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Queensland Competition Authority
Level 27, 145 Ann St
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April 2023 GAPE Newlands Pricing DAAU

6 October 2023

Dear George,

Aurizon Network welcomes the opportunity to respond to the Queensland Competition Authority's (QCA) Draft Decision on 24 August 2023 (**Draft Decision**) to not approve the April 2023 GAPE Newlands Pricing DAAU (**April DAAU**) having regard to statutory criteria and stakeholder submissions.

This submission responds to the respective considerations and draft decisions on the relevant elements of the April DAAU. On balance, Aurizon Network accepts the substantive majority of the Draft Decisions. However, Aurizon Network considers the basis for the Draft Decision to not approve the proposed variation of the GAPE Reference Train Description to be inconsistent with the statutory criteria. Consequently, this submission largely provides additional clarifying information and further reasoning for the proposed variation in the GAPE Reference Train Description.

Renewals Allocation Methodology

The Draft Decision considers it appropriate to accept the April DAAU proposed approach to the allocation of future asset replacement and renewals expenditure on the shared Newlands rail corridor.

Aurizon Network notes the allocation methodology is to be based on the forecast gross tonne kilometres and acknowledges the Glencore concern that further amendments would be necessary to implement this approach where reference tariffs are determined using contracted volumes rather than forecast volumes. However, as the Draft Decision does not approve the use of contract volumes for the purpose of the Gtk Forecast, then the Gtk Forecast will reflect forecast gross tonne kilometres and no further amendments are necessary.

Inclusion of NSIE Amounts

The Draft Decision notes the QCA is minded to accept the proposed phased inclusion of \$81.4 million (as at 1 July 2023) of the deferred Newlands System Infrastructure Enhancements (**NSIE**) in the Newlands pricing RAB and those amounts should be socialised across all users of the Newlands System.

Aurizon Network considers socialisation is consistent with the benefits of the NSIE accruing to all Newlands users in two key ways:

1. without the NSIE, it may not have been economically or commercially feasible for the Carmichael Rail Network (**CRN**) to connect to a 20 tonne axle load Newlands system (or that it would have represented a lower net cost to the April DAAU)¹; and
2. legacy Newlands users obtain the benefit of the economies of scale and contribution to common costs made by post-GAPE Newlands users associated with connection of the CRN to the 26 tonne axle load enhanced Newlands system.

Notwithstanding, Aurizon Network recognises that the statutory criteria could support the application of differential pricing between legacy Newlands users and NAPE/post-GAPE Newlands users where it can be quantified and demonstrated that legacy customers would be subject to a lower tariff without the CRN volumes.

Aurizon Network will make appropriate adjustments to the FY24 RAB Roll-forward report to account for the cessation of deferral of NSIE amounts, including where those amounts will not be included in the Newlands pricing RAB.

Forecast Volumes

While the QCA considers there is merit in contract volume-based pricing, the Draft Decision notes the QCA is minded to '*retain the current pricing arrangement in the Newlands system at this time.*'²

Consequently, without the increased financial risks associated with the implementation of contract volume-based pricing, the QCA also considers that fee-free relinquishments are not necessary for Newlands users to manage contract volumes.

Aurizon Network notes that implementation of this Draft Decision will not require the proposed amendments associated with fee-relinquishment in section 7.4.8 of the April DAAU.

GAPE Reference Train Description

The Draft Decision notes that the QCA is minded to refuse to approve the proposed amendments that provide for the transfer of GAPE access rights to Newlands users in the presence of an Existing Capacity Deficit (**ECD**). The QCA acknowledges that such transfers would generally be consistent with improving efficiency but the presence of the ECD means these efficiency gains, in some circumstances, may not be realised.

This conclusion has a broader range of implications. This reasoning can be effectively expressed as a principle:

There are some circumstances where transfers which would involve the actual use of unused access rights of one access holder by another access holder should not be permissible where there is an ECD within an existing system.

¹ No evidence, argument or analysis has been presented in the consideration of the April DAAU or the initial GAPE and Newlands pricing DAAU in September 2022 which contradicts this assumption.

² Queensland Competition Authority (2023) Draft Decision on April 2023 GAPE Newlands Pricing DAAU, August, p. 10

Fundamentally, all transfers are assumed to involve an access holder seeking to sell or transfer unused access rights to another party who intends to use those access rights. Otherwise, there is no rational basis for the trade.

