

21 July 2022

Mr George Passmore  
Queensland Competition Authority  
145 Ann Street  
Brisbane QLD 4000  
(Submitted via QCA Online Submission Form)

## **RE: Aurizon Network Draft Amending Access Undertaking – Concept Study**

The Queensland Resources Council (**QRC**), on behalf of the QRC's Rail Working Group, welcomes the opportunity to comment on Aurizon Network's Draft Amending Access Undertaking – Concept Study (the **DAAU**).

### **1. Consultation**

Aurizon Network provided a draft of their amendments to the RWG prior to submission to the QCA. We promptly provided Aurizon Network with an issues list and after a discussion with Aurizon Network our preliminary amendments to the DAAU. While some of the amendments sought were included in the DAAU, Aurizon Network did not engage further on those amendments which it did not accept (despite there being a 4 week period between receipt of our amendments and submission to the QCA of the DAAU). Accordingly, consultation prior to submission of the DAAU was limited.

The QRC has provided a copy of its submission to Aurizon Network. Aurizon Network are agreeable to meeting with the QRC to discuss the submission. If the parties are able to agree any of the drafting the parties would advise the QCA promptly.

### **2. Supportive of flexibility**

Aurizon Network's supporting submission notes that it considers that there is a lack of flexibility in the current UT5 process for existing capacity deficits<sup>1</sup>.

QRC's Rail Working Group is very supportive of amendments that provide more flexibility to the development of Transitional Arrangements to address an existing capacity deficit. We recognise that there will be merit in some Transitional Arrangements being

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<sup>1</sup> Aurizon Network supporting submission for DAAU, 8<sup>th</sup> June 2022 p2

implemented immediately and others being undertaken in a staged manner – for example, stage gates for expansion projects process or considerations of demand.

### **3. Fundamental flaws with DAAU**

We have identified some fundamental flaws in Aurizon Network's draft of the DAAU:

- Aurizon Network has introduced definitions of 'AN Proposed Transitional Arrangements' and 'AN Alternative TAs'. These definitions are used to refer to the specific Transitional Arrangements proposed in Aurizon Network's reports. The DAAU uses these terms throughout clause 7A.5.

The effect of these definitions is to tie the consideration of the Independent Expert and the QCA to what Aurizon Network has proposed. This is not consistent with the current undertaking, which gives the Independent Expert and QCA powers to consider Transitional Arrangements other than those which Aurizon Network has proposed. Such an amendment is inconsistent with the intended purpose of the amendments – being to provide greater flexibility in relation to the Transitional Arrangements.

This an issue of fundamental importance.

- Aurizon Network has adopted a relatively narrow approach to the DAAU overall – it is really to insert a process for concept studies and provide for Aurizon Network's own cost recovery. However, we think that if there is to be a DAAU that there should be broader express flexibility for the Independent Expert to suggest, and QCA to require, stage gates and for different Transitional Arrangements to be undertaken at different times. There should also be acknowledgement that a recommendation of the Independent Expert can be changed after a stage is complete. For example, after a concept study is complete the Independent Expert may have a different view based on the findings of the concept study report.
- While we think it is implicit, we consider the DAAU should more clearly and expressly confirm the discretion of the Independent Expert to consider those matters which it considers relevant. By reason of its role, the Independent Expert is in a unique position. It has access to information that the rest of the coal chain does not. We should let the Independent Expert make decisions based on facts it thinks are relevant.

### **4. Submission**

We have prepared a mark-up of the DAAU to address the concerns we have identified. The mark-ups are set out in attached table, together with covering explanations. Aurizon Network's submission kindly includes an explanation of the reasons for not accepting the QRC's changes. We have also attached a version of that table that responds to Aurizon Network's explanations. Lastly, we have attached a table which describes at a principle level the changes sought by the QRC.

Thank you for the opportunity to provide this submission.

Yours sincerely



Andrew Barger  
**Queensland Resources Council**

# QRC comments on ICAR DAAU drafting

Item No.	Clause/ Sub-clause	Change recommended by QRC	Explanation
<b>CLAUSE 7A.5 (EXISTING CAPACITY DEFICIT)</b>			
1.	7A.5(a)(iii)	<p>(iii) within three (3) Months after the Initial Capacity Assessment Report has been published by the QCA on its website, submit a detailed report to the QCA, the Chair of the Rail Industry Group and the Independent Expert showing the outcome of Aurizon Network’s analysis and consultation on the Existing Capacity Deficit and the Transitional Arrangements which it considers would most effectively and efficiently address the Existing Capacity Deficit, including:</p> <p>.....</p> <p>(C) if relevant, a shortlist of Expansions considered by Aurizon Network and through the consultation under clause 7A.5(a)(ii) (including reasonable estimates of costs to undertake each Expansion) that will <u>prudently and efficiently</u> address the Existing Capacity Deficit;</p> <p>.....</p> <p>(collectively and individually, the <b>AN Proposed Transitional Arrangements</b>).</p>	<ul style="list-style-type: none"> <li>• <b>QRC change in paragraph (C):</b> Any decision to propose an Expansion should have regard to the prudence of such a project. We think this as an implicit part of the paragraph and also consistent with the undertaking overall. Making it express simply makes this clear.</li> <li>• <b>QRC comment: Aurizon Network’s proposed new defined term “AN Proposed Transitional Arrangements”:</b> The defined term is used throughout the amendments. The purpose of the new term (and the definition) is to limit Transitional Arrangements to those that are proposed by Aurizon Network. The use of the definition limits the powers of the Independent Expert and the QCA in a way that does not exist in the current approved undertaking (see for example, 7A.5(d) of the current approved undertaking).  QRC has recommended changes where Aurizon Network has proposed to use this</li> </ul>

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			<p>term to address this limitation (see further in this table below).</p> <p>Alternatively, it may be possible to address this issue, by amending the definition 'AN Proposed Transitional Arrangements' (and renaming the term) in a way so that it is not limited to Transitional Arrangements proposed by Aurizon Network.</p>
2.	7A.5(ba)	<p>(ba) Where:</p> <p>(i) Aurizon Network proposes that a Concept Study be undertaken in accordance with clause 7A.5(a)(iii)(E) and the Independent Expert decides that a Concept Study should be undertaken by Aurizon Network; or</p> <p>(ii) the Independent Expert otherwise determines that it would benefit from a Concept Study from Aurizon Network to reach a view on <u>anythe</u> recommendation to be made to the QCA on the most effective and efficient <del>AN Proposed</del> Transitional Arrangement to address an Existing Capacity Deficit,</p> <p>the Independent Expert will provide a written recommendation to the QCA (copied to Aurizon Network) that Aurizon Network undertake the Concept Study and provide a copy to the Independent Expert, the QCA, the affected End Users and Chair of the Rail Industry Group together with the supplementary detailed report to be prepared by Aurizon Network as referred to in clause 7.5A(ea)(i) and, <u>where considered appropriate</u> (in the sole discretion of the Independent Expert), that the Concept Study include a Pre-feasibility Study execution plan.</p>	<ul style="list-style-type: none"> <li>• 'AN Proposed' Transition Arrangement is too restrictive. It means that the Independent Expert can only ask for a Concept Study for an Expansion recommended by AN in its detailed report (not another Expansion which the Independent Expert may think is more appropriate).</li> <li>• Using "<i>where considered appropriate</i>" in the closing language (yellow highlighting) confuses when the Independent Expert's recommendation can require inclusion of a Pre-Feasibility study. The Independent Expert's discretion to require this should not be hampered.</li> </ul>

