QCOAL USERS' FURTHER SUBMISSIONS IN RESPONSE TO QCA'S DRAFT RECOMMENDATION

Declaration of a service sought for the coal handling services at the North Queensland Export Terminal facility at Abbot Point

1 Overview

1 On 26 March 2026, the Queensland Competition Authority (**QCA**) issued a draft recommendation (the **Draft Recommendation**) in respect of the QCoal Users' request dated 13 June 2025 that the QCA recommend to the Treasurer that the coal handling services at the Terminal be declared a service under Part 5 of the *Queensland Competition Authority Act 1997* (Qld) (the **Act**), with a declaration date of 1 July 2027 and a declaration period of 10 years (the **QCoal Users' 13 June 2025 request**).

2 The Draft Recommendation found that criteria (b) and (c) of the access criteria in s 76(2) of the Act were satisfied, but not criteria (a) and (d).

3 The Draft Recommendation invited stakeholders to comment on the Draft Recommendation by 15 May 2026, which was later extended to 12 June 2026.

4 The QCoal Users made submissions responding to the QCA's draft recommendation on 12 June 2026. In support of that submission, the QCoal Users relied upon a further independent expert report from Greg Houston of Houston Kemp dated 12 June 2026 (**Further HK Report**). The Further HK Report relied upon an updated production forecast from Wood Mackenzie dated 12 June 2026.

5 Further submissions were also made by each of:

(a) NQXT (**NQXT Further Submissions or NQ**)**,** which included a supplementary statement of Mr Smith and a supplementary CEG note; and

(b) Aurizon Network (**Aurizon Further Submissions**),

both dated 12 June 2026.

6 Unless stated otherwise, this submission adopts the terms and definitions as used in the QCoal Users' 13 June 2025 request and submissions provided on 21 October 2025 (**QCoal October 2025 Submissions**) and 12 June 2026 (**QCoal June 2026 Submissions** or **QS**).

7 This submission relies upon a second further report of Houston Kemp dated 21 July 2026 (**Second Further HK Report**).

8 Confidential Material in these submissions is marked as follows:

(a) Category A

(b) Category B

(c) Category C

9 NQXT's Further Submissions are lengthy and in large parts repetitive of matters previously submitted. In many cases, the repetition advances propositions rejected by the QCA in its Draft Recommendation. To the extent those matters are not addressed by the QCoal Users in this submission, it should not in any way be taken as an acceptance of the matters advanced by NQXT and the QCoal Users rely upon their previous submissions and evidence on those issues.

2 Executive Summary

10 The QCoal June 2026 Submissions address why the QCoal Users contend that, notwithstanding the QCA's Draft Recommendation, the QCA ought to be satisfied that the requirements of each of criterion (a) and (d) are met. The NQXT Further Submissions and the Aurizon Further Submissions variously criticise aspects of the QCA's Draft Recommendation that criterion (b) is satisfied and that criterion (a) and (d) are not satisfied (although in respect of criterion (a) and (d) each support the ultimate view reached by the QCA). Those criticisms should be rejected.

11 In respect of criterion (b):

(a) The QCA has taken a conservative approach to market definition (assuming in favour of NQXT) by including in the market for the Terminal capacity in the Goonyella system that is contracted to NQXT but no more. The QCA is correct to have gone no further than that because:

(i) the evidence before the QCA demonstrates that not only are the Northern Mines the natural market for NQXT, they are captive to NQXT because they cannot obtain access to any other export facility (which is sufficient to constitute a market on its own); and

(ii) the inclusion of existing users in the Goonyella system within the market reflects the fact that such users would not likely switch to DBT in response to a SSNIP, as they could not practically do so.

(b) The exclusion of other demand for port access from users in the Goonyella system from the market is correct. Commercial reality demonstrates that such users prefer access to DBT, only seek access where capacity is unavailable at DBT, and switch away from NQXT when DBT becomes available. The access queue also demonstrates a revealed preference on the part of most users in the Goonyella system to take a place in the access queue rather than seeking to take on uncontracted capacity at the Terminal. In such circumstances, the QCA is right to define the market as comprising the Northern Mines (who are beholden to NQXT) and those users in the Goonyella system that have already contracted with NQXT, but no more.

(c) The QCA has also correctly rejected the argument advanced by NQXT that there is no commercially realistic market for later-stage coal tenements in the Newlands-Galilee catchment. That submission belies the existence of the market for exploration stage tenements, which demonstrates the potential for future transactions involving tenements (including later-stage tenements),together with the evidence of actual transactions in the market. The absence of a robust and active market only tends to support the position advanced by the QCoal Users in respect of criterion (a) that NQXT's conduct is deleterious to competition in the market—not that the market doesn't exist.

12 In respect of criterion (a):

(a) The QCA has correctly not fallen into the error which NQXT invites, by implicitly rejecting the proposition that the status quo in the market for later-stage tenements, and access arrangements in the market for the service, is reflective of a world without declaration. The QCA should continue to reject that invitation to err. Access arrangements to the Terminal over the last ten years have been governed by a quasi-regulatory framework, brought about by the legacy user agreements entered into with PCQ, that have had some capacity to restrain the exercise of monopoly power. Nonetheless, there is ample evidence that NQXT has sought to exercise its monopoly power since taking a novation of those contracts, given that NQXT has:

(i) been unable to agree on terms for access to the Terminal in a future without the quasi-regulatory environment in place with most users;

(ii) sought to impose a substantial increase in the price of access to the Terminal, which it has chosen not to justify as being reflective only of the efficient cost of providing the service (inclusive of a reasonable profit margin); and

(iii) refused to provide the best evidence that it does not act in the interest of its related party (Bravus), being evidence of what it has charged Bravus for access to the Terminal and what it has offered Bravus for future access.

(b) NQXT is wrong to submit that criterion (a) requires the QCA to be satisfied that the existing terms of access are not reasonable. The QCA ought to reject that proposition and continue to test the application of criterion (a) by reference to the statutory question of whether it is satisfied that declaration would promote a material increase in competition. While the present reasonableness of terms is relevant to that inquiry, it is not determinative.

(c) The NQXT Further Submissions undermine NQXT's support of the proposition that there will be uncontracted capacity at the Terminal throughout the proposed declaration period, as they illustrate that once rail access is taken into account, demand is likely to reach the Terminal's current practical capacity within the declaration period. That removes NQXT's asserted incentive to maximise throughput from all users, and heightens its incentive to preference Bravus for access.

(d) The limited degree of activity and competition in the market for later-stage tenements is likely referrable, in part, to the risk of hold-up that is already apparent from NQXT's market power and conduct. That absence of activity, as compared to the market in the Goonyella catchment, is useful evidence for the QCA that the removal of the risk of hold-up through declaration is likely to promote competition.

(e) The QCA has not erred in conflating life of mine investments with the period of declaration. As was demonstrated by the QCA and the Treasurer in considering the recommendation for DBT, what market participants expect will occur after a proposed declaration period can be relevant to competition in the declaration period.