In Aurizon Network's view, a decision that would not allow the transfer of GAPE access rights to a Newlands user willing to pay the same fixed AT2 and AT4 tariffs associated with the GAPE project costs results in the following adverse consequences.

Decision has discriminatory effect

The decision to not approve an amendment which would facilitate the transfer of unused GAPE access rights from a GAPE Access Holder to a Newlands Access Seeker cannot be reconciled against the following permissible transfers of access rights unloading at Abbot Point:

- a GAPE Access Holder transferring unused GAPE access rights to an Access Seeker originating in the Goonyella system or another existing GAPE Access Holder also originating in the Goonyella system; and
- a Newlands Access Holder transferring unused Newlands access rights to another Newlands Access Holder intending to use those access rights.

Both circumstances have the same practical effect of increasing real demand for access to the Newlands shared rail corridor while there is an ECD. Therefore, the Draft Decision to not approve the proposed amendment to the GAPE Reference Train Description discriminates solely on the origin not currently being in the same system and the issue of increasing real demand in a capacity constrained system as the basis for refusal is not specific to the proposed amendment.

Decision disadvantages GAPE Customers

In circumstances where a Newlands customer is operating above its contractual entitlement due to the aggregate underutilisation of access rights by both Newlands and GAPE customers, then the Draft Decision not to approve the proposed amendment to the GAPE Reference Train Description potentially disadvantages GAPE customers as all revenue from adhoc railings accrues to the Newlands coal system.

Aurizon Network notes an Access Holder's ability to operate 'beyond its current contract position' is largely a consequence of the demand from other Access Holders being less than their contract position. Aurizon Network can provide the QCA data on TSE utilisation levels of GAPE and Newlands customers as at the end of the September 2023 quarter in response to a request for information from the QCA.

Decision interferes with a GAPE Access Holder's ability to mitigate its take or pay exposures

Consistent with clause 7A.5(y) and 7A.5(z) of the 2017 Access Undertaking (**Access Undertaking**) UT5, an ECD does not affect the rights or obligations in respect of an access agreement. The Draft Decision to refuse amendment to the GAPE Reference Train Description unreasonably constrains the rights and interests of an Access Holder to mitigate its take or pay liabilities under its GAPE Access Agreement through the transfer of those access rights to another party.

The Draft Decision notes the comments from QCoal that³:

until the ECD in the Newlands system is significantly reduced, or eliminated, Aurizon Network's proposal has the potential to further compromise opportunities for access holders to be able to utilise their contracted capacity.

Assuming all Newlands and GAPE Access Holders have the same rights to either use their access rights or manage them in a way which allows those access rights to be used, then not permitting transfers of existing GAPE Access Rights to a Newlands user that would pay the same reference tariff and contribute the same revenue to the rail infrastructure from the Newlands to Goonyella Junction to Abbot Point has the practical effect of conferring priority rights to some Access Holders over others (i.e. that some Access Holders should expect to be able to use more of their access rights than others where Committed Capacity exceeds the Deliverable Network Capacity).

Decision may promote less efficient outcomes

Aurizon Network notes that under the criteria for a transfer to take effect in clause 7.4.3(a), a GAPE to Newlands transfer would not be consistent with the requirement that the Train Services for the Transferred Access Rights are the same as the nature or type of Train Services for the Nominated Access Rights as they share no common costs.

However, in the event of an inconsistency between the access undertaking and an access agreement, the terms of the access agreement prevail. In circumstances where the terms of an access agreement could facilitate the transfer of access rights from a GAPE Access Holder to a Newlands Access Seeker, then this would likely require further amendments to the Access Undertaking to transfer costs from the GAPE System to the Newlands System associated with the transferred train paths. Aurizon Network considers the proposed amendment to the GAPE Reference Train Description is a less administratively complex approach to give effect to such a transfer. For clarity, Aurizon Network reiterates that the proposed variation is a necessary, but not sufficient, condition for the transfer of GAPE Access Rights to a Newlands user in respect of the GAPE Deeds.

Furthermore, as noted above, a GAPE Access Holder may currently elect to transfer its unused access rights to a Newlands Access Seeker who could satisfy the current GAPE Reference Train Description by utilising part of the Goonyella to Newlands Connection (i.e. the Newlands Access Seeker would operate GAPE Train Services). This may incentivise inefficient third-party investment such as a connection to the Goonyella to Newlands Connection or complex operational arrangements to achieve the same outcome as changing the GAPE Reference Train Description as proposed.

