

Dalrymple Bay Coal Terminal User Group



**Submission to the Queensland Competition Authority: Climate
Change Expenditure Review**

23 June 2023

1 Purpose of submission

This submission is provided on behalf of the existing users of the Dalrymple Bay Coal Terminal (the **DBCT User Group**) in respect of the Queensland Competition Authority's (**QCA**) climate change expenditure review 2022-2023 process.

It therefore principally provides responses to the questions raised in the QCA's draft position paper of 21 April 2023 (the **Draft Paper**) and related matters raised in the stakeholder forum of 5 May 2023.

As the consultation questions raised in the Draft Paper are often inter-related, the DBCT User Group considers that, in addition to the responses to each question enclosed in Schedule 1, it is worth restating the key principles and issues that reflect its position, namely:

- (a) the existing provisions of the *Queensland Competition Authority Act 1997* (Qld) (the **QCA Act**) and Dalrymple Bay Infrastructure's (**DBI**) undertaking applicable to the Terminal coal handling services approved under the QCA Act (the **Undertaking**) already provide for an assessment of prudence based on factors that can and do accommodate assessment of climate related expenditure;
 - (b) that position is demonstrated by the fact that climate related expenditure is already occurring (see for example renewable power generated electricity supply being contracted for the Terminal) under the existing statutory and regulatory regime without material concerns being raised by users or infrastructure providers with the current arrangements;
 - (c) like any cost or project, whether climate related expenditure is prudent will depend on the circumstances of the relevant project and an assessment of the costs and benefits of the particular investment;
 - (d) because prudence is always dependent on the circumstances, costs and benefits of each individual project, any bias towards approval or any indication that approval will be provided in particular circumstances, is not consistent with the existing statutory and regulatory framework and is at risk of resulting in approval of inefficient expenditure and/or 'gold plating';
 - (e) in addition, most climate related expenditure proposals will form part of broader projects, or also be sought to be justified as prudent on the basis of other non-climate grounds, such that specific criteria for climate change expenditure that do not apply to other types of expenditure will be difficult to apply in practice;
 - (f) where users are being required to pay all of the costs of adaptation measures, users views about whether those costs are worthwhile to address or mitigate risks should be given very significant weight given that users are best placed to judge whether such costs are worthwhile to achieve the benefit of mitigating risks of loss of capacity, suspension for force majeure (and resulting take or pay and demurrage costs that may be incurred by users during such suspension) or being required to fund reinstatement;
 - (g) where users are being required to pay costs of greenhouse gas mitigation measures like carbon offsets, claims of benefits to users which are not verified by users themselves need to be treated with great caution, as it is likely to be principally the infrastructure provider that benefits from such measures (e.g. through burnished ESG credentials delivering better costs of finance and a higher stock price through being a more attractive investment to a broader range of potential investors) – and investment in measures beyond the extent to which users place value on them is not something which would occur in a workably competitive market;
 - (h) in the case of the Terminal specifically, the undertaking provides a critical role for users and the user-owned independent operator in relation to prudence in recognition of the fact that users are best placed to assess prudence, including:
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- (i) operating costs being paid on a pass through basis without regulatory oversight (i.e. the operator's operation and maintenance costs are effectively deemed to be prudent);
 - (ii) non-expansion capital expenditure (**NECAP**) being able to be deemed prudent where recommended by the operator and not objected to by users within a certain period: section 12.10 Undertaking; and
 - (iii) 60/60 requirement in relation to customer approval regarding the prudence of the scope of expansion works: section 12.5 Undertaking,and that position is appropriate and should be continued;
 - (i) as a result of each of the points above, there is no evident justification for further guidance being issued on how the QCA would assess prudence of climate related expenditure;
 - (j) instead, there is real danger in providing a separate QCA guideline or paper which seeks to provide additional guidance or principles which would be applied in assessing prudence of climate expenditure because:
 - (i) it would introduce tests and considerations that are not reflected in the statutory and regulatory framework under which decisions should be made and thereby create uncertainty and, potentially, grounds for regulatory challenge to QCA decisions;
 - (ii) by providing guidance in the absence of specific projects, there is a risk that guidelines would effectively pre-judge or interfere with future merits assessments;
 - (iii) the DBCT User Group's experience with past QCA guidelines and position papers produced by the QCA is that they have tended to be general and high level in nature and so not provided greater certainty to the parties or guidance on the particular circumstances that arise. In some instances they have instead provided an additional source of contention as Dalrymple Bay Infrastructure and the User Group have held conflicting views about how to interpret the QCA's guidance;
 - (k) in addition, in respect of the Terminal in particular, the DBCT User Group has serious concerns that where the negotiate-arbitrate regime approved by the QCA has resulted in certain components of pricing being commercially agreed, which in turn continue to be dependent on prudence being assessed in accordance with the undertaking:
 - (i) it is not consistent with DBI's or the QCA's rationale for that form of regulation (giving primacy to commercial negotiations) if the regulatory model in relation to prudence is effectively altered after a commercial resolution is struck;
 - (ii) if a guideline was to make an assessment of prudence of climate change expenditure more likely, or expand the range of climate related expenditure that would be considered prudent, it would change the risk profile for DBI and resulting costs of equity and debt *after* prices have been struck that took into account like changes in DBI's costs of capital, creating the potential for windfall gains; and
 - (iii) such a guideline would involve further regulatory intervention without any explanation as to why further regulatory intervention in assessment of prudence is appropriate but regulatory intervention in ensuring an efficient overall price is not;
 - (l) to the extent that the QCA is nevertheless determined to produce a guideline or paper, the DBCT User Group respectively submits that it should:
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- (i) be confined to describing the sort of evidence that the QCA would expect to be produced to support a claim for prudence of climate change related expenditure;
- (ii) make it clear that providing any such checklist of evidence will not conclusively result in an investment being assessed as prudent, because the merits of a prudence assessment will always need to be considered in the context of each individual project, the costs and benefits it delivers, and applying the statutory and regulatory framework applicable to that project and the relevant regulated infrastructure service;
- (iii) emphasise, as the Draft Paper does, the important role of customer views given the customers are principally exposed to funding the costs of such expenditure;
- (iv) where envisaging business cases or investment documents of the regulated infrastructure service provider are provided, acknowledge that a typical business case prepared by a regulated infrastructure provider is likely to be insufficient in relation to assessing the benefits arising from the proposed investment – as it will principally be concerned with benefits to the infrastructure service provider;
- (v) require a separate identification of the costs and benefits to users and the costs and benefits to the regulated infrastructure service provider, such that any discrepancies between the entities paying the costs and those obtaining benefits from the investment are made clear;
- (vi) be more cautious than the Draft Paper in referring to vague and undefinable concepts like 'community expectations' as being able to support prudence claims – as that will not produce the certainty the QCA desires and, in fact risk resulting in the bias towards granting prudence the QCA has indicated it is intending to avoid; and
- (vii) require concrete evidence that is able to be made public and scrutinised by stakeholders for any claim that climate expenditure investments are required to obtain access to financing, as the DBCT User Group considers that assertions of that nature need to be tested against market practice or evidence at the time before being accepted.

Schedule 1 to this submission contains responses to each of the specific consultation questions raised by the QCA that are guided by and consistent with these key principles.

Please do not hesitate contact John Hedge of Allens on (07) 3334 3171 or Ken Moore of Anglo American Metallurgical Coal (as current chair of the DBCT User Group) if you have any queries in relation to aspects of this submission.

