

21 September 2012

John Hall  
Chief Executive Officer  
Queensland Competition Authority  
GPO Box 2257  
Brisbane Q 4001

Dear John

### Review Event Submission – Central Queensland Flooding

Thank you for the opportunity to comment both on the Supplementary Information (dated 13 August 2012) as well as the original submission (of which the Supplementary Information refers to).

Xstrata Coal Queensland (XCQ) considers that there are a number of issues which must be given due consideration with regards to the QRNational Network Services (QRNNS) Submission and the Supplementary Information provided.

While XCQ recognises the work QRNNS undertook to promptly reinstate the rail network during this difficult period we have a number of concerns with QRNNS' proposal to pass through the cost of the reinstatement works. XCQ's concerns are detailed below:

#### →QRNNS's approach to self-insurance

The 2010 Access Undertaking states that *'the implementation of a self-insurance function by no-later than 31 December 2010, which must include:*

- i. *a resolution by the QR Network Board resolving which events are being self-insured and acknowledging that it is considered that QR Network will have sufficient financial capacity to assume such self-insured risks;*
- ii. *operation of an appropriate claims management system and implementation of other procedures to ensure that full and accurate costs of any self-insured losses are identified and claimed by QR Network;*
- iii. *varying accounting systems to establish a self-insurance fund and separate expense items for self-insurance;*
- iv. *expanding the current claims management team to provide sufficient capacity to assess and manage additional claims against self-insured risks including the pursuit of recovery against third parties (including QR Parties) where appropriate;*
- v. *establishing any other appropriate policies, processes and procedures for the management of claims against self-insured risks; and*
- vi. *either demonstrating to the QCA that self-insured losses would not otherwise be recovered through revenue recovery provided for by this Undertaking, or submitting a Draft Amending Undertaking to remove the potential for any such recovery'*

Despite of the above, there has been a lack of communication by QRNNS in regards to the details of their insurance coverage. In particular, missing information includes the level of insurance QRNNS holds (through

self-insurance), particulars of what is covered, what the deductibles are for each event, the time periods that are covered, and what the premiums producers pay to QRNNS cover. Furthermore, it is also unclear how the premiums are treated by QRNNS in a 12 month period where there is no event. The QCA needs to be satisfied that the costs QRNNS are looking to pass through represents the balance amount once accounting for the premiums which have been paid by the producers.

### →Multiple Discrete Events

The Queensland Competition Authority (QCA) draft decision in the 2009 Draft Access Undertaking (DAU) states *'the authority approves the creation of a review event for costs greater than \$1 million arising from catastrophes, as the review event provisions give the Authority sufficient discretion in assessing such a claim'* (pg. 51.) It could be surmised from this that provided QRNNS' financial cost were below the threshold identified (\$1million) that a company the size of QRNNS would be well positioned to absorb these costs (via self-insurance or otherwise).

It should be noted that during the December 2010/January 2011 period, (at least) six new Force Majeure (FM) notices were issued by QRNNS, with subsequent FM Notice updates relating to these six notices.

Given these six FM notices were not linked to each other, the interpretation is that during this period, a number of discrete events occurred.

QRNNS has grouped together the total costs of all discrete events which is misleading and not in line with the intent of how these costs should be handled. By applying this method, some of the costs which should be absorbed by QRNNS (via its self insurance mechanism or other) have been grouped together, artificially triggering (in some instances) a review event. It would be XCO's view that the 'Incremental cost breakdown by corridor and system' (appendix C of the QRNNS submission) be reviewed so that the works conducted can be easily linked to the FM notices called during this time and be identified as a separate events as applicable.

A summary of the six separate FM notices can be found in Appendix 1. XCO notes that, as it is not direct recipient of these FM notices, there may be others which were issued during the December 2010 – January 2011 period.