In light of these matters, Aurizon Network does not consider the Draft Decision to refuse to approve the proposed amendment to the GAPE Reference Train Description as being aligned to the statutory criteria.

Private Infrastructure

Aurizon Network acknowledges the Draft Decision that the proposed amendments to the definition of private infrastructure are appropriate in principle but that further amendments are required for the Bravus PIC discount to continue to apply.

³ Ibid, p. 12

Aurizon Network also notes the QCA comments⁴ that:

- *the term private infrastructure is used more broadly throughout UT5;*
- *they do not consider it appropriate to retrospectively change the application of PIC discounts for previously approved PIC amounts following an access holder's investment in private infrastructure, unless circumstances change such that the arrangements are providing benefits beyond those benefits originally intended.*
- *providing for retrospective changes to discounts will increase uncertainty for future access seekers as to the level of access charges that will be applied, where investment in private infrastructure to connect to the CQCN is required.*

In respect of the first point, the intention of the proposed amendment can be given effect and limited to the application of PIC discounts with the addition of 'for the purposes of clause 6.3.2' prior to 'to be constructed solely to connect an Access Holder's or a Customer's loading facility to Rail Infrastructure' in the second limb of the proposed amended definition of Private Infrastructure.

Aurizon Network considers retrospectivity to be an unavoidable consequence of the timing of the Bravus PIC approval and the April DAAU. This is particularly the case where submissions were made in response to the application for the PIC Amount as to whether a PIC discount should be applicable, but the QCA having determined that those matters were '*beyond the scope of this decision being made under clause 6.3.2, which relates specifically to the prudent and efficient value of the assets included in the PIC claim*'⁵.

In addition, Aurizon Network considers the approved PIC Amounts should be amended such that the CRN balloon loop is excluded from the PIC Amount. Such an amendment would have regard to the reasons in Aurizon Network's April 2022 explanatory paper on the consequential inconsistencies between Aurizon Network Access Undertaking and the CRN Access Policy in respect of Private Infrastructure. Aurizon Network also notes the Draft Decision has not addressed this aspect of Aurizon Network's submission and whether the CRN balloon loop should not have been included in the approved PIC Amount. In addition, the inclusion of the CRN balloon loop in the PIC Amount is not '*in line with existing arrangements*' as no other arrangements exist of mine specific infrastructure indirectly connecting to the CQCN via a private railway.

In respect of the last point, Aurizon Network considers the PIC Amount to be inconsequential in respect of the total costs associated with constructing the CRN and that the investment was not made in reliance on the application of a PIC discount or whether a PIC discount would even apply. Similarly, the change is specific to the circumstances equivalent to the connection of a railway and not the development of mine specific infrastructure. As such, the change would not increase uncertainty for future access seekers for coal carrying train services. The proposed change would also increase certainty for access seekers who intend to construct private infrastructure connecting to a private railway.

⁴ Ibid, pp. 13-14

⁵ Queensland Competition Authority (2022) Final Decision Private Incremental Costs: Carmichael Rail Loop and Connecting Infrastructure, December, p. 3

Aurizon Network notes that the costs of providing the PIC discount to coal carrying train services originating on the CRN is funded by an increase in the contribution to common costs by Newlands users and excluding Bravus, Newlands Customer submissions to the QCA did comment on the proposed amendment to Private Infrastructure.

Should the QCA consider in its final decision that the statutory criteria requires a PIC discount to apply to Bravus train services using the full PIC Amount approved by the QCA on 15 December 2022, then the proposed amendments to the definition of Private Infrastructure should be deferred to the next regulatory period where they can be considered in the context of the broader pricing arrangements on risk and cost allocation between customers.

Completed DAAUs

Since lodgement of the April DAAU on 6 April 2023, the QCA has approved the Reset Schedule F preliminary values and the Rebate Mechanism DAAU, which do not have amendments that inter-relate given this response.

Aurizon Network has assessed the proposed April 2023 DAAU amendments against the current approved Access Undertaking. A summary table at Attachment A compares the April 2023 DAAU amendments against those needed to give effect to the Draft Decision in the current approved Access Undertaking except for:

- including the proposed amendment to the GAPE Reference Train Description; and
- excluding the proposed amendment to Private Infrastructure.

Updated revenue and tariff tables consistent with the use of the volume forecasts in the Schedule F preliminary values are also provided in Attachment B.

