

## Schedule J - Investment Framework Principles Comparison table

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### Purpose

The purpose of this document is to compare Schedule J to QR Network’s approved Access Undertaking with:

- the draft amended Access Undertaking (**AU**);
- the draft Construction Agreement (**CA**); and
- the draft Participation Agreement (**PA**),

submitted by QR Network.

Capitalised terms have the meaning given in the Access Undertaking.



= Not consistent



= Consistent

### QR Network’s submission and commentary

Schedule J reference	AU, CA or PA Clause	Commentary	Consistency
<b>Item 1 – Foundation premises</b> Principle: QR Network cannot be forced to fund an Extension other than in accordance with an approved access undertaking or the provisions of the Act regarding determination of access	n/a	n/a	n/a

Schedule J reference	AU, CA or PA Clause	Commentary	Consistency
disputes.			
<p><b>Item 2 – Foundation premises</b></p> <p>Principle: To the extent that QR Network does invest in rail transport infrastructure used in the provision of declared services, including Significant Investments, the QCA can determine the rate of return that is commensurate with the risk of the investment.</p>	General	The Access Undertaking is consistent with Item 2 of Schedule J.	
<p><b>Item 3 – Foundation premises</b></p> <p>Principle: QR Network should not be able to exploit its monopoly power.</p>	General	The User Funding arrangements as currently proposed by QR Network are unlikely to be a viable alternative to QR Network funding and therefore will not be effective in achieving this foundation premise.	
<p><b>Item 4 – Foundation premises</b></p> <p>Principle: Users should have the right to fund Extensions (other than replacement capital expenditure) at their option.</p>	7.5.3 and 7.5.5 of the AU	Various places throughout the Access Undertaking note that the right to user fund only arises where QR Network is unwilling to fund. Examples include clause 7.5.3(b) and 7.5.5(e). This is discussed in greater detail under Item 11.	
<p><b>Item 5 – Undertaking coverage</b></p> <p>Principle: All Extensions in respect of rail transport infrastructure used to provide the Declared Service must take place under the auspices of an access undertaking approved under the Act to ensure even-handed dealing with all parties.</p>	n/a	n/a	n/a
<p><b>Item 6 – Undertaking coverage</b></p> <p>Principle: QCA will have the following roles in addition to those already in the previous undertaking:</p>	6.5.4, 7.5.5, 7.5.6 and other of the	The Access Undertaking is consistent with Item 6 of Schedule J.	

Schedule J reference	AU, CA or PA Clause	Commentary	Consistency
<ul style="list-style-type: none"> <li>(a) determining whether proposed capital expenditure forms part of a Significant Investment or not;</li> <li>(b) approving Access Conditions sought in respect of Significant Investments;</li> <li>(c) approving a Standard User Funding Agreement; and</li> <li>(d) making binding arbitration determinations in relation to:               <ul style="list-style-type: none"> <li>(i) Users' claims that they are unable to fund their shares of a Significant Investment via debt financing on reasonable terms obtained from a reputable financial institution; and</li> <li>(ii) the terms of a proposed or existing User Funding Agreements including:                   <ul style="list-style-type: none"> <li>(A) security requirements; and</li> <li>(B) any variations from a Standard User Funding Agreement approved by the QCA.</li> </ul> </li> </ul> </li> </ul>	AU		
<p><b>Item 7 – Network Extensions</b></p> <p>Principle: Subject to paragraph 8, Extensions should accommodate the needs of all Users who are seeking Access Rights which require additional Capacity and who are willing to commit to the approved terms and conditions of investment in the Extension during the Extension Process, whether or not these Users agreed to provide funding for the Extension.</p>	7.5.1(a) of the AU	Clause 7.5.1(a) of the Access Undertaking is consistent with Schedule J.	
<p><b>Item 8 – Network Extensions</b></p> <p>Principle: However, where there is a Funding Shortfall in respect of a Significant Investment, only Funding Users are guaranteed to have their Capacity requirements accommodated in the relevant Extension.</p>	7.5.5(f) of the AU	Clause 7.5.5(f) of the Access Undertaking is consistent with Schedule J.	

Schedule J reference	AU, CA or PA Clause	Commentary	Consistency
<p><b>Item 9 – Network Extensions</b></p> <p>Principle: If a User Funded Extension or Extension funded solely by QR Network produces Available Capacity, that Available Capacity and any pre-existing Available Capacity will be treated equally in future allocations of Available Capacity between Access Seekers.</p>	7.5.1(b) of the AU	Clause 7.5.1(b) of the Access Undertaking is consistent with Schedule J.	
<p><b>Item 10 – Network Extensions</b></p> <p>Principle: All Available Capacity, whether funded by QR Network or Users, will be allocated in accordance with the Undertaking's capacity allocation rules.</p>	7.5.1(b) of the AU	Clause 7.5.1(b) of the Access Undertaking is consistent with Schedule J.	
<p><b>Item 11 – Funding</b></p> <p>Principle: Users may opt to fund Extensions (other than replacement capital expenditure) and other system investments, even in circumstances where QR Network is willing to do so. Users need not provide the funding themselves directly but may involve other parties (e.g. Users may seek debt financing).</p>	7.5.3, 7.5.5(a) and 7.5.5(b) of AU	<p><u>Right for Users to provide funding</u></p> <p>Clause 7.5.5(a)(i) and (ii) of the Access Undertaking has been amended by QR Network in two respects:</p> <ol style="list-style-type: none"> <li>1 First, to provide that if an Access Seeker wishes to fund an Extension which is not a Significant Investment, it must make that election at the time that it advises that it wishes to negotiate the Indicative Access Proposal.</li> <li>2 Second, to include a provision to require the Access Seeker to pay or reimburse to QR Network the additional costs which will not be reimbursed through Access Charges.</li> </ol> <p>The two provisions are not consistent with Schedule J.</p> <p>Clause 7.5.5(a)(i) is inconsistent in that it unreasonably restricts an Access Seekers rights to elect to provide User Funding.</p> <p>Clause 7.5.5(a)(ii) is inconsistent with Schedule J in that it has the effect of passing on all risks in relation to a User Funded Extension to the funding Users. The provision would require a funding User to pay all operation and maintenance costs incurred by QR Network in relation to a User Funded Extension to the extent such costs are not</p>	