### →Disbursement of costs over multiple users of the effected Network

QRNNS are seeking to recover the incurred reinstatements costs by varying the reference tariffs of coal producers only. There is no information in the QRNNS submission which suggests that QRNNS is seeking to recover costs from other (non-coal) users of the impacted rail networks. By ignoring non-coal traffic which also uses the rail networks, coal producers who utilise the Blackwater and Moura networks are actually paying a disproportionate share (i.e. 100%) of the reinstatements costs QRNNS are seeking to recover.

It is XCO's belief that where extraordinary network costs are incurred, and the Infrastructure Manager seeks to recoup these costs, this should be equitably done by socialising the costs across **all** network users. Whether the Network Manager actively seeks to recoup these costs from non-coal users is wholly at their discretion. However, when calculating these costs, the Network Manager must first allocate those costs across all users, identifying the portion attributable to each "traffic type". As such, the sum of each coal producer's portion of socialised costs **must not** exceed its share when taking into consideration all traffic types that utilise the impacted sections of the rail network. This has not been undertaken by QRNNS in this situation.

Furthermore, QRNNS have failed to mention how they will account for users who over rail (thereby over paying) their annualised contracted tonnes during the period in which the tariffs are adjusted.

### →Rolleston Line repairs

Upon the devastation of the Rolleston branch line XCO immediately engaged QRNNS to perform reinstatement works. XCO provided QRNNS with a Letter of Undertaking stating that XCO will fund all works in relation to the reinstatement of the branch line up to the value of \$18 Million (see appendix 2.) At the time the letter was issued to QRNNS a detailed scope of works had yet to be established. The scope of works, drawn from the "Client Requirement Brief Rolleston Branch Line Flood Repairs", shows the works as follows:

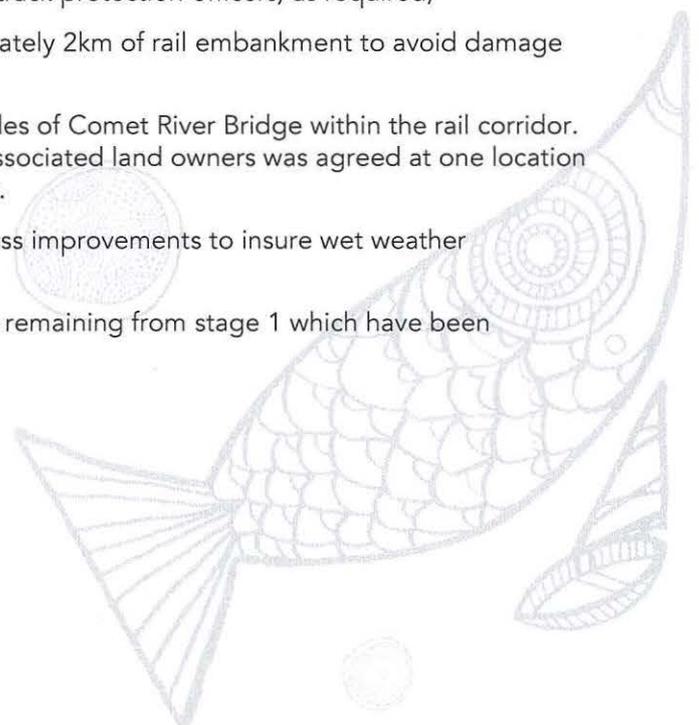
#### Stage One

- Establish access to the northern and southern sides to Comet River with civil improvements
- Reinstatement civil works to existing track alignment (standards reviewed between QR National and Xstrata),
- Remove existing track structure, store and reinstate after civil completed,
- Improve access height along existing track alignment (as agreed with Xstrata) and
- Reinstatement bridge

Further to this, XCO engaged QRNNS to perform some additional branch line works to enable the Rolleston Branch Line to better withstand flood events. The scope of these works (below) is drawn from a QRNNS Project Plan. These works included:

#### Stage Two

- 'All Other Works' – completion of improvement works to all identified areas (bridge abutments, stock crossing, embankments) except for the North Comet Bridge abutments,
- North Comet Bridge abutment improvement works. All associated works will be undertaken in conjunction with QR Network corridor safe working (track protection officers) as required,
- Rock armory downstream embankment of approximately 2km of rail embankment to avoid damage under flood overtopping scour,
- Wet weather access to the northern and southern sides of Comet River Bridge within the rail corridor. The establishment of property easements with the associated land owners was agreed at one location however was not deemed as practical on other sides.
- Undertake and implement required rail corridor access improvements to insure wet weather maintenance and rail operations access is achieved.
- Complete land, minor works and environmental cost remaining from stage 1 which have been approved by Xstrata



Communications from QRNNS state that despite of the above works, QRNNS still had to perform additional works (in excess of what XCQ engaged QRNNS to perform). A summary of the additional works that QRNNS have not been compensated for is:

- all access roads damaged by the flood but not repaired during the emergency works
- all unstable cutting batters and cess drains damaged by heavy rainfall but not repaired during emergency works
- formation washed out during floods and temporarily repaired by flooding with ballast

Given QRNNS's high level response, it is difficult to determine whether or not some of the works outlined in QRNNS's above gap analysis has already been covered off on (in some degree) under the stage one or stage two works (already funded by XCQ). Some of the works appear to overlap and if the Rolleston System Premium tariff increase is approved then it is likely that QRNNS would 'recover twice'.

## Conclusion

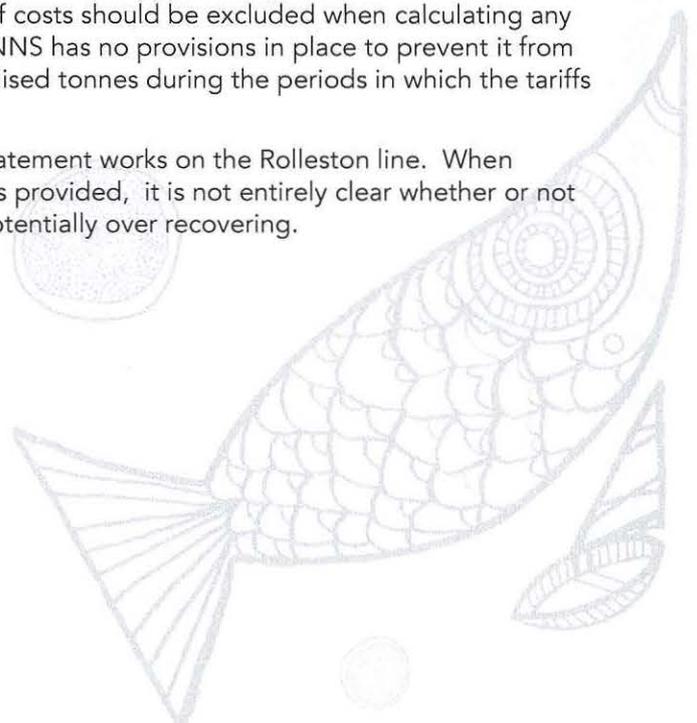
Whilst XCQ applaud the efforts made by QRNNS during this difficult time, there are a number of key issues surrounding the QRNNS submission which would make it difficult for the submission to be approved.

Firstly, the level of confusion surrounding the details of QRNNS's self-insurance policy and what it provides for.

Secondly, XCQ believes, that the total cost being claimed has been artificially elevated by grouping together a number of discrete FM events, some of which, when analysed individually, could potentially fall under the review event trigger and thus would be excluded from the cost increase justification.

Thirdly, XCQ considers that it is inappropriate to recover reinstatement costs against coal producers only. The reinstatement costs, as outlined in the QRNNS submission, should be limited to the portion of those costs which are attributable to coal producers when considering the wider population who utilise the network (i.e. travel train, grain, livestock, freight, etc.). Again, whether QRNNS pursue those users is at their discretion, however the 'non-coal sectors' portion of costs should be excluded when calculating any costs attributable to coal producers. As well as this, QRNNS has no provisions in place to prevent it from over recovering should users rail in excess of their annualised tonnes during the periods in which the tariffs are proposed to increase.