Should you have any questions in relation to this submission please contact, Jon Windle via email jon.windle@aurizon.com.au.

Kind regards,



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Head of Finance and Regulation
Aurizon Network

Appendix A. Summary of Access Undertaking Amendments in Response to Draft Decision

April DAAU Amendment	Amendment Description	Status of April DAAU Amendments
New clause 7.4.8(m)	<p>Allow Newlands Access Holders the opportunity to relinquish excess or surplus Access Rights without the payment of a Relinquishment Fee associated with the introduction of contract volume pricing in Newlands.</p> <p>Notification of intention to relinquish must be made on or before the nominated date which will reflect the due date on submissions in response to the QCA Draft Decision on the April 2023 DAAU.</p> <p>References to the new clause 7.4.8(m) are also included in:</p> <ul style="list-style-type: none"> • clause 7.4.8(d); and • Schedule F clause 4.3(h). 	<p>Remove.</p> <p>Amendments not required with use of forecast volumes.</p> <p>Consequential amendments not necessary to:</p> <ul style="list-style-type: none"> • clause 7.4.8(d); and • Schedule F clause 4.3(h).
New clauses 7.4.8(n)-(q)	<p>Allow the contracting of Access Rights relinquished under 7.4.8(m) on the condition that the Independent Expert confirms:</p> <ul style="list-style-type: none"> • the Access Rights, including any Ancillary Access Rights do not exceed the Capacity created by the relinquishment; and • the Existing Capacity Deficit for the Newlands System has been resolved for those Access Rights to become unconditional. <p>Where those relinquished Access Rights are contracted as conditional Access Rights pursuant to clause 7.4.8(n) then those Access Rights must be considered Committed Capacity by the Independent Expert for the purpose of assessing: Deliverable Network Capacity, Existing Capacity Deficits and Transitional Arrangements.</p> <p>Consequential references to clause 7.4.8(n) are added to clause 8.9.1(b).</p>	<p>Remove.</p> <p>Amendments not required without relevant relinquishment provisions.</p>
New Definition April 2023 GAPE	Required for the application of the Asset Replacement and Renewals Expenditure allocation methodology for the Shared	No change

April DAAU Amendment	Amendment Description	Status of April DAAU Amendments
Newlands Pricing DAAU	Rail Corridor described in the April 2023 DAAU.	
New Definition Newlands Shared Rail Corridor Replacement Assets	Required to define the assets subject to the Asset Replacement and Renewals Expenditure allocation methodology for the Shared Rail Corridor described in the April 2023 DAAU.	No change
Modify Definition Private Infrastructure	Add requirement for private infrastructure to be constructed solely to connect an Access Holder's or Customer's loading facility to Rail Infrastructure and align to the definition of Customer Specific Branch Line.	Remove Amendment excluded for reasons outlined in submission
New clause Schedule E, 1.3(c)	Modification of the RAB Roll-forward reporting requirements to reflect the approved Asset Replacement and Renewals Expenditure allocation methodology in the RAB Roll-forward report.	No change
New clause Schedule F, 4.1(b)(vii)(G)	Modification to the Annual Tariff Review Process to distribute the Allowable Revenue attributable to prior Newlands Shared Rail Corridor Replacement Assets on the basis the relative Gtk Forecasts for the Newlands and Goonyella to Abbot Point Systems.	No change
New clause Schedule F, 10.3(a)	Inclusion of requirement for the Newlands Gtk Forecast to be determined with reference to the aggregate gtk for all relevant Train Service Entitlements.	Remove Amendments not required with use of forecast volumes.
Modify clause Schedule F, 11.1(a)	Modify the definition of Coal System in the Reference Train Service Criteria to allow the application of the GAPE Reference Tariff to transferred Goonyella to Abbot Point System Access Rights which may not use the Goonyella to Newlands Connection.	No change Amendment retained for reasons outlined in submission.