Schedule J reference	AU, CA or PA Clause	Commentary	Consistency
		<p>compensated through the Access Charges. Further, the provision would also transfer the risk for imprudent expenditure to the funding user.</p> <p>Clause 7.5.5(a)(ii) goes much further than simply requiring a funding user to pay the capital costs of the Extension. It cuts across the provisions of a User Funding Agreement, which purport to allocate the costs to be borne by funding users and the costs to be borne by QR Network.</p> <p>Clause 7.5.5(a)(ii) creates an unjustified distinction between funding by QR Network and Users and serves to place User Funding in a weaker position than funding by QR Network.</p> <p>Clause 7.5.3, which deals with Customer Specific Branch Lines is also inconsistent with Schedule J. Clause 7.5.3 states that a user may only fund a Customer Specific Branch Line where QR Network is unwilling to fund.</p> <p>Finally, clause 7.5.5(e) of the Access Undertaking notes that QR Network will undertake Extensions where funding users provide funding for the projected cost which “QR Network does not wish to fund”. The quoted words are inconsistent with Schedule J and should be deleted.</p> <p><u>Funding through third parties</u></p> <p>QR Network’s draft Construction Funding Agreement only permits user funding to be provided by a Customer. It does not permit funding user to provide funding through a third party (such as a lender) as is expressly contemplated by Schedule J.</p>	
<p><b>Item 12 – Funding</b></p> <p>Principle: If Users intend to fund an Extension, all potential Users for the Capacity to be created by an Extension must be given the opportunity to participate in the funding of the Extension in proportion to the Capacity the Access Rights they are seeking would utilise.</p>	<p>N/A</p>	<p>To give effect to item 12 of Schedule J the Access Undertaking would need to include an obligation on QR Network to notify relevant Access Seekers that an Access Seeker proposes to utilise user funding.</p>	

Schedule J reference	AU, CA or PA Clause	Commentary	Consistency
<p><b>Item 13 – Funding</b></p> <p>Principle: If Users fund an Extension, they will be compensated for their investment by receiving an amount equal to the return on and of the capital component of Access Charges from any Users of the Capacity created by their investment who did not participate in the user funding (with QR Network being entitled to receive an amount equal to the components of Access Charges based on operation and maintenance costs).</p>	<p>7.5.5(l) of AU and 3.3 of PA</p>	<p>Item 13 of Schedule J provides that QR Network is to provide funding users with the return on and capital component of Access Charges generated by the user funded Extension.</p> <p>QR Network propose a significant change from the Schedule J principles. While the Schedule J principles acknowledge that QR Network will retain the operation and maintenance component of any Access Charges, QR Network have extended its rights of retention to the component of Access Charges relevant to “regulatory and performance risk”.</p>	
<p><b>Item 14 – Funding</b></p> <p>Principle: QR Network must fully fund:</p> <ul style="list-style-type: none"> <li>(a) replacement capital expenditure;</li> <li>(b) Expansions which are valued at less than \$300 million and are required to produce Available Capacity needed for provision of Access Rights sought by Access Seekers; and</li> <li>(c) capital expenditure valued at less than \$300 million needed to respond to a Capacity shortfall resulting from either a change in System Operating Assumptions or an incorrect forecast of capacity,</li> </ul> <p>delivered by Infrastructure Enhancements.</p> <p>The Regulated WACC will apply to any such investments and Access Conditions cannot be sought in respect of access which is dependent on such investments other than in accordance with Clause 6.5.2 of the Undertaking. An Extension may include a number of related projects on different parts of the network. There may also be more than one such Extension over the Term. In the case of a dispute, the QCA will determine whether capital expenditure forms part of a Significant Investment or comes within this provision.</p>	<p>7.5.4(a) and 7.5.1(e) of AU</p>	<p>Clause 7.5.4(a) is largely consistent with Schedule J.</p> <p>There are two material respects in which it is not consistent. First, Schedule J provides that QR Network must undertake and fund Extensions where there is a shortfall in capacity resulting from a change in operating assumptions or an incorrect forecast of capacity. Clause 7.5.4(a)(iii) deals with changes in operating assumptions, but the Access Undertaking does not deal with a shortfall caused by an incorrect forecast of capacity.</p> <p>Secondly, clause 7.5.4(a)(iv) and (v) incorporate an exception to QR Network’s obligation to fund Extensions which is not contemplated by Schedule J and appears inconsistent with item 14(c) of Schedule J. The exception provided for by clause 7.5.4(a)(iv) states (somewhat ambiguously) that QR Network is not obliged to undertake an Extension where a “Significant Investment” does not create all of the capacity required to meet the demands of a “Major External Development” and the Extension which would be required to meet that shortfall would be a “Major Expansion” which is not a “Significant Investment”.</p> <p>QR Network have included a further exception to its obligation to fund and undertake Extensions. That additional exception is contained in clause 7.5.1(e). It provides that QR Network is not required to fund and undertake an Extension where QR Network consider that an Extension is:</p>	

