbitrator from denying an asset owner access to its own facility*" and Australian third-party access regimes are "*directed to providing a right of access to <u>spare capacity</u> (i.e., the amount that remains after the asset owner's requirements), rather than the effect [of] the compulsory acquisition and reallocation of capacity*."[41]

79 An example of QCoal Users failing to engage with the legal framework governing declaration is the reference at paragraph 85 of their 12 June 2026 submission in which they state:

> [redacted]
>
> *This example also clearly demonstrates that NQXT is not solely motivated to increase total short-term throughput through the Terminal.*

80 It is evidently both commercially reasonable and entirely consistent with the operation of Part 5 of the QCA Act for NQXT to [redacted]) when [redacted]. NQXT instead, and quite appropriately, [redacted]

[40] See section

[41] Incenta Report on Criterion (a), 26 August 2025, pp 11, 33

# 5 Criterion (a) – promotion of competition

## 5.1 The QCoal Users have failed to establish a market exists or that it is meaningful

81 The QCoal Users point to the QCA's finding that 60% of exploration permits for coal (**EPCs**) and 50% of mineral development licences (**MDLs**) within the Newlands-Galilee catchment are held by firms that do not mine coal and rely on this as evidence of a substantial pool of potential transactions.[42]

82 However, the broad characterisation of these firms as 'non-mining' entities is incorrect:

(a) the QCA's own analysis in Appendix C of the Draft Recommendation demonstrates that 2 out of 11 of the EPC holders in the Newlands-Galilee system are current Terminal users (QCoal and Glenmore) and 3 of the 6 MDL holders in the Newlands-Galilee system (QCoal, Glencore and Peabody (through its interest in Middlemount)) are current Terminal Users – that is, they are miners;

(b) moreover, the MDL holders identified in Table 23 of the Draft Recommendation include GVK Hancock and Waratah – each of which is a mining company with stated intentions to develop coal projects, not a speculator or trader;

(c) similarly, the EPC holders listed in Table 24 include entities such as AMCI, Blackwood, GVK Hancock and Waratah, all of which are mining enterprises that have acquired tenements for the purpose of potential future development.

83 There is no evidence that any of these entities acquired or holds their tenements for the purposes of speculative trading.

84 The fact that tenement holders in the Newlands-Galilee catchment are mining companies – rather than intermediaries, speculators or traders – explains the absence of transactions in this so-called market. These entities hold tenements as part of their broader mining operations and development pipelines; the tenements are not a separable product that is independently traded. In this respect, the tenements are derivative of the coal market itself. This is consistent with NQXT's submissions throughout the QCA's investigation that the activities giving rise to later-stage tenements are typically undertaken by producing mines, and that strong economies of scope between coal production and tenement activities preclude the existence of a functionally separate market.

85 The QCoal Users have not been able to produce or point to any evidence of a party acquiring or trading in late-stage tenements as a discrete product – as an intermediary or speculator – at any point in the 13-year period over which the QCA has examined the evidence.

## 5.2 It would be commercially irrational for Adani to acquire tenements rather than develop its existing holdings

86 The QCoal Users contend that the Adani Group may seek to acquire in-catchment tenements rather than expanding the Carmichael mine, and that this provides the foundation for a theory that the Adani Group could engage in "*active foreclosure of the tenements market to facilitate the purchase of such tenements at a lesser price*".[43] This theory is speculative and [redacted].

[42] QCoal submission dated 12 June 2026 in response to QCA Draft Recommendation, [75]-[78].

[43] QCoal submission dated 12 June 2026 in response to QCA Draft Recommendation, [80].

87 As previously submitted, the Adani Group has invested billions of dollars in the development of the Carmichael mine and associated rail infrastructure. [redacted].