Finally, XCQ actively engaged QRNNS to perform reinstatement works on the Rolleston line. When comparing the agreed scope of works to the gap analysis provided, it is not entirely clear whether or not some items have been duplicated and thus QRNNS is potentially over recovering.

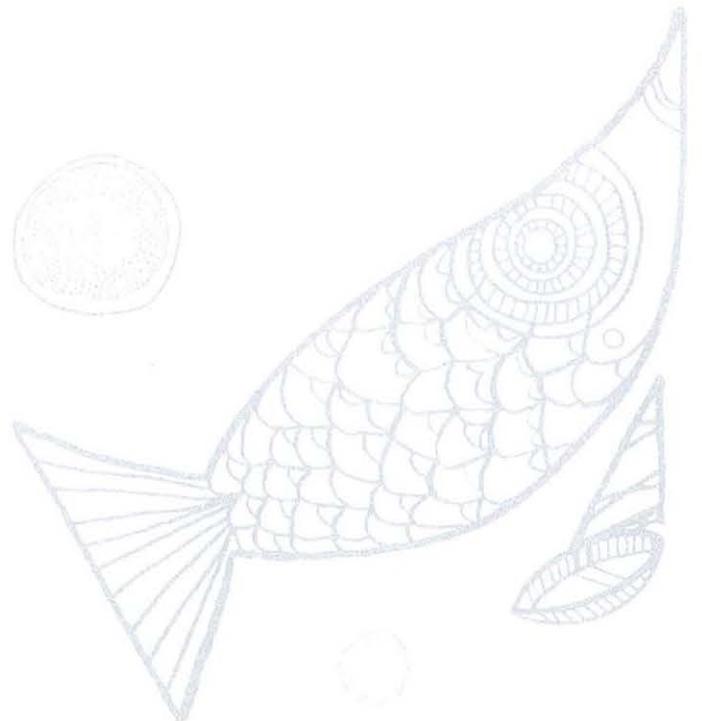


Thank you for the opportunity to respond to the QRNNS submission, we look forward to your due consideration and decision.

Yours sincerely

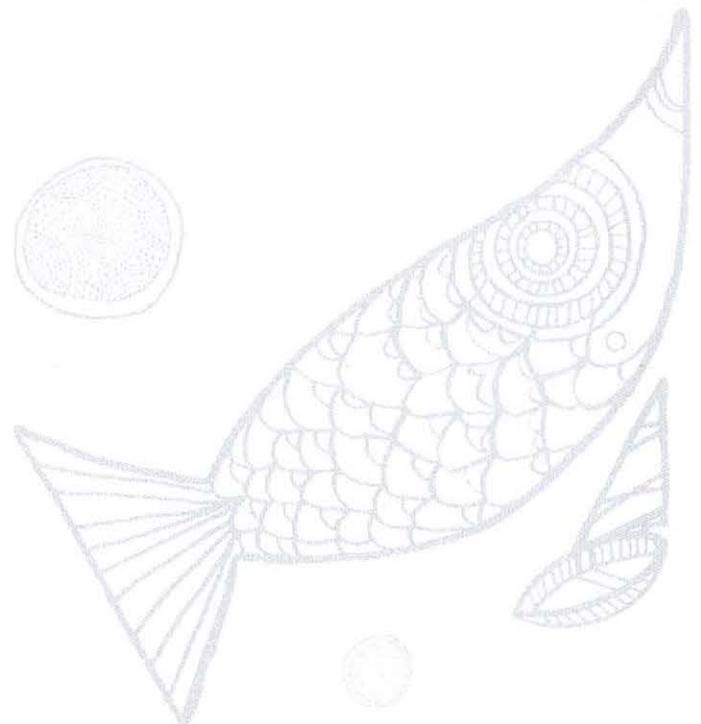


General Manager - Finance  
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Appendix 1 – Summary of FM notices issued by QRNNS