(f) Contrary to NQXT's submissions, the QCA ought not rely on public statements about the reasons for mine closures as evidence of the existence (or non-existence) of hold-up concerns. Such statements are not reliable for that purpose.

(g) NQXT's new evidence does not demonstrate that its directors and officers will not have regard to Bravus' interests, particularly if a decision is made not to declare the Terminal. Those directors have multiple roles within the group and are entitled to have regard to the group's interests, notwithstanding the bare assertion that they do not do so. The QCoal Users have demonstrated evidence of that self-preferencing, which has never been justified.

13 In respect of criterion (d), NQXT's criticisms of the QCA's assessment of the cost risk for it in a world with declaration are not well-founded. But in any event, NQXT's observed conduct demonstrates that the cause of its cost impost with users has been brought about by its own attempts to impose monopolistic pricing. The risk that NQXT will incur costs seeking to do so in a regulated world is not a reason to consider that the Terminal should not be declared.

14 Aurizon also submits that price monitoring is an appropriate alternative solution. Such an approach would fail to restrain the exercise of NQXT's market power. It is not a threat likely to bring about reasonable access terms so as to minimise the risk of hold-up and promote competition in dependent markets (including later-stage tenement markets).

3 The QCA's approach and preliminary findings on criterion (b)

15 Both the NQXT Further Submissions and the Aurizon Network Further Submissions make a number of unfounded criticisms of the QCA's approach to market definition.

16 ***First***, NQXT criticises the QCA's approach of treating Goonyella mines as being "in the market" only insofar as they are contracted to NQXT, but not including volumes where those Goonyella mines are contracted to DBT.

17 Contrary to NQ [110], this is not an "absurd conclusion". Criterion (b) concerns "total foreseeable demand in the market". The QCA has, at p 30, appropriately recognised the commercial reality of the demand for services at NQXT from Goonyella mines.[1] That demand only exists so far as the Goonyella mines are unable to obtain contracted capacity at DBT or face constraints along the Goonyella rail system. This is the very reason GAPE was built in the first place. If there were uncontracted capacity at DBT and unconstrained rail capacity, it is obvious that those mines would prefer to export to coal through DBT rather than NQXT due to the significantly lower costs of rail. Indeed, it is apparent from the evidence led by NQXT concerning Goonyella mines [redacted]

[1] Draft Recommendation at p 30; Annexure 1 - HoustonKemp Economists – Review of submissions on QCA draft recommendation for declaration of coal handling service at NQXT – Greg Houston dated 21 July 2026 (Second Further HK Report) at [16]-[17], [31]-[37].

[redacted] While NQXT refers to other (seemingly high level) discussions with other producers in the Goonyella system at NQ [124](b)-(d), the interest of those producers all appears to be premised on there being no spare capacity at DBT.

18 Further, the submissions at NQ [111] and [113] fail to engage with the fact that switching between NQXT and DBT is only apparent for the Goonyella mines. For the Northern Mines and those on the GAPE system, there is simply no economically viable alternative to rail to port other than NQXT, nor the available infrastructure to rail south via GAPE. The suggestion at NQ [111] that NQXT is not a natural monopoly in respect of those mines shows that NQXT's submissions are divorced from commercial reality. This reflects, contrary to NQ [113], that the only circumstances in which some users multi-home across both DBT and NQXT is where a Goonyella mine cannot obtain contracted capacity at DBT for all tonnage being produced by the mine.

19 The QCA was correct to conclude that the Northern Mines are the natural market for NQXT. Indeed, it is well-recognised that a market may comprise of only a subset of end users.[2] As Beach J explained in *ACCC v Pacific National Pty Ltd (No 2)* [2019] FCA 669 at [102], "if a hypothetical monopolist could profitably raise price to a subset of its customers, these customers constitute a separate relevant market". That test is obviously met in respect of the Northern Mines and users on the GAPE system. By including existing NQXT users from the Goonyella system in its market definition, the QCA simply recognised that they were unlikely to switch to DBT in response to a SSNIP by NQXT, as DBT simply cannot accommodate that additional tonnage.

20 In addition, the Second Further HK Report explains that the QCA's approach to market definition is, if anything, conservative.[3] Mr Houston's preferred market definition was confined to the Northern Mines, being the mines for whom NQXT is persistently least cost and for whom there is no close substitute. The QCA's approach to criterion (b) goes further by including the limited demand from Goonyella mines expected to use NQXT during the declaration period. That additional demand does not undermine the QCA's fundamental approach or conclusion. It means that the QCA has adopted a more conservative assessment of criterion (b), because it includes additional demand that must be met by NQXT at least cost before criterion (b) can be satisfied.

21 ***Second***, both NQXT and Aurizon Network criticise the QCA for not including all foreseeable demand from the Goonyella System unable to obtain contracted capacity at DBT in its market definition. In this context, they both criticise the QCA for not having proper regard to the 31 mtpa of demand in the DBT access queue and the risk that the 8X expansion at DBT does not go ahead.

22 However, that point only serves to prove the correctness of the approach taken by the QCA to market definition. That is because the existence of 31 mtpa in the access queue at DBT is indicative of the strong preference for users in the Goonyella system to use DBT and that their total demand for coal handling services does not form part of the demand in the market for the service at NQXT. As the QCA correctly found at p 24, despite this queue exceeding the planned expansion of 14.9 million tonnes, none of those users have secured long-term access to NQXT or engaged in negotiations for the expansion of rail capacity to do so. Nor did Goonyella users explore switching away from DBT when there were substantial price increases in 2021-22 and 2022-23, despite the existence of spare capacity at NQXT. While, as noted above, there appears to be some evidence of Goonyella miners exploring access to NQXT, that does not cut across the QCA's general conclusion at p 24 that it is unlikely those mines will enter into long-term arrangements with NQXT. The fact that those mines have not yet contracted for capacity at NQXT, despite the queue at DBT, suggests there is significant hesitancy from Goonyella mines in entering into such arrangements. It also reinforces the QCA's conclusion (at p 33) that DBT and other terminals do not impose an effective competitive constraint on the market for the service.

23 ***Third***, contrary to NQ [117], the QCA did not apply the SSNIP test based on whether a coal producer would move "spot tonnes to an alternative terminal based on current pricing if it

2 Annexure 1 - Second Further HK Report, [21]-[24].

3 Annexure 1 - Second Further HK Report, [43]-[52], [78]-[84].

could do so". Rather, on p 32, the QCA correctly assessed whether, if at the time for renewal of access rights at NQXT, users would substitute volumes to an alternative terminal (DBT) in response to a SSNIP. The QCA was correct to conclude at p 33 they would not, unless capacity at DBT became available for Goonyella NQXT users.