Attachment B: Updated Tariff and Revenue Tables for Forecast Volumes

Schedule F Clause 10.2(a) - Newlands

Reference Tariff input	2022/23 [^] (\$)	2023/24 [^] (\$)	2024/25 (\$)	2025/26 (\$)	2026/27 (\$)
AT ₁	1.95	2.01	2.07	2.13	2.20
AT ₂	333.12	343.28	353.75	364.54	375.66
AT ₃	5.90	10.34	11.72	12.16	12.20
AT ₄	0.79	1.41	1.59	1.65	1.66
QCA Levy	0.00866	0.0058**	0.0063	0.0063	0.0063
IE Fee	0.01868	0.0164	0.0164	0.0164	0.0164

Schedule F Clause 10.2(b) - Newlands

Nominated Loading Facility	Reference Tariff input	2022/23 (\$) [^]	2023/24 (\$) [^]	2024/25 (\$)	2025/26 (\$)	2026/27 (\$)
Carmichael Mine	AT ₃	5.90	8.42	9.79	10.22	10.26
	AT ₄	0.79	1.09	1.27	1.33	1.34

Schedule F Clause 10.3 - Newlands

Year	Gtk Forecast (,000 gtk)	Allowable Revenue – AT ₂₋₄ (\$000)
2022/23 ¹	3,914,712	29,567
2023/24 ¹	3,563,898	42,319
2024/25	3,563,898	48,488
2025/26	3,563,898	50,479
2026/27	3,563,898	50,710

Schedule F Clause 11.2(a) - GAPE

Reference Tariff input	2022/23 [^] (\$)	2023/24 [^] (\$)	2024/25 (\$)	2025/26 (\$)	2026/27 (\$)
AT ₁	1.57	1.62	1.67	1.72	1.77
AT ₂	15,464.32	15,464.32	15,464.32	15,464.32	15,464.32
AT ₃	0.17	1.55	1.41	1.35	1.38
AT ₄	1.05	3.28	2.70	2.72	1.56
QCA Levy	0.00866	0.0058**	0.0063	0.0063	0.0063
IE Fee	0.01868	0.0164	0.0164	0.0164	0.0164

Schedule F Clause 11.3 - GAPE

Year	Gtk Forecast (,000 gtk)	Allowable Revenue – AT ₂₋₄ (\$000)
2022/23 ¹	9,682,695	107,815
2023/24 ¹	8,991,152	142,253
2024/25	8,991,152	131,587
2025/26	8,991,152	131,732
2026/27	8,991,152	111,907

Schedule K

Total CQCN (\$m)	FY24	FY25	FY26	FY27
Capital Indicator[^]	290.0	323.7	349.0	352.7
Return on Capital	497.4	504.9	510.2	513.1
Return of Capital minus Inflation	252.7	271.8	304.0	315.7
Direct Maintenance Costs	164.1	174.9	175.8	179.5
Indirect Maintenance Cost Allowance	17.5	17.3	16.7	16.4
Electric Operating Expenditure Allowance	72.0	72.0	72.0	72.0
Non-Electric Operating Expenditure Allowance	135.1	135.1	135.1	135.1
Tax Allowance	49.8	51.9	56.4	56.7
Revenue Adjustments	62.6	31.6	32.3	33.1
Allowable Revenue	1,251.3	1,259.4	1,302.5	1,321.6

Newlands – Non-Electric (\$m)	FY24	FY25	FY26	FY27
Capital Indicator[^]	14.6	19.7	19.5	19.8
Return on Capital*	25.1	28.3	28.8	29.2
Return of Capital minus Inflation	11.1	12.8	14.5	14.2
Direct Maintenance Costs	5.1	5.7	5.5	5.9
Indirect Maintenance Cost Allowance	0.5	0.5	0.4	0.4
Electric Operating Expenditure Allowance				
Non-Electric Operating Expenditure Allowance	3.6	3.6	3.6	3.6
Tax Allowance	2.3	2.9	3.1	3.0
Revenue Adjustments	1.9	2.1	2.1	2.2
Allowable Revenue	49.5	55.9	58.1	58.5

GAPE – Non-Electric (\$m)	FY24	FY25	FY26	FY27
Capital Indicator[^]	8.2	9.7	9.2	9.9
Return on Capital*	60.7	57.3	53.6	49.5
Return of Capital minus Inflation	50.6	54.7	58.9	45.7
Direct Maintenance Costs	8.7	9.7	9.3	10.1
Indirect Maintenance Cost Allowance	0.8	0.8	0.7	0.7
Electric Operating Expenditure Allowance				
Non-Electric Operating Expenditure Allowance	12.9	12.9	12.9	12.9
Tax Allowance	11.1	11.6	12.1	9.3
Revenue Adjustments	11.9	(0.4)	(0.4)	(0.4)
Allowable Revenue	156.8	146.6	147.2	127.8

* working capital is added to Return on Capital.

[^] Capital Indicator expressed as Start of Year Values.