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		<ul style="list-style-type: none"> <li>not technically and economically feasible; or</li> <li>QR Network’s legitimate business interests are not protected.</li> </ul> <p>The exception is stated to be “notwithstanding any other provision” and would therefore prevail over the obligation imposed on QR Network in clause 7.5.4(a).</p> <p>The exception which is contained in clause 7.5.1(e) is not contemplated in Schedule J. It was not a feature of the Access Undertaking which was approved by the QCA in September of 2010.</p> <p>The tests which are provided for in clause 7.5.1(e) are very broad. What is economically feasible and what is in the legitimate business interests of QR Network are very general and wide tests. They would allow QR Network to argue that the return it is allowed for the relevant Extension is insufficient. It could also argue that in certain circumstances user funding is not in its legitimate business interests. To the extent that clause 7.5.1(e) was used in these ways it is inconsistent with item 14 of Schedule J which states that QR Network will <u>undertake</u> the specified Extensions at the regulated rate of return, and will <u>undertake</u> user funded Extensions.</p>	
<p><b>Item 15 – Funding</b></p> <p>Principle: QR Network has no obligation to fully fund Significant Investments or Customer Specific Branch Lines. However, it is anticipated that QR Network will want to fund all or part of Significant Investments and Customer Specific Branch Lines where it considers it is in its commercial interests to do so, unless:</p> <p>(a) it is unable to raise finance or in doing so would prejudice its capital management; or</p> <p>(b) Users propose to fund all or part of such an Extension.</p> <p>As discussed later, QR Network may seek approval for Access Conditions and/or additional returns in respect of Significant</p>	<p>7.5.3 and 7.5.4(c) of AU</p>	<p>Clauses 7.5.3 and 7.5.4 of the Access Undertaking submitted by QR Network is largely consistent with item 15 of Schedule J. There are two aspects in which it is not consistent.</p> <p>First, the Access Undertaking is inconsistent with Schedule J in that clause 7.5.4(c) of the Undertaking (which obliges QR Network to give notice where it refuses to fund) should be expanded to include Customer Specific Branch Lines.</p> <p>Secondly, clause 7.5.4(c) provides that QR Network will provide the QCA with reasons where it refuses to fund a Significant Investment. Under the Schedule J principles those reasons are required to be given by the appropriate board of directors (presumably by way of a board minute or resolution). QR Network’s mark-up only requires such reasons to be given by way of a notice from the company (which</p>	

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<p>Investments.</p> <p>If QR Network indicates that it is unwilling to fund all or part of an Expansion, the board of directors of QR Network must, or where the unwillingness to fund is based on a decision of its holding company, QR Network must procure that the board of its ultimate holding company, provide the QCA with a statement setting out the reasons for this, for publication on the QCA's website.</p>		<p>could be a simple letter from an officer of QR Network).</p>	
<p><b>Item 16 – Funding</b></p> <p>Principle: QR Network must fund up to 30% of a partially User Funded Significant Investment, if requested to do so by Users that are unable to raise their own share of the funds by debt funding on reasonable terms from reputable financial institutions. QR Network can seek approval from the QCA for special terms and conditions for that funding to the extent justified by special risks and costs being borne by QR Network.</p>	<p>7.5.5.(f)(i) of AU</p>	<p>Clause 7.5.5(f)(i) of the Access Undertaking is not consistent with Item 16 of Schedule J. That is because, as drafted, QR Network's obligation to fund a shortfall only arises where an Access Condition has been approved.</p> <p>That was clearly not the intention of Item 16 of Schedule J which provides:</p> <ul style="list-style-type: none"> <li>• QR Network should fund shortfalls in user funding up to 30% of the capital cost; and</li> <li>• QR Network will be entitled to an Access Condition where approved by the QCA.</li> </ul> <p>The Access Undertaking should therefore be amended to disconnect the obligation to fund and the imposition of an Access Condition.</p>	
<p><b>Item 17 – Funding</b></p> <p>Principle: The obligation to partially fund Significant Investments in accordance with paragraph 16 is subject to QR Network having a maximum commitment of \$300 million in respect of such funding for the Term.</p>	<p>7.5.5(f)(i)(B) of AU</p>	<p>Clause 7.5.5(f)(i)(B) is consistent with Item 17 of Schedule J.</p>	

Schedule J reference	AU, CA or PA Clause	Commentary	Consistency
<p><b>Item 18 – Funding</b></p> <p>Principle: If QR Network disputes that a User is unable to fund its share of the costs of a Significant Investment (by debt funding on reasonable terms from reputable financial institutions) and is unwilling to fund the User’s share, the QCA will arbitrate. The onus of proof will rest with the User claiming they are unable to raise debt funding on reasonable terms from reputable financial institutions. If the QCA concludes that the User could have raised its share of the funds by debt funding on reasonable terms from reputable financial institutions, the User will not be eligible for QR Network funding under this provision.</p>	7.5.5(f) and 7.5.5(g) of AU	Clauses 7.5.5(f) and (g) are consistent with Item 18 of Schedule J.	
<p><b>Item 19 – Funding</b></p> <p>Principle: While QR Network will not be otherwise obliged to provide funding for a Significant Investment, QR Network will have the right to participate in a User Funded Extension up to the level of the Capacity that is created in excess of that needed by the Funding Users.</p>	7.5.5(d) of AU	Clause 7.5.5(d) is consistent with Item 19 of Schedule J.	
<p><b>Item 20 –Insufficient funding for Significant Investments</b></p> <p>Principle: Where the aggregate of the development costs:</p> <ul style="list-style-type: none"> <li>(a) QR Network has voluntarily decided to fund;</li> <li>(b) Funding Users have decided to fund; and</li> <li>(c) QR Network has been obliged to fund in accordance with paragraph 16 above, in respect of a Significant Investment (together the Committed Funding) is: <ul style="list-style-type: none"> <li>(i) more than QR Network's estimate of the cost of building the smallest efficient Extension, then: <ul style="list-style-type: none"> <li>(A) QR Network will design the level of Planned Capacity to be created by the Extension to reflect</li> </ul> </li> </ul> </li> </ul>	7.5.5 of AU	Clause 7.5.5(f) is consistent with Item 20 of Schedule J.	

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<p>the Committed Funding; and</p> <p>(B) the Capacity created by the Extension will be first allocated to all of the Funding Users (in the proportions their funding bore to the total development cost) and any remaining Available, Capacity will be allocated among the other Users who put forward an expression of interest in accordance with paragraph 50 but did not provide User Funding based on the formation of a queue in accordance with the principles in the approved access undertaking;</p> <p>(ii) is less than QR Network's estimate of the cost of building the smallest efficient Extension (with the difference being the Funding Shortfall):</p> <p>(A) QR Network will advise the Funding User of the Funding Shortfall and the Funding Users will be given a reasonable opportunity to elect to fund the Funding Shortfall (in which case they will be given the first right of refusal of Planned Capacity proportionate to the additional funding provided);</p> <p>(B) if the Funding Users in aggregate fail to provide sufficient additional funding to rectify the Funding Shortfall, then QR Network is not obliged to develop the Extension (but may do so if it wishes to itself fund the Funding Shortfall); and</p> <p>(C) if the Funding Shortfall is rectified, the Extension will be developed to reflect the smallest efficient Extension with Capacity created by the Extension being first allocated to all of the Funding Users (in the proportions their funding bore to the total development cost except to the extent a Funding User providing funding but did not exercise their right of first refusal) and any remaining Available Capacity will be allocated among the other Users who put forward an expression of interest in</p>			