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3.	7A.5(bb)	(bb) If the QCA agrees with the recommendation made by the Independent Expert under clause 7A.5(ba) it will make a determination to that effect requiring Aurizon Network to undertake the Concept Study (including where applicable, the Pre-feasibility Study execution plan) recommended by the Independent Expert, as soon as practicable, having regard to the nature of the Concept Study. <u>Unless the QCA's determination otherwise requires, a Concept Study undertaken by Aurizon Network under clause 7A.5 does not need to (and is not to) include a Pre-feasibility Study execution plan.</u>	This change is required because without it, by definition a "Concept Study" requires the inclusion of a Pre-Feasibility Study execution plan.
4.	7A.5(bd)	(bd) Aurizon Network's reasonable costs of undertaking a Concept Study <del>required</del> <u>by in accordance with</u> a determination of the QCA under any provision of this clause 7A.5 will be treated as follows:  .....	As well as being reasonable, Aurizon Network's costs should only be recoverable if any conditions (or similar) stipulated in the QCA's determination are complied with. We think using "in accordance with" language is required to capture this. Alternatively, "required by" could be retained by inserting "and in accordance with" immediately after.
5.	7A.5(d)	(d) <u>Subject to clauses 7A.5(da), 7A.5(ea), 7A.5(m) and 7A.5(n), if</u> <del>if</del> affected End Users and Aurizon Network have not reached an agreement as to which <del>of the AN Proposed</del> Transitional Arrangements should be implemented, the Independent Expert must review any report provided by Aurizon Network under clause 7A.5(a)(iii) and promptly <u>(subject to clause 7A.5(da))</u> make a	<ul style="list-style-type: none"> <li>The inclusion of the 'subject to' language (2 instances) is required to reflect other paragraphs which seek to provide greater clarity as to the scope of the Independent Expert's and QCA's role (in response to</li> </ul>

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		<p>recommendation to the QCA with respect to which <del>of the AN Proposed</del> Transitional Arrangements it considers will most effectively and efficiently resolve the Existing Capacity Deficit, including with regard to:</p> <ul style="list-style-type: none"> <li>(i) which <del>of the AN Proposed</del> Transitional Arrangements will result in the lowest net present cost applying the Discount Rate to all Access Holders without prejudice to the reliability and performance (in the long and short term) of the Rail Infrastructure;</li> <li>(ii) forecast demand for Capacity (but excluding any forecast demand by an Access Holder which is in excess of its Train Service Entitlements); and</li> <li><del>(iii) any Annual Capacity Assessment which the Independent Expert has undertaken or is undertaking pursuant to clause 7A.4.2; and</del></li> <li><u>(iv) such other facts or circumstances which the Independent Expert (acting reasonably) considers appropriate.</u></li> </ul>	<p>Aurizon Network’s proposal to limit those roles) – see our comments on clauses 7A.5(da), (ea), (m) and (n) below;</p> <ul style="list-style-type: none"> <li>• Using “AN Proposed” Transitional Arrangements language is too restrictive. It reflects Aurizon Network’s approach that the clause 7A.5 provisions more generally only apply to arrangements which Aurizon Network itself proposes. It would mean that neither the Independent Expert nor QCA could make recommendations / determinations about any Transitional Arrangements except for “AN Proposed Transitional Arrangements” (or later “AN Alternative TAs”).</li> <li>• QRC suggest that it is helpful to clarify that the Independent Expert may take into account other “facts and circumstances which it considers appropriate”. For example, this would enable the Independent Expert to take into account changes in demand profile over the relevant period ie – by loadpoint, operational improvements, transfers, other Expansions etc and delivery timing all of which may impact the proposed benefits and viability of that project.</li> </ul> <p>Given that the Independent Expert is in a unique position of knowledge it would be a wasted opportunity for the Independent Expert not to expressly have this right.</p>

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6.	7A.5(da)	<p><del>(da) Nothing in this clause 7A.5 prevents the Independent Expert making a recommendation to the QCA under clause 7A.5(d) with respect to AN Proposed Transitional Arrangements pending either:</del></p> <p><del>(i) — the QCA's determination pursuant to clause 7A.5(bb) as to whether a Concept Study is to be completed; or</del></p> <p><del>(ii) — the completion of a Concept Study that the QCA determines, pursuant to clause 7A.5(bb), should be completed. If the Independent Expert makes a recommendation to the QCA under clause 7A.5 that Aurizon Network undertake a Concept Study in respect of one or more proposed Expansions (each a <b>Relevant Expansion</b>):</del></p> <p><u>(i) the Independent Expert may, acting reasonably, elect the time at which it provides its recommendation pursuant to clause 7A.5(d) or 7A.5(ea)(v) (as applicable) from the following:</u></p> <p><u>(A) while the QCA is still considering whether to make a determination under clause 7A.5(bb) requiring Aurizon Network to prepare a Concept Study in respect of any one or more of the Relevant Expansions provided that if the QCA ultimately decides not to make a determination requiring Aurizon Network to undertake a Concept Study under clause 7A.5(bb) in respect of the Relevant Expansions (or decides to make a determination requiring a Concept Study in respect of some only, and not all, Relevant Expansions) the Independent Expert may provide a revised recommendation pursuant to clause 7A.5(d) or 7A.5(ea)(v) (as applicable) promptly after the QCA's decision; or</u></p> <p><u>(B) promptly after the QCA has decided, in respect of all the Relevant Expansions, whether or not to make a determination under clause 7A.5(bb) requiring Aurizon Network to prepare a Concept Study; or</u></p> <p><u>(C) if the QCA makes a determination under clause 7A.5(bb) requiring Aurizon Network to prepare a Concept Study in respect of any one or more of the Relevant Expansions, within a reasonable period after the Independent Expert receives the Supplementary Detailed Report in respect of the Concept Study;</u></p>	<p>The purpose of this paragraph should be to provide clarity around the Independent Expert scoping and timing its recommendation(s) about those projects which are to be implemented where Concept Study(ies) are part of the overall solution under consideration.</p> <p>Aurizon Network's drafting only provides limited scope – namely recognition that an IE recommendation might be “pending” either a QCA determination or completion of a Concept Study. Also use of “AN Proposed” Transitional Arrangement is once again, too restrictive (once again, seeking to limit IE's discretion as to recommending solutions).</p> <p>We think there should be greater (but not unlimited) flexibility for the Independent Expert to be able to make decisions about how best to time when it makes recommendations in these circumstances.</p> <p>QRC's suggested redraft includes:</p> <ul style="list-style-type: none"> <li>• Flexibility for Independent Expert to choose when it will give its recommendation(s) (from a closed list of possible options, including to defer the decision until the Concept Study is completed); and</li> <li>• Express recognition of the following: <ul style="list-style-type: none"> <li>○ recommendations made earlier in the process (ie. a “pending” type situation)</li> </ul> </li> </ul>



