



HOUSTONKEMP
Economists

Further expert report re proposed declaration of NQXT

A report for Arnold Bloch Leibler

21 October 2025

Confidentiality key:

Category A

Category B

Category C

Contact Us

Sydney

Level 40
161 Castlereagh Street
Sydney NSW 2000

Phone: +61 2 8880 4800

Disclaimer

This report is for the exclusive use of the HoustonKemp client named herein. There are no third party beneficiaries with respect to this report, and HoustonKemp does not accept any liability to any third party. Information furnished by others, upon which all or portions of this report are based, is believed to be reliable but has not been independently verified, unless otherwise expressly indicated. Public information and industry and statistical data are from sources we deem to be reliable; however, we make no representation as to the accuracy or completeness of such information. The opinions expressed in this report are valid only for the purpose stated herein and as of the date of this report. No obligation is assumed to revise this report to reflect changes, events or conditions, which occur subsequent to the date hereof. All decisions in connection with the implementation or use of advice or recommendations contained in this report are the sole responsibility of the client.

Contents

1. Introduction	1
1.1 Instructions	1
1.2 Summary of conclusions from my earlier reports	2
1.3 Structure of my report	4
2. Criterion (a)	5
2.1 Mischaracterisation of the effect of declaration and criterion (a) test	5
2.2 Vertical integration and maximising throughput	8
2.3 Later-stage tenements	10
2.4 Coal haulage services	12
3. Criterion (b)	13
3.1 Framework for market definition	15
3.2 Response to critique of Houston analysis	24
Annexure A – Letter of instruction	28

Figures

Figure 3.1: Illustrative difference between assumed demand curves	18
Figure 3.2: Illustrative willingness-to-pay of Goonyella mines – Hird/Ockerby approach	19
Figure 3.3: Illustrative economic profit outcomes for Goonyella mines – conventional approach	20

Tables

Table 3.1: Summary of key differences in approaches to criterion (b)	14
--	----



1. Introduction

1. I have been asked to prepare this report by Arnold Bloch Leibler (ABL) on behalf of QCoal Pty Ltd and Byerwen Coal Pty Ltd (together, the QCoal Users).
2. Its context is an investigation by the Queensland Competition Authority (QCA) in relation to a request by the QCoal Users for declaration of the coal handling service supplied at North Queensland Export Terminal (NQXT).
3. Attached to the QCoal Users' request were two expert reports prepared by me that set out the basis for my conclusion that the coal handling service supplied at NQXT satisfies the four criteria of section 76(2) of the *Queensland Competition Authority Act 1997* (QCA Act).¹ This report should be read in conjunction with those reports.
4. A subsequent submission to the QCA by NQXT² included lay evidence and expert reports that underpin NQXT's contrary conclusion that criteria (a), (b) and (d) at section 76(2) of the QCA Act are not satisfied.³
5. In this report, I respond to ABL's request that I review that evidence and comment on the two expert reports accompanying the NQXT submission.

1.1 Instructions

6. ABL has asked me to prepare a further report which responds to NQXT's submission and supporting evidence.⁴ I attach a copy of my further letter of instructions as annexure A.
7. In preparing my report, I have reviewed:
 - a. NQXT's submission;
 - b. expert reports prepared on behalf of NQXT, ie:
 - i. an expert report by Jeff Balchin addressing criterion (a) (the Balchin report);⁵ and
 - ii. an expert report by Tom Hird and Jason Ockerby addressing criterion (b) (the Hird and Ockerby report);⁶
 - c. lay evidence from employees of various Adani Group entities, ie:
 - i. statement from Mark Bradley Smith, General Manager at NQXT;⁷

¹ Houston, G, *Expert report of Greg Houston – does NQXT's coal handling service satisfy criterion (a)?*, 13 June 2025 (hereafter 'criterion (a) report'); and Houston, G, *Expert report of Greg Houston – does NQXT's coal handling service satisfy criteria (b) to (d)?*, 13 June 2025 (hereafter 'criterion (b) report').

² NQXT, *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 (hereafter, 'NQXT submission').

³ NQXT submission, para 27.

⁴ ABL, *Letter to Greg Houston entitled 'Further Instructions – Access Declaration for North Queensland Export Terminal facility at Abbot Point'*, 16 October 2025, para 3.

⁵ Incenta, *NQXT declaration application: do the services satisfy criterion (a)?*, August 2025 (hereafter, 'Balchin report').

⁶ Hird, T and Ockerby, J, *North Queensland Export Terminal criterion b*, 26 August 2025 (hereafter, 'Hird and Ockerby report').

⁷ Statement of Mark Bradley Smith, 22 August 2025 (hereafter, 'MBS statement').

- ii. statement from Damien Dederer, General Manager at Abbot Point Operations;⁸ and
 - iii. statement from Brendan Lane, General Manager at Bowen Rail Company and Carmichael Rail Network;⁹
 - d. statement of David Moore, Infrastructure Manager at QCoal.¹⁰
8. This report principally responds to the contentions put in the expert reports prepared on behalf of NQXT.

1.2 Summary of conclusions from my earlier reports

9. In this section I summarise my conclusions in two earlier reports that I prepared on whether the coal handling service supplied at NQXT satisfies the four criteria of section 76(2) of the QCA Act.
10. For the reasons set out in this report, in my opinion NQXT's submission and supporting evidence does not form an economic basis for changing the conclusions that I reached in these earlier reports, which I summarise below.

1.2.1 Criterion (a) report

11. In my report entitled '*Expert report of Greg Houston – does NQXT's coal handling service satisfy criterion (a)?*' (criterion (a) report), I concluded that the coal handling service provided at NQXT satisfies criterion (a) at section 76(2) of the QCA Act, ie:¹¹

...access (or increased access) to the service, on reasonable terms and conditions, as a result of a declaration of the service would promote a material increase in competition in at least 1 market (whether or not in Australia), other than the market for the service...

12. In particular, I concluded that:
- a. the significant risks for third-party access seekers and the substantial differential between third parties and Bravus Mining that would persist in a future without declaration imply that access (or increased access) to the service on reasonable terms as a result of declaration would be likely to promote:¹²
 - i. an increase in competition between Bravus Mining and third parties in markets for later-stage coal tenements in the Newlands and Galilee systems, because those third parties would be offered similar or equal terms of access to NQXT with declaration, as compared to the significant risk of no or poor-quality access without declaration; and/or
 - ii. an increase in competition between third parties in markets for later-stage coal tenements, because without declaration those third parties may not be willing to undertake any transactions, while the certainty over access as a result of declaration may incentivise those parties to undertake transactions;
 - b. declaration could promote a material increase in throughput of metallurgical coal at NQXT, relative to without declaration, and that NQXT represents a material proportion of global metallurgical coal trade, and thus the access on reasonable terms for exporters of metallurgical coal that declaration would imply, would promote an increase in competition in global markets

⁸ Statement of Damien Dederer, 25 August 2025 (hereafter, 'DD statement').

⁹ Statement of Brendan Lane, 22 August 2025 (hereafter, 'BL statement').

¹⁰ Statement of David Moore, 20 October 2025 (hereafter, 'DM statement').

¹¹ QCA Act, s 76(2)(a).

¹² Criterion (a) report, para 242.

for metallurgical coal exports, by increasing supply and thereby placing downward pressure on prices;¹³

- c. on the assumption that declaration of NQXT would allow for entry by new users into the Galilee basin, declaration of NQXT would facilitate entry or the threat of entry for the provision of below-rail services connecting the Galilee basin to the Newlands system, ie, promote a material increase in competition in that relevant dependent market;¹⁴ and
- d. declaration of NQXT, and the equality of access on reasonable terms for coal hauled by third-party haulage providers that it would imply, would therefore promote an increase in competition in the market(s) for coal haulage services covering the Galilee and Newlands systems (and possibly wider).¹⁵

1.2.2 Criterion (b) report

13. In my report entitled '*Expert report of Greg Houston – does NQXT's coal handling service satisfy criteria (b)-(d)*' (criterion (b) report), I concluded that the coal handling service provided at NQXT satisfies each of criterion (b), (c), and (d) at section 76(2) of the QCA Act, ie:¹⁶

- (b) that the facility for the service could meet the total foreseeable demand in the market—
 - (i) over the period for which the service would be declared; and
 - (ii) at the least cost compared to any 2 or more facilities (which could include the facility for the service);
- (c) that the facility for the service is significant, having regard to its size or its importance to the Queensland economy;
- (d) that access (or increased access) to the service, on reasonable terms and conditions, as a result of a declaration of the service would promote the public interest.

14. I concluded in relation to criterion (b) that:¹⁷

- a. the relevant market is the market for NQXT's coal handling service for mines that connect directly to (ie, are located adjacent to) the Newlands system, the Carmichael rail line or the GAPE, ie, northern mines;
- b. total foreseeable demand in the market for the service will be less than NQXT's nameplate capacity;
- c. NQXT can meet total foreseeable demand in the market over the declaration period under consideration, and that this conclusion would hold for total foreseeable demand up to 120 mtpa; and
- d. NQXT can meet total foreseeable demand in the market at least cost, a conclusion that I test against higher levels of total foreseeable demand.

¹³ Criterion (a) report, paras 261-263.

¹⁴ Criterion (a) report, para 279.

¹⁵ Criterion (a) report, June 2025, para 292.

¹⁶ QCA Act, ss 76(2)(b)-(d).

¹⁷ Criterion (b) report, paras 249b-249e.