Schedule 1 – Responses to consultation questions

	QCA Consultation Questions	DBCT User Group responses
1.	<p>QCA Act: To what extent is climate-related expenditure consistent with the access undertaking approval criteria in s. 138(2) of the QCA Act? Do the matters discussed in Chapter 3 appropriately capture the relevant considerations we ought to have regard to?</p>	<p>While climate change or potential climate impacts is not specifically referenced, the range of factors that the QCA must have regard to under section 138(2) QCA Act (and section 120 QCA Act) is sufficiently wide to enable the QCA to consider climate-related issues in decisions about approvals of access undertakings (particularly given the references to legitimate business interests of both owner and access seekers, the public interest, the pricing principles and any other issue the QCA considers relevant).</p> <p>The DBCT User Group considers the QCA is correct in its statement in the Draft Paper that <i>'our obligations under Part 5 of the QCA Act are consistent with enabling prudent and efficient expenditure, whether it is climate related or not'</i> (pg 17).</p> <p>The DBCT User Group also agrees that whether climate change expenditure is supported by those factors will, as recognised by the QCA, <i>'depend on the specific circumstances of the individual expenditure proposal'</i> (pg 19). Similarly, the DBCT User Group agrees that <i>'while some climate change expenditure will be consistent with the object clause, it will be more difficult to establish a nexus to that clause in other circumstances'</i> (pg 20).</p> <p>For that reason:</p> <ul style="list-style-type: none"> • there should not be a bias towards approval of climate-related expenditure (either generally or where certain pre-specified circumstances are met or evidence is provided), as depending on the costs and outcomes of each project, there can be both prudent and imprudent expenditure that is climate related; • it will be difficult for the QCA to provide guidance on how it will assess prudence in respect of future hypothetical projects without either creating real risks of pre-assessing particular types of expenditure without sufficient reference to the merits of individual projects or the applicable statutory/regulatory criteria or being so high level as to be of limited utility and risk introducing new points of contention between regulated service providers and users of such services.
2.	<p>Adequacy of existing frameworks: At a high level, do stakeholders accept that our</p>	<p>Yes – the DBCT User Group considers that existing prudency processes are appropriate for considering expenditure proposal in respect of DBCT, whether climate related or not. We agree with the QCA's view that <i>'the general scope, standard and cost appropriate to assessing prudency and efficient of expenditure proposals is fit for</i></p>

processes for assessing prudence and efficiency of expenditure proposals can be effectively applied to proposals for climate change related expenditure (adaptation and mitigation)?

purpose' (pg 31).

The DBCT User Group fully acknowledges the difficulties the QCA has noted do exist (i.e. undertaking of long term investments where there are uncertainties as to future events, externalities, and differences in willingness to commit expenditure between infrastructure providers and users). However, the DBCT User Group considers they equally exist for other types of expenditure.

In particular, in respect of the Terminal services, the DBCT User Group notes that the existing regime already provides mechanisms for dealing with these issues that will remain equally applicable to expenditure that is wholly or partly 'climate related' expenditure:

- operating costs are paid on a pass through basis without regulatory oversight (i.e. the operator's operation and maintenance costs are effectively deemed to be prudent as the user-owned operator is considered to make the appropriate trade-offs between costs and benefits of such expenditure);
- non-expansion capital expenditure (**NECAP**) is deemed prudent where recommended by the operator and not objected to by users within a certain period: section 12.10 Undertaking (and DBI can seek the QCA's approval for NECAP which is not deemed prudent in that way); and
- the 60/60 requirement provides for a certain degree of customer approval regarding the prudence of the scope of expansion works: section 12.5 Undertaking and a clear regime for up-front QCA consideration of each aspect of prudence,

and each of those arrangements should be continued.