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		<p><u>(ii) if the Independent Expert makes its recommendation under clause 7A.5(d) or 7A.5(ea)(v) (as applicable) at a time provided in either clause 7A.5(da)(i)(A) or (B), in addition to the matters set out in clause 7A.5(d)(i)-(iv), the Independent Expert must have regard to the fact that the Concept Study is yet to be completed and its recommendation may, without limitation, include Transitional Arrangements (other than Relevant Expansions) which are recommended:</u></p> <p><u>(A) as temporary or permanent measures (as described in the Independent Expert’s recommendation) (where temporary measures may, for example, be subject to or pending the QCA’s determination under clause 7A.5(bb) or completion of the Concept Study for the Relevant Expansions and review of the Supplemental Detailed Report) or a combination of both; and/or</u></p> <p><u>(B) to address discrete parts of the Existing Capacity Deficit, which may include any part of the Existing Capacity Deficit which the Independent Expert considers:</u></p> <p><u>(1) will not be, or is unlikely to be, resolved by the Relevant Expansions even if they ultimately proceed under clause 7A.5(i) (if any); and/or</u></p> <p><u>(2) will, or will likely, be resolved by one or more of the Relevant Expansions if it ultimately proceeds under clause 7A.5(i), and</u></p> <p><u>(iii) if the Independent Expert elects to make its recommendation under clause 7A.5(d) or 7A.5(ea)(v) (as applicable) in accordance with clause 7A.5(da)(i)(C) and the Independent Expert is also required to provide another recommendation under this clause 7A.5 at or around the same time in respect of the same (or parts of the same) Existing Capacity Deficit, the Independent Expert may provide a consolidated recommendation for both purposes.</u></p>	<p>can be expressed to be temporary measures and/or address specific parts of the Existing Capacity Deficit;</p> <ul style="list-style-type: none"> <li>○ what matters the Independent Expert must take into consideration when making a recommendation in a “Concept Study pending” situation; and</li> <li>○ Independent Expert can make “consolidated” recommendations.</li> </ul> <p>We think it is important for the drafting to be clear so that there is a suitable balance between the Independent Expert’s level of flexibility and its limits.</p>
7.	7A.5(e)	(e) Within 15 days (or such longer period as may be required by the QCA) of receiving a recommendation from the Independent Expert under any provision of this clause 7A.5, the QCA must make a determination as to which <del>of the AN Proposed</del> Transitional	The Aurizon Network language would prevent the Independent Expert recommending and the QCA making a determination for any

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		<p>Arrangements <del>or alternative Transitional Arrangement in its Supplementary Detailed Report (AN Alternative TAs), as applicable,</del> recommended by the Independent Expert will most efficiently and effectively resolve all or part of the Existing Capacity Deficit or Remaining Existing Capacity Deficit, as applicable, including with regard to which <del>of the AN Proposed Transitional Arrangements or AN Alternative TAs, as applicable,</del> will result in the lowest net present cost applying the Discount Rate to all Access Holders without prejudice to the reliability and performance (in the long and short term) of the Rail Infrastructure provided that the QCA's determination must be consistent with the System Operating Parameters other than as required to accommodate an operational change deemed prudent by the QCA for the purpose of rectifying the Existing Capacity Deficit or Remaining Existing Capacity Deficit, as applicable.</p>	<p>Transitional Arrangement unless it had first been proposed by AN (either "AN Proposed Transitional Arrangements" or "AN Alternative TAs").</p>
8.	7A.5(ea) (Previously 7A.5(db))	<p>(ea) The following will apply where the QCA makes a determination under clause 7A.5(bb) requiring Aurizon Network to prepare a Concept Study, after that Concept Study is undertaken:</p> <p>(i) Aurizon Network <del>will</del><b>must</b> promptly provide to the Independent Expert (copied to the QCA and the Chair of the Rail Industry Group) a copy of the Concept Study together with a supplementary detailed report (<b>Supplementary Detailed Report</b>) making a recommendation as to whether one or more of the Expansions the subject of a Concept Study should proceed to be implemented so as to address any Existing Capacity Deficit remaining after taking into account:</p> <p style="padding-left: 40px;"><u>(A) the extent to which any <del>AN Proposed</del> Transitional Arrangements already the subject of a QCA determination under clause 7A.5(e) have, or will, address the Existing Capacity Deficit; and</u></p> <p style="padding-left: 40px;"><u>(B) the terms of the QCA's determination under clause 7A.5(e) applying to any such Transitional Arrangements (for example, if any such Transitional Arrangements are temporary);</u></p> <p style="padding-left: 40px;"><b>(Remaining Existing Capacity Deficit);</b></p> <p>.....</p> <p>(v) if Aurizon Network and the affected End Users do not agree with Aurizon Network's recommendation in the Supplementary Detailed Report or Aurizon</p>	<ul style="list-style-type: none"> <li>• <b>Paragraph (i)</b></li> </ul> <p>We think the intent is that this is an Aurizon obligation and, accordingly, suggest using "must" not "will.</p> <ul style="list-style-type: none"> <li>• <b>New paragraph (i)(B)</b></li> </ul> <p>For determining the Remaining Existing Capacity Deficit, it is implicit that the impact of any condition or other term of the QCA determination applying to a Transitional Arrangement must be taken into account (not just the relevant Transitional Arrangement itself). We think expressly stating this makes it clear.</p> <ul style="list-style-type: none"> <li>• Language (paragraphs (i), (v) and (vi)) again reflects AN's approach – that determinations can only be made for measures which have first been proposed by AN (eg. "AN Proposed Transitional</li> </ul>

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		<p>Network recommends in the Supplementary Detailed Report that any one or more of the Expansions the subject of the Concept Study should not proceed, the Independent Expert must review the Concept Study and the Supplementary Detailed Report and promptly <u>(subject to clause 7A.5(da))</u> make a recommendation to the QCA with respect to which <del>of the AN Proposed Transitional Arrangements</del> <u>(which may include -and/or any of the alternative Transitional Arrangements referred to in clause 7A.5(ea)(iii) and/or other alternative Transitional Arrangements)</u> it considers will most effectively and efficiently resolve the Remaining Existing Capacity Deficit, including with regard to:</p> <p>(A) whether the Expansion the subject of the Concept Study would most effectively and efficiently resolve the Existing Capacity Deficit; and</p> <p>(B) <del>the matters set out in clause 7A.5(d)(i)-(iv).any Annual Capacity Assessment which the Independent Expert has undertaken or is undertaking pursuant to clause 7A.4.2;</del> and</p> <p>(vi) where <u>the Independent Expert is considering whether to make a recommendation under clause 7A.5(ea)(v) for an Expansion as an alternative Transitional Arrangement (whether the Expansion has been proposed by Aurizon Network <del>proposes an Expansion as an AN Alternate TA or otherwise)</del>, the Independent Expert may, before making <u>any such</u> recommendation <del>under clause 7A.5(ea)(v)</del>, make a recommendation to the QCA that a Concept Study be carried out by Aurizon Network in relation to that Expansion <u>(and any such recommendation will be deemed to be a recommendation given under clause 7A.5(ab)).</u></u></p>	<p>Arrangements or “AN Alternate TA”). Independent Expert and QCA should not be hindered thus. If other measures are considered more suitable, QRC considers this should be allowed.</p> <ul style="list-style-type: none"> <li>• <b>Paragraph (v)</b></li> </ul> <p>We think that it should be clear in paragraph (v) that when there is a need for <i>alternate</i> Transitional Arrangements to be considered the Independent Expert’s processes and role remains the same as for consideration of initial Transitional Arrangement:</p> <ul style="list-style-type: none"> <li>○ Independent Expert has the same discretion as to timing its recommendation when there is a Concept Study for an alternate Expansion (recommended inclusion of “subject to clause 7A.5(da)” language); and</li> <li>○ Independent Expert is allowed to bring all of its knowledge to bear in making recommendations (recommended change to (v)(B)).</li> </ul>

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			<ul style="list-style-type: none"> <li>• <b>Paragraph (vi) – recommended change to closing language</b></li> </ul> <p>Where the Independent Expert recommends a Concept Study for an alternative Expansion, we think the intent is that the same provisions of 7A.5 should apply as for a Concept Study that is recommended under paragraph (ba). QRC suggests that this can be achieved in a simple drafting manner by deeming a recommendation for a Concept Study under this paragraph to be given under clause 7A.5(ab).</p>
9.	7A.5(f)	(f) Subject to clause 7A.5(h), Aurizon Network must comply with any determination made by the QCA under this clause 7A.5, including by doing everything reasonably necessary to implement the type of <u>and timing for</u> Transitional Arrangements determined by the QCA in a prudent and diligent manner so as to resolve the Existing Capacity Deficit (or Remaining Existing Capacity Deficit, as applicable) as soon as reasonably practicable, having regard to the nature and type of Transitional Arrangements required.	We think the intent is that the Independent Expert and QCA will have discretion to include requirements in their recommendations / determinations as to when specific Transitional Arrangements are to be implemented. We think expressly referring to timing in this paragraph makes this clear.
10.	7A.5(i)	(i) If Aurizon Network and affected End Users agree that an Expansion is the most effective and efficient option to address the Existing Capacity Deficit (or Remaining Existing Capacity Deficit, as applicable) and affected End Users wish to rectify the Existing Capacity Deficit (or Remaining Existing Capacity Deficit, as applicable), or if the QCA otherwise determines that an Expansion is the most effective and efficient option to address the Existing Capacity Deficit (or Remaining Existing Capacity Deficit, as applicable), then: <ul style="list-style-type: none"> <li>(i) the Independent Expert must review and approve the efficiency <del>and</del> prudence <u>and timing</u> of the proposed Expansion prior to Aurizon Network incurring any construction expense in relation to the proposed</li> </ul>	QRC suggests that timing is an important consideration as well as efficiency and prudence and, therefore, should be part of what needs to be approved by the Independent Expert.