15. I concluded in relation to criterion (c) that consideration of the factors evaluated by the QCA in its declaration review of the Dalrymple Bay Terminal (DBT) indicate that NQXT is significant, having regard to its size or its importance to the Queensland economy.¹⁸
16. Finally, I concluded in relation to criterion (d) that access (or increased access) to the service provided by NQXT, on reasonable terms and conditions, as a result of declaration would promote the public interest by:¹⁹
 - a. promoting investment in NQXT;
 - b. promoting investment in the market for below-rail services originating in the Galilee basin;
 - c. promoting investment in the markets for:
 - i. later stage thermal coal tenements in the Newlands System and Galilee Basin;
 - ii. later stage metallurgical coal tenements in the Newlands System; and/or
 - iii. later stage tenements containing both thermal and metallurgical coal in the Newlands System and the Galilee Basin;
 - d. promoting efficient investment in the market for metallurgical coal;
 - e. promoting investment in the market or markets for coal haulage services on the Galilee and Newlands rail systems;
 - f. likely increasing the amount of royalties payable to the Queensland state government;
 - g. reducing the likelihood of NQXT incurring significant administrative and compliance costs to resolve disputes, absent declaration;
 - h. likely reducing the compliance costs incurred by access seekers, both in relation to securing access on reasonable terms and confirming compliance with those terms;
 - i. mitigating the risk that the vertical integration of NQXT leads to increased exports of thermal coal that scores relatively poorly when assessed against ESG criteria, in comparison to metallurgical coal produced by third parties; and
 - j. promoting economic efficiency throughout the coal supply chain.

1.3 Structure of my report

17. My report is structured as follows:
 - a. in section 2, I comment on Mr Balchin's assessment of whether the coal handling service provided at NQXT satisfies criterion (a); and
 - b. in section 3, I comment on Dr Hird and Mr Ockerby's analysis of whether the coal handling service provided at NQXT satisfies criterion (b).

¹⁸ Criterion (b) report, para 262.

¹⁹ Criterion (b) report, para 330.

2. Criterion (a)

18. In this section, I respond to Mr Balchin's report that addresses whether the coal handling service at NQXT satisfies criterion (a).

2.1 Mischaracterisation of the effect of declaration and criterion (a) test

19. In my opinion, the Balchin report substantially mischaracterises both the effect of declaration and the nature of the test to be applied under criterion (a).

2.1.1 Declaration would retain negotiation as the principal mechanism

20. Throughout his report, Mr Balchin appears to mischaracterise both the effect of declaration and the economic test described at criterion (a). By way of example, Mr Balchin contends that:²⁰

The effect of declaration of the services of a facility like the Terminal [Abbot Point Coal Export Terminal] is that prices are likely to be determined by the regulator (the QCA)...indeed it is very likely that the QCA would either require an undertaking to be prepared with reference tariffs...or would be called upon to arbitrate a dispute.

...

It follows that extending price regulation to the Terminal (via declaration) would be requiring the QCA to confront complex regulatory issues...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.

21. Mr Balchin is correct that the QCA can determine a reference tariff or otherwise require the access provider to provide the access seeker with price, cost and asset value information. The effect of these mechanisms is to facilitate efficient access negotiations and to narrow the scope for disputes.²¹ However, Mr Balchin simply assumes that:²²

... the **most likely outcome**...is that the QCA **will**...implement what is essentially an *ex ante* review of prices and other terms of access...there would be a **strong likelihood** that the QCA would be asked to arbitrate the terms of access... [emphasis added]

22. In my opinion, it is incorrect for Mr Balchin to contend that the 'most likely outcome' of declaration is that parties would neither be willing nor able to negotiate directly in the context afforded by declaration. In contrast to Mr Balchin's contended 'most likely outcome', I note that the owner of DBT struck ten-year agreements with all its customers under what it described as a 'light-handed regulatory framework'.²³ This suggests that there is ample scope for commercially agreed access to infrastructure for which a service has been declared.
23. Indeed, Mr Balchin suggests that the parties would be able to negotiate effectively *even without declaration*. For example, he states that NQXT's proposed standard agreement reflects:²⁴

²⁰ Balchin report, paras 8-10.

²¹ See, for example, QCA, *Part C: DBCT declaration review*, Final recommendation, March 2020 (hereafter 'QCA DBCT recommendation'), p 95. Mr Balchin accepts that the 'access provider would be obliged to negotiate with access seekers, and to provide substantial information to support those negotiations.', Balchin report, para 73.

²² Balchin report, para 76.

²³ Dalrymple Bay Infrastructure, *DBI Announces 10 year pricing agreements and significant increase in distribution guidance*, ASX announcement, 11 October 2022.

²⁴ Balchin report, para 11.

- [REDACTED]
24. I disagree with Mr Balchin's contention that parties will be able to negotiate effectively without declaration. To the contrary, the history of disputes between terminal users and NQXT illustrates that, historically, negotiation in absence of declaration has often not been effective.
25. Mr Balchin contends that NQXT's current offers to users are constrained by DBT, because '[REDACTED]'.²⁵ In my opinion, this is not strong evidence of effective negotiation giving rise to 'reasonable' prices. Rather, any monopolist will 'factor in' prices for out-of-market constraints in determining its profit maximising price, but this is not evidence of the existence of any close constraint that inhibits the exercise of substantial market power.²⁶
26. Notwithstanding his contention as to NQXT's prices being constrained by those at DBT, it is difficult to reconcile Mr Balchin's views that:
- a. on the one hand, without declaration, the parties can be expected to negotiate effectively; and
 - b. on the other, that declaration would remove the likelihood of negotiations being effective.
27. In this respect, Mr Balchin goes as far as to state that:²⁷
- ... it cannot be supposed with any certainty that the prices with declaration are likely to be more reasonable than the prices without declaration, and **in fact I think the opposite is likely to be the case...**
- ...there can be no confidence that the "with declaration" prices will be lower and more certain (stable) than those that would be negotiated commercially, **indeed the opposite is likely to be the case** [emphasis added]
28. This contention sits uneasily with Mr Balchin's opinion elsewhere in his report that:²⁸
- Under any of these alternatives [in the presence of declaration], it is likely that prices either will be **determined with reference to cost**...or those prices will be negotiated against expectations of what such a cost-based regulatory determination would entail. [emphasis added]
29. Taken together, Mr Balchin appears to be suggesting that, absent declaration, NQXT would offer and accept prices that are 'more reasonable' (presumptively, 'more reasonable' from the perspective of an access seeker) than those that would be determined by reference to its costs, or, in other words, that without the constraint posed by declaration NQXT would likely offer below-cost prices.
30. In my opinion, it strains credulity to suggest that this would be the case. Indeed, if NQXT were more likely to offer below-cost prices in the absence of declaration, one would expect:
- a. users or prospective users to be highly incentivised to arrive at the commercially negotiated, lower-priced outcomes contemplated by Mr Balchin, whether or not declaration arises; and/or
 - b. NQXT to be supportive of declaration, such that it would be more likely to recover its costs.

²⁵ Balchin report, para 69b.

²⁶ This error is similar to the cellophane fallacy, whereby prevailing market prices are above the competitive level such that the application of the hypothetical monopolist test to prevailing prices may erroneously suggest that customers would substitute away from the hypothetical monopolist. See, for example: Motta, M, *Competition policy: theory and practice*, Cambridge University Press, New York, 2009, p 105.

²⁷ Balchin report, paras 62 and 89.

²⁸ Balchin report, para 77.

2.1.2 Criterion (a) test is not a cost-benefit analysis

31. Section 76(2)(a) of the QCA Act specifies criterion (a) of the test for declaration as being that:

...access (or increased access) to the service, on reasonable terms and conditions, as a result of a declaration of the service would promote a material increase in competition in at least 1 market (whether or not in Australia), other than the market for the service...

32. My understanding is that application of this criterion turns on whether a material increase in competition in a market – any market, other than for the service itself – would be promoted by access (or increased access) to the service, on reasonable terms and conditions, as a result of declaration. This contrasts with other criteria that explicitly highlight other matters to which regard must be had, eg, administrative and compliance costs in relation to criterion (d).²⁹

33. In contrast to my approach, Mr Balchin appears to suggest that the test includes reference to a level of costs or risks that the promotion of competition must outweigh. This is evidenced by Mr Balchin's apparent interpretation of the test, in relation to which he states:³⁰

It follows that, for price regulation to be justified in the context of the [Abbot Point Coal Export] Terminal, the benefits expected from this would need to be commensurately large relative to downside risks of regulation... The risks – and challenges – associated with declaration... are very real, and so it follows that the benefits also need to be tangible, rather than some form of theoretical possibility, and expected in a market that is substantial rather than trivial.

34. Setting aside Mr Balchin's apparent conflation of 'declaration' – which establishes the right of an individual access seeker to seek an arbitral determination of the terms of access – with 'price regulation', my understanding is that application of the test for declaration requires neither:

- a. the promotion of competition in a dependent market to 'be commensurately large relative to downside risks of regulation', or for the benefits 'to be tangible'; nor
- b. the dependent market itself to be considered 'substantial rather than trivial'.

35. Rather, the principal economic consideration in applying criterion (a) is whether a *material* increase in competition would be *promoted*. In my opinion, the test calls for a qualitative assessment of the prospects for competition that will or may arise from access on reasonable terms implied by declaration. There is no scope within criterion (a) for the weighing and offsetting exercise contemplated by Mr Balchin.

36. Consistent with this more straightforward interpretation of criterion (a), in his decision in relation to DBT, the then Treasurer explained that:³¹

[assessment of criterion (a)] involves consideration of whether there is an **improvement in the opportunities and environment** for competition, such that competitive outcomes are **materially more likely** to occur in a future with declaration compared to a future without declaration.

37. In other words, the Treasurer confirmed that the test calls for a qualitative assessment of the competitive process, rather than a quantitative-orientated, cost-benefit analysis of the kind suggested by Mr Balchin.

38. Notwithstanding, in Mr Balchin's description of the considerations falling to the weighing process that he contemplates, there is no recognition of the risk that clearly *does* arise without declaration, ie, the risk of a monopoly acting without close constraint.

²⁹ QCA Act, s 76(5)(c).

³⁰ Balchin report, para 12.

³¹ Treasurer (Qld), *Queensland Competition Authority Act 1997 - Notice of a decision to declare a service under sections 84-87*, Queensland Government Gazette, No 31, 1 June 2020, 267 (hereafter 'Treasurer DBCT decision'), para 4.7.16.

2.2 Vertical integration and maximising throughput

39. In my opinion, the Balchin report overlooks important considerations for the terms of access likely to be offered by NQXT arising from the vertically-related interests of the Adani Group, as well as the nature of its incentives in relation to terminal throughput.

2.2.1 Adani Group vertical integration is a relevant consideration

40. I explain in my criterion (a) report that:³²

A service provider is vertically integrated if it operates (or closely related entities operate) in markets upstream or downstream from that in which it provides the service of interest.