88 Moreover, [redacted] During the period of elevated metallurgical coal prices in 2023 and 2024, and even more recently, several operating mines were traded in other Queensland coal catchments, including:

(a) Whitehaven's acquisition of the Daunia and Blackwater mines;

(b) Stanmore's acquisition of South 32's interest in the Eagle Downs project;

(c) Peabody's acquisition of the Wards Well project; and

(d) Dhilmar Limited's acquisition of the Anglo Queensland met coal portfolio.

[redacted].

89 This is consistent with the evidence provided by Mr Crowe that [redacted].[44]

90 The Adani Group's expansion plans are also [redacted] As Mr Crowe states, [redacted].[45]

91 In this context, the suggestion that the Adani Group would choose to acquire new tenements – with all the additional cost, complexity, regulatory risk and supply chain challenges that would entail – rather than incrementally expanding its existing operations at Carmichael is commercially irrational [redacted].

## 5.3 The evidence is clear that there is no hold up risk

92 The QCA sought further submissions and evidence regarding potential hold-up risk and its impact on investment decisions. The QCoal Users have been unable to provide any direct or cogent evidence on this issue. Nor has any other interested third party provided the QCA with evidence on this issue, despite the QCA's express call for submissions and the fact that the QCA's investigation has been ongoing for more than 12 months.

93 Notwithstanding what the QCoal Users themselves describe as the "*paucity of primary evidence*", the QCoal Users urge the QCA to infer that hold-up risk "*is very likely to materially*

[44] Statement of Michael Crowe dated 13 June 2025, [7] and [15].

[45] Statement of Michael Crowe dated 13 June 2025, [12].

*impact the investment decisions of both existing and new entrants in the coal tenements markets in the Newlands-Galilee system*".[46]

94 The QCoal Users themselves concede that they are "*not aware of actual and potential transactions in the tenements markets*" and accept that knowledge of such actual or potential transactions is "*inherently commercially sensitive information held by the tenement holders*".[47] That the applicant for declaration cannot point to a single transaction – actual or potential – in the "market" upon which they rely, and does not even have knowledge of any such transaction, fundamentally undermines any claim that declaration would promote material increase in competition in that market.

95 Absent evidence (or even knowledge of transactions), the QCoal Users instead seek to challenge the QCA to infer that hold-up risk is material because other factors (such as commodity prices, regulatory approvals, operating costs, financing conditions, ESG and broader market dynamics) do not fully explain the absence of transactions in the tenements market. The QCoal Users argue that "*the question is whether those matters are likely to be so significant that the mitigation of hold-up risk through declaration would not materially improve the opportunities and environment for competition*".[48]

96 First, this inverts the proper approach. It is for the applicant to satisfy the QCA that declaration would promote a material increase in competition – not for the QCA to infer such a conclusion from the absence of an alternative explanation.

97 Second, there is substantial and clear evidence of the factors that present a material risk of holding up investment in coal mining and development in Queensland – and the regulatory status of NQXT is not one of them. The comprehensive review of public statements by coal producers provided in Appendix 3 to NQXT's 12 June 2026 submission shows that terminal costs or regulatory status have never been cited as a factor in any mine investment decision in Queensland over the last 14 years. This includes in statements made by QCoal itself.[49]

98 By contrast, factors such as adverse coal prices, market uncertainty, Queensland State royalties, rising operational costs, ESG considerations and difficulties obtaining financing are consistently cited by producers as the reasons for decisions not to proceed with or to withdraw from new or operational mine projects.

99 This is not a case where an absence of evidence supports an inference. There is no shortage of evidence. Rather, this is a case where all available evidence points towards those matters that are clearly material to hold up risk and terminal regulation is simply not one of them.

100 Indeed, Mr Houston himself rightly identifies that the margins available from coal sales are substantially higher than the revenues able to be obtained by the Adani Group from supplying terminal services. It follows that if terminal charges represent only a small fraction of a coal producer's total costs and overall margins, it is implausible that the level or uncertainty of those charges would be sufficiently material to deter investment in tenements or mine development.