24 CEG's reliance on so-called "episodic rivalry" does not assist NQXT. As explained in the Second Further HK Report, the fact that a Goonyella mine may contract with NQXT because capacity at DBT is unavailable does not demonstrate that DBT is a close substitute for that mine during the declaration period.[4] It demonstrates the opposite. Where the commercial premise for using NQXT is that DBT is unavailable, DBT cannot be treated as an effective constraint on NQXT in respect of that demand. The QCA was therefore correct to include, at most, only the limited Goonyella demand expected to use NQXT during the declaration period, rather than treating as part of the market for NQXT's service all Goonyella demand that is theoretically contestable but commercially unrealistic.

25 This reflects the fundamental flaw in CEG's approach. As explained in the Second Further HK Report, market definition is directed to identifying close economic substitutes that impose an effective constraint on the facility, not every possible or technical substitute. CEG's approach repeatedly treats every potential substitution as sufficient. That is not the relevant statutory or economic inquiry. It leads to a market definition and an assessment of demand that would be too broad and commercially unrealistic.

26 ***Fourth***, NQXT's reliance at NQ [155]-[156] on the decision in *ACCC v **NSW Ports** Operations Hold Co Pty Ltd* [2021] FCA 720 is misplaced. As the QCA correctly explained in footnote 70, that decision was very fact specific. For example, there was direct evidence that the prices at Port Botany were set having regard to the prices at other ports and that shipping lines would consider Port Botany and Port of Newcastle close economic substitutes: see at [507] and [511]. That may be contrasted to NQXT and DBT where: (1) there is no evidence that the baseline price set by NQXT has been set by reference to the prices at DBT; and (2) neither the Northern Mines nor Goonyella users in fact consider NQXT and DBT to be close economic substitutes. The Northern Mines simply cannot switch away from NQXT to DBT given the absence of rail access.

27 ***Fifth***, NQXT submits at [168(a)] that if the QCA's approach to market definition were adopted, it would mean that any declaration would be limited to the extent of the natural monopoly, and users outside of the market defined by criterion (b) could not be subject to regulation. NQXT then criticises the QCA for not addressing this issue.

28 This criticism is unfounded as it is legally wrong. The QCA's recommendation, and any subsequent declaration by the Minister, occurs in respect of a particular "service". A service is relevantly defined by s 72 of the QCA Act to include "a service provided… by means of a facility and includes, for example—the handling or transporting of goods or other things". Here, the QCA has defined the service as being "the coal handling services at the Terminal, including the unloading, storing, reclaiming and loading of coal".[5]

29 Part 5 of the QCA Act draws a distinction between the "service" (see s 76(1)) and the market for the service (see s 76(2)(b)). But it does not require that any declaration be crafted so that the declaration operates only insofar as the service is provided to a particular market. There is no express requirement to that effect. Nor can one be implied. The suggestion that declaration must not apply to the provision of the service to certain users outside the scope of the "natural market" (in which a natural monopoly exists) has no statutory foundation in the text of Part 5, nor its purpose.

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4 Annexure 1 - Second Further HK Report, [67]-[72].

5 Draft Recommendation, [2.2].

4 Criterion (a)

4.1 Existence of the later-stage coal tenements market

30 NQXT's Further Submissions at section 5.1 are to the effect that there is no commercially realistic market for later-stage coal tenements in the Newlands-Galilee catchment. The immediate difficulties with that proposition are obvious.

(a) ***First***, it is inconsistent with the commercial reality that later-stage coal tenements in the Newlands-Galilee catchment, including those held by the QCoal Users and the Adani Group, are valuable and capable of being bought or sold.

(b) ***Second***, as submitted elsewhere, the lack of transactions in the later-stage coal tenements market is indicative of the very hold-up risk of which NQXT says there is no evidence. Indeed, thin trading, combined with the substantial sunk cost investment required to exploit later-stage coal tenements, is exactly the type of environment where access uncertainty and monopoly bargaining power can have the greatest effect on investment decisions.

(c) ***Third***, as the QCA found in the Draft Recommendation, 60% of EPCs and 50% of MDLs within the Newlands-Galilee catchment are held by non-mining firms. This is indicative of a strong potential for future transactions in the later-stage tenements market. The importance of these potential future transactions was correctly recognised by the QCA in its Draft Recommendation at p 47. NQXT's assertion that no market exists ignores the potential arising from them. To suggest that there is no market for those EPCs and MDLs is to suggest that non-mining firms hold valueless tenements that they will never seek to profit from.

(d) ***Fourth***, NQXT's submission wrongly treats the present absence of frequent transactions as proof that no market exists. That does not follow. Even if the QCA were to accept that there are not frequent transactions for later-stage coal tenements, it should find there are potential transactions, which are sufficient for the purposes of s 76(2). Markets are fields of actual as well as potential transactions between buyers and sellers, and may continue to exist "even though dealings in it be temporarily dormant or suspended".[6] That is particularly so for later-stage coal tenements, where transactions are necessarily episodic because the assets are long-lived, capital-intensive and closely connected with mine development decisions. The QCA's findings as to the proportion of EPCs and MDLs held by non-mining firms, together with the existence of substantial undeveloped coal assets in the Newlands-Galilee catchment, provide a proper basis to find that a market exists.

31 For criterion (a) to be satisfied, the QCA is not required to find that frequent transactions would occur in the proposed declaration period, if the Service is declared. The question is whether declaration would materially improve the opportunities and environment for competition. In a thin, episodic and capital-intensive market, the reduction of access uncertainty may be especially important because it affects what they are prepared to pay or accept for later-stage coal tenements, and whether they are willing to proceed with a transaction at all.

4.2 The counterfactual under criterion (a)

32 The NQXT Further Submissions suggest that the QCA has replicated its approach to criterion (a) for the DBT redeclaration decision without proper engagement with the evidence: NQ [5](a). This is an unfair and unsubstantiated criticism of the QCA's Draft Recommendation.

33 It in large part appears premised on a view, as outlined at NQ [32], that the "only cogent and reliable evidence of the future state of the world without declaration is the *status quo*", and "therefore the QCA must explain why the evidence of actual commercial conduct and market

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6 See, e.g., *Queensland Wire Industries Pty Ltd v Broken Hill Proprietary Co Ltd* (1989) 167 CLR 177 at 196 (Deane J), applied with approval in *NT Power Generation Ltd v Power and Water Authority* (2004) 219 CLR 90 at [109] (McHugh ACJ, Gummow, Callinan and Heydon JJ); see also *Re Application by Services Sydney Pty Ltd* (2005) 227 ALR 140 at [110] (Australian Competition Tribunal).

outcomes over the past decade is not reflective of the likely future terms of access or conduct".

34 As addressed in section 3.9 of the QCoal June 2026 Submissions, the past decade is not reflective of what the future state of the world would be without declaration. The legacy user agreements between users and NQXT were originally entered into with PCQ, a government-owned corporation.[7] Both the price and non-price terms of those agreements significantly constrained the extent to which NQXT could exercise monopoly power on incumbent users.