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		<p>Expansion. Where the Independent Expert does not approve the efficiency <del>and</del>, prudence <u>and timing</u> of the Expansion, Aurizon Network must submit an alternative proposal that:</p> <p>(A) Aurizon Network and the affected End Users have agreed will address the Existing Capacity Deficit (or Remaining Existing Capacity Deficit, as applicable) for approval; or</p> <p>(B) (if Aurizon Network and the affected End Users have not agreed an alternative proposal within 20 Business Days after the Independent Expert decides not to approve the efficiency <del>and</del>, prudence <u>and timing</u> of the Expansion), Aurizon Network (acting reasonably) determines will address the Existing Capacity Deficit (or Remaining Existing Capacity Deficit, as applicable);</p> <p>(ii) any alternative proposal required to be submitted by Aurizon Network in accordance with this clause 7A.5(i)(i) will be reviewed by the Independent Expert for efficiency <del>and</del>, prudence <u>and timing</u>. Unless and until the Independent Expert approves the efficiency <del>and</del>, prudence <u>and timing</u> of the proposed Expansion (as set out in any alternative proposal required to be submitted by Aurizon Network in accordance with clause 7A.5(i)(i)), Aurizon Network must not incur any construction expenditure in relation to the proposed Expansion.</p> <p>(iii) subject to clause 7A.5(i)(v), Aurizon Network is obliged to <u>promptly</u> undertake and fund the Expansion <u>in accordance with the timing as approved by the Independent Expert and otherwise promptly</u> at the Approved WACC applicable from time to time;</p> <p>(iv) the value of the Expansion will be included in the Regulatory Asset Base;</p> <p>(v) Aurizon Network will only be obliged to undertake and fund an Expansion up to an amount of \$300 million (in aggregate across all Expansions required in accordance with this clause); and</p>	

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		(vi) for clarity, the pricing principles to apply to an Expansion are set out in Part 6 and Schedule F.	
11.	Clause 7A.5(m)	<p>(m) Any recommendation by the Independent Expert made under this clause 7A.5 and any determination by the QCA contemplated by this clause 7A.5 may be:</p> <p>(i) a recommendation or determination (as applicable) not to address some or all of the Existing Capacity Deficit or Remaining Existing Capacity Deficit, as applicable (or not to do so until certain conditions arise); or</p> <p>(ii) a solution comprising or otherwise including:</p> <p>(A) more than one <del>AN Proposed Transitional Arrangement or AN Alternative TA</del> (including more than one type); and/or</p> <p>(B) implementation of one or more <del>AN Proposed Transitional Arrangements or AN Alternative TA Arrangement</del>:</p> <p>(1) in the future or at different times (including delayed implementation and/or a staged approach), with or without interim steps; and/or</p> <p>(2) as temporary measures.</p>	Language again reflects AN's approach – that recommendations and determinations can only be made for measures which have first been proposed by AN (eg. "AN Proposed Transitional Arrangements or "AN Alternate TA"). Independent Expert and QCA should not be hindered thus.
12.	Clauses 7A.5(n) and (o)	<p>(n) Without limitation to clause 7A.5(m):</p> <p>(i) <u>Aurizon Network's views, reports and/or recommendations provided as contemplated in clause 7A.5 do not limit the nature or scope of any recommendation by the Independent Expert under clause 7A.5 and, for clarity, the Independent Expert's recommendations under those clauses may be different (including as to the type or timing of the Transitional Arrangements) to those proposed by Aurizon Network;</u></p>	<ul style="list-style-type: none"> <li>Aurizon Network is wanting the Independent Expert to be limited to recommending things which Aurizon Network has first proposed. This is definitely not what the users are seeking.</li> </ul> <p>QRC's suggested paragraph (i) makes this clear, along with the changes to replace references to "AN Proposed" Transitional</p>

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		<p>(ii) where <u>an Expansion is proposed or otherwise under consideration as one of the Transitional Arrangements to address an Existing Capacity Deficit (or any Remaining Existing Capacity Deficit) or</u> the QCA makes a determination in relation to an Expansion <u>then, subject to any terms to the contrary in any QCA determination,</u> the implementation of any other QCA determination relating to another <del>AN Proposed Transitional Arrangements or AN Alternative TAsArrangement</del> (for example, voluntary relinquishments), should not be delayed pending any <u>recommendation, determination or other approval for, or undertaking any</u> Concept Study or construction of <u>the</u> Expansion;</p> <p>(iii) where an Expansion is the subject of (or part of) any <del>AN Proposed Transitional Arrangement</del> <u>proposed or any AN Alternative TA</u> <del>otherwise under consideration (proposed Expansion)</del> to address all or any part of an Existing Capacity Deficit or Remaining Existing Capacity Deficit, as applicable, a recommendation by the Independent Expert or determination by the QCA (as applicable) in accordance with clause 7A.5 to pursue the Expansion may include a recommendation by the Independent Expert and a requirement by the QCA (as applicable) that <u>Aurizon Network should:</u></p> <p>(A) <del>Aurizon Network should</del> undertake either or both a Pre-feasibility Study or Feasibility Study for the proposed Expansion<del>;</del></p> <p><u>(B) comply with any one or more provisions of clauses 8.3 or 8.4 (or any part or parts thereof) in undertaking the Pre-Feasibility Study or Feasibility Study for the proposed Expansion.</u></p> <p>Where a Pre-feasibility Study and/or Feasibility Study is required by a determination of the QCA<del>;</del></p> <p><u>(C)</u> Aurizon Network must comply with any such requirement;</p> <p><del>(DB)</del> the proposed Expansion <u>will</u> be reconsidered by the Independent Expert for a recommendation to the QCA, and by</p>	<p>Arrangements and/or “AN Alternative TAs” throughout paragraph (n).</p> <ul style="list-style-type: none"> <li>• <b>Paragraph (ii) (previously (i))</b></li> </ul> <p>QRC has identified the following gaps in Aurizon Network’s drafting in this clause:</p> <ul style="list-style-type: none"> <li>○ The clause doesn’t apply: <ul style="list-style-type: none"> <li>➢ before the QCA has made a determination about a proposed Expansion (eg. if the Independent Expert is still considering whether to recommend a Concept Study or the QCA is still considering whether to make a determination); or</li> <li>➢ pending any “recommendation, determination or approval for a Concept Study”.</li> </ul> </li> <li>○ It doesn’t recognise that the QCA’s determination may speak to the relative timings (ie. may have terms which are contrary to what this paragraph requires);</li> </ul> <p>QRC’s suggested wording addresses these gaps.</p> <ul style="list-style-type: none"> <li>• <b>Paragraph (iii) (previously (ii))</b></li> </ul> <p><u>New paragraph (B)</u></p>