In relation to the key example, which is referred to by DBI as a basis for challenging the adequacy of existing frameworks (the decision by the QCA that certain expenditure on carbon offsets by Seqwater would not be prudent), the DBCT User Group considers:

- the stance adopted by the QCA in respect of that particular expenditure not being prudent (the infrastructure provider buying carbon offsets at the cost of users without proper investigation of whether other forms of greenhouse gas mitigation were more efficient) entirely appropriate;
- it far from clear that DBI's example of obtaining carbon offsets to make an 8X expansion carbon neutral (that it indicates would be deterred by that previous finding) would be prudent noting that:
 - no view on prudence can reasonably be formed in the absence of any discussion of how much that would cost (likely to be very significant), what other mitigation measures were considered by DBI and

		<p>what benefits are seen to arise from going so far beyond DBI's legal obligations;</p> <ul style="list-style-type: none"> ○ such an approach goes beyond any strategy referred to in the DBI Master Plan, Sustainability Strategy 2020 or Sustainability Report 2022; ○ the benefits of such a position would principally fall to DBI (e.g. through giving rise to ESG credentials that may lead to commercial and reputation benefits, potentially including lower costs of financing and making DBI a more attractive equity investment); ○ the costs of such a position would fall entirely to users (both existing users under the commercially agreed arrangements and the 8X expansion users); ○ the existing users have reached a commercial agreement with DBI which provides an agreed return on investment which was set in the context of DBI's claims regarding 'ESG risks' and impacts on the costs of debt and equity, and it is difficult to see how it is prudent and appropriate for regulatory intervention that has the potential to deliver DBI benefits including potential reductions in those risks and costs of capital, while forcing users to pay for the costs of the offsets that were not envisaged at the time the commercial agreement was reached; and ○ it is inconsistent with the primacy of commercial negotiations DBI and the QCA relied on as the justification for the negotiate-arbitrate form of regulation which currently applies to the Terminal services, to dictate to 8X users that they should pay for a carbon neutral expansion in advance of any commercial negotiation of that matter having occurred.
3.	<p>Assessment: How can our assessment approach for climate-related spending, including the expected standard of strategic planning and business cases, most effectively align with regulated businesses' existing internal processes?</p>	<p>DBI is currently a single asset company, whose capital approval processes are presumably well aligned to the existing regulatory and commercial framework under which it has made extensive investments since regulation.</p> <p>Accordingly, we submit the best way to ensure that the QCA's assessment of prudence of all types of expenditure aligns with DBI's internal approval processes is to maintain the current arrangements, rather than supplementing them with new requirements specific to climate related expenditure.</p> <p>The DBCT User Group has no objection to the concept raised by the QCA that in order to support prudency claims expenditure should be aligned to a coherent and credible strategy/asset management plan and robust business case (although that should presumably be the case for all material expenditure, irrespective of whether it is climate related). Similarly we have no objection to businesses cases needing to address demonstrated need, consultation with customers, demonstrated consideration of options and efficient cost.</p> <p>However, we consider that it needs to be acknowledged that the usual internal business case a regulated</p>

		<p>infrastructure provider has prepared to date is likely to be insufficient in relation to assessing the benefits arising from the proposed investment – as it will principally be concerned with benefits to the infrastructure service provider – and not sufficient to address the costs as those will simply be assumed to be borne by the users in any case.</p> <p>If the QCA is minded to prescribe minimum requirements for a business case it should require a separate identification of the costs and benefits to users and the costs and benefits to the regulated infrastructure service provider, such that any discrepancies between the entities paying the costs and those obtaining benefits from the investment are made clear.</p> <p>The DBCT User Group also considers that it is dangerous to frame concepts like a 'demonstrated need' by reference to vague principles of community expectations which provides no real yardstick by which the QCA could assess whether such a need is demonstrated as part of a prudency assessment.</p> <p>Any guidance that is based on this approach will not achieve the QCA's stated objectives of providing a clear assessment framework and assisting the parties in negotiation how to proceed.</p>
4.	<p>Adaption: How can the assessment approach for adaptation spending best be applied to encourage parties to solve problems through long-term planning and consultation with customers?</p>	<p>As the QCA rightly notes '<i>infrastructure investors have always been made in the face of uncertainty about future weather-related events</i>' (pg 48). For example, the Terminal's resilience to cyclones has always formed part of the context for assessments of prudency of capital expenditure projects. That example also demonstrates the difficulty of utilising a specific approach to climate related expenditure, when resilience expenditure will increasingly be partly climate related and partly justified on other grounds.</p> <p>Consequently, the DBCT User Group considers that the existing regulatory framework and QCA approach to assessment of prudency remain well-suited to consideration of adaption expenditure.</p> <p>The DBCT User Group agrees with the QCA that fundamentally adaption investments should be aligned with an asset management strategy and supported by a robust business case. Such documents would be expected to cover matters like the risk the expenditure is addressing, alternative options and efficiency of cost for the chosen option.</p> <p>However, in assessing prudency it is important to recognise that:</p> <ul style="list-style-type: none"> • the risks of non-availability or destruction are borne by users (who also may have to assume take or pay obligations and demurrage in other parts of the logistics chain); and • the cost of (the return on and of capital on) adaption expenditure is borne by users, <p>such that it really needs to be the customers assessment of the trade-offs of costs and level of risks mitigated</p>