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<p>accordance with paragraph 50 but did not provide User Funding based on the formation of a queue in accordance with the principles in the approved access undertaking.</p> <p>If QR Network is unwilling to fully fund a Significant Investment and some Users who are seeking additional Capacity are unable or unwilling to raise their shares of the funding, the Users who are willing to fund the Significant Investment will have to meet the full cost of the Significant Investment, subject to paragraph 16 above, and QR Network will not be obliged to develop the Significant Investment until such funding arrangements between Users are agreed or one or more Users will fund the Funding Shortfall in return for being allocated the remaining uncontracted Planned Capacity.</p>			
<p><b>Item 21 – Ownership</b></p> <p>Principle: QR Network will own and operate the rail transport infrastructure utilised to provide the declared service, including Extensions other than Customer Specific Branch Lines which are wholly funded by Users. Access to parts of the rail network created by Extensions to other coal basins will not automatically be declared and QR Network may or may not be the owner or operator for such Extensions.</p>	<p>7.5.5(b) and of AU</p>	<p>Clause 7.5.5(b) and the draft Construction Agreement are consistent with Item 21 of Schedule J.</p>	
<p><b>Item 22 – Ownership</b></p> <p>Principle: Users will have the right to own and operate Customer Specific Branch Lines while QR Network must facilitate their connection to the existing network and ongoing operation.</p>	<p>7.5.3 and 7.5.4(b) of AU</p>	<p>It is implicit but not stated in clause 7.5.3 that the Access Seeker who funds a Customer Specific Branch Line will own the infrastructure.</p> <p>Clause 7.5.3 should be amended to make this clear. Clause 7.5.4(b) should also be amended to acknowledge that user funded Customer Branch Lines are owned by the user funder (other than where agreed otherwise or the land for Extension is owned or leased by QR Network).</p>	

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<p><b>Item 23 – Security</b></p> <p>Principle: In relation to any User Funded Extension, each Funding User (or Funding User’s financier where debt financed) may take security over the contracts, including the User Funding Agreement, and associated cash flows and QR Network’s creditors may take security over its cash flows and the resulting Rail Infrastructure.</p>	14.4 of PA	<p>The Access Undertaking does not acknowledge the funding users’ rights to secure its rights in respect of the participation agreement or the revenue generated by the user funded Extension.</p> <p>The draft Participation Agreement acknowledges that the funding user may charge the agreement. That does not however extend to a granting of security over the cash flows which the funding user is entitled to. Without such security the charge over the agreement has limited value.</p> <p>QR Network’s draft of the Participation Agreement does not extend to a user’s lender charging the agreement or securing the cash flows (as is expressly provided for in Schedule J).</p>	
<p><b>Item 24 – Construction</b></p> <p>Principle: QR Network must construct all Expansions because of operational/safety concerns with multiple parties accessing an operating railway with multiple Users, subject only to the step-in rights described in paragraph 26.</p>	CA	<p>The Draft Construction Agreement provided by QR Network is largely consistent with Item 24 of Schedule J.</p> <p>However, the level of control over the Extension works proposed to be retained by QR Network through the Construction Agreement significantly exceeds the level of control required to achieve “operational/safety concerns.” The extent of control maintained by QR Network undermines the effectiveness of user funding because:</p> <ul style="list-style-type: none"> <li>• it is reasonable to expect that funding users will want control over the way in which their money is being spent;</li> <li>• for user funding to be ‘bankable’ lenders will expect that funding users will retain some control over the performance of the works.</li> </ul>	
<p><b>Item 25 – Construction</b></p> <p>Principle: Prudent cost overruns on construction will be incorporated into the Regulatory Asset Base and passed on to Access Holders via Access Charges, unless special Access Conditions are approved by the QCA which provide differently. QR Network will absorb all other cost overruns (as is the case now).</p>	3.5 and 7.15 of CA	<p>Clause 7.15(b) of the draft Construction Agreement provides that QR Network will refund to a funding user its proportion of any capital costs paid for by the funding user and which are deemed by the QCA not to be prudent.</p> <p>Clause 7.15(b) is stated to be subject to clause 7.15(c). Clause 7.15(c) serves to significantly narrow the operation of clause 7.15(b). It provides that QR Network will not be required to refund any costs</p>	

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<b>Item 26 – Construction</b>	7.5.1 of AU and 24 of CA	<p>The amended Access Undertaking and draft Construction Agreement differ markedly from item 26 of Schedule J.</p> <p><u>Expeditiously</u></p> <p>Clause 7.5.1(d) of the Access Undertaking had previously obliged QR Network to undertake Extensions “expeditiously”. The obligation to act expeditiously has been deleted and replaced with an obligation to “unnecessarily and unreasonably delay”. That is a much lower (and weaker) test than an obligation to act expeditiously.</p> <p>Similarly, the draft Construction Agreement does not oblige QR Network to work “expeditiously”. Rather, it only obliges QR Network to use best endeavours to have a segment completed by its planned date.</p> <p><u>Development of timetable and other crucial information</u></p> <p>The Access Undertaking does not oblige (or otherwise provide a process for) QR Network to develop a timetable for the performance of an Extension. Nor does it oblige QR Network to develop other key information required to populate the draft Construction Agreement.</p> <p>The draft Construction Agreement assumes that the timetable and</p>	