Item No.	Clause/ Sub-clause	Change recommended by QRC	Explanation
		<p>the QCA in making a further determination, <del>both</del> following completion of the Pre-feasibility Study and/or Feasibility Study <u>(as applicable)</u> to confirm whether or not the proposed Expansion remains the most efficient and effective means of resolving all or part of the Existing Capacity Deficit or Remaining Existing Capacity Deficit; <u>and</u></p> <p><u>(E) Clause 7A.5(i) will not apply to the proposed Expansion unless, following reconsideration in respect of the Feasibility Study (or where the QCA determines that only a Pre-feasibility Study is required, following reconsideration in respect of the Pre-feasibility Study):</u></p> <p><u>(1) Aurizon Network and affected End Users agree (or confirm their agreement, as applicable) that the proposed Expansion is the most effective and efficient option to address the Existing Capacity Deficit (or Remaining Existing Capacity Deficit, as applicable) and affected End Users wish to rectify the Existing Capacity Deficit (or Remaining Existing Capacity Deficit, as applicable); or</u></p> <p><u>(2) the QCA otherwise determines (or confirms its previous determination, as applicable) that the proposed Expansion is the most effective and efficient option to address the Existing Capacity Deficit (or Remaining Existing Capacity Deficit, as applicable).</u></p> <p><u>(ive)</u> Where the QCA determines that a Pre-feasibility Study or Feasibility Study is to be undertaken by Aurizon Network under clause 7A.5(n)(iii):</p> <p><u>(A4)</u> Aurizon Network must undertake the Pre-feasibility Study and/or Feasibility Study (unless, in respect of the Feasibility Study, the QCA determines following a submission from</p>	<p>Aurizon Network is proposing (clauses 8.3.1A/8.4.1A) that the provisions for normal conduct of Pre-feasibility / Feasibility Studies not apply to undertaking these studies where required under clause 7A.5. QRC considers there should be scope for the Independent Expert to recommend / QCA to require compliance with certain provisions of these normal clauses (8.3, 8.4) (ie. by expressly nominating these “in” as part of the recommendation / determination).</p> <p><u>New paragraph (E)</u></p> <p>If a Pre-feasibility and/or Feasibility Study is required, an Expansion should not be able to be presented for the final construction “approval” (under 7A.5(i)) until reconsideration following those studies through Aurizon Network supplemental report / Independent Expert recommendation / QCA determination gate process has been completed. The Aurizon Network drafting is silent on this matter and therefore leaves the matter open to dispute what applies.</p> <p>QRC’s new paragraph (E) makes this clear.</p> <ul style="list-style-type: none"> <li>• <b>Paragraph (iv) (previously (o))</b></li> </ul>



Item No.	Clause/ Sub-clause	Change recommended by QRC	Explanation
		<p>Aurizon Network, that the Feasibility Study is not required given the outcome of the Pre-feasibility Study); <del>and</del></p> <p><del>(B) Aurizon Network will be entitled where compliance with any provisions of clauses 8.3 and/or 8.4 (or any part or parts thereof) in undertaking the Pre-Feasibility Study and/or Feasibility Study (as applicable)) is required by a determination by the QCA, Aurizon Network must comply with any such requirement; and</del></p> <p><u>(C2) the provisions of clause 7A.5, clause 2.2 of Schedule E and clause 4.3(c) of Schedule F relating to Concept Studies will apply to the Pre-feasibility Study or Feasibility Study (as applicable) to the extent relevant (including for the purposes of determining Aurizon Network’s entitlement to recover its reasonable costs of undertaking the Pre-feasibility Study or Feasibility Study in accordance with and subject to clauses 7A.5(bd)(i) and (ii) and for reconsideration of the proposed Expansion) as if all references in those clauses to “Concept Study” were references to “Pre-feasibility Study” or “Feasibility Study”, as applicable.</u></p>	<p><u>General</u></p> <p>This provision would appear to follow as part of paragraph (n) and accordingly, we think it should be renumbered (n)(iv) (and the cross reference updated as shown in line 3).</p> <p><u>New paragraph (B)</u></p> <p>As stated above, QRC considers there should be scope for the Independent Expert to recommend / QCA to require compliance with certain provisions of clauses 8.3/8.4 (the normal clauses for conduct of these types of studies). QRC’s suggested new paragraph (B) is Aurizon Network’s obligation to comply where this is the case.</p> <p>Changes to paragraph (C) (previously (2))</p> <p>Aurizon Network is proposing that the normal provisions for these studies (clauses 8.3, 8.4) not usually apply where these studies are required by a QCA determination under clause 7A.5. Aurizon Network’s language for this paragraph only addressed recovery of its costs.</p> <p>QRC’s suggested changes to this clause makes it clear that where pre-feasibility or feasibility studies are required under clause 7A.5, all of the provisions of clause</p>

Item No.	Clause/ Sub-clause	Change recommended by QRC	Explanation
			7A.5 applying to Concept Studies will apply to the further studies (to the extent relevant).
13.	New 7A.5(o)	<u>(o) An earlier recommendation by the Independent Expert, or determination by the QCA, under clause 7A.5 does not operate to limit any subsequent recommendation or determination (as applicable) which may be made by the Independent Expert or the QCA (as applicable) under clause 7A.5 even if the recommendation or determination (as applicable) is in respect of the same Existing Capacity Deficit (or parts of the same Existing Capacity Deficit).</u>	The Independent Expert and QCA should be able to make a recommendation / determination on the basis of the most up to date information and circumstances and should not be limited by prior recommendations / determinations. Aurizon Network's drafting is silent on the matter and therefore leaves it open to argument. QRC's language makes this clear.
<b>OTHER AMENDED PROVISIONS</b>			
14.	8.3.1A Application	<p><b>8.3.1A Application</b></p> <p>For clarity, the provisions of clause 8.3 (other than clause 8.3.4(d)) do not apply in the case of Expansions to be undertaken in accordance with clause 7A.5 to address any Existing Capacity Deficit. <u>except where and to the extent that, for any such Expansion, the QCA's relevant determination under clause 7A.5 for that Expansion otherwise requires.</u></p>	See explanation on clause 7A.5(n)(iii)(B) above. QRC's recommendation is that the Independent Expert / QCA have discretion to expressly make a recommendation / determination that some of the normal provisions for undertaking pre-feasibility studies (clause 8.3) should apply.
15.	8.3.4 General provisions	<p><b>8.3.4 General provisions</b></p> <p>.....</p> <p>(d) The capital expenditure for an Expansion includes:</p>	<ul style="list-style-type: none"> <li>• <b>Changes to (d)(ii)</b></li> </ul> <p>QRC's suggested changes are for consistency with paragraph (i) ("relating to that Expansion") and to recognise that the cost of the Concept Study will only become "capital expenditure" if the Expansion</p>