35 In particular, the pricing provisions contained in those user agreements reflected the type of terms that might be typical under a declared access regime. Those terms included a formula for the calculation of the TIC based on revenue and tonnage forecasts, and the ability of users to arbitrate the TIC proposed by NQXT during price review periods (which in each case resulted in findings that the TIC proposed was well in excess of what ought to have been proposed under Schedule 7). That pricing formula approximated a regulatory environment that, consistently with the pricing principles in s 168A(a) of the *Queensland Competition Authority Act 1997* (Qld), allowed a price for access that would "generate expected revenue for the service that is at least enough to meet the efficient costs of providing access to the service and include a return on investment commensurate with the regulatory and commercial risks involved".

36 NQXT's own evidence confirms the point. It does not identify a stable and settled future without declaration. T[redacted][8] That evidence is inconsistent with NQXT's contention that the "status quo" provides the only cogent and reliable evidence of the future without declaration. The relevant future is not the historical period governed by legacy agreements. It is a future in which those agreements expire, NQXT is vertically integrated with a major user of the Terminal, and access seekers must negotiate without the benefit of the legacy pricing, renewal and dispute resolution protections.

37 The legacy user agreements also required the operator to seek to maximise contracted capacity, so as to ensure that users who were in long-term agreements were not left bearing the burden of other users declining to renew their agreements.

38 It is only now that those legacy user agreements are coming to an end that NQXT's conduct may be relevant to the assessment of what the future state of the world without declaration would look like. But even a large degree of that conduct has been undertaken in the shadow of this declaration application and is, therefore, to an extent not reflective of a world without declaration if the Treasurer ultimately decides not to declare the Terminal under Part 5 of the Act.

39 Even so, NQXT's recent conduct in the context of the negotiation of new user agreements demonstrates that it is very likely NQXT will use its monopolistic market power in a way which will be deleterious to competition in dependent markets. For example, the QCA should find that the substantial increase in the port charge being proposed by NQXT is reflective of an exercise of market power in an unconstrained regulatory environment which is likely to be inhibitive to competition in dependent markets. As the QCoal October 2025 submissions at [136]-[141] demonstrate, [redacted] This illustrates that NQXT both has exercised and will continue to exercise its unconstrained market power, and that there is likely to be a material difference in pricing provisions in a world with declaration.

40 It is revealing that despite the multiple rounds of submissions and evidence, NQXT has not provided any credible explanation for how those charges have been calculated. NQXT's choice not to do so suggests that these charges are well above the efficient cost of supply (inclusive of a reasonable profit margin). [redacted]

7 Annexure 1 - Second Further HK Report, [86]-[90]; Draft Recommendation, p 64.

8 NQXT Further Submissions, [26].

[redacted] oes not say anything about the reasonableness of that Port Charge in the absence of evidence as to the circumstances in which it was negotiated and the factors that led [redacted] to agree to that price [redacted]

41 NQXT Further Submissions at [49]-[63] and [73]-[74] also rely upon existing and further evidence of Mr Smith concerning the negotiation and conclusion of new user agreements with certain users as evidence of NQXT's behaviour in a world without declaration. There are several points to make about that evidence:

(a) Apart from [redacted], each of the users referred to in NQXT's evidence are on the Goonyella system and therefore have optionality at DBT (subject to capacity). This is not the case for the Northern Mines including QCoal, which the QCA has correctly found are captive to NQXT. Therefore, the fact that NQXT has negotiated on price and non-price terms with users in the Goonyella system who have optionality provides no evidence as to how NQXT will use its monopolistic market power in respect of the Northern Mines, or indeed whether a declaration would promote a material increase in competition in dependent markets.

(b) As submitted above, while the QCA has some evidence before it as to the negotiations that occurred [redacted], there is no evidence as to the commercial rationale or circumstances in which [redacted] was willing to agree to both [redacted] r the majority of terms that now form part of the standard user agreement. Further, as submitted previously, the user agreement only concerns [redacted], which is the closest mine to the Terminal and a captive user: QCoal October 2025 Submissions at [122]-[125].

(c) The users who have agreed terms with NQXT reflect only a small proportion of the existing users of NQXT under legacy agreements. Indeed, as NQXT submits at NQ [26](b), [redacted] Therefore, the commercial reasons why a very small proportion of users have agreed to certain terms with NQXT are unlikely to be reflective of and do not establish that NQXT is offering reasonable terms and/or is unlikely to exercise its market power in contractual negotiations.

(d) The New Standard Agreement does not provide a substitute for declaration. It is not an access undertaking approved by the QCA. It is not independently enforceable by access seekers in the same way as a statutory access regime. It does not provide a mechanism by which an access seeker can require access on reasonable terms and conditions if negotiations fail. NQXT can change the terms that it is prepared to offer as and whenever it wishes.[9]

42 In respect of the repeated suggestion that there is no evidence of discriminatory behaviour by NQXT (NQ [5](a)(iii)), that submission relies on past conduct – when the legacy user agreements were in place – but cannot in any event be accepted.

43 Aside from complaining about the costs of arbitrations and the proceedings in the Queensland Supreme Court, it is telling that NQXT's submissions fail to engage with its conduct that led to that proceeding, or most of the matters raised by the QCoal Users in section 7.3 of its October 2025 Submissions and section 3.7 of its June 2026 Submissions.

44 NQXT's principal response is simply to assert that the business is carried on separately and that it has been directed to operate on a strictly arms' length basis with Bravus. However, those unspecified directions are not enforceable in a world without declaration. They are also inconsistent with the observed behaviour of NQXT that was the subject of the Queensland Supreme Court proceeding, which enabled Bravus to obtain a novation of some of QCPL's tonnage without taking on all of it, without it being offered on the open market. That conduct is direct evidence of self-preferencing.

9 NQXT Further Submissions, [75]-[81]; Annexure 1 - Second Further HK Report, [95]-[97].

45 Further, NQXT has failed to disclose to the QCA the TIC and HCF charges that Bravus has paid under its legacy User Agreement, or the scope of the disagreement on price, if there be any, in its negotiations with Bravus.[10] The best evidence of a lack of preferencing, and that Bravus has not been treated more favourably than other users, would be disclosure of the price offered to Bravus under its existing agreement, and in the future, together with evidence of how that price was agreed.[11] The only party with the capacity to provide that evidence voluntarily is NQXT or Bravus. The fact that they have not done so suggests that such evidence would not assist the argument that it has made to the QCA and that NQXT has in fact provided Bravus with preferential treatment.