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<p>(b) providing the Users with details of the required standards and specifications for the Rail Infrastructure;</p> <p>(c) providing the Users with details of the current status of the work on the Extension;</p> <p>(d) keeping all relevant Users informed regarding operations of the Rail Infrastructure which may impact on the development of the Extension;</p> <p>(e) providing the funds it has received through user Funding that it has not spent in the development of the Extension to the users undertaking the development of the Extension;</p> <p>(f) assigning or novating contracts required for the development of the Extension or, where assignment or novation is not practicable, entering into back-to-back arrangements where QR network on-supplies goods or services to the Users on the same terms as they are supplied to QR Network by third party suppliers; and</p> <p>(g) assisting the Users undertaking the development to obtain all necessary licences and approvals for the development (by assignment from QR Network or otherwise).</p>		<p>scope for the Extension project has been developed and is attached to the draft Construction Agreement. Without a process to develop a timetable (and other crucial information such as a scope) there is likely to be delay in completing a draft Construction Agreement and undertaking the Extension.</p> <p><u>Step-in events</u></p> <p>Schedule J provides that where QR Network unnecessarily delays, a User may step-in and undertake the construction work.</p> <p>This right has been substantively limited in QR Network’s draft Construction Agreement. QR Network have defined “unnecessarily delayed” as meaning:</p> <ul style="list-style-type: none"> <li>• where the estimated time for completion of a segment is 6 months or more later than the last planned completion date; or</li> <li>• where the estimated time for completion of a segment is 3 months or more later than the planned completion date for a connected unloading facility development.</li> </ul> <p>Such a narrow definition of “unnecessarily delay” is not reflected in Item 26 of Schedule J.</p> <p>The draft Construction Agreement provides that a funding user may not exercise its step-in rights until resolution of a dispute (where QR Network disputes a funder’s right to step-in). Such a formulation only encourages QR Network to initiate a dispute process. At the very least, the clause should acknowledge that QR Network remain liable if it has wrongfully initiated a dispute process.</p> <p>Finally, where a user funder is entitled to step-in its rights of step-in are limited to the appointment of a managing contractor. That removes a significant amount of control from the user. It is also inconsistent with Schedule J which notes that the “Users may undertake construction”. Whether a managing contractor is used should be at the funding users’ election and not to the exclusion of their right to procure construct directly.</p> <p>The draft Construction Agreement does not reflect paragraphs (a) to (g) of item 26. Those paragraphs are aimed at facilitating Users</p>	

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		directly undertaking of the work.	
<b>Item 27 – Construction</b> Principle: Users will be permitted to construct Customer Specific Branch Lines to their own specifications, with interface standards approved by QR Network. QR Network must facilitate Users developing their own Customer Specific Branch Line including by providing access to land which QR Network has the power to provide and entering into a Rail Connection Agreement in respect of the Connecting Infrastructure.	7.5.3 of AU	Clause 7.5.3 of the Access Undertaking does not acknowledge that a user’s development of a Customer Specific Branch Line may be undertaken to the User’s own specifications.	
<b>Item 28 – WACC/Rate of Return/Access Conditions</b> Principle: The Regulated WACC provides an appropriate return on capital for normal monopoly infrastructure risks that are systematic.	General	The Access Undertaking is consistent with item 28 of Schedule J.	
<b>Item 29 – WACC/Rate of Return/Access Conditions</b> Principle: The WACC that applies will be the same whether infrastructure investment is undertaken by QR Network or Users, reflecting the same infrastructure investment risk. Coal-company WACCs are not appropriate to User investment in coal rail transport infrastructure as they relate to the risks associated with coal-mine ownership (e.g. production, sales, prices etc) and not coal rail transport infrastructure risks.	General	In order for the WACC that applies to be the same whether infrastructure investment is undertaken by QR Network or Users, there must be a process by which Access Conditions (including a varied WACC) can be assessed for a User Funded project, as there is in the case of the same project being undertaken by QR Network. The possibility of User Funded investments earning a varied WACC is specifically acknowledged in Items 30 and 43 of Schedule J.  The above should be: <ul style="list-style-type: none"> <li>expressly reflected in the Access Undertaking;</li> <li>(where relevant) included in the Construction Agreement as an obligation on QR Network to seek approval of the Access Condition.</li> </ul>	

Schedule J reference	AU, CA or PA Clause	Commentary	Consistency
<p><b>Item 30 – WACC/Rate of Return/Access Conditions</b></p> <p>Principle: All investments in Rail Infrastructure (by QR Network or Users) will earn the Regulated WACC, unless they incur risks in addition to those that are compensated for in the Regulated WACC. Such risks might include demand risk, asset stranding risk and construction risk.</p>	<p>6.5.2 of the AU</p>	<p><u>Acknowledgement of regulatory WACC</u></p> <p>The acknowledgement that user funded and QR Network funded Extensions will be generally undertaken at the regulatory WACC is not reflected in the Access Undertaking.</p> <p><u>Risks not compensated in the Access Charges</u></p> <p>The principle that QR Network may only seek an uplift in its WACC in circumstances where it will bear a risk which is not compensated for is not accurately reflected in the Access Undertaking. Clause 6.5.2(a) of the Access Undertaking for example notes that QR Network may seek an Access Condition “in order to mitigate QR Network’s exposure to the financial risks associated with providing Access”. For consistency with Schedule J, clause 6.5.2 should be expressed as “financial risks which are not contemplated to be compensated for through the regulatory WACC. Also, Item 30 specifically acknowledges that a rate of return other than the Regulated WACC may be appropriate for investments by QR Network <b>or Users</b>. As was noted under Item 29, the Undertaking requires a process for the appropriate WACC to be determined for User Funded investments.</p>	
<p><b>Item 31 – WACC/Rate of Return/Access Conditions</b></p> <p>Principle: If QR Network intends to impose Access Conditions in respect of the provision of access which is dependent on a Significant Investment it must seek approval from the QCA for such Access Conditions. The QCA may approve special Access Conditions including additional returns to address any additional risks associated with Significant Investment. Special Access Conditions may relate to matters such as: the depreciation period and/or profile, take or pay arrangements or the term of contracts. To the extent that QR Network seeks additional returns to compensate it for additional risks, the risks should be accounted for in the cash flows to which the Regulated WACC rate is applied, with the cash flows being determined considering the possible outcomes and the probabilities of the</p>	<p>6 of the AU</p>	<p>Clause 6 of the Access Undertaking is consistent with Item 31.</p>	