Item No.	Clause/ Sub-clause	Change recommended by QRC	Explanation
		<p>(i) the cost of a Pre-feasibility Study or Feasibility Study relating to that Expansion; and</p> <p>(ii) where a Concept Study <u>relating to that Expansion</u> was undertaken pursuant to a QCA determination under clause 7A.5 <u>prior to that Expansion proceeding</u>, the cost of that Concept Study. —</p> <p>However:</p> <p><u>(iii)</u> any amounts that are not repaid or reimbursed (as applicable):</p> <p><del>(iii)(A)</del> <u>(A)</u> for a Pre-feasibility Study (other than a Pre-feasibility Study required pursuant to a QCA determination under clause 7A.5), under clause 8.4.4(b)(iii)(A); <del>and</del></p> <p><u>(B)</u> for a Feasibility Study (other than a Feasibility Study required pursuant to a QCA determination under clause 7A.5), under clause 8.4.4(b)(iii)(B); <del>and</del></p> <p>(iv) <u>for a Concept Study, Pre-feasibility Study or Feasibility Study required pursuant to a QCA determination under clause 7A.5, any costs for which clause 7A.5(bd) does not provide treatment,</u></p> <p>will not be treated as capital expenditure and will not be included in the Regulatory Asset Base.</p>	<p>ultimately proceeds (“prior to that Expansion proceeding”).</p> <ul style="list-style-type: none"> <li><u>New paragraph (v)</u></li> </ul> <p>Clause 7A.5(bd) only deals with Aurizon Network’s “reasonable costs of undertaking [the relevant study]...” (and provides for these to be included in the regulatory asset base - paragraph (iii)).</p> <p>Aurizon Network’s drafting for this clause is silent on any exclusions in the case of costs for studies required pursuant to clause 7A.5 (which opens the argument that all costs, including ones that aren’t reasonable, can be included as capital expenditure). QRC’s suggested change clarifies that the same limits as clause 7A.5(bd) apply here.</p>
16.	8.4.1A Application	<p><b>8.4.1A Application</b></p> <p>For clarity, the provisions of this clause 8.4 (other than clause 8.4.1(a)(iii)) do not apply in the case of Expansions to be undertaken in accordance with clause 7A.5 to address any Existing Capacity Deficit: <u>except where and to the extent that, for any such Expansion, the QCA’s relevant determination under clause 7A.5 for that Expansion otherwise requires.</u></p>	<p>See explanation on clause 7A.5(n)(iii)(B) above. QRC’s recommendation is that the Independent Expert / QCA have discretion to expressly make a recommendation / determination that some of the normal provisions for undertaking feasibility studies (clause 8.4) should apply.</p>

Item No.	Clause/ Sub-clause	Change recommended by QRC	Explanation
17.	Clause 12 Definitions	<p><del>AN Alternative TA has the meaning given to that term in clause 7.5A(e).</del></p> <p><b>[AN Proposed Transitional Arrangements</b> has the meaning given to that term in clause 7.5A(a)(iii).]</p> <p><b>AN Performance Breach</b></p> <p>(a)...</p> <p>(b) ...</p> <p>(c)....,</p> <p>except to the extent that any act or omission of Aurizon Network under <b>paragraphs (a) - (c)</b> is directly attributable to:</p> <p>(d) the proper performance, completion and/or implementation of any Transitional Arrangements agreed to or determined under clause 7A.5;</p> <p>(e) a delay to the implementation of any Transitional Arrangements on the basis that the QCA has not made any relevant determination <u>except to the extent that any such delay is [directly attributable to any act or omission of Aurizon Network];</u> or</p> <p>(f) an agreement, recommendation or determination under clause 7A.5 that Aurizon Network will not implement any Transitional Arrangement to address an Existing Capacity Deficit or Remaining Existing Capacity Deficit.</p>	<ul style="list-style-type: none"> <li>• Whether definitions of “AN Alternative TA” or AN Proposed Transitional Arrangements” are required depends on whether (as per AN’s approach) the Independent Expert and QCA are to be limited in the scope of recommendations / determinations to what AN is proposing. QRC suggests that should not be the case.</li> <li>• We do not think the carve out (from “AN Performance Breach”) in paragraph (e) should apply to the extent the delay is attributable to Aurizon Network.</li> </ul>

Item No.	Clause/ Sub-clause	Change recommended by QRC	Explanation
		.....	
18.	Schedule E, clause 2.2	<p><b>Schedule E, clause 2.2</b></p> <p>(aa) Where Aurizon Network undertakes a Concept Study pursuant to a QCA determination under clause 7A.5 and the Expansion to which the Concept Study relates does not ultimately proceed under clause 7A.5(<del>ida</del>):</p> <p>.....</p> <p>(iii) the <b>Concept</b> Study <del>c</del>Costs approved by the QCA as prudent and efficient will be included in the value of the Regulatory Asset Base(s) to which the Concept Study relates (or where the Concept Study relates to more than one Coal System, the Study Costs will be allocated amongst Coal Systems (including allocations amongst Reference Tariffs) on a pro-rata basis by reference to the other Approved Capital Expenditure), for the next Year of the Term following approval of that expenditure by the QCA. For clarity, no other party’s approval is required for inclusion of the capital expenditure and the QCA will not be required to undertake any consultation in respect of the expenditure related to the Concept Study.</p>	<p>These are drafting changes:</p> <ul style="list-style-type: none"> <li>• To fix an incorrect cross reference; and</li> <li>• To change “Study Costs” to “Concept Study costs” (for consistency with terminology with balance of the clause and clause 7A.5(bd)).</li> </ul>

# High level explanation table – Amendments for QRC Submission

Item	Event	QRC amendment – brief explanation
1	AN proposing Transitional Arrangements (Detailed Report)	Expansions which are shortlisted in AN's proposed Transitional Arrangements must be prudent and efficient
2	The IE recommends that a Concept Study be undertaken	<ul style="list-style-type: none"> <li>• The IE should not be limited to asking for Concept Studies on “AN Proposed Transitional Arrangements”. That is, it should be free to recommend Concept Studies for other projects. This issue (of AN seeking to limit what IE and QCA can recommend/determine to what AN has proposed) occurs in a number of clauses.<sup>1</sup></li> <li>• The IE should have complete discretion to decide whether or not a Concept Study should include a Pre-feasibility Study execution plan.</li> </ul>
3	The QCA decides that a Concept Study is required	Clarification that a Concept Study undertaken under the Transitional Arrangement process only includes a Pre-feasibility Study execution plan where the QCA specifies that to be the case. Otherwise, the normal definition of Concept Study (originally developed for use under Part 8 arrangements) requires that it must include a Pre-feasibility Study execution plan.
4	AN ability to recover costs for a Concept Study	Cost recovery should be conditional on the study complying with QCA's requirements.
5	IE prepares for recommending Transitional Arrangements (general)	<ul style="list-style-type: none"> <li>• Transitional Arrangements which are the subject of IE's recommendation should not be limited to AN proposals (see Item 2).</li> <li>• When deciding what it will recommend, IE should be able to consider “such other facts or circumstances which the Independent Expert (acting reasonably) considers appropriate”.</li> <li>• IE's approach to be subject to a number of other clauses which provide more information on the IE's and QCA's role.</li> </ul>

<sup>1</sup> Red text has been used in this table wherever this same issue arises.

Item	Event	QRC amendment – brief explanation
6	IE prepares for recommending Transitional Arrangements where it has also recommended one or more Concept Studies	<ul style="list-style-type: none"> <li>• <b>Transitional Arrangements should not be limited to AN proposals (see Item 2).</b></li> <li>• IE should have flexibility in terms of timing (ie. when to recommend Transitional Arrangements) and scope, in the case where Concept Studies are recommended, including while the QCA is considering whether a Concept Study is required, while the study is being prepared, or after the study is completed.</li> </ul>
7	QCA prepares for a decision about Transitional Arrangements	<p><b>The QCA should not be limited to AN proposals in making its determinations about what Transitional Arrangements are required (see Item 2).</b></p>
8	<p><b>AN action:</b> AN completes a required Concept Study and determines Remaining Existing Capacity Deficit.</p> <p><b>IE action:</b> IE prepares for recommendation(s) following completion of a required Concept Study</p>	<p><b>AN action (paragraph (i))</b></p> <ul style="list-style-type: none"> <li>• To clarify that AN has an obligation, not just an intention, to provide a copy of the Concept Study and the Supplementary Detailed Report to IE, QCA and Chair of Rail Industry Group.</li> <li>• In determining what Existing Capacity Deficit remains (which the relevant Expansion might address), AN should also take into account: <ul style="list-style-type: none"> <li>– <b>All Transitional Arrangements already required by the QCA (not only those which were originally proposed by AN) (see Item 7);</b></li> <li>– Any terms of the QCA’s determinations (ie. that might impact on the extent or period for which already required Transitional Arrangements are in place).</li> </ul> </li> </ul> <p><b>IE action (paragraphs (v) and (vi))</b></p> <ul style="list-style-type: none"> <li>• <b>Transitional Arrangements should not be limited to AN proposals. The IE should be free to recommend Transitional Arrangements which include an Expansion in respect of which a Concept Study has already been undertaken and/or any other alternative projects (including projects not proposed by AN). The IE should also be free to recommend Concept Studies for alternative projects (not only AN proposed alternatives). (see Item 2).</b></li> <li>• In preparing for its recommendations, the IE should be able to have regard to “other facts and circumstances....” (see Item 5).</li> <li>• If the IE does make a recommendation for Concept Studies for any alternative projects, the same provisions should apply as for a Concept Study recommended by the IE following AN’s original Detailed Report and the IE should have the same</li> </ul>