...

A vertically integrated firm with market power may have an ability and incentive to disadvantage its rivals in the upstream or downstream market.

...

The economic motivation for attempting to foreclose downstream rivals is that, by raising the input cost of rivals (such as the cost of coal handling services), the integrated firm can put those rivals at a cost disadvantage and **thereby increase its own prices and/or market share** in the downstream market, eg, coal exports. [emphasis added]

41. Mr Balchin criticises my assessment of the various incentives applying as a result of the vertically integrated elements of the Adani Group as:³³

...incorrect and misleading as the Adani entities do not have interests in the production of metallurgical coal. Accordingly, this activity cannot be interpreted as a denial of access that is intended to foreclose competition in a related market, which is the principal economic concern with vertical integration – and the harm that is intended to be addressed by access regulation...

42. To my knowledge, Mr Balchin is correct to observe that the Adani Group entities have no interest in metallurgical coal production. However, in my opinion, Mr Balchin's consequent reasoning – as well as his interpretation of the 'harm that is intended to be addressed' – is focused too narrowly. In particular, he does not give sufficient recognition to other considerations by which Adani Group entities may have incentives to affect other terminal users (which may or may not compete directly with Bravus Mining to sell coal).
43. Although the effect on competition is the principal relevant consideration under criterion (a), there need not be a connection between the precise *rationale* for self-preferential conduct and the potential effect on competition in a dependent market. In particular, it is reasonable to expect (and valid to consider in terms of satisfying criterion (a)) that:
- Adani Group entities may favour the production of thermal coal from Bravus Mining because it would earn more profit by increasing the amount of that coal that it exports (whether or not this displaces third-party coal); and
 - this may have an effect on competition in markets involving metallurgical coal (such as those for tenements markets or coal exports), even if the Adani Group does not itself produce metallurgical coal.

³² Criterion (a) report, paras 92-94.

³³ Balchin report, para 115.

44. A further consideration governing the incentive for the Adani Group to frustrate users at the terminal is the potential for effects on above rail services. For example, Mr Smith indicates that he considers:³⁴

[REDACTED]

45. It follows that NQXT could seek to use its position as a bottleneck facility to [REDACTED]
[REDACTED]
[REDACTED]³⁵

46. Mr Balchin suggests that the Adani Group entities will not deny access, including because it has:³⁶

...adopted a number of measures that are designed to give confidence of security of access (and equality of treatment of all access seekers), which include [REDACTED]
[REDACTED]
[REDACTED]...

47. Unlike declaration under the QCA Act, these arrangements:

- a. may be at risk of amendment or withdrawal at NQXT's discretion [REDACTED]
[REDACTED]
[REDACTED];
- b. are not subject to independent oversight by the QCA; and
- c. for disputes arising by reference to them, do not necessarily involve recourse to arbitration.

48. Notwithstanding the likely implementation issues inherent in the 'measures' cited by Mr Balchin, they also omit reference to elements of great relevance to users, such as the *certainty* of access *on reasonable terms*.

2.2.2 Profit maximisation does not necessarily align with throughput maximisation

49. Mr Balchin states that:³⁷

Secondly, even if declaration were considered likely to produce an improvement in the reasonableness of the terms of access, NQXT would have an incentive to offer price and non-price terms of access that maximise the short term and long term prospects for the sector. A consequence of this is that tenement activity would be unlikely to change in any material way, so that competition in the market could not be affected in any material way as a result of declaration.

50. In my view, the reasoning underpinning this aspect of Mr Balchin's opinion is incorrect as a matter of economic principle.
51. In particular, his contention that NQXT would have an incentive to 'maximise the short and long term prospects for the sector' overlooks the implications of NQXT's market power. Put simply, if Mr Balchin were correct, no service provider could satisfy criterion (a) because all such providers would have a similar incentive to 'maximise the short term and long term prospects for the sector.' Rather, economic principles are clear that – absent some form of non-market constraint – suppliers with substantial market power seek to withhold output relative to the effectively competitive level, so as to raise the price of the relevant service and thereby raise their profits.

³⁴ MBS statement, para 211.

³⁵ In my opinion, the fact that terminal regulations have [REDACTED] (Balchin report, para 119c(i)) does not hold much weight given the presence of the original user agreements over that period and NQXT's ability unilaterally to amend the terminal regulations.

³⁶ Balchin report, para 191b.

³⁷ Balchin report, para 149.

52. This principle is also consistent with the observations of the QCA and then Treasurer in respect of DBT. The QCA recognised that although DBT 'is not vertically integrated, it is a monopolist service provider and would have an incentive to maximise profits by charging more, even if this reduces volumes'.³⁸ Similarly, the then Treasurer recognised that:³⁹

[DBCT Management Pty Ltd] would have both the ability and incentive to maximise profits by charging more, **which would not necessarily align with maximising throughput.** [emphasis added]

2.2.3

53. Mr Balchin states that 'the reasonableness of NQXT's current pricing offer can be observed', in part, by the contention that NQXT has taken on:⁴⁰

[REDACTED]

54. Mr Balchin's observation of fact as to NQXT's current pricing offer causing [REDACTED] may well be, but in my opinion the associated contention sought to be drawn by Mr Balchin omits important considerations. In particular, Mr Balchin overlooks that:

- a. the [REDACTED]
 - i. [REDACTED]; and
 - ii. [REDACTED]
- b. by nature of its vertically integrated structure with a significant user of the terminal, Adani Group is likely to be better placed than third-party users to assess whether [REDACTED] may have a positive expected value if [REDACTED]; and
- c. that the purported benefit is offered at NQXT's discretion, ie, including that [REDACTED], eg, depending on whether the access seeker was located north or south of the GAPE.

2.3 Later-stage tenements

55. I disagree with Mr Balchin's contentions as to the relevant markets and their potential for competition to be promoted under the assessment of criterion (a).

2.3.1 Market definition

56. Mr Balchin contends, without presenting evidence relevant to the matter at hand, that the:⁴²

...market for later stage coal tenements (to the extent it exists) is a derivative market of the global coal markets...

³⁸ QCA DBCT recommendation, p 170.

³⁹ Treasurer DBCT decision, para 4.6.8(b).

⁴⁰ Balchin report, para 69c.

⁴¹ [REDACTED]

⁴² Balchin report, para 142.

57. Mr Balchin also incorrectly contends that I have:⁴³

...**assume**[d] that the geographic market for late stage tenements is the region he refers to as the “northern mine area”. This narrow geographic market is inconsistent with the past position of the Tribunal and NCC that the geographic market is a world market...**no evidence has been provided** that the market should be defined as narrowly as the “northern mine area”... [emphasis added]

...

Moreover, the limited evidence of transactions in such tenements suggests that a separate market is not a commercial reality. I observe that while Mr Houston has argued that the late stage tenements should be considered to be a separate market, this has not been supported with evidence.

58. On the contrary, in my criterion (a) report I:⁴⁴

- a. identify the presence of actual transactions⁴⁵ for tenements on the Newlands system, with direct connection to the GAPE and the Galilee Basin, including between sellers that did not engage in the mining and exporting of coal;
- b. identify that the narrowest reasonable starting point for market definition that is consistent with the context is tenements on the Newlands system, with direct connection to the GAPE and the Galilee Basin, being the area covered by those mines that export coal through NQXT exclusively;
- c. apply the hypothetical monopsonist framework to show that prospective buyers of later-stage coal tenements in areas outside this region would be unlikely to be willing or able to substitute to purchase tenements in this region, because of the lack of any degree of certainty in relation to access to NQXT; such that I
- d. conclude, based on those steps, that the relevant geographic market should be confined to the area that I identify as my narrowest reasonable starting point.

59. In its assessment of DBT, the QCA similarly considered it appropriate to consider:⁴⁶

...three functionally distinct coal tenements markets:

- the market for the supply and acquisition of new or early stage exploration permits for coal in the **central Queensland region** (exploration stage tenements)
- the market for the supply and acquisition of late stage exploration and development tenements in relation to metallurgical coal in the **Hay Point catchment** (development stage tenements)
- the market for the supply and acquisition of operating mines in relation to metallurgical coal in the **Hay Point catchment** (operating mines). [emphasis added]

⁴³ Balchin report, paras 30 and 152.

⁴⁴ Criterion (a) report, paras 116-126 and 150-199.

⁴⁵ In my criterion (a) report, I explain that a market is the ‘field of actual and *potential* transactions’. Moreover, in identifying the relevant functional dimension(s) of a market, it may similarly be ‘necessary to consider whether, within what may appear to be a single function, there is the *potential* for trade to occur within that function.’ It follows that actual transactions need not be observable when identifying the boundaries of a market, including the relevant functional dimension(s). See: Criterion (a) report, paras 65 and 74.

⁴⁶ QCA DBCT recommendation, pp 117-118. I note that Mr Balchin refers to the QCA’s quotation of the Tribunal as part of its consideration of coal tenements in its assessment of DBCT, but he fails to properly grapple with the QCA’s principal analysis which did find three relevant, functionally distinct coal tenements markets.

60. In reaching that view, the QCA considered, among other things, whether ‘coal tenements outside the Hay Point catchment are in the same economic market as tenements in the Hay Point catchment.’⁴⁷ The QCA’s approach was affirmed by the then Treasurer.⁴⁸
61. In my opinion, the more refined conclusions drawn by the QCA – relative to conclusions drawn by the National Competition Council (NCC) and the Australian Competition Tribunal (the Tribunal) – in relation to both:
- a. the specification of three functionally distinct forms of tenement; and
 - b. the narrower geographic boundaries applying in relation to those tenements,
- is a natural consequence of:
- a. the distinct legal and so functional forms of tenements applying in Queensland; and
 - b. relatedly, more refined analysis of the attributes – and so their substitutability for one another – of parties who are more likely to enter into transactions for those functionally distinct tenements.
62. Accordingly, in my opinion the conclusions of the NCC and the Tribunal that Mr Balchin contends as being ‘inconsistent’ can more properly be explained by distinctions as to the factual context, the purpose of the analysis and evolution in the appropriate conclusions as deeper considerations are brought to bear.