		<p>(taking into account both likelihood of occurring and consequences upon occurrence) that is given pre-eminence in assessing prudence. We strongly support the QCA's conclusion that <i>'given customers, particularly for transport infrastructure, are expected to pay for adaption expenditure and are affected by damage to the facility, they are best placed to assess the level of service reliability they require and the consequences of not having it'</i> (pg 50).</p> <p>Accordingly, it needs to be acknowledged that a typical business case from a regulated infrastructure provider will be insufficient in relation to assessing the benefits arising from the proposed investment – as it will principally be concerned with benefits to the infrastructure service provider and not be overly concerned with the costs due to being able to recover those from users. However, to support an assessment of prudence of adaption expenditure, such a business case really needs to separately identify the costs and benefits to users (informed by the views of users and, in the case of the Terminal, the views of the user owned operator) and demonstrate prudence from the perspective of a customer.</p> <p>For as long as the user-owned operator remains part of the regulatory and commercial framework for the Terminal, this is already catered for, particularly through the Operator's recommendations having a material impact on how prudence of NECAP is assessed under DBI's access undertaking.</p> <p>The DBCT User Group considers that the existing approach is appropriate in encouraging parties to solve problems through long-term planning and appropriate involvement of customers.</p>
5.	<p>Mitigation: How can the assessment approach facilitate prudent and efficient mitigation expenditure that provides value for money and meets the community's supported environmental goals?</p>	<p>Similar to its comments on Q4, the DBCT User Group is supportive of the need for alignment of greenhouse gas mitigation expenditure with business plans and strategy.</p> <p>The DBCT User Group also broadly agrees with the QCA's assessment that customer endorsed and legally mandated abatement measures would face less scrutiny.</p> <p>However, as noted in responses to other questions (Q2 and Q6), the DBCT User Group has serious reservations about mitigation expenditure, in particular, being automatically assessed as prudent in circumstances where it goes beyond legal and customer requirements and is funded by users while principally delivering benefits to the infrastructure provider (e.g. through impacts on cost of capital), thereby reducing costs and risks to DBI that were understood to exist at the point pricing for the Terminal services was agreed.</p> <p>Appropriate mitigation measures can and will be supported through the existing frameworks (see as a clear example the procurement of renewable energy for the Terminal by the user owned operator), which provide for the customers' consultation that the QCA (rightly) considers important.</p> <p>While the DBCT User Group understands the principle the QCA is aiming for in the Draft Paper for having regard to</p>

whether a mitigation strategy is consistent with that adopted by a well-managed business operating in a workably competitive environment (pg 55), we are concerned that is a nearly impossible test to apply in practice. By their nature, the businesses the QCA regulates are monopolies. They do not have to engage in mitigation in order to attract customers (which are effectively captive to the supplier/infrastructure) and because prices are not a matter of responding to demand and supply these monopoly businesses are not incentivised to invest in mitigation only to the extent valued by the customer. Rather they have strong incentives to, potentially, overinvest because they obtain benefits from ESG-related investing while the regulatory model guarantees the costs of doing so will be underwritten (and, as a result, to support prudency assessments the business case for mitigation expenditure would need to go beyond the considerations typically included in an infrastructure provider's business case and separately assess prudency based on the costs and benefits to users).