Item	Event	QRC amendment – brief explanation
		flexibilities in terms of timing and scope for its recommendations as apply for an initially recommended Concept Study (see Item 6).
9	AN complies with QCA determination	If the QCA nominates particular timing for a Transitional Arrangement, AN should implement the Transitional Arrangement in accordance with that timing (otherwise as soon as practicable).
10	A proposed Expansion is submitted to IE for final construction approval (ie. approval of efficiency and prudence).	Clarification that timing is part of what is to be considered for approval by the IE. It should be recognised that timing is an implicit part of efficiency and prudence consideration by making timing express.
11	Types of IE recommendations and QCA decisions	Neither the IE nor the QCA should be limited to what AN has proposed (see Item 2).
12	Further information about IE recommendations and/or QCA determinations	<ul style="list-style-type: none"> <li>• Neither the IE nor the QCA should be limited to what AN has proposed (see Item 2).</li> <li>• The general principle (that implementation of another Transitional Arrangement already the subject of a QCA determination should not be delayed where a Concept Study is required for an Expansion) should also apply even before it is clear whether the QCA will require the Concept Study to be undertaken (eg. prior to the IE's recommendation or while still under QCA consideration).</li> <li>• Also, the QCA should be free to nominate timing requirements (eg. it should be free to specify a timing for another Transitional Arrangement that is dependent on some event or occurrence being satisfied, or not satisfied, regarding a proposed Expansion).</li> <li>• If further studies are required, the IE and QCA should have the discretion to recommend / require AN to comply with parts of the normal Part 8 provisions.</li> <li>• A staged “gate” approach should apply for further studies (if these are required). The same Transitional Arrangement process and provisions should apply as do for Concept Studies (including AN's cost recovery and reconsideration by the IE for recommendation and QCA for determination). An Expansion should not proceed to the next stage (or for final construction approval) if it does not pass through an earlier stage with confirmation by an IE recommendation and QCA determination.</li> </ul>



Item	Event	QRC amendment – brief explanation
13	Further information about IE's and QCA's earlier and subsequent recommendations / determinations	The IE and QCA should be able to make a recommendation / determination on the basis of the most up to date information and circumstances and should not be limited by prior recommendations / determinations.
14 & 16	Application of clauses 8.3 and 8.4 (normal provision for expansion studies)	See Item 12, 4th dot point.
15	AN's ability to recover costs for concept or further studies	Where an Expansion proceeds following the Transitional Arrangement process, costs should only be included in the regulatory asset base if they are covered by the relevant provision – ie. cost recovery should be conditional on compliance with the QCA's determination(s) (as well as being reasonable).
17	Definitions	<ul style="list-style-type: none"> <li>• Definitions specifically to cover what AN has proposed are not required because Transitional Arrangements should not be so limited (see Item 2).</li> <li>• A delay to implementing a Transitional Arrangement (on the basis that the QCA has not made a determination) should not be an exception to "AN Performance Breach" if the delay is due to AN.</li> </ul>

## Draft Rail Working Group Feedback and Consideration

**[Note:** The final column sets out responses to Aurizon Network’s comments provided (in Annexure A to its covering submission for the DAAU) on some of RWG’s previously suggested changes. The separate QRC submission on the DAAU contains a full mark up of its remaining requested changes and covering explanations for these.]

Draft RWG Feedback	Details	Response
Forecast demand and Annual Capacity Assessment considerations (clause 7A.5(d)(ii))	<p>Aurizon Network agreed with RWG that in making its recommendation to the QCA in respect of proposed Transitional Arrangements, the Independent Expert could take into account:</p> <ul style="list-style-type: none"> <li>• "forecast demand for Capacity (but excluding any forecast demand by an Access Holder which is in excess of its Train Service Entitlements)"; and</li> <li>• any Annual Capacity Assessment undertaken by the Independent Expert pursuant to clause 7A.4.2 since the ICAR was published.</li> </ul>	<p>The Aurizon Network comment does not address the other RWG change to this clause which was not included by Aurizon Network (expressly allowing the IE to take into account other facts etc).</p>
Pre-Feasibility execution plan (clause 7A.5(ba))	<p>Aurizon Network agreed to RWG's request that a Concept Study could include a Pre-feasibility execution plan.</p>	<p>The Aurizon Network comment does not address the other RWG changes to this clause which were not included by Aurizon Network.</p>
Timing of recommendation by Independent Expert (clause 7A.5(da))	<p>RWG proposed that the Independent Expert could elect, from a number of alternatives, the timing at which the Independent Expert would provide its recommendation to the QCA on Transitional Arrangements pending completion of various measures.</p> <p>Aurizon Network considered that the 'timing points' which industry included were unnecessarily restrictive. However, Aurizon Network agreed that guidance should be given on the timing of the recommendation and included drafting that confirms that the Independent Expert should be able to make such a recommendation at any point in time.</p>	<p>We don't think the Aurizon Network drafting does allow the IE to make a recommendation <u>at any point in time</u>. Clause 7A.5(d) requires the IE to make its recommendation "promptly" after receiving the AN report. Aurizon Network's language in (da) does not change this, it merely recognises that the recommendation that is made can have some "interim" nature (ie. can be expressed to be pending either of those matters being achieved). In any case, the drafting doesn't make it clear that if a recommendation is made earlier, the IE can provide a further/replacement recommendation once those matters have been completed.</p> <p>The RWG drafting provided flexibility for the IE to provide or delay a recommendation at such time as the IE may think fit (within certain limits – being the timing points) and made it clear that further recommendations can be made if the IE does provide recommendations earlier in the process.</p> <p>We think the RWG drafting is much clearer and express as to the IE's discretion (and</p>

Draft RWG  
Feedback

Details

Response

relevant boundaries) and has been included in the QRC submission table of mark-up.

Staged implementation of Transitional Arrangements (clause 7A.5(ea)(i))

RWG proposed drafting that allowed for staged implementation of Transitional Arrangements pending the outcome of a Concept Study as determined by the QCA. RWG's drafting reflected the staged implementation approach by references to "temporary" or "permanent" measures.

Aurizon Network agreed to the concept of a staged implementation of Transitional Arrangements (without accepting industry's nomenclature of temporary and permanent measures) and accepted the concept of having to address "Remaining Existing Capacity Deficits" following the implementation of the first round of Transitional Arrangements.

The use of "temporary" language in the RWG drafting was for the purposes of an example only and is not considered to be essential. But the consideration to which is related is considered to be important in determining what the "Remaining Existing Capacity Deficit" is.

Aurizon Network has only adopted one measure proposed by the RWG drafting (for the purposes of determining Remaining Existing Capacity Deficit): what is remaining following implementation of the first round of Transitional Arrangements.