Schedule J reference	AU, CA or PA Clause	Commentary	Consistency
outcomes as a consequence of the additional risks.			
<b>Item 32 – WACC/Rate of Return/Access Conditions</b>	6.5.4(a)(viii) of the AU	Clause 6.5.4(a)(viii) is consistent with item 32 of Schedule J.	
<p>Principle: If QR Network considers that its cost of funds for a Significant Investment is inconsistent with the Regulated WACC, then QR Network may ask the Authority to approve an uplift on the Regulated WACC (the Varied WACC). The circumstances in which the QCA will approve a Varied WACC will be limited to changes in the risk free rate and debt margin in respect of the Significant Investment unless QR Network can show that, as a result of funding the Significant Investment, it has a materially different gearing ratio or credit rating. Users will have the option to accept a Varied WACC approved by the QCA, or to pursue User funding instead.</p>			
<b>Item 33 – WACC/Rate of Return/Access Conditions</b>	6.5.4(e) of the AU	Clause 6.5.4(e) is consistent with item 33 of Schedule J.	
<p>Principle: QR Network must obtain the QCA's approval for any proposed Access Conditions or other risk adjustments. However, parties will first have the opportunity to commercially negotiate the terms of access.</p> <p>The QCA will approve Access Conditions that are commercially agreed between QR Network and all relevant Users unless:</p> <ul style="list-style-type: none"> <li>(a) it is not in the public interest, including the public interest in having competition in markets;</li> <li>(b) it may disadvantage the interests of parties who are not parties to the agreement;</li> <li>(c) QR Network has failed to provide the required information to Users regarding risk and return (see below); or</li> <li>(d) it would contravene a provision of the Act or the Undertaking.</li> </ul>			

Schedule J reference	AU, CA or PA Clause	Commentary	Consistency
<p><b>Item 34 – WACC/Rate of Return/Access Conditions</b></p> <p>Principle: As part of the process for negotiating the proposed Access Conditions, QR Network must provide upfront a detailed analysis to both the QCA and the Users of the additional risks faced by QR Network and the Access Conditions (including additional returns) it considers are required to mitigate or to compensate for those risks. Failure to provide this analysis will be grounds for the QCA to refuse to approve Access Conditions.</p>	6.5.4(a) of the AU	Clause 6.5.4(a) is consistent with item 34 of Schedule J.	
<p><b>Item 35 – WACC/Rate of Return/Access Conditions</b></p> <p>Principle: If parties are unable to agree terms within 60 days of the detailed analysis being provided by QR Network, or such further period of time approved by the QCA, the QCA will arbitrate the matter. The QCA will not grant extensions that take the total negotiation period to more than 120 days, unless a majority by number of the Access Seekers or Customers ask for such an extension. All periods referred to in this paragraph commence on the date that the QCA considers the price negotiations to have effectively commenced. Unless particular circumstances indicate otherwise, the QCA would consider the negotiation period to begin on the date when QR Network issues its detailed analysis of the additional risks and Access Conditions for an Extension. If the QCA has reason to believe that QR Network has commenced negotiating with Users regarding Access Conditions in respect of an Extension, it may require QR Network to provide the detailed analysis required by this Investment Framework to all relevant Users within 10 Business Days and cease negotiating the content of Access Conditions until that analysis has been provided.</p>	6.5.4 (b) and (c) of the AU	Clauses 6.5.4(b) and (c) are consistent with item 35 of Schedule J.	
<p><b>Item 36 – WACC/Rate of Return/Access Conditions</b></p> <p>Principle: Users may at any time decide to refer the matter to</p>	6.5.4(c) of the AU	Clause 6.5.4(c) is consistent with item 36 of Schedule J.	

Schedule J reference	AU, CA or PA Clause	Commentary	Consistency
<p>the QCA for arbitration or to fund the Extension themselves. In considering the appropriateness of the proposed Access Conditions, the QCA will consult with stakeholders. The QCA may decline to arbitrate during the process, where it considers the referral is vexatious or the referring party has not negotiated Access Conditions in good faith.</p>			
<p><b>Item 37 – WACC/Rate of Return/Access Conditions</b> Principle: Whether or not QR Network accepts the Access Conditions that the QCA considers to be reasonable, the QCA will publish its decision, which will indicate the Access Conditions the QCA considers reasonable.</p>	6.5.4(g) of the AU	<p>Clause 6.5.4(g) of the Access Undertaking differs from Schedule J in that:</p> <ul style="list-style-type: none"> <li>• Clause 6.5.4(g) only permits the QCA to publicly publish its decision where it rejects an Access Condition;</li> <li>• Schedule J requires the QCA to publicly publish its decision in cases where the QCA rejects an Access Condition sought by QR Network and in cases where the QCA approves the Access Condition sought by QR Network (in each case publishing the Access Conditions considered reasonable by the QCA).</li> </ul>	
<p><b>Item 38 – WACC/Rate of Return/Access Conditions</b> Principle: QR Network may not seek to impose, and the QCA will not approve, any Access Condition that:</p> <p>(a) restricts Access Seekers or their Customers from raising disputes with the QCA or disclosing proposed Access Conditions or other contract terms to the QCA;</p> <p>(b) requires Access Seekers, Access Holders, or their Customers to disclose information that is confidential to one or more of them, to any other Access Holder, Access Seeker, or their Customer in circumstances other than those permitted by this Undertaking; or</p> <p>(c) results in QR Network earning Access Charges based on a Varied WACC or otherwise earning above the return provided by Reference Tariffs based on the Approved</p>	6.5.5 of the AU	<p>Clause 6.5.5(c) has been amended by QR Network. The amendment is not consistent with Schedule J. The effect of the amendment is to limit the prohibition against earning revenue in excess of the regulated WACC. The amendment purports to confine the operation of the prohibition to Access resulting from an Extension. There does not seem to be a valid reason to limit the prohibition in this way.</p>	