Force Majeure Event (FME) 1	
FM Notice Date	Wednesday 01 December 2010
FME Start Time & Date	16:25 Tuesday 30 November 2010
FME End Time & Date	11:00 Wednesday 01 December 2010
Impacted Area	Rolleston Branch Line
Impacted System/s	Blackwater
FM Notice Linked to subsequent notices (if yes, details)	No



**Force Majeure Event (FME) 2**

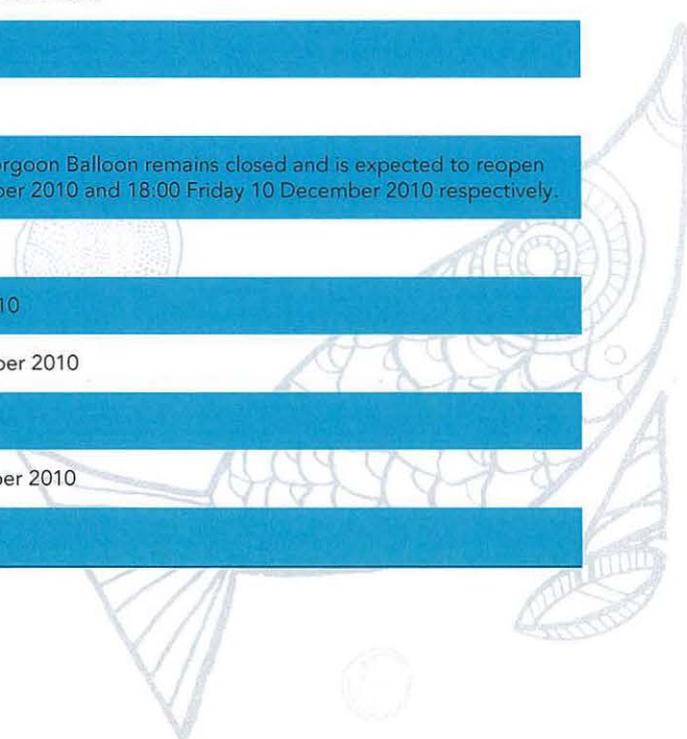
FM Notice Date	Friday 03 December 2010
FME Start Time & Date	07:09 Friday 03 December 2010
Impacted Area	Minerva to Nogoia
FME Start Time & Date	09:15 Friday 03 December 2010
Impacted Area	Nogoia to Burngrove
FME Start Time & Date	13:30 Friday 03 December 2010
Impacted Area	Rest of the Blackwater and Moura System
Impacted System/s	Blackwater and Moura
FM Notice Linked to subsequent notices (if yes, details)	Yes

Subsequent FM Notice 1

FM Notice Date	Thursday 09 December 2010
FME End Time & Date	11:03 Monday 06 December 2010
Area FM Lifted	Moura Main Line – now available for traffic
FME End Time & Date	15:15 Tuesday 07 December 2010
Area FM Lifted	Boonal to Blackwater; Nogoia to Burngrove
FME End Time & Date	15:40 Wednesday 08 December 2010
Area FM Lifted	Rolleston Line
Impacted System/s	Blackwater & Moura
Additional Notes	Springsure branch and Boorgoon Balloon remains closed and is expected to reopen 18:00 Thursday 09 December 2010 and 18:00 Friday 10 December 2010 respectively.