However, this ignores that what is remaining could also be influenced by any terms of the QCA's determination. We don't see it as essential to use "temporary" or "permanent" language (this was merely included in the RWG drafting as an example).

We have included this additional consideration (without using "temporary" or "permanent" language) in the QRC's submission table of markup as we think it is relevant to include.

Alternative Transitional Arrangements

Aurizon Network agreed with the RWG-proposed concept of requiring Aurizon Network, as part of its Supplementary Detailed Report, to make a recommendation on alternative Transitional Arrangements which, in Aurizon Network's view, could effectively and efficiently address any Remaining Existing Capacity Deficit or whether, in Aurizon Network's view (acting reasonably), affected Access Holders and Customers would prefer not to do anything to address the Remaining Existing Capacity Deficit.

The manner in which Aurizon Network has adopted the concept significantly differs from the RWG proposed approach. Aurizon Network's approach to the alternatives follows that which has been reflected throughout the DAAU – that the IE and QCA can only recommend / make determinations about Transitional Measures which Aurizon Network has first proposed.

The RWG proposed drafting incorporated this concept as a means of requiring Aurizon Network to provide these views for the benefit of the Independent Expert or the QCA (but without impacting their discretion).

Completion of Pre- Feasibility Study or Feasibility Study

RWG recommended that, following the completion of either a Pre-feasibility or Feasibility Study, the relevant Expansion will be subject to a further requirement for either End User approval of the Expansion or QCA determination that the Expansion

We think that a staged gate approach is required. If QCA makes a determination requiring either or both a pre-feasibility or feasibility study then the Expansion should be reconsidered in accordance with the same

Draft RWG  
Feedback

Details

Response

(clause  
7A.5(n)(ii)(B))

is the most effective and efficient option to address the ECO.

Aurizon Network agreed to the proposal that the relevant Expansion should be the subject of a further determination by the QCA and has included drafting to that effect. However, Aurizon Network did not agree to the proposal for a further round of End User approval as it is more appropriate for the QCA to make the determination on the most effective and efficient option to address the ECD.

processes and provisions under 7A.5 as apply to concept studies and, only if approved by the End Users or determined by the QCA, should the Expansion proceed to the next stage.

The RWG drafting allows for (but does not require) End User approval – if End User approval is not obtained, the Expansion moves to the next stage only with a QCA determination.

We think this is a reasonable approach and these changes have been included in the QRC submission table of mark up.

Relief from  
Concept Study  
obligation

RWG requested a change that would relieve Aurizon Network of the obligation to comply with a determination made by the QCA to undertake a Concept Study where the Aurizon Network and the affected End Users have also already agreed that a Concept Study is not required for that Expansion.

Aurizon Network rejected this proposed change because the outcome contemplated by that change (i.e. the express agreement that a Concept Study is not required) is not one contemplated by the Detailed Report and its consultation with End Users.

Our understanding of the Aurizon Network comment is that the change was rejected because the factual situation where it would be applicable has not (and will not) arisen.

Namely, a situation where:

- QCA requires a Concept Study for a proposed Expansion; but
- affected End Users and Aurizon Network manage to reach agreement on the Expansion and agree no Concept Study is required.

If this is correct (ie. the above situation will not arise), we agree with Aurizon Network rejecting the change.

Delay to carrying  
out Expansion

RWG suggested a new clause which provided that:

*"Notwithstanding Aurizon Network and the affected End Users having jointly agreed that an Expansion is the most effective and efficient option to address the Existing Capacity Deficit, if the Independent Expert makes a recommendation to the QCA that Aurizon Network undertake a Concept Study" the Expansion will not proceed "unless and until the first to occur of:*

- I. Aurizon Network and the affected End Users jointly agree that a Concept Study under clause ... is not required for that Expansion;*
- II. the QCA does not agree with the Independent Expert's recommendation to require, and declines to make a determination requiring, Aurizon Network to*

As above, if this situation has not arisen then there is no need for this RWG proposed change.

*undertake the Concept Study for that Expansion; and*

- III. the Concept Study is completed and the application of clause ... to that Expansion is confirmed pursuant to clause ... (subject to any further application of this clause in respect of a Pre-feasibility Study or Feasibility Study, as applicable pursuant to clause ..."*

Aurizon Network rejected RWG's proposal because it does not reflect the fact that the affected End Users and Aurizon Network have not jointly agreed that an Expansion is required. In other words, the circumstances in which the clause operates (i.e. the wording in the opening paragraph) have not arisen.

Expansion of Independent Expert's role (clause 7A.5(d))

RWG proposed that the Independent Expert may make a recommendation to the QCA for Transitional Arrangements beyond those that have been identified by Aurizon Network in consultation with affected End Users, and that, in making such recommendation, the Independent Expert could consider anything that the Independent Expert considered appropriate.

Aurizon Network rejected this proposal because the DAAU relates to Concept Studies, and it was never intended to vary the roles of the Independent Expert and the QCA under UT5 in ways that did not relate to Concept Studies.

RWG also proposed an expanded role for the Independent Expert in approving the timing of the proposed Expansion. Aurizon Network did not accept this drafting as it is beyond the scope of the Independent Expert's remit in UT5.

#### **Scope of Transitional Arrangements open to IE / QCA recommendation / determination**

We do not agree that the IE and QCA are presently only entitled to make recommendations or determinations on projects that have been identified by Aurizon Network (see clause 7A.5(d) of the current approved undertaking which refers to Transitional Arrangements of "the type").

Aurizon Network's drafting of the DAAU seeks to change the current position (by removing the "type of" language and introducing new definitions "AN Proposed Transitional Arrangements" and "AN Alternative TAs") – to limit the powers of the Independent Expert and the QCA in a way that, in our view, does not exist in the current approved undertaking.

#### **Permitted considerations**

As to the matters the IE can consider, the IE's position regarding information is unique and we think it is wasted opportunity and could lead to less than optimal outcomes if it was not able to use its discretion and take into account information as it thinks appropriate.

#### **Express reference to timing**

We think approval of timing of a project is implicit in the IE's approval (under clause 7A.5(i)) of "prudence and efficiency". Timing is an integral part of considering the prudence and efficiency of a project and the RWG's proposal to expressly refer to timing is only clarifying the existing intent.

Draft RWG Feedback	Details	Response
Compliance with Chapter 8	<p>RWG proposed that where the Independent Expert made a recommendation (and/or the QCA made a determination) that an Expansion was the most effective and efficient Transitional Arrangement, then the Independent Expert and/or the QCA may include a recommendation or determination (as applicable) that "any one or more of the provisions of clauses 8.3 and 8.4 (or any part thereof)" would apply.</p> <p>Aurizon Network did not include this drafting as clauses 8.3 and 8.4 were expressly not intended by UT5 to apply in respect of Expansions under clause 7A.5 and the breadth of the proposed drafting only served to create uncertainty.</p>	<p>While it may be appropriate for exclusion of 8.3 and 8.4 to be the generic approach for pre-feasibility and feasibility studies required under clause 7A.5, we think that there should be discretion to require compliance with provisions as may be appropriate to suit specific circumstances.</p> <p>This has been included in the QRC submission table of mark up.</p>
Relinquishments	<p>Customers have raised the potential to be able to further relinquish access rights where the ECO has not yet been resolved, or a plan is not in place to resolve this. Aurizon Network considers there may be merit to this, however due to timing, and as the principle has not been consulted on more broadly with customers, it has not included this in the DAAU. Further, consideration must be given to the impact of one customer relinquishing access rights at no cost on other customers' access charges, and the costs already incurred by customers in undertaking studies.</p> <p>Aurizon Network is willing to consider and work with the RWG on this concept, and for any agreed positions to be proposed to the QCA as part of its consultation process.</p>	Noted.