2.4 Coal haulage services

63. I conclude in my criterion (a) report that declaration of NQXT would promote an increase in competition in the market(s) for coal haulage services covering the Galilee and Newlands systems (and possibly wider).⁴⁹
64. Mr Balchin contends that declaration ‘cannot influence the conditions for competition in the market for rail haulage.’⁵⁰ I disagree, for the reasons that I explain in my criterion (a) report and for the further reasons below.
65. I explain at paragraph 44 above that Mr Smith indicates that he considers:⁵¹
- ... [REDACTED]
66. I explain in my criterion (a) report that NQXT could adjust the operation of the terminal, and particularly its interface with rail operations, in such a manner as to affect other parts of the rail supply chain.⁵² In my opinion, the context of [REDACTED]
- [REDACTED]
- [REDACTED]

⁴⁷ QCA, DBCT recommendation, p 127.

⁴⁸ Treasurer DBCT decision, para 4.4.2.

⁴⁹ Criterion (a) report, para 292.

⁵⁰ Balchin report, para 34 (chapeau).

⁵¹ MBS statement, para 211.

⁵² Criterion (a) report, para 290.

3. Criterion (b)

- 67. In this section, I comment on key shortcomings in the methodology by which Dr Hird and Mr Ockerby evaluate whether the coal handling service provided at NQXT satisfies criterion (b).
- 68. I present a summary of the key differences between my approach and Dr Hird and Mr Ockerby's approach in table 3.1 on the next page.
- 69. In the remainder of this section I:
 - a. describe shortcomings in the framework for market definition adopted in the Hird and Ockerby report; and
 - b. comment on Dr Hird and Mr Ockerby's critique of my analysis.

Table 3.1: Summary of key differences in approaches to criterion (b)

Issue	Approach in my criterion (b) report	Dr Hird and Mr Ockerby's approach	Comment on approaches
Narrowest scope of the market taken as the starting point (candidate market)	Mines with direct connection to either the Newlands system, the Carmichael rail line or the GAPE (consistent with the QCA's approach in its declaration review of DBT).	Any customer that the facility could profitably serve (over 2025 to 2030) assuming there was no alternative coal handling service available, anywhere. Specifically, this includes demand from any customer where both parties could profitably trade (enjoy economic surplus) if no alternative coal handling services were to exist.	Dr Hird and Mr Ockerby's approach: • gives rise to a starting point much broader than my approach; • includes customers that are unlikely ever to access the facility; and • is substantially different from the QCA's approach in respect of DBT.
Approach to expanding the narrowest scope of the market	Identification of close substitutes for the service by reference to relative costs of access (consistent with the QCA's approach in its declaration review of DBT).	Not applicable.	The approach applied in my criterion (b) report: • tests whether the market should be broadened by assessing the extent to which other terminals represent close substitutes for the service; • is consistent with the QCA's approach in respect of DBT. Dr Hird and Mr Ockerby's approach does not contemplate any potential expansion step from their scope of the market.
Is the coal handling service at DBT in the same relevant market as the coal handling service at NQXT?	The step above shows that the coal handling service at DBT (or other terminals) is not a close substitute for the coal handling service at NQXT. Accordingly, the coal handling service at DBT (and other terminals) is not in the same relevant market as the coal handling service at NQXT.	The coal handling service at DBT and other terminals is assumed not to exist.	Both approaches give rise to a market in which NQXT is the only supplier of coal handling services. However, the means by which this outcome is derived contrasts sharply, ie, the conclusion that DBT is not a supplier in the market: • is an <i>outworking</i> of my approach, because my analysis shows that other terminals are not close substitutes to the service at NQXT; whereas • is a prior <i>assumption</i> under Dr Hird and Mr Ockerby's approach, because their initial step contends that coal miners 'have no other alternative to trade'.
What customers comprise the demand side of the market for the purpose of assessing foreseeable demand?	Mines with direct connection to either the Newlands system, the Carmichael rail line or the GAPE.	Any customer that the facility could profitably serve (over 2025 to 2030) if no alternative coal handling services were available. Specifically, this includes any customer where both parties could profitably trade (enjoy economic surplus) if no alternative coal handling services were to exist.	My approach gives rise to a demand-side that accords with the customers for whom it is efficient to access NQXT, bearing in mind the close substitutes (of which, in fact, there are none). Dr Hird and Mr Ockerby's approach gives rise to a demand-side that includes any mine for which coal could be transported to NQXT at a cost (including mining costs but not port charges) lower than the applicable coal price.

3.1 Framework for market definition

70. Criterion (b) of the declaration criteria reads:⁵³

...that the facility for the service could meet the total foreseeable demand in the market–

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

71. Criterion (b) is often described as a ‘natural monopoly’ test because – in economics – a supplier can be said to have natural monopoly characteristics if it can meet all demand in a market at least cost.

72. The relevance of natural monopoly to economic regulation stems from its economic implication that:

- a. it is efficient (least cost) for demand in the market to be met by a single supplier; but
- b. the exercise of market power by a monopoly supplier is not constrained by the availability of close substitutes.

73. Absent some form of intervention, a supplier operating under these circumstances can improve its economic position by raising prices and lowering the quantity of goods or services supplied, to the detriment of consumers, total welfare and economic efficiency.

74. The avoidance of these adverse implications is consistent with the inclusion of a natural monopoly test to determine whether economic intervention is required, in the form of declaration, to promote economic efficiency under part 5 of the Act, for which the objective is:⁵⁴

...to promote the economically efficient operation of, use of and investment in, significant infrastructure by which services are provided, with the effect of promoting effective competition in upstream and downstream markets.

75. The two economic implications of natural monopoly that I cite in paragraph 72 are similarly reflected in a process for market definition that, at its core:

- a. identifies the cohort of customers for whom it is most efficient (or least cost) to access the relevant service (as distinct from potential substitute services); and then
- b. evaluates the extent to which the availability of substitutes constrains the service provider’s ability to exercise market power.

76. Similarly, I explain in my criterion (b) report that:⁵⁵

The governing economic principle for the definition of markets is the degree of substitutability of the relevant products or services.

and:⁵⁶

Defining a market involves identification of the competitive constraints that are likely to have a material effect on a product or service (they are ‘in’ the market), and those that have a less material effect (they are ‘out’ of the market).

⁵³ QCA Act, s 76(2)(b).

⁵⁴ QCA Act, s 69E.

⁵⁵ Criterion (b) report, para 79.

⁵⁶ Criterion (b) report, para 78.

77. Consistent with the principles identified in my criterion (b) report,⁵⁷ the existence of transactions with customers from outside a particular geographic envelope does not itself contradict the appropriateness of that boundary in terms of assessing the geographic scope of substitutes that constrain a supplier's ability to exercise market power.
78. Rather, it is far from unusual in relation to location-based geographic markets for customers from outside a particular geographic envelope to transact from time-to-time with suppliers inside that geographic envelope. This reflects that market definition rarely involves bright lines or hard boundaries.⁵⁸ Rather, the relevant consideration is not the existence or absence of customers that may transact from outside the candidate geographic boundaries, but rather the identification of the geographic scope of constraints on the suppliers inside the market.

3.1.1 Dr Hird and Mr Ockerby's approach

79. Dr Hird and Mr Ockerby adopt a very different, unconventional approach to market definition.
80. Rather than adopting a process of market definition that is guided by the extent to which there are close substitutes for the NQXT service, Dr Hird and Mr Ockerby's approach is predicated on the absence of any or all alternative services. Specifically, the Hird and Ockerby report explains that, in their view:⁵⁹

...the geographic scope of the market should extend to include any mine customer that could profitably exchange with NQXT if there were no alternative for the mine than to trade with it. As such, the total foreseeable demand in the market refers to the sum of the demand from any customer that the facility could profitably serve over the period for which its service would be declared. Specifically, this includes demand from any customer where both parties could profitably trade (enjoy economic surplus) if they have no other alternative to trade.

81. In making the assumption that other export facilities do not exist, Dr Hird and Mr Ockerby's approach involves an assessment of criterion (b) by reference to a cohort of supposed customers:
- a. for whom it will likely never be efficient to access NQXT, ie, because they have at least one lower cost alternative;
 - b. that are very unlikely ever to access NQXT; and
 - c. for whom the conduct at issue in this declaration review has no practical bearing.
82. By way of illustration of the implications of Dr Hird and Mr Ockerby's approach, suppose there was a coal mine adjacent to DBT. Under their approach, Dr Hird and Mr Ockerby would include – as part of their initial step – production from this mine as part of their assessment of foreseeable demand in the market for coal handling services at NQXT, notwithstanding that:
- a. it would be highly inefficient and impractical for such a coal mine to access NQXT, because the cost of transport to NQXT would far exceed that of accessing DBT; so that
 - b. it would be very unlikely that such a coal mine would ever access (or seek to access) NQXT; and
 - c. as a result, the declaration status of NQXT would have no practical bearing on such a coal mine.
83. By consequence, Dr Hird and Mr Ockerby's approach to market definition is irreconcilable with the role of criterion (b), and the access criteria more generally, in determining whether declaration is required

⁵⁷ Criterion (b) report, paras 86-90.

⁵⁸ See, for example, Criterion (b) report, para 78, referring to *Re Tooth & Co Ltd* (1979) 39 FLR 1, p 39.

⁵⁹ Hird and Ockerby report, para 83.

to promote economic efficiency, consistent with the objective of part 5 of the Act. Dr Hird and Mr Ockerby's contentions also cannot be reconciled with the approach to market definition in other contexts. I explain my reasoning for this opinion below.

84. The origin of the inherent misconception of Dr Hird and Mr Ockerby's approach is the overwhelming emphasis they place on their colloquial description of criterion (b) as a 'natural monopoly' test and their associated contention that, therefore:⁶⁰

...the necessary approach is to consider a state of the world in which that firm, or the facility of that firm subject to the declaration proceedings, was a true monopoly.

85. On the contention that it is necessary to establish the existence of a 'true monopoly', the Hird and Ockerby report approaches criterion (b) in an abstract, theoretical manner that is divorced from the promotion of economic efficiency in relation to the NQXT service, as well as from practical reality on the Central Queensland coal network (CQCN).