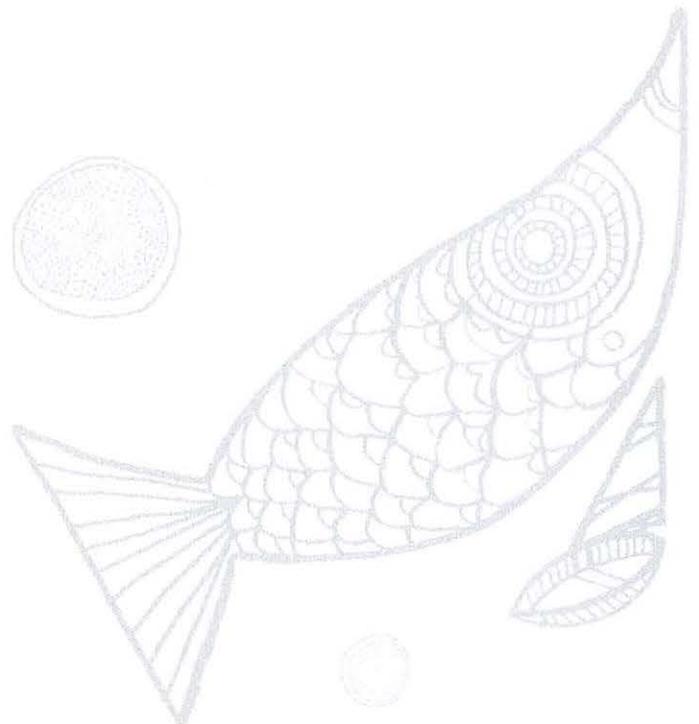
Subsequent FM Notice 2

FM Notice date	Thursday 16 December 2010
FME End Time & Date	16:00 Thursday 09 December 2010
Area FM Lifted	Springsure branch line
FME End Time & Date	13:40 Saturday 11 December 2010
Area FM Lifted	Boorgoon Balloon



Impacted System/s	Blackwater
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Force Majeure Event (FME) 3	
FM Notice Date	Monday 13 December 2010
FME Start Time & Date	06:36 Sunday 12 December 2010
FME End Time & Date	18:00 Sunday 12 December 2010
Impacted Area	Mainline between Umolo and Dingo
Impacted System/s	Blackwater
FM Notice Linked to subsequent notices (if yes, details)	No



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**Force Majeure Event (FME) 4**

FM Notice Date	Monday 20 December 2010
FME Start Time & Date	11:45 Monday 20 December 2010
Impacted Area	Between Rolleston and Kinrola Junction
Impacted System/s	Blackwater
FM Notice Linked to subsequent notices (if yes, details)	Yes

Subsequent FM Notice 1

FM Notice Date	Tuesday 21 December 2010
FME End Time & Date	07:30 Tuesday 21 December 2010
Area FM Lifted	Rolleston Branch line – now open between the hours of 0600 to 1900 (until Monday 27 December 2010)
Impacted System/s	Blackwater

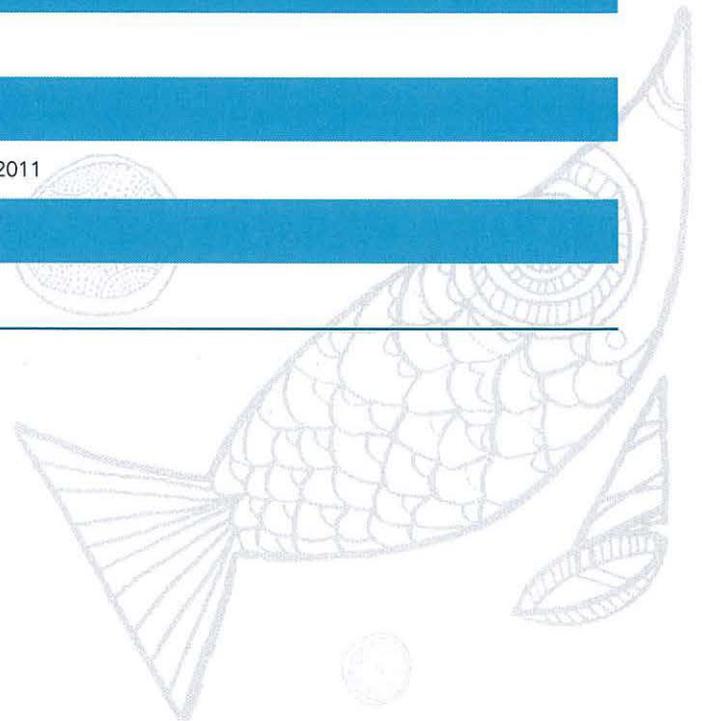
Subsequent FM Notice 2

FM Notice Date	Friday 11 March 2011
FME End Time & Date	21:33 Tuesday 08 March 2011
Area FM Lifted	Rolleston Branch line – now available, subject to speed restrictions
Impacted System/s	Blackwater