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[46] QCoal submission dated 12 June 2026 in response to QCA Draft Recommendation, [112].

[47] QCoal Submission dated 12 June 2026 in response to QCA Draft Recommendation, [77].

[48] QCoal Submission dated 12 June 2026 in response to QCA Draft Recommendation, [130].

[49] QCoal Media Statement, Cook Colliery mine closure announced, 2 December 2025. Accessed here: https://www.qcoal.com.au/cook-colliery-underground-mine-statement/

## 5.4 Position of QCoal Users in relation to criterion (a) is internally inconsistent on the likely future terms of access

101 The standard established by the Productivity Commission is that declaration is warranted where the prevailing terms and conditions of access (i.e., those that will likely apply absent declaration) are "*so poor that they disrupt competition in another market*".[50] This is evidently not the case here.

102 The QCoal Users' own position on the terms of access to NQXT is internally inconsistent and undermines the foundation for their criterion (a) case:

(a) **First, the QCoal Users accept that the terms under which they have had access to the Terminal for the past 15 years are reasonable. NQXT has demonstrated that the [redacted].**

[redacted].

(b) **Second, the QCoal Users argue that the relevant "market" should not include users with access to DBT because those volumes are contestable and not subject to the exercise of market power. However, [redacted].**

As explained in the Statement of Mark Smith dated 22 August 2025, [redacted].

[redacted].

(c) **Third, the QCoal Users suggest that NQXT's [redacted] is evidence of the exercise of market power.**

Fixed-term contracts are a relatively standard feature of infrastructure access arrangements across the coal industry and other analogous industries, including gas transportation, energy infrastructure, port leases and other port terminals.

Indeed, in recent years, in the coal industry, the general trend has been towards shorter contract terms, reflecting the increased demand uncertainty that characterises the current market environment. [redacted].

[50] Productivity Commission, National Access Regime Inquiry, Report No 66 (2013), page 173.

In any event, [redacted].

(d) **Fourth, QCoal has a right to access the Terminal today.** [redacted]

As explained in paragraph 15 of the Supplementary Statement of Mark Smith dated 21 July 2026, [redacted].

[redacted].

(e) **Fifth, the QCoal Users cannot explain why or how the terms of access in the future (following the expiry of the Legacy User Agreements) would be significantly different from the status quo.**[51]

As noted above, the evidence demonstrates that the [redacted]

[redacted].

[redacted].

QCoal's contention that the future without declaration will result in materially inferior terms of access is not supported by the evidence of actual commercial arrangements that have been entered into over recent years and therefore must be rejected.

[51] QCoal submission dated 12 June 2026 in response to QCA Draft Recommendation, [101]-[107].

# 6 Criterion (a) – other issues

## 6.1 Other markets

103 NQXT submits that the QCoal Users' reliance on a supposed secondary capacity market at paragraphs 60 to 62 of their 12 June 2026 submission is also misconceived. The QCoal Users argue that short-term capacity transfers could form a secondary market given that Aurizon has confirmed the existence of regular secondary capacity trading in rail capacity. They then contend that NQXT has foreclosed competition in that market by not permitting third party access transfers.

104 NQXT notes that [redacted].

105 In any event, criterion (a) requires the QCA to be satisfied that access, or increased access, to the service on reasonable terms and conditions as a result of declaration would promote a material increase in competition in at least one market *other than the market for the service itself*. The alleged market identified by the QCoal Users is not a dependent market of that kind – it is, at most, a proposed alternative mechanism for allocating rights to acquire the *same* coal handling service at the Terminal that is sought to be declared.

106 Additionally, [redacted][52]

107 This is consistent with economic expert evidence from CEG that competition for terminal services is episodic and occurs through mine development decisions, long-term take-or-pay contracts, capacity expansions and associated rail and port infrastructure investment, rather than through a spot or secondary market of the kind QCoal posits.[53] It would be inappropriate for the QCA to treat declaration as a means of cutting across [redacted] in order to force it to accept a secondary trading model [redacted], and in circumstances where no evidence has been provided showing demand for this type of capacity at NQXT.