86. Dr Hird and Mr Ockerby weave such a path by 'defining a market' on the explicit assumption that no alternative services exist, ie, they define:⁶¹

...the relevant market as the output from mines that NQXT could profitably serve if it were the only available supplier. This test assesses potential demand for NQXT absent alternatives, consistent with its role as a natural monopoly test.

87. In economic terms, demand for a service reflects each customer's maximum willingness-to-pay for that service, which is itself a function of the next best alternative option available. More specifically, a business customer's maximum willingness-to-pay for a service is the lesser of:

- a. the total returns they expect to derive from a transaction; and
- b. the cost of the next best alternative option available to them.

88. By way of example, the demand for transporting coal by road will be a function of the expected cost of instead transporting coal by rail, if that is the next best alternative.

89. By defining a market on the assumption that there are no alternatives to the NQXT service, the Hird and Ockerby report proceeds to estimate foreseeable demand that:

- a. ignores an essential determinant of customers' maximum willingness-to-pay – and, therefore, the level of demand for the service⁶² – being the cost of the next best alternative; and
- b. reflects demand for coal handling services over a geographic area that is likely to be at least as large as the CQCN, but that is not related to the market in which the NQXT service is provided.

90. In my opinion, the former also brings into question whether the level of demand subsequently estimated by the Hird and Ockerby report's assessment of criterion (b) can reasonably be treated as 'foreseeable'. It is also unclear whether Dr Hird and Mr Ockerby's assessment of expected costs, revenue and throughput, measured as an average over the 2025 to 2030 period,⁶³ is an accurate reflection of the corresponding expected values over the proposed declaration period, ie, the ten-year period commencing 1 July 2027.

91. I illustrate these shortcomings in the approach contended for by Dr Hird and Mr Ockerby in Figure 3.1 below, in which:

⁶⁰ Hird and Ockerby report, para 221.

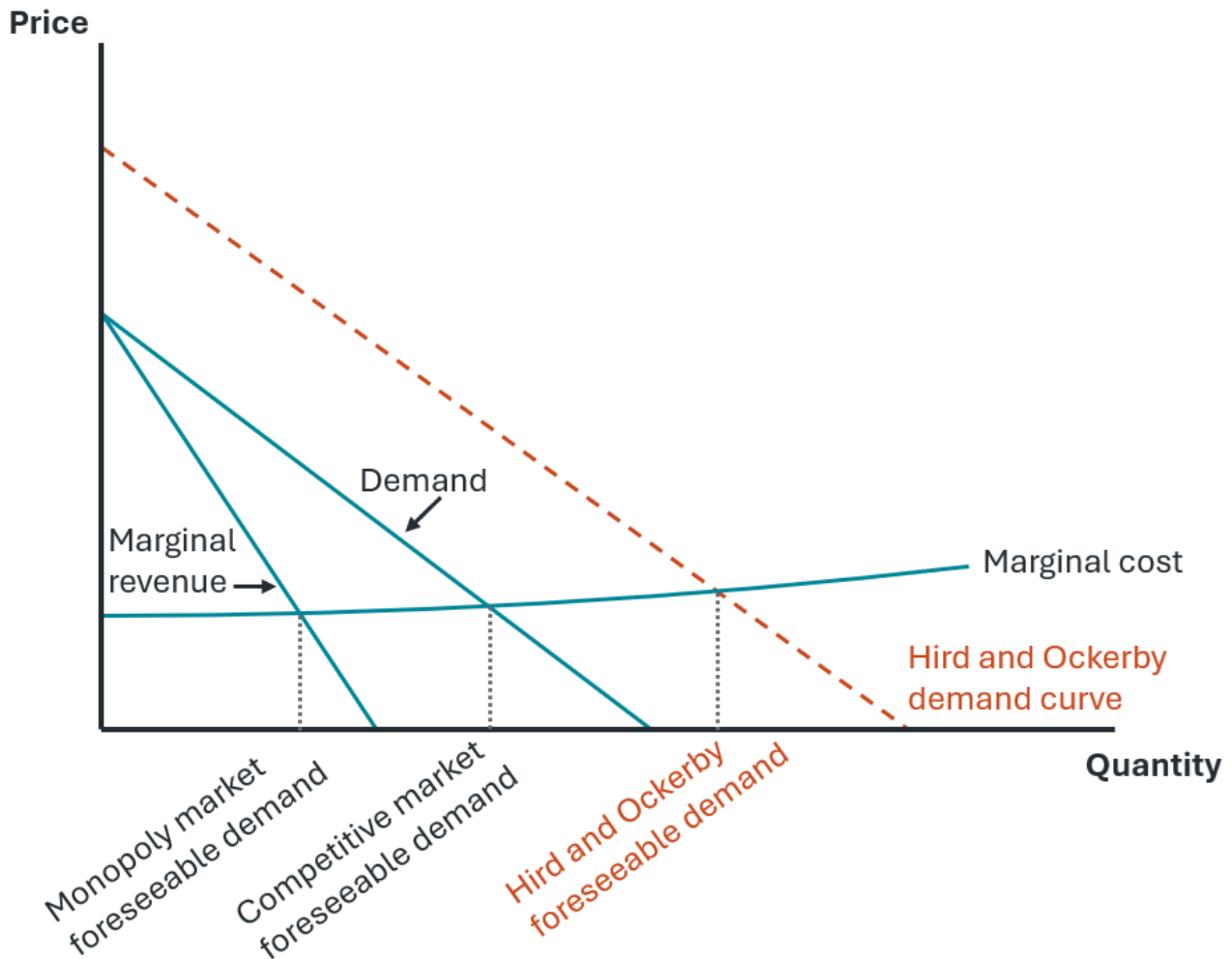
⁶¹ Hird and Ockerby report, para 7.

⁶² As explained at paragraph 87.

⁶³ Hird and Ockerby report, appendix A.

- a. the 'monopoly market' and 'competitive market' points are derived by reference to a demand curve that reflects an essential determinant of customers' maximum willingness-to-pay (and therefore demand), being the cost of the next best alternative; whereas
- b. the 'Hird and Ockerby' approach omits this important determinant of demand (the next best alternative) and therefore results in an artificially high demand curve.

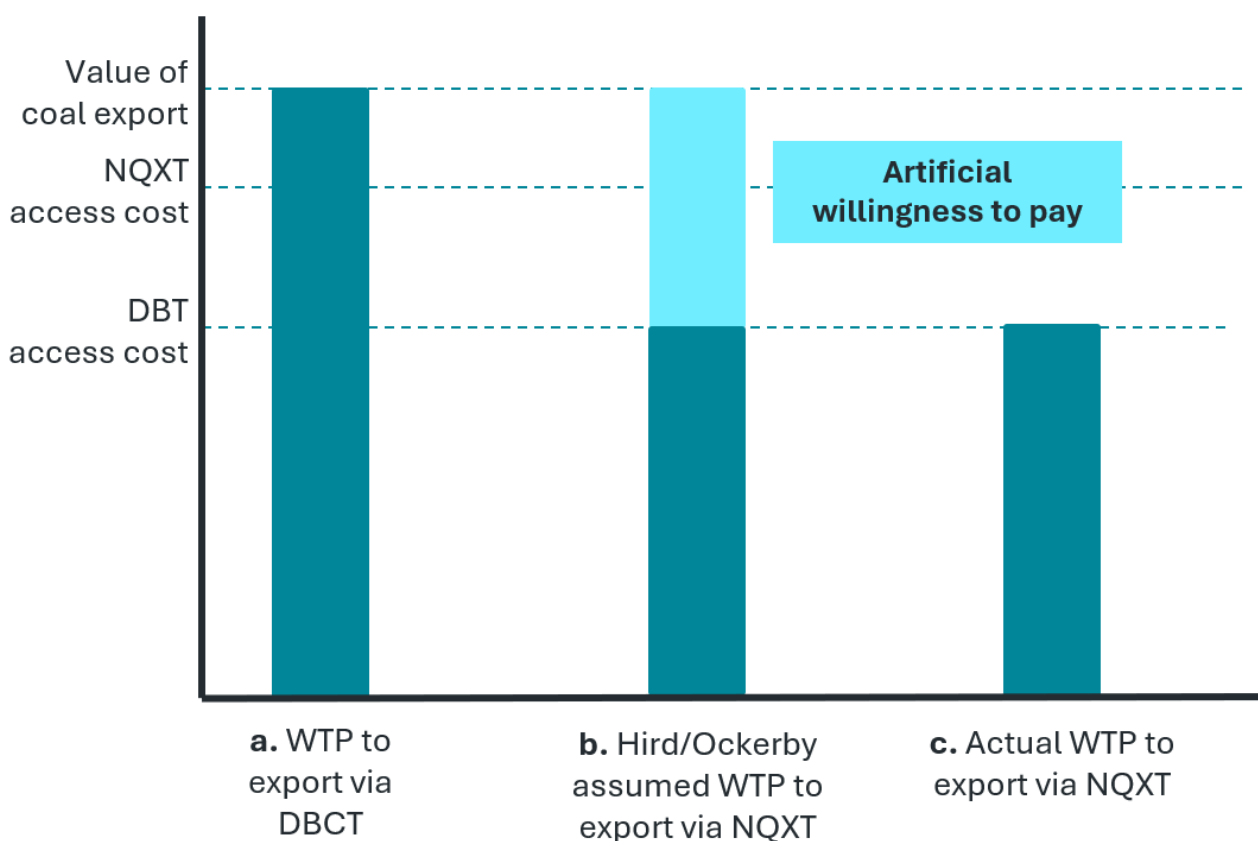
Figure 3.1: Illustrative difference between assumed demand curves



92. I note that the Hird and Ockerby demand curve may be relevant in a criterion (b) assessment if a properly applied market definition process was to identify, potentially after an expansion step, that alternative suppliers should be taken to be in the same market as the coal handling service at NQXT.
93. The fundamental error in Dr Hird and Mr Ockerby's approach is that they include, as a starting point in their market definition process, customers for whom transacting at NQXT:
 - a. is profitable, in an accounting sense; but,
 - b. gives rise to a negative economic surplus due to the existence of DBT (and other alternatives).
94. In Figure 3.2 below I illustrate the artificiality of willingness-to-pay under Dr Hird and Mr Ockerby's approach by reference to a representative Goonyella system mine, for whom access costs (inclusive of transport charges) are higher at NQXT than at DBT. In this figure, the representative mine would be willing to pay:

- a. to export via DBT – up to the value of the coal it is seeking to export;⁶⁴
- b. to export via NQXT, under Dr Hird and Mr Ockerby's assumption that no alternative coal handling facilities are available, up to the value of the coal it is seeking to export, ie, the same as to export via DBT in (i); and
- c. to export via NQXT, in the real world – up to but not more than the cost of accessing DBT (again, inclusive of transport charges), since DBT exists as a preferable alternative.