Subsequent FM Notice 3

FM Notice Date	Tuesday 07 June 2011
FME End Time & Date	21:33 Tuesday 08 March 2011
Area FM Lifted	Rolleston Branch line
Impacted System/s	Blackwater

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Force Majeure Event (FME) 5

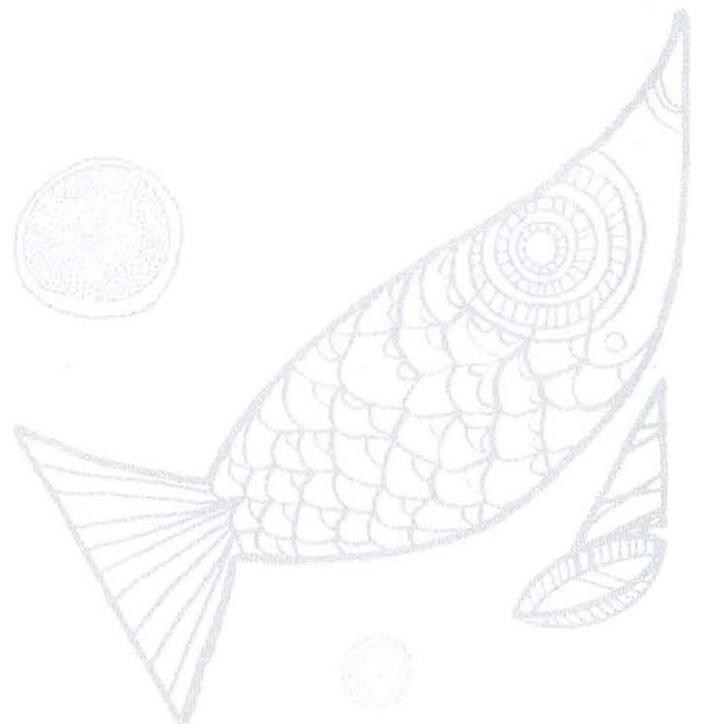
FM Notice Date	Wednesday 29 December 2010
FME Start Time & Date	07:15 Wednesday 29 December 2010
Impacted Area	Yamala to Cement
Impacted System/s	Blackwater
FM Notice Linked to subsequent notices (if yes, details)	Yes

Subsequent FM Notice 1

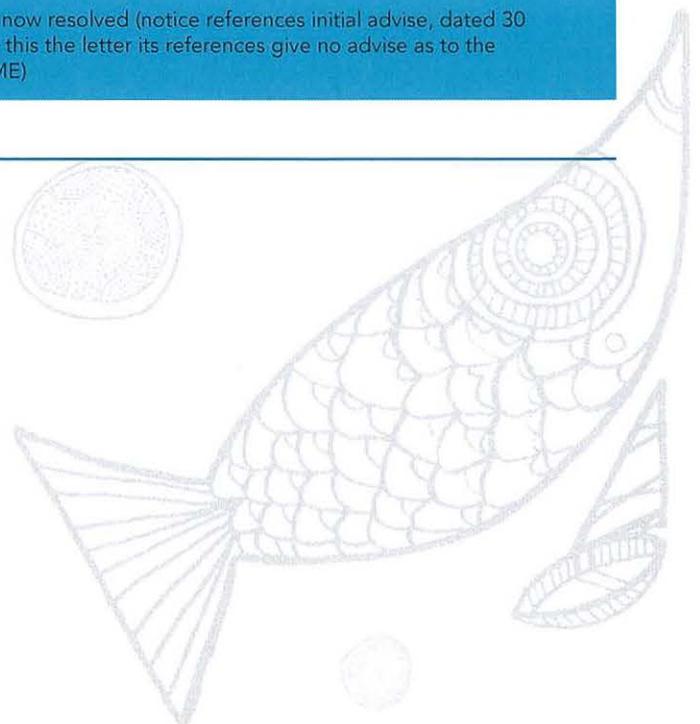
FM Notice Date	Monday 07 March 2011
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**Note** This advise only restates the messages of the 1<sup>st</sup> FM notice (29 December 2010). XCQ has no record of this being closed out.