108 Finally, declaration is directed to promoting competition in an existing market. It is not a mechanism for creating a new market that would not otherwise exist.

[52] NQXT Submission to QCA, 26 August 2025, p 54

[53] CEG Supplementary Report, 12 June 2026, p 1.

# 7 Criterion (b)

## 7.1 Aurizon Network submission

109 The further submission from Aurizon Network in response to the Draft Recommendation provides further support for NQXT's position regarding the scope of market demand and whether that demand can be served by a single facility at least cost.

110 Aurizon Network takes the QCA's position on market definition and the scope of foreseeable demand to its logical conclusion. In the Draft Recommendation, the QCA confines foreseeable demand to the northern mines plus Goonyella volumes contracted to NQXT because they cannot access capacity at DBT. In effect, the QCA defines the market for NQXT's service as its "natural market" (i.e. the northern mines)[54] plus any volumes outside that natural market that cannot be serviced by DBT. Aurizon Network rightly points out that, on this approach, the QCA's assessment of foreseeable demand must include all volumes in the Goonyella System currently unable to ship through DBT – including volumes that are currently in the DBT queue.

111 NQXT emphasises that it does not agree with the QCA's approach to defining the market for NQXT's coal handling service and foreseeable demand in that market. NQXT continues to believe that CEG's approach, which includes all demand that could economically be serviced by NQXT, is the only reasonable approach that aligns with the statutory purpose and requirements of criterion (b).

112 Nonetheless, if the QCA is minded to adopt its current approach, based on the earlier DBT redeclaration approach, NQXT agrees with Aurizon that it must include *<u>all Goonyella volumes that are unable to access DBT</u>* in foreseeable demand for NQXT's service.

113 As well as the matters set out in Aurizon's submission, the need to do so is further reinforced by [redacted].

114 [redacted].[55]

[redacted]

[redacted]

[redacted]

[redacted]

[54] QCA Draft Recommendation, p 32.

[55] [redacted]

[redacted]

[redacted]

[redacted]

115 The approach advocated for by Aurizon Network brings the market definition and assessment of foreseeable demand closer to market reality. It highlights the extent of currently unmet demand and the potential for a contest between NQXT and DBT to satisfy that demand. In this context, it becomes clear that market demand cannot be met at least cost by a single facility. The reality is that market demand will continue to be met by a combination of multiple facilities within an interconnected system.

116 In response to and drawing on the further information provided by Aurizon Network, NQXT commissioned Create Advisory to analyse the least cost pathways to serving currently unmet demand in the Goonyella System (i.e. volumes in the DBT queue). This demonstrates that current unmet demand is likely to be served at least cost by a ***combination*** of:

(a) spare capacity at NQXT; and

(b) expansion of capacity at DBT.

117 In particular, the Create Advisory analysis demonstrates that:

(a) The DBT 8X expansion is relatively capital intensive, as is the cost of incremental Goonyella rail network capacity:

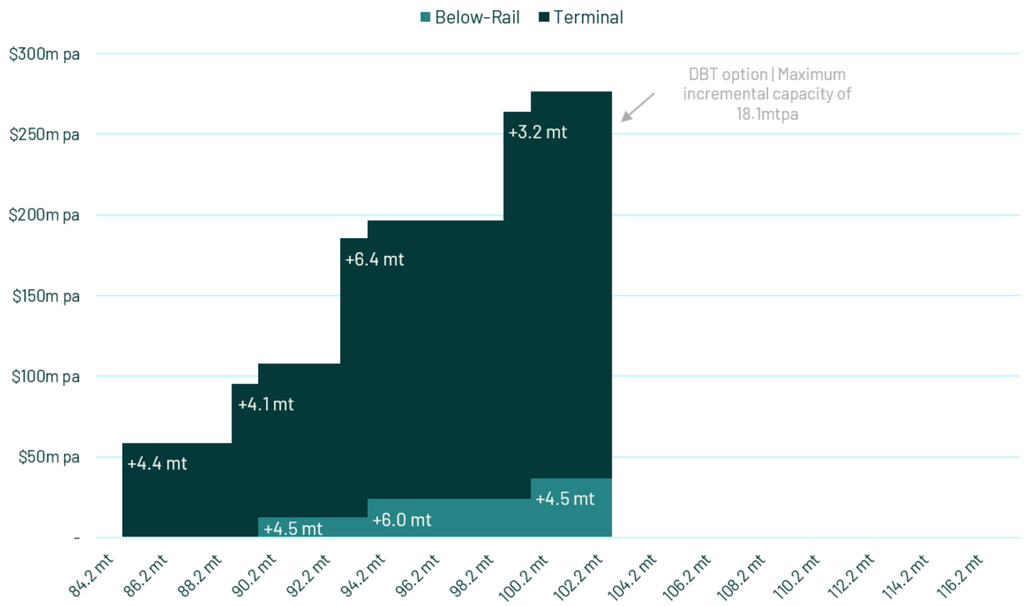

*Table 5: DBT expansion options*

| Project/option | Capacity | Cost ($FY28) | Annualised |
|---|---|---|---|
| 8X Phase 1 | +4.4mtpa | ~$576m | ~$58.7m pa |
| 8X Phase 2 | +4.1mtpa | ~$359m | ~$36.6m pa |
| 8X Phase 3 | +6.4mtpa | ~$761m | ~$77.5m pa |
| | **+14.9mtpa** | **~$1,696m** | **~$172.7m pa** |
| 8X 'Future phase' | +3.2mtpa | ~$660m | ~$67.2m pa |

*Table 6: Goonyella expansion options*

| Project/option | Capacity | Cost ($FY28) | Annualised |
|---|---|---|---|
| Connors Range Track Stability Works | +2.0mtpa | ~$83m | ~$8.5m pa |
| Jilalan Additional Road | +2.5mtpa | ~$41m | ~$4.2m pa |
| *Indicative projects supporting 8X Phase 2* | **+~4.5mtpa** | **~$125m** | **~$12.7m pa** |
| Remove Balloon Loop Operating Restrictions | +1.0mtpa | ~$30m | ~$3.0m pa |
| Jilalan to Wotonga Crossovers (11x staged crossovers) | +5.0mtpa | ~$81m | ~$8.3m pa |
| *Indicative projects supporting 8X Phase 3* | **+~6.0mtpa** | **~$111m** | **~$11.3m pa** |
| Indicative projects to support 8X 'future phase'[20] | **+~4.5mtpa** | **~$125m** | **~$12.7m pa** |

Note 1: Specific projects that might be required to support the incremental capacity of a DBT 8X 'future phase' were not identified. We adopted the estimated capacity and cost of the projects identified to support DBT 8X Phase 2 capacity as an indicative cost.

(b) By contrast, [redacted]

[redacted]

[redacted]

*Table 4: GAPE/Newlands expansion options*

| Project/option | Capacity | Cost ($FY28) | Annualised |
|---|---|---|---|
| Coral Creek Passing Loop[1] | +2.6mtpa | ~$29m | ~$2.9m pa |
| Additional consists (~3)[2] | +<6.0mtpa | ~$125m | ~$14.8m pa |
| Pring Yard Additional Road | +~1.3mtpa | ~$23m | ~$2.4m pa |
| | **+~9.9mtpa** | **~$177m** | **~$20.1m pa** |
| Goonyella-length trains | +~10mtpa | ~$148m | ~$15.0m pa |

(c) [redacted]

(i) [redacted]

(ii) [redacted]

[redacted]

(d) [redacted]

(i) [redacted]

(ii) [redacted]

(iii) [redacted]

(iv) [redacted]

[redacted]

118 From NQXT's perspective this result is unsurprising, given how market demand has historically been serviced across both terminals. The historical experience is that, where there has been unmet demand within the central Queensland system, the least cost option for servicing this demand has involved investment across multiple facilities. The clearest example of this was in the mid-2000s, when increased demand was met by expansions of capacity at both NQXT and DBT, including through investment in the Northern Missing Link and X50 expansion at Abbot Point.