46 The arrangements between NQXT and Bravus are not transparent. For example, Adani's recent annual report refers obliquely to a "separate arrangement" between NQXT and Bravus (Adani Mining Pty Ltd) under which Bravus agreed to pay A$138 million as a "security deposit" towards the performance of Bravus' obligations under its user agreement with NQXT.[12] The QCoal Users understand that to be a reference to the A$138 million "security deposit" paid by Bravus to NQXT following Bravus' receipt of that amount from the Rio User under the novation and termination arrangements agreed between the Rio User and NQXT, described at part 7.1 of the QCoal Users' 13 June 2025 application. As explained at paragraphs [124]-[132] of the Queensland Supreme Court's decision, that arrangement was "a most unusual collection of legal concepts" in which Bravus paid NQXT A$138 million as a security deposit, however NQXT was not required to keep the money separate from its own money, and the "deposit" could only be used to set off against Bravus' obligations under the user agreement if NQXT was permitted to do so under the terms of its financing documents. As Justice Dalton found at [129]: the "security deposit" was "planned to be used as [NQXT's] own money and has been". The Queensland Court of Appeal also stated that "[t]he practical effect of the Security Deposit Arrangement was to pass on to the appellant the benefit of the novation payments of $138 million."[13] These opaque and unusual arrangements suggest that the QCA should apply close scrutiny to NQXT's claims that it does not engage in self-preferencing. As the Queensland Court of Appeal confirmed, these arrangements reflect that NQXT was and is contractually entitled to deal differently with individual users and to prefer the interests of its related entity over those of existing users.[14]

47 The QCA may, of course, exercise its coercive powers to obtain the relevant information from Bravus or NQXT. It ought to do so. If the price is materially less than what has been offered to the other users, that would affirmatively demonstrate the existence of discriminatory conduct.

4.3 Criterion (a) does not require satisfaction that terms of access will be different with a declaration

48 NQXT's Further Submissions at [5](b) and [31]-[38] assert that criterion (a) must not be satisfied if the QCA finds that the existing terms of access are reasonable. NQXT is apparently suggesting that the QCA accepted this to be the legal position, by reason of its statement in the Draft Recommendation at p 113 that "If, in a scenario without declaration, we find there would still be access on reasonable terms for a reason other than declaration (e.g., because of constraints imposed by competition or some other regulatory regime), such that there would be no material increase in competition in a dependent market as a result of declaration, it would follow that criterion (a) is not satisfied".

49 NQXT's position is wrong at law.

50 As the QCA correctly accepted elsewhere in the Draft Recommendation, it is not necessary for the QCA to form a view about the specific terms and conditions of access that would apply

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10 Statement of M Smith dated 26 August 2025 (First Smith Statement) at section H.5; Supplementary Statement of M Smith dated 12 June 2026 (Supplementary Smith Statement) at [24]-[29].

11 It should also be noted, however, that if NQXT charges monopolistic prices to all Users, Bravus paying the same price (to a related company within the Adani group) would not prevent the competitive detriment, or the need for declaration, from arising.

12 Adani Enterprises Limited, Integrated Annual Report 2025-26 (Annual Report, 29 May 2026) p 674, note 50(a): https://www.adanienterprises.com/-/media/Project/Enterprises/Investors/Investor-Downloads/Annual-Report/AEL-FY26.pdf.

13 *Adani Abbot Point Terminal Pty Ltd v Lake Vermont Resources Pty Ltd* (2021) 399 ALR 302 at [41].

14 *Adani Abbot Point Terminal Pty Ltd v Lake Vermont Resources Pty Ltd & Ors* (2021) 399 ALR 302 at [156].

with and without declaration. Rather, as set out in the QCoal October 2025 Submissions at Section 4.2, the test under criterion (a) is concerned with the "promotion" of competition. It does not require proof of particular commercial results (such as better terms of access) with a declaration than without. Rather, criterion (a) is concerned with the "creation of a commercial environment" through a declaration which is expected to promote a material increase in competition.[15] This is consistent with the views of the NCC and Australian Competition Tribunal in *Duke EGP* [2001] ACompT 2 at [75] referred to at p 116 of the Draft Recommendation.

51 NQXT's reliance upon the Australian Competition Tribunal's decision in *Application by New South Wales Mineral Council (No 3)* [2021] ACompT 4 is overstated. While it may be accepted that the existing terms of access being offered are <u>relevant</u> to the forward-looking question, they are by no means <u>determinative</u>. Indeed, a critical part of the passage at [51](c) from that decision which was not reproduced by NQXT is that "due consideration must also be given to the prospect of future changes in the commercial, regulatory and economic circumstances that might alter the incentives, and likely behaviour, of the service provider". Therefore, an assessment of the reasonableness of terms currently being offered by NQXT must be considered in light of NQXT's incentives over the entire proposed declaration period. Little weight can be placed on statements as to its current intentions – particularly when they are made in the context of this declaration process and not the subject of any binding access deed (unlike DBCT's response to the declaration process).

52 Accordingly, even if the QCA considered that the terms currently being offered by NQXT are reasonable, that would not answer the relevant statutory question for criterion (a).

4.4 NQXT's throughput incentive is overstated

53 NQXT Further Submissions at [10]-[15] emphasise and rely upon the QCA's preliminary views that as there is, and will be, over the proposed declaration period uncontracted capacity at NQXT, this will limit NQXT's incentive to limit or restrict third-party access. NQXT also submits that vertical integration within the Adani Group does not otherwise create a credible foreclosure incentive.

54 These issues were addressed in detail in the QCoal June 2026 Submissions at Sections 3.2 and 3.4 and Section 4 of the Further HK Report. As with the QCA's Draft Recommendation, NQXT's submissions and evidence concerning throughput incentive fail to have regard to the following matters.

(a) ***First***, the Further HK Report in Section 4 identifies real option value associated with uncontracted capacity which has been overlooked by the QCA and ignored by NQXT. This includes the flexibility to respond to future changes in coal market conditions, such as periods of elevated coal prices, the ability to accommodate future expansion of Bravus, bargaining leverage in future access negotiations and operational flexibility during periods of disruption or constrained railed capacity.

(b) ***Second***, the primary evidence of NQXT's own conduct in respect of the Rio User and Sonoma, as well as the prospect of a secondary trading market for access to NQXT, is inconsistent with a throughput maximisation incentive: QS [53]-[63].

(c) ***Third***, the rail capacity constraints on the Newlands system (confirmed by Aurizon to be a deficit of 8.7 mt in FY27) means that any increase in third-party throughput at NQXT (which will necessarily require rail capacity) directly competes with the planned expansion of Bravus to 16 mtpa. Indeed, at NQ [100], NQXT refers to evidence from the Chief Operating Officer of Bravus that [redacted] Apart from expansion of the rail system funded by users, this would only come from the non-renewal or relinquishment of contractual rights. This suggests that the Adani Group (and therefore NQXT) may during the proposed declaration period have a strong economic

[15] *DBT Management Pty Ltd v Treasurer and Minister for Infrastructure and Planning (Qld)* [2021] QSC 335 at [129]; *Re Duke Eastern Gas Pipeline Pty Ltd* [2001] ACompT 2, [75].

incentive to foreclose access to NQXT to other users to free up rail capacity in the Newlands System.[16]

(d) ***Fourth***, Adani recently announced that, in FY2025-26, the Carmichael mine completed a 112-room expansion of the mine workers' accommodation village to support an increase in coal production.[17]

(e) ***Fifth****,* the QCA's view as to available capacity at the Terminal is based on the nameplate capacity of the Terminal (50 mtpa). However, NQ [103] confirms that "*the current deliverable capacity on the Newlands / GAPE System is only 39.8 mtpa, or less than 80% of the Terminal's maximum capacity.*" That deliverable capacity is:

(i) *less* than the QCA's upper bound of total foreseeable demand in each year from 2027-28 to 2036-37, apart from 2028-29 (at page 39);

(ii) *less* than the QCA's *lower* bound of total foreseeable demand in 2027-28; and

(iii) substantially *less* than Wood McKenzie's updated forecast throughput from FY2037 onwards (and only a relatively small amount higher than Wood McKenzie's updated forecast for the earlier financial years).[18]

This undermines the argument that NQXT has a strong incentive (if any incentive at all) to achieve further third-party throughput at the Terminal. To the contrary, as the QCA observed, capacity constraints at the Terminal or in the rail system are the circumstances in which NQXT is most likely to have an incentive to refuse or restrict third-party access.