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Force Majeure Event (FME) 6	
FM Notice Date	Thursday 30 December 2010
FME Start Time & Date	07:16 Monday 27 December 2010
Impacted Area	Kabra to Warren; Warren to Wycarbah; Aroona to Edungalba
Impacted System/s	Blackwater
FM Notice Linked to subsequent notices (if yes, details)	Yes
<u>Subsequent FM Notice 1</u>	
FM Notice Date	Thursday 05 January 2011
FME End Time & Date	11:00 Wednesday 29 December 2010
Area FM Lifted	Kabra to Warren is now operational – with speed restrictions
FME End Time & Date	13:42 Thursday 30 December 2010
Area FM Lifted	Warren to Wycarbah is now operating – with speed restrictions
FME Start Time & Date	10:30 Monday 03 January 2011
Impacted Area	McKenzie to Fairhill
FME Start Time & Date	08:40 Monday 20 December 2010
Impacted Area	Minerva Branch line
FME Start Time & Date	14:00 Tuesday 04 January 2011
Impacted Area	Clarke to Stiratt section is now resolved (notice references initial advise, dated 30 December 2010, however this the letter its references give no advise as to the commencement of this FME)
Impacted System/s	Blackwater and Moura



## Appendix 2 – XCQ Letter of Undertaking



10 February 2011

Mike Carter  
Executive Vice President and Chief Executive Officer  
Network Services  
GPO Box 1429  
Brisbane Qld 4001

Dear Mike

**RE: Reinstatement Works – Rolleston Branch Line**

Under the Network Access Undertaking QR has an obligation to maintain the Rail Infrastructure in a condition which is fit for purpose and accordingly Xstrata Coal Queensland expects Reinstatement Works to the Rolleston Branch Line to proceed in a quick and efficient manner.

Costs associated with these works are reimbursable to QR via the QCA process although the method of this reimbursement is uncertain.

To provide QR with the surety it seeks, Xstrata Coal Queensland Pty Ltd (XCQ) undertakes to pay QR Network Pty Ltd's (Network) costs for reinstatement works to the Rolleston Branch Line. The scope of the reinstatement works has been drafted by Network in the Client Requirement Brief - Rail Infrastructure (Reinstatement Works) and a meeting has been arranged for Friday 11 February 2011 to discuss and finalise these Reinstatement Works.

Once the Reinstatement Works have been signed we authorise funding for Network to proceed with the Reinstatement Works for a total amount of \$18,000,000 (excluding GST). We also confirm we will, in good faith, negotiate and finalise the formal contract for payment to Networks for the Reinstatement Works as soon as possible.

In relation to the payment of the Reinstatement Works, whilst we agree to reimburse Network for these costs we do have a preference for them to be recovered through an increased tariff on a monthly basis. We would like to discuss this process further with you to ensure both our objectives of completing and funding the Reinstatement Works as soon as possible are met.

There are elements of uncertainty in the Reinstatement Works as to the allocation of costs between reinstatement of existing rail line, improvements to the rail line and future developments proposed. We would like to understand these cost allocations further as we currently have in place Access Facilitation Deed arrangements in relation which relate to the future development (ballast increase).

Finally we also advise there may be potential for Network to receive Government Financial Assistance in relation to flood recovery particularly in relation to the resumption of services to Gladstone Power Station. We encourage Network to pursue this opportunity and credit any financial assistance received to the costs of the Reinstatement Works.

Yours sincerely



Reinhold Schmidt  
Chief Operating Officer  
Xstrata Coal Queensland Pty Ltd

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