119 The Create Advisory analysis demonstrates that currently uncontracted volumes (including those in the DBT queue) are both contestable and would not be served at lowest cost by a single facility alone. Create Advisory demonstrates that [redacted] This is reinforced by [redacted].

120 By contrast, implicit in the QCA's Draft Recommendation in this case is a finding that all volumes currently in the DBT queue will be served at lowest cost by expanded capacity at DBT (i.e. 8X expansion capacity). This also highlights the potentially distortionary effect of regulatory decisions by the QCA, such as the socialisation of 8X costs, which may undermine the most efficient economic incentive of users expanding at DBT (namely, to rail through NQXT) by allowing them to avoid facing the full incremental cost of their additional tonnes at DBT.

121 This leads to the irrational conclusion that coal from the same mine can be both in and out of the same market at the same time, in relation to different amounts of its output (where some is contracted with NQXT and other output is through DBT).

122 NQXT shares the concern reflected in Aurizon's submission, that it is not a safe or reasonable approach to simply ignore these tonnes (as not within the market) and to instead conclude that the only tonnes relevant to the assessment of the market are those contracted by existing users at NQXT and based on a Price Ruling in relation to socialisation (especially where the relevant factors on which it was based no longer hold). For the purposes of criterion (b), the QCA does not need to determine likely demand <u>for a facility</u>. What is required is an assessment of foreseeable demand <u>in the *market* – including demand that may be served by other facilities</u>.

123 When all contestable incremental tonnes and appropriate costs are considered (whether facilitating the full capacity of the queue immediately or staged on an incremental basis), it is evident that the lowest cost and most efficient expansion path for the Queensland coal industry involves a combination of investment and expansion across both NQXT and DBT.

124 Whether NQXT retains a degree of pricing power in negotiations with an individual user at any point in time, including as a result of geographic proximity to that user, is, with respect, beside the point. When all market demand is taken into account, there is no reasonable basis to find NQXT is a natural monopoly facility within the meaning of criterion (b).

# 8 Criterion (d) – public interest

125 The Draft Recommendation rightly acknowledges that the statutory test under criterion (d) is a positive one. This is a higher threshold than the earlier (and negatively framed) test and one that requires the QCA (and the Minister) to be positively satisfied that declaration would result in a net public benefit to the Queensland economy and community.[56]

126 In this case:

(a) Any claimed benefit in the form of a promotion of competition in respect of a so-called, "late stage Northern tenements market" is hypothetical, unsubstantiated and (at most) would apply to a market that, if it exists at all, is one in which there have been no more than three transactions over the last 13 years. The applicant itself cannot point to any practical or competitive benefit accruing in the market which it claims is relevant.

(b) Evidence is clear that a decision to declare NQXT would not offer any benefit to wider mining investment or development or act to reduce 'hold up' in any way.

(c) By contrast, the costs and risks created by declaration are real and substantial. Such a decision also risks creating a regulatory distortion which may impact wider investment in supply chain infrastructure across the CQCN. This has significant potential consequences for the Queensland industry and economy.

127 There is no basis to find that the public benefit test is positively satisfied.

**Declaration of NQXT will undermine the need for future efficient development of the CQCN as an integrated network**

128 As noted above, at Section 2, any Final Recommendation that found that NQXT operates as a natural monopoly which does not offer an efficient or competitive alternative to DBT, risks distorting efficient investment incentives across the CQCN over the coming decade.