Schedule J reference	AU, CA or PA Clause	Commentary	Consistency
WACC, other than as approved by the QCA.			
<p><b>Item 39 – Pricing</b></p> <p>Principle: Access Charges in respect of Access which is able to be provided by virtue of Extensions should be determined in accordance with the pricing principles incorporated in the undertaking, (i.e. a uniform tariff that sits between incremental and stand-alone costs), unless the QCA considers, on application from QR Network, that an alternative approach is appropriate in the circumstances.</p>	n/a	Item 39 does not seem to give rise to an amendment to the Access Undertaking.	
<p><b>Item 40 – Pricing</b></p> <p>Principle: The QCA will revise Reference Tariffs when a Significant Investment occurs, based initially on forecast costs and subsequently on actual costs.</p>	Schedule A of the AU	The Access Undertaking is consistent with Item 40 of Schedule J.	
<p><b>Item 41 – Pricing</b></p> <p>Principle: Where a User Funded Extension is deemed by the Authority to have created Available Capacity in excess of that needed for an efficient expansion of the network (e.g. a User may want to construct a facility with excess Capacity), the cost of the excess Capacity may not be incorporated in the Regulatory Asset Base for the purposes of calculating current Access Charges and may instead be carried forward (at the Regulated or Varied WACC, as applicable to Access Charges for train services which utilise the Extension) for inclusion in Access Charges at a later date.</p>	7.5.5(k) of the AU	Clause 7.5.5(k) is consistent with item 41 of Schedule J.	

Schedule J reference	AU, CA or PA Clause	Commentary	Consistency
<p><b>Item 42 – Pricing</b></p> <p>Principle: User funding will cover the capital costs of the Extension, with ongoing maintenance and operating costs included in the Reference Tariff in the usual way.</p>	<p>7.5.5(l) of the AU and clause 3.3 and Schedule 3 of the PA</p>	<p><u>Retention of revenue</u></p> <p>Clause 7.5.5(l) of the Access Undertaking and clause 3.3 of the Participation Agreement are not consistent with item 42 of Schedule J.</p> <p>They are not consistent because they provide that in addition to retaining operation and maintenance charges, QR Network will also be entitled to:</p> <ul style="list-style-type: none"> <li>retain any component of the Access Charges relevant to “regulatory and performance risk” (see clause 7.5.4(l)(i)); and</li> <li>retain an amount for any tax or financial costs borne by QR Network (see clause 7.5.4(l)(ii)).</li> </ul> <p><u>Pass through of benefits obtained by QR Network</u></p> <p>The Participation Agreement does not include a mechanism for QR Network to pass back to the funding users any tax or financial benefits which QR Network obtain from the user funding.</p>	
<p><b>Item 43 – Pricing</b></p> <p>Principle: The Funding Users will have their capital investment (including any amounts of a relevant feasibility study) refunded to them in accordance with the depreciation profile associated with the capital expenditure, together with the Regulated or Varied WACC (as applicable) on the unrefunded balance, subject to QR Network receiving Reference Tariffs in respect of the user funded Capacity that are sufficient to cover the amount of the refund after meeting approved operating and maintenance costs. If Reference Tariff revenues are not sufficient, QR Network is obliged to refund only the amount it has received from such Reference Tariffs net of approved operating and maintenance costs. Users must also be refunded any financial benefits that accrue to QR Network as legal owner of the Rail Infrastructure. The arrangements should be such that QR Network receives no benefit (tax or cash flow) from</p>	<p>7.5.5(l) of the AU and 3.3 of the PA</p>	<p>As above.</p>	

Schedule J reference	AU, CA or PA Clause	Commentary	Consistency
<p>wholly User Funded Extensions, with QR Network retaining only the portion of Reference Tariffs related to operating and maintenance costs.</p>			
<p><b>Item 44 – Pricing</b>            Principle: If a shortfall (or surplus) in Reference Tariff revenue occurs in respect of Capacity funded by QR Network or Users, the shortfall (or surplus) will be met by (or refunded to) all Access Holders in the relevant Individual Coal System through the existing revenue cap adjustment process. A shortfall (or surplus) caused solely by a Funding User will be to the account of that Funding User.</p>	<p>7.5.5 of the AU and Schedule 3 of the PA</p>	<p>The Access Undertaking and Schedule 3 of the Participation Agreement provides for revenue shortfalls to be shared across all users of the relevant system.</p>	
<p><b>Item 45 – Pricing</b>            Principle: No additional fees or on-costs may be charged by QR Network in respect of User Funded Extensions, unless there are additional costs or risks assumed.</p>	<p>7.2 of the CA</p>	<p>QR Network’s draft of the Construction Agreement provides for QR Network to be paid a mark-up on the costs paid for by the funding user. This is referred to in the agreement as the “CIP Percentage. The CIP Percentage is increased if QR Network achieve certain targets.</p> <p>The CIP Percentage is in addition to any revenue which a QR Network related body corporate may earn through a subcontract arrangement.</p> <p>The mark-ups provided for in the Construction Agreement are included without QR Network taking on any additional risk.</p> <p>In addition to its mark-ups, QR Network have included a very full form tax indemnity which passes on to funding users all tax risks, including risks which may be caused by an act or omission of QR Network. Inconsistently, there is no acknowledgement that tax or financial benefits received by QR Network will be passed on to funding users.</p>	

Schedule J reference	AU, CA or PA Clause	Commentary	Consistency
<p><b>Item 46 – Extension Process</b></p> <p>Principle: The investment decision process (deciding on the reasonableness of/need for the investment in the Extension) should be independent of who funds the investment – QR Network, Users or a combination of the two.</p>	7.5.2 of the AU	Clause 7.5.2 of the Access Undertaking is consistent with item 46 of Schedule J.	
<p><b>Item 47 – Extension Process</b></p> <p>Principle: QR Network will initiate an Extension Process where it:</p> <ul style="list-style-type: none"> <li>(a) believes an Extension is required to meet demand within the coal supply chain; or</li> <li>(b) is requested to do so by the owner or operator of an expanding or new unloading facility that services users of the Rail Infrastructure; or</li> <li>(c) is requested to do so by a coal supply chain group such as the DBCT Coal Chain Coordinator, the Gladstone Coal Export Executive and the BMA Hay Point Coal Chain;</li> <li>(d) has received access requests which would utilise in excess of 70% of the Planned Capacity to be developed by the smallest efficient Extension of the Rail Infrastructure; or</li> <li>(e) has received access requests for less than 70% of the Planned Capacity to be developed by the smallest efficient an Extension, but those Users are willing to meet 70% of the costs associated with development of the Extension.</li> </ul>	7.5.2(b) of the AU	Clause 7.5.2(b) is consistent with item 47 of the Access Undertaking.	
<p><b>Item 48 – Extension Process</b></p> <p>Principle: The Extension Process must include timetables, deadlines and information requirements.</p>	7.5.2 of the AU	<p>The Access Undertaking has not been updated to incorporate item 48 of Schedule J.</p> <p>The draft Construction Agreement relies upon the parties to have agreed a scope of works, timetable and target cost for the Extension. The Access Undertaking does not contain any detail or process for</p>	