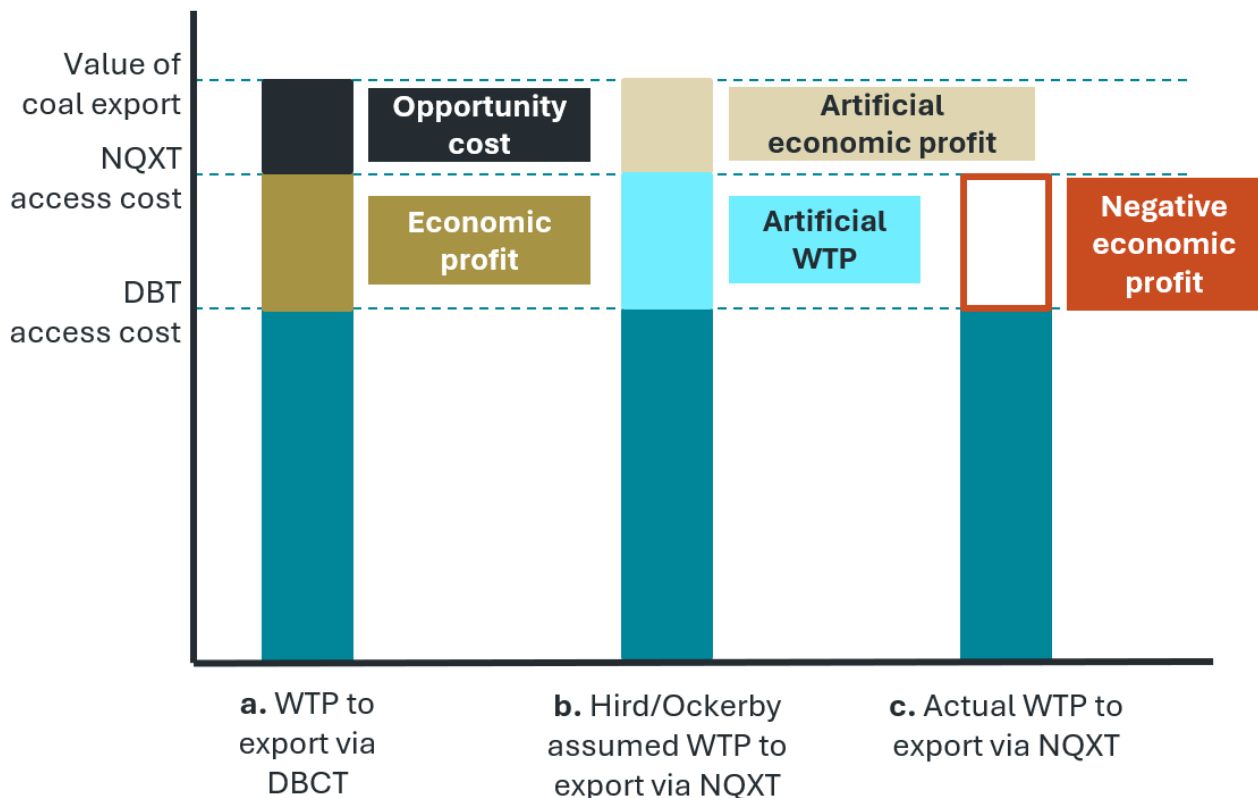
Figure 3.2: Illustrative willingness-to-pay of Goonyella mines – Hird/Ockerby approach



95. In Figure 3.3 I illustrate the effect of this artificiality on the economic profit earned by such a mine, by showing that for this representative Goonyella system mine:
- a. exporting via DBT (ie, the representative mine's preferred option) results in positive economic profit, and where the opportunity cost (of accessing NQXT) reflects the value of the coal it is seeking to export less the cost of accessing NQXT;
 - b. exporting via NQXT would be profitable in the absence of alternative coal handling facilities; but
 - c. consistent with the commercial reality, the existence of DBT implies that exporting via NQXT would result in negative (or foregone) economic profit for the representative Goonyella mine, because it would not be pursuing its profit-maximising course of action.

⁶⁴ For the purposes of this illustrative example, the 'value of the coal the representative mine is seeking to export' is equal to the export price less production costs.

Figure 3.3: Illustrative economic profit outcomes for Goonyella mines – conventional approach



96. In my opinion, it is not appropriate to include within the narrowest reasonable candidate market those mines for whom trading with NQXT results in negative economic surplus, ie, mines that would prefer to obtain coal handling services from terminals other than NQXT because those terminals are lower-cost alternatives.⁶⁵

Erroneously broad geographic boundaries

97. Further, by consequence of adopting a market defined by reference to the absence of any alternatives – rather than being guided by the extent of close substitutes – Dr Hird and Mr Ockerby’s approach is predisposed to an erroneously broad finding as to the geographic boundaries for the market.
98. Reflecting the implausibly broad geographic extent of their market, Dr Hird and Mr Ockerby arbitrarily constrain their estimate of foreseeable demand to [REDACTED] and highlight the potential inclusion of additional, similarly-located mines.⁶⁶ On this basis, Dr Hird and Mr Ockerby’s approach would likely lead to a market for the NQXT service that is at least as large as the CQCN.
99. By way of illustration, in assuming away the existence of any substitutes for the essential services that often exhibit natural monopoly characteristics, Dr Hird and Mr Ockerby’s approach to market definition gives rise to perverse definitions of the market for a service. For instance, the approach suggested by Dr Hird and Mr Ockerby would give rise to a market for the provision of electricity distribution services by a provider in Brisbane by assuming away the existence of any alternatives for distributing electricity, eg, electricity distributors in adjacent regions. Given the likelihood that many customers

⁶⁵ I note that it may be appropriate for such mines to be included in a *final* market, eg, after considering the profitability of a SSNIP over the narrowest reasonable candidate market.

⁶⁶ Hird and Ockerby report, paras 154-155.

have an extremely high willingness-to-pay for access to electricity, Dr Hird and Mr Ockerby's approach would likely conclude that the market for electricity distribution services provided by a supplier in Brisbane extended well beyond Brisbane and potentially into other states.

Market definition in other contexts

100. In justifying their unconventional approach to market definition, Dr Hird and Mr Ockerby seek to distinguish the purpose of market definition:⁶⁷
 - a. in the context of merger assessments under the *Competition and Consumer Act 2010 (Cth)* (the CCA), where it is standard practice for market definition to be guided by substitutability; and
 - b. in the context of criterion (b), where the Hird and Ockerby report states it is necessary instead to assume away all alternatives.
101. From an economic perspective, both contexts concern whether intervention is required to constrain the creation or exercise of market power and promote economic efficiency.
102. In my opinion, that the regulatory intervention contemplated in the form of declaration in the context of criterion (b) differs from the prevention of a merger or the enforcement of conduct-related provisions of the CCA, falls significantly short of an economic justification for a fundamentally different and unconventional approach to market definition.
103. Further, the appropriateness of market definition by reference to substitutability in both contexts is marked by references to substitutes in the description of a 'market' in both contexts.
104. Section 71(2) of the QCA Act states that:

If **market** is used in relation to goods or services, it includes a market for—

 - (a) the goods or services; and
 - (b) other goods or services that are able to be substituted for, or are otherwise competitive with, the goods or services mentioned in paragraph (a). [emphasis in original]
105. This is similar to the definition that is set out in the *Competition and Consumer Act 2010 (Cth)*, ie:⁶⁸

...market means a market in Australia and, when used in relation to any goods or services, includes a market for those goods or services and other goods or services that are substitutable for, or otherwise competitive with, the first-mentioned goods or services.
106. Importantly, an approach to market definition that is governed by economic substitution need not result in a market that includes only one supplier, as Dr Hird and Mr Ockerby appear to suggest.⁶⁹

3.1.2 Conflation of natural monopoly characteristics with a monopoly

107. Dr Hird and Mr Ockerby overlook the distinction between an industry with natural monopoly characteristics and a market with a monopoly supplier. For example, the Hird and Ockerby report states that:⁷⁰

The cost structure of an industry is characterised as a natural monopoly when it is lower cost for a single supplier to serve all demand than if there were multiple suppliers. When a service has these natural monopoly characteristics, **competition between two or more suppliers is not**

⁶⁷ Hird and Ockerby report, paras 221-225.

⁶⁸ Competition and Consumer Act 2010, s 4E.

⁶⁹ See, for example, Hird and Ockerby report, para 263.

⁷⁰ Hird and Ockerby report, para 72.

feasible. As a result, a single supplier **will be unconstrained** by actual or potential substitution to an alternative supplier of the service. [emphasis added]

108. Although it is correct to describe a natural monopoly as having lower cost to serve market demand, this does not imply that ‘competition between two or more suppliers is *not feasible*’. To the contrary, an industry may have natural monopoly characteristics but be able to sustain multiple suppliers, albeit they would earn a smaller collective profit than an unconstrained monopoly. An industry may also have natural monopoly characteristics in combination with prices that are substantially above the long run cost of supply, so that alternative competing suppliers – with much higher costs of supply – are artificially drawn into such a market.
109. In other words, even a market for the service that was so defined to include other facilities could satisfy criterion (b) if that facility (possibly including efficient expansion) could meet demand in that market at the least cost.