(f) ***Sixth***, there are real difficulties in expanding the capacity of the Newlands System, as acknowledged in NQXT's Further Submissions (NQ [105]-[107]) and Mr Smith's supplementary statement ([48]-[58]). First, an Expanding User would "*be required to fund the expansion (on a full incremental cost basis), while the benefit of doing so would be shared with other existing users*" (NQ [106]); Mr Smith's statement at [55]). Second, there has been no such expansion to date despite the existing queue in relation to the Newlands system, which includes demand for additional tonnes from Bravus (NQ [105])). Third, a third-party user has no incentive to fund (in whole or in part) an expansion without sufficient security of access to the Terminal – in the absence of declaration of the Service at the Terminal. Fourth, Bravus (which need not worry about access to the Terminal because it is an Adani group company) will not fund the expansion for the reasons NQXT has identified in NQXT's Further Submissions (at NQ [106]). As a result, it would be more cost effective for NQXT to limit third-party access to the Terminal to free up rail capacity that could be utilised by Bravus.[19]

(g) ***Seventh***, Aurizon Network's responses demonstrate that nominal spare terminal capacity and ad hoc rail access are not substitutes for secure, long-term access to the integrated supply chain. Aurizon Network has confirmed that, where Newlands/GAPE capacity becomes available through non-renewal of existing access rights or transitional arrangements, capacity will be allocated having regard to, among other matters, the access seeker's ability to demonstrate associated Supply Chain Rights, including terminal capacity rights.[20] Aurizon Network has also confirmed that ad hoc services are prioritised below contracted orders, and that contracted orders have generally achieved at a higher rate than ad hoc orders in the Newlands/GAPE Systems. That evidence matters because an access seeker, investor or expanding producer is unlikely to treat uncertain ad hoc access as equivalent to secure

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16 Annexure 1 - Second Further HK Report, [98]-[104].

17 Adani Enterprises Limited, Integrated Annual Report 2025-26 (Annual Report, 29 May 2026) p 129: https://www.adanienterprises.com/-/media/Project/Enterprises/Investors/Investor-Downloads/AnnualReport/AEL-FY26.pdf.

18 Wood Mackenzie Forecast, p 3.

19 NQXT Further Submissions, [105]-[107]; Supplementary Smith Statement, [48]-[58].

20 QCoal Users' submissions dated 12 June 2026, Annexure 14, *Aurizon Network Responses to QCoal Users' Questions dated 19 May 2026* (Aurizon Network Responses), responses to questions 8 and 11, pp 2-3.

contracted rail and terminal capacity. It follows that the existence of nominal spare capacity at the Terminal does not answer the relevant question: whether, in the future without declaration, access seekers will have sufficient certainty across the integrated supply chain to support investment, acquisition and expansion decisions.

4.5 Other dependent markets

55 In relation to criterion (a), the fact that the Terminal is effectively capacity constrained by the capacity constraints on the Newlands/GAPE system is also a reason why declaration would also promote a material increase in competition in markets other than the market for later-stage coal tenements. They include:

(a) **coal haulage markets:**[21] if NQXT limits third-party access to the Terminal (in order to free up capacity on the Newlands/GAPE system for Bravus) that would reduce demand from third-party users for, and therefore hinder and reduce competition between coal producers to acquire, coal haulage services. That is so even if the providers of coal haulage services are subject to access regimes, have no incentive or desire to give Bravus preferential treatment and the relevant markets are currently considered "workably competitive".[22]

(b) **secondary trading:**[23] if NQXT limits third-party access to the Terminal (in order to free up capacity on the Newlands/GAPE system for Bravus) that would reduce demand from third-party users for rail capacity, and therefore hinder and reduce competition in secondary markets in which users trade rail capacity directly with each other.

56 Declaration of the Service promoting a material increase in competition for rail capacity is in addition to declaration promoting a material increase in competition in a secondary market in which users trade capacity at the Terminal directly with each other,[24] which (in the absence of declaration) NQXT has sought to foreclose.[25]

57 A declaration would promote a material increase in competition in these dependent markets because, in each of those markets, demand for the service is derived from access to the Terminal.

58 For the same reasons, declaration would promote a material increase in competition in other dependent markets, such as port operations, coal shipping and mining services, where the relevant services are "derivative of coal export or coal tenement activity".[26]

4.6 The asserted absence of evidence concerning hold-up risk

59 NQXT's Further Submissions at [180]-[220] seek to support the QCA's preliminary view concerning the absence of evidence as to hold-up risk in the later-stage coal tenements market. This was addressed in detail in the QCoal June 2026 Submissions, particularly section 3.10.

60 Contrary to NQ [183](a)-(c), the market for later-stage coal tenements in the DBT catchment provides a useful comparator. The very fact that there was significantly more competition in that market in the DBT catchment, in circumstances where DBT was a declared service, compared to the Newlands-Galilee catchment where NQXT has not been a declared service, and where both catchments are subject to industry-wide issues (such as regulatory approval, financing and ESG conditions), is evidence of the fact that a declaration is likely to promote competition in that market. It is the very evidence of a lack of transactions and activity in the later-stage coal tenements market in the Newlands-Galilee catchment as compared to the catchment serviced by DBT (despite DBT facing significant capacity constraints) from which the QCA may infer that hold-up risk is a significant factor inhibiting decisions to invest.

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21 Further HK Report, section 6.2.
22 Cf Draft Recommendation, p 44.
23 Further HK Report, section 6.3.
24 Draft Recommendation, p 45.
25 QCoal June 2026 Submissions, [60]-[61].
26 Draft Recommendation, p 45.

61 Contrary to NQ [183](d), NQXT's incentives cannot be compared to the Port of Newcastle. PNO is not a vertically integrated service provider[27] and therefore throughput maximisation may be a dominant commercial incentive to avoid a reputation for hold-up risk at that port. By contrast, NQXT does not have the same singular incentive. To the extent decisions are made by existing users not to recontract for access to the service (and therefore also free up rail capacity on the Newlands System), this would enable the Adani Group to progress its planned expansion of the Carmichael Mine.