Schedule J reference	AU, CA or PA Clause	Commentary	Consistency
		<p>the development of these items. This is a significant deficiency because:</p> <ul style="list-style-type: none"> <li>the scope, timetable and target cost are crucial items; and</li> <li>without a sufficient process for the development of these items there is scope for disputation, and delay.</li> </ul>	
<p><b>Item 49 – Extension Process</b></p> <p>Principle: Where a need for further Infrastructure Enhancements can be reasonably anticipated, QR Network must undertake the necessary scoping and planning studies (including pre-feasibility and feasibility studies). Access Seekers seeking Access that is dependent on such Infrastructure Enhancements can be requested to underwrite the studies and all prudent costs of the studies will be:</p> <p>(a) considered as User Funding in respect of determining how Planned Capacity to be developed by an Extension is allocated and in respect of return of capital; and</p> <p>(b) included in the Regulatory Asset Base irrespective of whether the project is completed through to the commissioning stage.</p> <p>If QR Network unreasonably delays the necessary studies, Users may undertake the necessary work at their cost and QR Network must give the Users all reasonable assistance, including any necessary information and site access.</p>	<p>7.5.2(a) and (e) of the AU</p>	<p>Clauses 7.5.2(a) and (e) of the Access Undertaking are largely consistent with item 49 of the Access Undertaking.</p> <p>Clause 7.5.2(a) of the Access Undertaking differs from Item 49. Item 49 provides that in the case that QR Network unreasonably delays undertaking the study, the funding users may step in and QR Network must provide reasonable assistance in doing so. The Access Undertaking differs in that it requires the users to first initiate a dispute process before it is entitled to exercise its step-in rights. The interposition of the dispute process is likely to cause delay and takes away from the utility of the step-in right.</p> <p>The step-in should be provided as of right, rather than being conditional on the initiation of a dispute process.</p> <p>To give effect to Item 49 the Access Undertaking should be amended to provide for a standing user funding agreement for studies. That agreement should include options for:</p> <ul style="list-style-type: none"> <li>funding by users; and</li> <li>QR Network funding, underwritten by users.</li> </ul>	
<p><b>Item 50 – Extension Process</b></p> <p>Principle: A mechanism must be in place to inform all Users who would reasonably be expected to have an interest in gaining Access Rights which might be generated by a potential Extension of the network (including those listed on the Committed Capacity Register or in a queue for Available</p>	<p>7.5.2(c) of the AU</p>	<p>Clause 7.5.2(c) is consistent with item 50 of Schedule J.</p>	



Schedule J reference	AU, CA or PA Clause	Commentary	Consistency
amendments to the Authority's satisfaction.			
<b>Item 54 – Finalisation of the Investment Framework</b>	n/a	n/a	n/a
Principle: If QR Network fails to do so, the QCA will have the power to finalise and approve a Standard User Funding Agreement and amendments to the approved access undertaking to incorporate the principles set out in this Investment Framework.			
<b>Item 55 – Finalisation of the Investment Framework</b>	n/a	n/a	n/a
Principle: In the interim, the QCA will require Parts 4, 6 and 7 of the approved undertaking to incorporate the most critical elements of these principles. As such, Extensions which are currently being progressed or considered such as Wiggins Island are covered by the new investment framework. However, in respect of Extensions which are currently in process (such as Wiggins Island), it will be treated as if QR Network had formed the intention to negotiate Access Conditions on the Approval Date.			
<b>Item 56 – Definitions</b>	n/a	n/a	n/a
For the purposes of this Schedule the following terms have the meanings given below:			
<b>Committed Funding</b> has the meaning given in paragraph 20.			
<b>Customer Specific Branch Line</b> means an Extension that when constructed will connect an Access Holder or Customer's single loading facility to Rail Infrastructure.			
<b>Expansion</b> means an Extension that is not a Customer Specific Branch Line.			

Schedule J reference	AU, CA or PA Clause	Commentary	Consistency
<p><b>Extension of Rail Infrastructure</b> includes an enhancement, expansion, augmentation, duplication or replacement of all or part of the Rail Infrastructure. An Extension may include a number of related Infrastructure Enhancements on different parts of the Rail Infrastructure.</p>			
<p><b>Extension Process</b> means the process described in paragraphs 47-51.</p>			
<p><b>Funding Shortfall</b> has the meaning given in paragraph 20.</p>			
<p><b>Funding User</b> means a User which has entered a User Funding Agreement with QR Network.</p>			
<p><b>Infrastructure Enhancement</b> means new Rail Infrastructure or a modification to existing Rail Infrastructure.</p>			
<p><b>Investment Framework</b> means the principles set out in this Schedule.</p>			
<p><b>Major Expansion</b> means an Expansion for the purpose of creating or providing additional Capacity substantially as a result of or in connection with a single Major External Development.</p>			
<p><b>Regulated WACC</b> means 9.96% per annum.</p>			
<p><b>Significant Investment:</b> means investment applying to a Major Expansion estimated to cost in excess of \$300 million.</p>			
<p><b>Standard User Funding Agreement</b> means a pro forma User Funding Agreement</p>			
<p><b>Users</b> means Access Seekers and/or their Customers.</p>			
<p><b>User Funding Agreement</b> means an agreement by which a User agrees to provide funding to QR Network for the development of Infrastructure Enhancements.</p>			
<p><b>User Funded Extension</b> means an Extension, the costs of which are to be wholly or partly funded by Users pursuant to User Funding Agreements.</p>			

Schedule J reference	AU, CA or PA Clause	Commentary	Consistency
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**Varied WACC** means a weighted average cost of capital different to that of the Regulated WACC.

Where a term has not been specifically defined in this Schedule, the definitions in Part 12 of the Undertaking apply.