129 In the face of stable and potentially falling global demand and associated uncertain and potentially falling production in Central Queensland, focus has shifted from supporting expansion of supply chain capacity to more efficiently and cost-effectively supporting volumes utilising *existing* capacity, wherever possible, especially where spare capacity exists.

130 In this case, it is critical that investment signals created by regulatory decisions properly recognise the lower-cost infrastructure solution available through use of existing (and available) capacity at NQXT to service Goonyella production.

**The public interest is not served by making decisions that are premature**

131 [redacted].[57] [redacted].[58]

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[56] Draft Recommendation at page 118.

[57] QCA Draft Recommendation, section 2.6.2.

[58] NQXT, *Submission in response to QCA's Draft Recommendation not to declare the coal handling service at the North Queensland Export Terminal*, 12 June 2026, [225].

132 The minimum commercial position of QCoal Users over the proposed declaration period is therefore a matter of record. Any negotiated outcome for the QCoal Users could only *improve* on this commercial position.

133 QCoal Users' arguments do not focus on any immediate or short-term competitive benefit. Instead, they argue, without evidence, that significant changes to the current Standard User Agreement may be introduced by NQXT at some undefined point in the future,[59] and their approach to criterion (a) relies upon an assumption of capacity changes occurring in more than 10-years and after the proposed declaration period.[60]

134 On the applicant's own arguments, it is not clear what benefit could arise for any party from declaration in the short term or, indeed, over the proposed declaration period – other than to enable the QCoal Users to refer a price arbitration to the QCA as [redacted]

135 There is no material public benefit in imposing heavy-handed price regulation for a decade on critical export infrastructure to suit the immediate commercial negotiating position of an individual user [redacted]. This is especially so, when the arguments in support of doing so are premised on a range of matters that, if they occur at all, are at least 10+ years away. If QCoal Users wish to seek to justify declaration based on matters such as capacity constraints at NQXT or a substantial increase in the production output of Carmichael mine, it is more appropriate to wait until these occur before bringing a request.

**The costs of declaration are real and substantial**

136 The Draft Recommendation fails to have regard to the fundamental benefit which the current commercial negotiations offer QCoal Users and other renewing users – [redacted]. This avoids any potential for future pricing disputes over this period.

137 It is therefore not correct, as suggested in the Draft Recommendation, that declaration "*replaces commercial uncertainty with regulatory uncertainty*".[61] The opposite is true.

138 [redacted] As noted repeatedly in submissions, [redacted]t, which the QCoal Users have acknowledged are reasonable.[62] [redacted]

139 By contrast, declaration creates a "negotiate-arbitrate" dynamic which potentially re-opens all terms of access, including price, and exposes the parties to an almost certain arbitration processes before the QCA.

140 There is no reason to suggest that the QCA negotiation and arbitration process would be any less costly than the periodic commercial TIC arbitrations that have occurred every 5-years under the Legacy User Agreements. NQXT has provided evidence that the costs to the Adani

[59] QCoal Users' 12 June 2026 Submission, [105]-[108].

[60] Wood Mackenzie, *Competition Declaration – North Queensland Export Terminal Facility*, June 2026, section 2.2 page 4.

[61] Draft Recommendation, section 5.5.1, page 96.

[62] QCoal Users' 12 June 2026 Submission, [103]-[104].

group of the last three price review arbitration processes in FY12, FY17 and FY22 have totalled approximately [redacted].[63]

141 Simply, these are costs that will not be required to be incurred by NQXT or any other stakeholder – either now or at any point over the next decade – if the parties are left to finalise commercial arrangements using the unregulated commercial offer and pricing already provided to the QCoal Users by NQXT.

[63] NQXT, *Submission in response to QCA's Draft Recommendation not to declare the coal handling service at the North Queensland Export Terminal*, 12 June 2026, [224(a)(ii)].