4.7 The Relevance of the Period of Declaration

62 In section 6.4 of NQXT's Further Submissions, NQXT asserts that the QCA has conflated long-term life-of-mine certainty with the proposed declaration of 10 years, and that it is inappropriate to consider the effect of declaration on investment decisions for a period of any longer than 10 years.

63 The submission does not identify how the QCA is said to have erroneously considered investment beyond the 10-year horizon of the proposed declaration period. But the fact that mine investments are made over longer time periods does not mean that declaration, or the threat of declaration, is irrelevant to investment decisions.

64 Contrary to the proposition at NQ [188], if a declaration is made, participants in the market will have reason to think that that state of affairs will continue until the conditions giving rise to declaration are no longer satisfied. The Treasurer made this point in his reasons for declaring DBI.[28] In the case of NQXT, that could only feasibly occur if demand were to increase so much that the Terminal could no longer meet it at least cost, or the market for later-stage tenements (and other dependent markets) became so competitive that declaration would no longer be relevant. If a declaration were made, it is difficult to conceive of a reason why participants in the market would assume that either criterion (a) or (b) would cease to be satisfied in the next declaration period. If a declaration is made, participants in the market who contract in the declaration period will have greater certainty as to the likely long-term price and access terms for the Terminal, as they can assume that, absent some unforeseen event that means that declaration is no longer necessary, the Terminal is still likely to be declared when their access terms need to be renewed in the future.

65 That provides a much greater level of certainty for participants to make investment decisions compared to the present state of affairs, where all that is available to constrain NQXT is the threat of declaration and the threat is weak because the satisfaction of the criteria necessary to permit a declaration to be made is contested.

4.8 Public statements about mine closures and investment decisions irrelevant and immaterial

66 Through Appendix 3, NQXT asserts that in respect of 16 mine closures, suspensions, project abandonment and investment withdrawals from 2012 to 2025, there are no public statements to the effect that port or terminal charges were a reason not to continue or proceed with a mine project or investment: see NQ [195].

67 Those public statements are irrelevant to the QCA's recommendation. The relevant question for the QCA on hold-up risk is whether access conditions to the Terminal in the absence of a declaration will affect competition in dependent markets (including the later-stage coal tenements market), not whether lack of terminal access was the cause of past mine closures or suspensions. Indeed, many of the announcements concerned sunset projects which were winding down operations in any event, did not use the Terminal, and closed up to 14 years ago. The effects of hold-up risk are much more likely to be represented by fewer or no bids for tenements or operating mines and lower bid prices. These are not matters that will appear in public discourse.

68 In any event, media statements are not a reliable insight into all material decision drivers – it is much more likely for these statements to cite macro factors such as coal prices or royalties

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27 National Competition Council, Decision and Statement of Reasons: Glencore Coal Pty Ltd's application for declaration of the shipping channel service at the Port of Newcastle, p 4: https://ncc.gov.au/images/uploads/DEPONSR-001.pdf.

28 Treasurer (Qld), Statement of Reasons for Decision to Declare the DBCT Service, [4.7.51].

rather than commercially sensitive information concerning infrastructure access rights. This is particularly so where the relevant entity may have other commercial arrangements or negotiations relating to other mining assets. As NQXT highlights, a number of the public statements, including the general industry announcements from BHP and Coal Australia Industry relied upon from late 2025 and 2026, are essentially advocacy pieces against the Queensland Government's approach to royalties. They do not provide any probative evidence as to the factors influencing investment decisions by potential entrants into the later-stage coal tenements market in the Newlands-Galilee catchment.

4.9 The hold-up risk associated with port access is material

69 In section 6.6 of NQXT's Further Submissions, and drawing upon the public statements summarised in Appendix 3, NQXT seeks to argue that various other factors are the dominant variables affecting investment decisions, such as coal prices, rising production costs, increasing royalties, declining global demand forecasts and climate change and that any hold-up risk associated with the Terminal is immaterial.

70 The QCoal Users repeat and rely upon Section 3.10 of their June 2026 Submissions and particularly [124]-[136]. In short, it may be accepted that each of those factors is relevant to investment decisions in the later-stage tenements market to varying degrees. Each is a source of uncertainty as to an assessment of the profitability of a proposed investment. However, the existence of those risks does not somehow make port access no longer a concern. Further, what makes port access qualitatively different is that access to NQXT, as a monopoly service provider, is not just a source of uncertainty for potential entrants that affects the industry generally. Rather, it is a known weakness and vulnerability that specifically affects the Newlands-Galilee catchment. As the QCA accepted throughout its Draft Recommendation, NQXT is likely to charge "prices in excess of efficient costs" and "setting the price as high as is achievable, subject to the user still being willing to execute an agreement (i.e. not exiting the market)" (pp 66-67). The potential ability of NQXT to exercise monopoly power over the terms of access is very likely to be perceived as a definite obstacle to the profitability of any new investment in the later-stage coal tenements market. The QCA was therefore correct to conclude in the Draft Recommendation that:

(a) the coal tenements market is, "in part, driven by access to the Terminal" and "[b]oth markets also involve site-specific and substantial sunk costs in developing tenements" (p 50); and

(b) potential buyers "would be sufficiently certain of access to export facilities in other regions on reasonable terms, but less certain in relation to access on reasonable terms at the Terminal" (p 52).

4.10 NQXT's directors are permitted to have regard to interests of the Adani Group

71 The QCoal June 2026 Submissions at Section 3.3 provided the QCA with an analysis of relevant case law concerning the ability of directors to have regard to the interests of a broader corporate group in the proper exercise of their duties and functions.

72 The supplementary statement of Mr Smith dated 12 June 2026 at [71] confirms that NQXT's Constitution permits the Board to take into account the interests of the wider Adani Group. This is reflected in clause 8.6 of the Constitution, which provides that where NQXT is a "wholly-owned subsidiary of the Holding Company, a Director is authorised to act in the best interests of the Holding Company" if the Director "acts in good faith in the best interests of the Holding Company" and NQXT is not insolvent at the time the Director acts and does not become insolvent. That expressly aligns with s 187 of the Corporations Act. Holding Company is defined as the ultimate holding company within the meaning of s 9 of the *Corporations Act 2001* (Cth). Ultimate holding company is defined in s 9 as a holding company of NQXT which "is itself a subsidiary of no body corporate". As Mr Smith's statement at [71] recognises, the effect of that provision of the Constitution is that directors of NQXT are permitted to act in the best interests of the Adani Group, which owns a controlling stake in APSEZ, which purchased NQXT on or about 23 December 2025.[29]

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[29] North Queensland Export Terminal, 'APSEZ completes acquisition of NQXT Australia' (23 December 2025): APSEZ completes acquisition of NQXT Australia | North Queensland Export Terminal.