3.1.3 Dr Hird and Mr Ockerby’s foreseeable demand ignores rail constraints

110. Among its other deficiencies, Dr Hird and Mr Ockerby’s definition of foreseeable demand as including ‘demand from any customer where both parties could profitably trade’ makes no allowance for:
- on the one hand, the insufficiency of rail networks’ capacity to carry the demand that they contend is foreseeable; or
 - on the other, the resource cost (and subsequent effect on ‘profitability’ of trade) that would be required in order to expand rail capacity to carry that demand.
111. Indeed, Dr Hird and Mr Ockerby explicitly recognise that – but then do not account for – their assumption regarding foreseeable demand gives rise to rail capacity issues. In particular, they state:⁷¹
- We conservatively estimate foreseeable demand in the market in which NQXT operates to be [REDACTED] contracted capacity over 2025 to 2030... [REDACTED] is...greater than the rail system’s current capacity to deliver coal to NQXT.
112. Notwithstanding the other shortcomings in Dr Hird and Mr Ockerby’s approach, it strains credulity both:
- to suggest that coal that could not actually be delivered to NQXT (ie, due to rail constraints) should be considered as ‘foreseeable’; and
 - to exclude the associated rail expansion costs in an assessment of whether ‘both parties could profitably trade’.
113. Dr Hird and Mr Ockerby do recognise that:⁷²

[REDACTED]
[REDACTED]
[REDACTED] [emphasis added]

114. However, the Hird and Ockerby report overlooks the need to account for these costs in its assessment of ‘profitable’ transactions.

⁷¹ Hird and Ockerby report, paras 186-187.

⁷² Hird and Ockerby report, para 188.

3.1.4 Application of the Hotelling model

115. In its submission, NQXT states that:⁷³

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 supplies, and differing customer preferences.

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.

[citations omitted]

116. I disagree with these contentions as to the relevance and application of the Hotelling model in this context.

117. First, Dr Hird and Mr Ockerby describe the Hotelling model in their report and purport to 'apply the principles outlined' therein to 'the factual situation of NQXT's location'.⁷⁴ However, I disagree that they 'apply' the Hotelling model to any factual situation.

118. Dr Hird and Mr Ockerby assume away the existence of alternative suppliers of coal handling services, such that their approach does not represent 'the factual situation of NQXT's location'. This contrasts with the starting point for the approach that I apply in my criterion (b) report, which is grounded in the factual circumstances.

119. Further, Dr Hird and Mr Ockerby do not actually apply the Hotelling model. Rather they use their 'stylised illustration' to contend that:⁷⁵

The market that a firm operates in is at least as wide as the demand that it could profitably serve if it had not [sic] competitors.

120. Second, I disagree that the Hotelling model purportedly applied is 'better suited to the task at hand' than the approach that I apply, which reflects widely-accepted principles of market definition.

121. NQXT describes the decision of Jagot J in *NSW Ports* as follows:⁷⁶

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 reality*". Her Honour observed that decisions of customers would be more complex and multifaceted, having regard to various dimensions of port functionality, not just land transport costs.

122. I disagree with NQXT's contention that the Hotelling model 'overcomes the main shortcoming' identified by Jagot J. The Hotelling model, as purportedly applied by Dr Hird and Mr Ockerby, *explicitly* assumes that customers have regard *specifically* to transport costs, and not to 'various dimensions of port functionality', when making decisions.

⁷³ NQXT submission, paras 366-367.

⁷⁴ Hird and Ockerby report, para 153.

⁷⁵ Hird and Ockerby report, para 132.

⁷⁶ NQXT submission, para 342.

123. For example, Dr Hird and Mr Ockerby describe the Hotelling model as follows:⁷⁷

With two competing suppliers and positive transport costs, each customer must decide between three alternatives:

- Purchase nothing (when neither supplier is offering prices that leave that customer with any surplus);
- Purchase from A at a cost of $P_A + T \cdot d_A$ where d_A is **that customer's distance** from Firm A; or
- Purchase from B $P_B + T \cdot d_B$ where d_B is **that customer's distance** from Firm B [emphasis added]

124. Indeed, Dr Hird and Mr Ockerby state that:⁷⁸

In this report we will be interpreting these parameters **literally as distance and transport costs** from a mining customer to each export terminal. [emphasis added]

125. In that respect, the Hotelling model gives rise to some considerations that are included in the approach that I apply in my criterion (b) report, such as the relative cost of access to terminals other than NQXT.⁷⁹ However, I also explain in my report that other considerations apply in addition to distance, such as rail network and port capacity constraints.⁸⁰

126. Finally, as a matter of principle, I also disagree that a SSNIP test, properly applied, is not capable of reflecting decisions by customers that are complex and multifaceted.

3.2 Response to critique of Houston analysis

127. In this section I respond to Dr Hird and Mr Ockerby's critique of my analysis.

3.2.1 Overarching observations

128. A recurring theme of Dr Hird and Mr Ockerby's critique of my analysis is their conflation of:

- a. the theoretical framework for assessment of criterion (b) that I have previously applied in the context of the QCA's declaration review of DBT and which I describe in section 3 of my criterion (b) report (my DBT approach), but do not apply for the reasons I describe in my criterion (b) report;⁸¹ and
- b. my application to the NQXT service of the methodology adopted by the QCA in its declaration review of DBT, which I describe in section 4 of my criterion (b) report and on which my conclusions are principally based.

129. For instance, the Hird and Ockerby report at times:

- a. refers to the former as my 'stated methodology' and the latter as my 'actually implemented methodology', while identifying their distinction as a point of critique in itself;⁸²
- b. refers to one or other generically as my 'approach', 'proposed approach' or 'analysis';⁸³ and

⁷⁷ Hird and Ockerby report, para 121.

⁷⁸ Hird and Ockerby report, para 99.

⁷⁹ See, for example: Criterion (b) report, paras 144-160.

⁸⁰ See, for example: Criterion (b) report, para 145.

⁸¹ Criterion (b) report, paras 104-113.

⁸² Hird and Ockerby report, paras 252 and 257.

⁸³ Hird and Ockerby report, para 241,

c. conflates elements of one approach with another.

130. By way of practical example as to the latter, in their discussion of my application of the QCA's methodology in section 9.3 of the Hird and Ockerby report (referred to by Dr Hird and Mr Ockerby as my 'actually implemented methodology'), Dr Hird and Mr Ockerby revert without clarification to a discussion of my DBT approach. Specifically, the Hird and Ockerby report reverts to a discussion of the five to ten per cent price increase under the SSNIP test that I describe in section 3 of my criterion (b) report, but do not apply in that report.⁸⁴

3.2.2 Correction of typographical error

131. In section 3 of my criterion (b) report I described a theoretically pure framework for assessment of criterion (b) and highlighted that I applied this framework in the QCA's declaration review of DBT.
132. I also set out the reasons for my conclusion that it is appropriate to adopt the QCA's methodology from its declaration review of DBT to evaluate whether the NQXT service satisfies criterion (b).⁸⁵ I then applied the QCA's methodology to the NQXT service in section 4 of my criterion (b) report.
133. In explaining my DBT approach, my description of the generally accepted framework for defining the product and geographic dimensions of a market – 'the hypothetical monopolist' – included a typographical error.⁸⁶
134. Specifically, I incorrectly omitted the word 'not' from the second step in my description of the hypothetical monopolist test, such that it departed from the widely-known and well-accepted specification of the hypothetical monopolist test, including in the accompanying reference to the ACCC's merger guidelines.⁸⁷
135. For the avoidance of doubt:
- a. I did not re-apply my DBT approach in my criterion (b) report;
 - b. I did correctly describe and apply that framework in the reports that I prepared in the context of the QCA's declaration review of DBT, as referenced in the Hird and Ockerby report and in section 3 of my criterion (b) report; and
 - c. this typographical error affected (otherwise) neither my description nor application of the QCA's methodology in my criterion (b) report.
136. I present below the correct description of the 'hypothetical monopolist test' with the formerly omitted, but now included, word 'not' inserted in bold.

The generally accepted framework for defining the product and geographic dimensions of markets is the 'hypothetical monopolist test'. This involves the systematic application of a process that:

- a. commences with a candidate market being the narrowest reasonable market definition, taking into account the purpose at hand;
- b. assesses whether a hypothetical monopolist in the candidate market would be closely constrained by products or services from outside the market, by contemplating the effect of imposing a small but significant non-transitory increase in price (SSNIP) from the competitive level – if the hypothetical monopolist would **not** profitably be able to impose such a price

⁸⁴ Hird and Ockerby report, para 263.

⁸⁵ Criterion (b) report, paras 104-113.

⁸⁶ I note that the same typographical error was translated into my criterion (a) report, although it is not evident in my accurate description of the similar hypothetical monopsonist test in my criterion (a) report. See: Criterion (a) report, paras 77 and 79; and Criterion (b) report, para 86.

⁸⁷ Criterion (b) report, para 86, footnote 57.

rise, then the next step is applied or, otherwise, the candidate market is appropriate; and
[addition bolded]

- c. expands the market to include the closest constraints on the hypothetical monopolist and goes back to the previous step.

137. That this error was typographical can also be observed by comparing it with my accurate description of the similar hypothetical monopolist test in my criterion (a) report, which does include the word 'not'.⁸⁸

3.2.3 Dr Hird and Mr Ockerby's critique of the hypothetical monopolist test

138. Section 9.2 of the Hird and Ockerby report contains an assessment of what I identify to be the generally accepted framework for defining the product and geographic dimensions of markets, but inclusive of the typographical error that I highlight in section 3.2.2 of this report.

139. It is unfortunate that Dr Hird and Mr Ockerby did not identify this as a typographical error, given:

- a. my explicit reference to it being the generally accepted framework for defining the product and geographic dimensions of markets;⁸⁹
- b. my reference in the same paragraph to the correctly specified hypothetical monopolist test in the ACCC merger guidelines;⁹⁰ and
- c. the correct specification and application of the hypothetical monopolist test in my DBT report, which I identified in section 3 and that is also referenced in the Hird and Ockerby report.⁹¹

140. Nevertheless, this typographical error had no consequence for the analysis or conclusions in my criterion (b) report, which were founded on my application to the NQXT service of the methodology that the QCA adopted in its declaration review of DBCT.