In that regard, the DBCT User Group considers the QCA should be cautious in introducing concepts like 'best practice' and 'community expectations' into assessments of prudency and automatically attributing as 'benefits to users' (which support an assessment of prudency) impacts on Scope 3 emissions and externality impacts, in circumstances where these are really benefits to the infrastructure provider but a prudency assessment will effectively facilitate those benefits being funded entirely by users. Broad and uncertain concepts of community expectations are not well suited to advance guidance from the QCA, and the extent of their relevance and whether they provide a justification for a particular climate related expenditure should fall to be assessed when considering prudency for the individual project concerned, rather than as the subject of further high level commentary in any guideline.

6. **Guideline:** Should we produce a guideline that indicates how we will consider climate change related expenditures? If yes, what matters should it contain, other than the matters outlined in Chapter 9?

For the reasons noted in this submission, the QCA should not publish a guideline that seeks to provide substantive guidance on how the QCA will assess the prudency of climate change related expenditures.

In particular:

- existing regulatory arrangements involve consideration of the same matters and remain appropriate for consideration of expenditure that is wholly or partly considered climate related;
- there is real danger in providing a separate QCA guideline or paper which seeks to provide additional guidance or principles which would be applied in assessing prudency of climate expenditure because:
 - it would introduce tests and considerations that are not reflected in the statutory and regulatory framework under which decisions should be made and thereby create uncertainty and, potentially, grounds for regulatory challenge to QCA decisions;

- by providing guidance in the absence of specific projects, there is a risk that guidelines would effectively pre-judge or interfere with future merits assessments;
- the DBCT User Group's experience with past QCA guidelines and position papers produced by the QCA is that they have tended to be general and high level in nature and have not provided greater certainty to the parties or guidance on the particular circumstances that arise. In some instances they have instead provided an additional source of contention as Dalrymple Bay Infrastructure and the User Group have held conflicting views about how to interpret the QCA's guidance;
- in respect of the Terminal in particular, the DBCT User Group has serious concerns that where the negotiate-arbitrate regime approved by the QCA has resulted in certain components of pricing being commercially agreed, which in turn continue to be dependent on prudency being assessed in accordance with the undertaking:
 - it is not consistent with DBI's or the QCA's rationale for that form of regulation (giving primacy to commercial negotiations) if the regulatory model in relation to prudency is effectively altered after a commercial resolution is struck;
 - where the guideline was to make an assessment of prudency of climate change expenditure more likely it would change the risk profile for DBI and resulting costs of equity and debt after prices have been struck that took into account like changes in DBI's costs of capital, creating the potential for windfall gains; and
 - such a guideline would involve regulatory intervention on a matter that does not need such intervention (prudency) having declined regulatory intervention on the issue where there was a clear need to prevent monopoly pricing (a reference tariff);

To the extent that the QCA nevertheless considers it appropriate to produce a guideline or paper, the DBCT User Group respectfully submits that it should:

- be confined to describing the sort of evidence that the QCA would expect to be produced to support a claim for prudency of climate change related expenditure;
- make it clear that providing any such checklist of evidence will not conclusively result in an investment being assessed as prudent, because the merits of a prudency assessment will always need to be considered in the context of each individual project, the costs and benefits it delivers, and applying the statutory and regulatory