73 Adani's recent annual report lists NQXT and Abbot Point Port Holding Pte Ltd as entities over which Adani's related parties (which include Carmichael Rail) or key management personnel have significant influence.[30]

74 Two of NQXT's three directors have senior roles within the broader Adani group (NQ [26](ii) and (iii)), whilst the "independent director" (Mr Devlin) was a director of Bravus before he became a director of NQXT.[31] Mr Janakaraj, who only recently resigned as director of NQXT (NQ [26](iii)), was also a director of Bowen Rail at the same time, and was previously a director of Bravus.[32] Another former NQXT director (Samir Vora) was at one stage a director of NQXT, NQXT Holdings, Bravus and Bowen Rail at the same time.[33]

75 NQXT, Bravus and Bowen Rail also share the same company secretary, principal place of business, registered address and email address for media enquiries (media@bravus.com.au).[34]

76 NQXT has provided no evidence from any board members that the directors do not in fact have regard to broader Adani Group interests in making board decisions. Mr Smith's hearsay statements and opinion to the contrary should be afforded little weight by the QCA. In any event, as noted above, if the spectre of declaration were to pass, there is no reason to consider that the position would not change.

5 Criterion (d)

5.1 Higher costs for NQXT not a reason not to make a declaration

77 At NQ [222]-[225], NQXT takes issue with the QCA's correct conclusion that it is not evident that NQXT would face lower or higher costs if the service is regulated.

78 NQXT's submission gives undue weight to the ordinary costs of the arbitration process. If the service is declared, Part 5 does not require immediate arbitration. It provides a framework under which access seekers and NQXT first negotiate, with arbitration available if they cannot agree on reasonable access terms. Both parties have an incentive to reach agreement by negotiation to avoid the uncertainty of arbitration. NQXT's limited success in contracting with Terminal users to date illustrates the cost of protracted access negotiations in which NQXT is unconstrained in seeking to impose monopoly pricing.

79 Even if the QCA did accept that NQXT may face marginally higher costs in a declaration world (which is disputed), that should be given little if any weight. The costs faced by NQXT in the price review arbitrations under the legacy user agreements were caused by NQXT seeking to impose unreasonably high TICs. That such behaviour would lead to increased costs for NQXT in a declaration world through the negotiate-arbitrate framework under Part 5 of the QCA Act, is not a reason to tolerate NQXT imposing monopoly rents in a non-declaration scenario and

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30 Adani Enterprises Limited, Integrated Annual Report 2025-26 (29 May 2026), pp 661-662: https://www.adanienterprises.com/-/media/Project/Enterprises/Investors/Investor- Downloads/Annual-Report/AEL-FY26.pdf.

31 Annexure 2 - ASIC Historical Extract – Adani Mining Pty Ltd (ACN 145 455 205) dated 1 July 2026; Annexure 3 - ASIC Historical Extract – North Queensland Export Terminal Pty Ltd (ACN 149 298 206) dated 1 July 2026.

32 Annexure 2 - ASIC Historical Extract – Adani Mining Pty Ltd (ACN 145 455 205) dated 1 July 2026; Annexure 3 - ASIC Historical Extract – North Queensland Export Terminal Pty Ltd (ACN 149 298 206) dated 1 July 2026; Annexure 4 - ASIC Historical Extract – Bowen Rail Company Pty Ltd (ACN 638 074 889) dated 1 July 2026.

33 Annexure 2 - ASIC Historical Extract – Adani Mining Pty Ltd (ACN 145 455 205) dated 1 July 2026; Annexure 3 - ASIC Historical Extract – North Queensland Export Terminal Pty Ltd (ACN 149 298 206) dated 1 July 2026; Annexure 4 - ASIC Historical Extract – Bowen Rail Company Pty Ltd (ACN 638 074 889) dated 1 July 2026.

34 Annexure 2 - ASIC Historical Extract – Adani Mining Pty Ltd (ACN 145 455 205) dated 1 July 2026; Annexure 3 - ASIC Historical Extract – North Queensland Export Terminal Pty Ltd (ACN 149 298 206) dated 1 July 2026; Annexure 4 - ASIC Historical Extract – Bowen Rail Company Pty Ltd (ACN 638 074 889) dated 1 July 2026; North Queensland Export Terminal, 'Contact': https://www.nqxt.com.au/; Bravus Mining and Resources, 'Contact': https://www.bravusmining.com.au/contact/; Bowen Rail Company, 'Contact': https://www.bowenrail.com.au/contact/.

therefore deterring competition in dependent markets (including later-stage coal tenement markets).

5.2 A declaration will promote competition

80 At NQ [226]-[229], NQXT submits that even if criterion (a) is satisfied, the QCA should not find criterion (d) is not satisfied based on the fact a “theoretical and hypothetical promotion of competition in a market without any likely transactions over the declaration period cannot reasonably be found to be likely to give rise to a clear and positive public benefit”. The QCA would simply not reach such a conclusion on the evidence before it. Such a finding would also undermine the operation of the criterion in s 76(2) – it amounts to a suggestion that despite criterion (a) being satisfied, the promotion of a material increase in competition found by the QCA would not be in the public interest.

81 In any event, the public benefit is not hypothetical. Declaration would reduce the risk that monopoly pricing, renewal uncertainty and discriminatory non-price terms deter efficient investment in mines and tenements dependent upon the Terminal. It would also support more efficient use and planning of the broader Newlands/GAPE supply chain by giving users greater confidence to contract for long-term rail and terminal capacity. Those benefits are particularly significant where, as the QCA has found, the Terminal has natural monopoly characteristics, is significant to the Queensland economy, and is operated by a vertically integrated group with interests in dependent markets.

6 Aurizon Network’s proposal for Part 3 declaration and price monitoring should not be adopted

82 The Aurizon Network proposes that instead of a declaration, the QCA should recommend that the Minister declare that NQXT is a non-government monopoly business and exercise his power to refer NQXT to the QCA for price monitoring under Part 3 of the Act.

83 NQXT agrees with the Aurizon Network that NQXT is a monopoly business activity within the meaning of Act. This is particularly so in respect of the Northern Mines.

84 However, NQXT considers that price monitoring will be ineffective to impose the necessary constraints on the exercise of its monopoly market power by NQXT. It is advisory only and provides no power to the QCA or Minister to take steps to combat excessive charging practices. Nor are such findings likely to be seen by NQXT as giving rise to a threat of declaration. If the QCA is not satisfied that criterion (a) is engaged in respect of this declaration request, investigation of NQXT’s price alone is not going to demonstrate that criterion (a) is satisfied in the future. This is particularly so where reasonable terms of access to NQXT depend on both price and non-price terms. The QCA was correct to conclude at pp 63-64 that it is “not apparent that these provisions would constrain the exercise of market power in a way that would promote a material increase in competition in any dependent market”. [35]

7 Conclusion

85 For the reasons set out above, the NQXT Further Submissions and Aurizon Further Submissions:

(a) do not provide a basis for the QCA to depart from its preliminary conclusions that criteria (b) and (c) are satisfied; and

(b) do not answer the QCoal Users’ submissions as to why criteria (a) and (d) are satisfied.

86 The QCoal Users therefore maintain that the QCA should recommend declaration of the service.

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[35] Draft Recommendation, pp 63-64.