3.2.4 Considerations relevant to certain mines in the Goonyella system

141. NQXT has criticised the approach that I applied in my criterion (b) report because:⁹²

...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...

142. NQXT states also that:⁹³

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

143. NQXT further states that three of these mines – [REDACTED] – have accepted the price terms offered by NQXT and have an ability to switch to DBT.⁹⁴ However:

⁸⁸ Criterion (a) report, para 79b.

⁸⁹ Criterion (b) report, paragraph 86.

⁹⁰ Criterion (b) report, paragraph 86, footnote 57.

⁹¹ See: Criterion (b) report, para 106; Hird and Ockerby report, para 267, footnote 47; and Houston, G, *Does DBCT's coal handling service satisfy criterion (b)?*, 28 May 2018, p 19.

⁹² NQXT submission, para 348.

⁹³ NQXT submission, para 99a.

⁹⁴ NQXT submission, paras 392(b) and 274-285.

- a. the access agreement recently entered into between [REDACTED]
[REDACTED] – [REDACTED], [REDACTED]
[REDACTED],⁹⁶
- b. [REDACTED]
[REDACTED]
[REDACTED]⁹⁷ and
- c. Mr Smith noted [REDACTED]
[REDACTED]
[REDACTED]⁹⁸

144. Whether or not these agreements, in principle or otherwise, extend into the declaration period and, if so, to what extent, is also not clear from the redacted information available to me.
145. Notwithstanding, in section 3.1 I explain why it is appropriate under a framework with an efficiency-based objective to adopt as a starting point for market definition those customers for whom it is most efficient (or least cost) to access the relevant service, as distinct from potential alternative services. I also explain that the existence of transactions with customers from outside a particular geographic envelope does not itself contradict the appropriateness of that geographic boundary in terms of assessing the geographic scope of substitutes that constrain a supplier's ability to exercise market power.

⁹⁵ NQXT submission, para 99a.

⁹⁶ MBS statement, para 121(d)

⁹⁷ See: NQXT submission, para 283; and MBS statement, para 121(c).

⁹⁸ MBS statement, paras 167-169.

Annexure A – Letter of instruction



MELBOURNE
SYDNEY

Partners
Mark M Leibler AC
Henry D Lanzer AM
Joseph Borensztajn AM
Leon Zwier
Philip Chester
Ross A Paterson
Stephen L Sharp
Kevin F Frawley
Zaven Mardrossian
Jonathan M Wenig
Paul Sokolowski
Paul Rubenstein
Peter M Seidel
John Mitchell
Ben Mahoney
Jonathan Milner
John Mengolian
Matthew Lees
Genevieve Sexton
Jeremy Leibler
Nathan Briner
Justin Vaatstra
Clint Harding
Susanna Ford
Tyrone McCarthy
Teresa Ward
Christine Fleer
Jeremy Lanzer
Bridget Little
Gla Cari
Jason van Grieken
Elyse Hilton
Jonathan Ortner
Stephen Lloyd
Scott Phillips
Gavin Hammerschlag
Shaun Cartoon
Damien Cuddihy
Dorian Henneron
Rebecca Zwier
Ben Friis-O'Toole
Raphael Leibler
Gabriel Sakkal
Matthew Davies
Rachel Soh
Consultants
Kenneth A Gray
Special Counsel
Sam Dollard
Laila De Melo
Emily Simmons
Bridgid Cowling
Ari Watne
Brianna Youngson
Briely Trollope
Laura Cochrane
Greg Judd
Paul Chadwick
Senior Associates
Elly Bishop
Lisa Garson
Vidushee Deora
Luke Jedynek
Emily Korda
Michael Repse
Anna Sapountsis
Alexandra Harrison-Ichlov
Claire Southwell
Luise Squire
Ari Bendet
Grace Cho
Lucy Eastoe
Michelle Ainsworth
Micaela Bernfield
Crosby Radburn
Jessica Wills
George Basil
Harriet Craig
Ellie Mason
Jessica Ortner
Cameron Siwright
Freeman Zhong
Ben Chahoud
Sophia Charles
Christopher Davies
Madeleine Durrant
Erin Puckridge
Jason Rudaizky
Emma French-Mullen

16 October 2025

By-Email
Confidential & privileged communication

Greg Houston
Partner
HoustonKemp

greg.houston@houstonkemp.com

File No. 021922839

Contact
Michael Greatrex
Direct +61 2 9226 7103
mgreatrex@abl.com.au

Partner
Stephen Lloyd
Direct +61 2 9226 7260
slloyd@abl.com.au

Dear Mr Houston

Further Instructions — Access Declaration for North Queensland Export Terminal facility at Abbot Point

- 1 We refer to:
 - (a) our letter dated 6 June 2025 (**Initial Instructions**); and
 - (b) the submissions and supporting evidence submitted to the QCA on behalf of NQXT on 8 September 2025 (**NQXT Material**).

- 2 We adopt the terms used in our Initial Instructions.

Instructions

- 3 We instruct you to prepare a further report which responds to the NQXT Material, to assist the QCA in deciding whether to recommend that the service be declared under Part 5 of the Act.
- 4 You are to prepare this further report on the same basis as set out in our Initial Instructions.

Factual Instructions

- 5 The Clermont mine operated by Glencore is connected to the Goonyella System and has previously hauled coal to both NQXT and DBCT.¹
- 6 Based on information provided to the QCoal Users by Aurizon, including the **enclosed** map:
 - (a) the rail distance from the Clermont mine to NQXT is approximately 380 km and from Clermont to DBCT is approximately 280 km; and
 - (b) the Collinsville mine is connected to the Newlands system and the rail distance from it to NQXT is approximately 100 km.

¹ NQXT's submissions dated 26 August 2025 at [355(a)].

- 7 The Collinsville mine operated by Glencore is the closest operating mine to NQXT.

Documents Provided

- 8 To assist you in the preparation of your report, we will also provide you with a copy of the statement of David Moore, Infrastructure Manager QCoal.
- 9 Please let us know if you have any questions or if you require any further information at this stage.

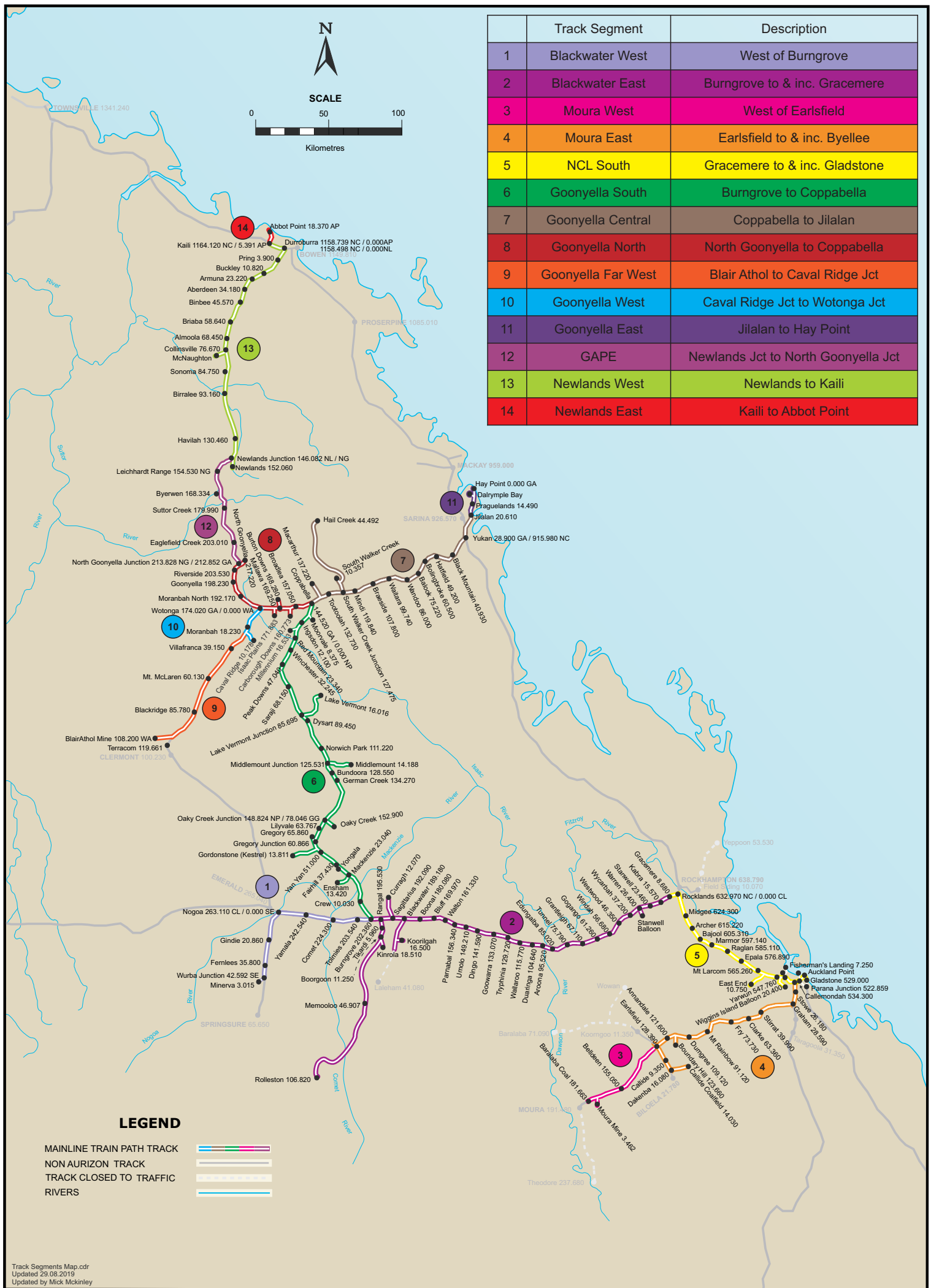
Yours sincerely

Arnold Bloch Leibler

A handwritten signature in black ink, appearing to read 'Stephen Lloyd', written over a light blue horizontal line.

Stephen Lloyd
Partner

Matthew Lees
Partner





HOUSTONKEMP
Economists

Sydney

Level 40
161 Castlereagh Street
Sydney NSW 2000

Phone: +61 2 8880 4800