		<p>framework applicable to that project and the relevant regulated infrastructure service;</p> <ul style="list-style-type: none"> • emphasise, as the Draft Paper does, the important role of customer views given the customers are principally exposed to funding the costs of such expenditure; • where envisaging business cases or investment documents of the regulated infrastructure service provider are provided, acknowledge that they are likely to be insufficient in relation to assessing the benefits arising from the proposed investment – as they will principally be concerned with benefits to the infrastructure service provider; • require a separate identification of the costs and benefits to users and the costs and benefits to the regulated infrastructure service provider, such that any discrepancies between the entities paying the costs and those obtaining benefits from the investment are made clear; • be more cautious than the Draft Paper in referring to vague and undefinable concepts like 'community expectations' as being able to support prudency claims – as that will not produce the certainty the QCA desires and, in fact risk resulting in the bias towards granting prudency the QCA has indicated it is intending to avoid; and • require concrete evidence that is able to be made public and scrutinised by stakeholders for any claim that climate expenditure investments are required to obtain access to financing, as the DBCT User Group considers that assertions of that nature need to be tested against market practice or evidence at the time before being accepted. <p>The QCA should carefully consider what it says about the perceived impact of such a guideline, given that it is supported by the monopoly infrastructure providers and opposed by users.</p>
7.	<p>Insurance: How can the regulatory regime promote efficient climate risk approaches, including insurance and pass-through mechanisms, that balance the interests of regulated businesses and their customers?</p>	<p>This balance is already achieved at DBCT through the existing regulatory framework. In particular, given that the independent user-owned operator is responsible for obtaining most insurances and those costs are passed through to users without QCA oversight.</p> <p>The existence of the independent user owned operator (which has appropriate incentives to make a prudent trade-off decision for customers between the costs of insurance and risks of damage/unavailability) is what ensures the balance of interests at DBCT currently.</p> <p>However, the DBCT User Group considers it is important that particular caution should be paid to prudency claims for self-insurance in relation to climate related matters given the potential for that resulting in an infrastructure provider earning above regulated returns where the premium or cost claimed for such insurance is not sourced</p>

		<p>from a competitive market and the contractual arrangements with users may result in users having to bear the costs of rectification/damage if they occur in any case.</p>
<p>8.</p>	<p>Other Matters: Are our existing processes for considering financing costs and asset stranding risk sufficiently developed and flexible to deal effectively with any such matters related to climate change?</p>	<p>This is not currently relevant to DBCT given the negotiate-arbitrate model has resulted in capital charges for access to the terminal being commercially agreed (taking into account the risks borne by DBI, including those mentioned by the QCA).</p> <p>However, the DBCT User Group reiterates the point that in that context, it is not appropriate (and inconsistent with the QCA's stated objective in adopting this form of regulation of giving primacy to commercially negotiated outcomes) to alter the risks assumed by DBI in providing services at the Terminal by changing how the QCA assesses prudence of climate change expenditure.</p> <p>Where any QCA guideline was to make an assessment of prudence of climate change expenditure more likely, or facilitate DBI boosting its ESG credentials at the cost of users, it changes the risk profile for DBI and resulting costs of equity and debt after prices have been struck that took into account likely changes in ESG impacts and DBI's costs of capital, creating the potential for windfall gains by DBI. For as long as the QCA continues to approve a form of regulation that results in the QCA having no control over DBI pricing, it is not appropriate for its to change the incentives DBI has and risks DBI bears (which DBI's own submissions recognised are closely intertwined) in relation to expenditure.</p> <p>We are comforted by the statements at the stakeholder forum that is not the QCA's intention, but remain concerned that any guidance published by the QCA which is directed at how the QCA would determine the merits of a prudence in respect of climate change expenditure risks doing that – given that each project should turn on its own merits – and is not well suited to pre-assessment.</p> <p>Finally the DBCT User Group notes comments by DBI about availability of finance, and simply notes that the QCA should require concrete evidence that is able to be made public and scrutinised by stakeholders for any claim that climate expenditure investments are required to obtain access to financing, as unsubstantiated assertions of that nature are easy to make and to support prudence need to be tested against market practice or evidence at the time.</p> <p>Impacts on the cost of capital of broader coal industry issues are better left for an assessment of reference tariffs in the context of the Queensland Rail or Aurizon Network undertakings where the QCA has the ability to consider both permitted returns and the approach to prudence of expenditure together.</p>