

6th October 2023

Mr. George Passmore

Queensland Competition Authority

Level 27, 145 Ann Street

Brisbane Queensland 4001

Submitted online: <https://www.qca.org.au/submissions/>

Dear George,

**Bravus response to the Queensland Competition Authority's "Draft Decision - April 2023 GAPE Newlands Pricing DAAU ", dated August 2023.**

Bravus Mining and Resources Pty Ltd (**Bravus**) welcomes the opportunity to respond to the **Draft Decision - April 2023 GAPE Newlands Pricing DAAU"**.

Our submission in response is set out in the **Attachment**.

Regards,

*Ian Gibbons*

Ian Gibbons

Supply Chain Consultant

Bravus Mining and Resources

## Attachment

### Summary:

#### 1. NSIE Pricing Issues-

Bravus agrees with the following principles set out in the QCA draft decision:

- Aurizon should be entitled only to recovery the depreciated value of capital associated with the NSIE assets, calculated as if those assets were incorporated into the Newlands RAB from earliest point in time at which it was appropriate to do so under the regulatory framework.
- In determining the ‘starting point’ for this purpose, regard should be had only to the regulatory framework and not to outside commercial incentives that Aurizon may otherwise have had to delay or defer commencement of railings.

However, Bravus reiterates its view that, applying these principles consistently, the earliest time for recovery of the NSIE capital under the regulatory framework was at some point between 2012 and 2014, and well before commencement of UT5 on 1 July 2017.

Bravus is concerned that the QCA’s conclusion in this regard is based on the “*information available*”<sup>1</sup> and relied upon Aurizon submissions that this was the “*earliest practical date the deferred NSIE capital could have been reflected in the Newlands system reference tariff*”. In effect, this suggests the QCA accepted Aurizon’s submissions on this issue, without being provided with clear and accurate evidence by Aurizon, and when Aurizon clearly had an interest in delaying the start date.

The Queensland Government Open Portal data indicates that two new Qcoal mines commenced railing following the commission of NAPE capacity: Jax in CY12/FY13 and Drake in CY14/FY15.

Aurizon has been aware of the considerable risk of double recovery of NSIE capital across GAPE and NAPE users for almost a decade (following a GAPE user-initiated audit of the commercial arrangements under the GAPE Deeds in 2014<sup>2</sup>). Despite this – or perhaps because of it – Aurizon appears not to have provided full or transparent information to the QCA in respect of the timing of commencement of railings at the Drake and Jax mines.

For example, beyond untested submissions made by Aurizon, it is not clear on what basis and on what evidence the QCA formed the view that there was or is “*still considerable uncertainty surrounding the relevant volumes being railed by the NAPE user*” at the time of UT4 approval.<sup>3</sup> Indeed, as at April 2016, the QCA’s final UT4 decision indicated that it was not aware of railings having commenced. Aurizon appears to have done nothing to correct that view.<sup>4</sup>

---

<sup>1</sup> Draft decision at page 7.

<sup>2</sup> This issue is referred to in submissions of QCoal to the QCA on Newlands GAPE Pricing DAAU dated 2<sup>nd</sup> November 2022 and Rio Tinto to the QCA FY22 ARRT dated 9<sup>th</sup> April 2022.

<sup>3</sup> Draft decision at page 9.

<sup>4</sup> QCA Final Decision (UT4) Aurizon Network draft access undertaking Volume III – Pricing and tariffs. p 282

Bravus therefore submits that the QCA confirm that it obtained information from Aurizon necessary to ensure that its decision at the time of UT4 was not based on information that was incomplete in material respects at that time<sup>5</sup> For example:

- Did Aurizon provide the QCA with the raiiling commencement dates of new mines following the commissioning of GAPE, specifically the Jax mine in CY12 and the NAPE mine, Drake in or around CY14 (or earlier)?
- To the extent that Aurizon claimed that railings from Jax or Drake were ‘uncertain’, what steps were taken by Aurizon to support those claims with evidence or to explain to the QCA why the cause of uncertainty was relevant to the commencement date for the purpose of UT4?
- Did Aurizon provide evidence to the QCA to permit it to test the rail commencement dates under the terms of UT4 itself, and not merely whether rail commencement had been satisfied from Aurizon’s perspective under the unregulated NAPE agreement for commencement of the unregulated fee?<sup>6</sup>

Put simply, Aurizon should not be permitted to benefit from delay caused by uncertainty it has itself created by providing the QCA with materially incomplete information, particularly in circumstances where Aurizon is aware that it is likely to obtain a commercial advantage (in the form of double recovery) from such delay.

The QCA act, section 150K states the circumstances in which a previous draft access undertaking ruling does not apply (relating to a relevant service).

*“(2) The circumstances are—*

*(a) information used by the authority to make the ruling was false or misleading in a material particular; or*

*(b) the circumstances relating to the service existing when the authority makes the determination or decision mentioned in subsection (1) are materially different to the relevant circumstances for the ruling; or*

*(c) if there is a relevant assumption for the ruling—the event or matter to which the assumption relates has not happened as assumed.”*

For these reasons, Bravus submits that the QCA should re-test the basis upon which it found that the earliest practical date for commencement of regulatory recovery was 1 July 2017 and confirm that this was based on evidence, and not earlier ‘uncertainty’ created by a lack of fulsome disclosure by Aurizon during UT4.

Based on publicly available information regarding the commencement of railings from Jax and Drake, Bravus submits that an appropriate starting point is no later than CY14, when it

---

<sup>5</sup> QCA Act 231(1).

<sup>6</sup> Aurizon Network in their own UT4, April 2015 submission allude to the commercial GAPE/NAPE deed arrangements or an interpretation of these commercial arrangements as being the basis for not commencing NAPE regulatory revenue at the commencement of Drake railings. Referred to in QCA 2014 Draft Access Undertaking Queensland Competition Authority’s Draft Decision on Policy and Pricing Principles. p 250

is evident that railings from both mines had commenced. There is no apparent justification for allowing approximately 3 years further delay (and over-recovery).

If, despite this, the QCA retains the current regulatory recovery date for NSIE as 1 July 2017, Bravus notes that this is conservative and likely allows Aurizon to over-recover regulated NSIE capital (together with potentially allowing several years of double recovery). There is certainly no reasonable basis to permit continued deferral of any additional amounts (such as the \$26.7m claimed by Aurizon). Bravus strongly supports the QCA's decision to reject this unjustified and ambit claim by Aurizon.

## **2. Application of PIC Discounts**

Bravus agrees with the QCA's Draft Decision on the QCA approved PIC, Notably-

- i. Retrospective changes to any QCA approved PIC would create uncertainty for future access seekers investing in Private Infrastructure
- ii. The benefit Bravus receives under its PIC approval are competitively neutral and reflect the historic benefit other Newlands system parties have enjoyed ; Noting
- iii. Bravus remains the only access holder utilising the CRN.

## **3. Allocation of Asset Replacement and Renewal Expenditure on the shared rail corridor**

Bravus supports the QCA Draft decision on asset replacement and renewal expenditure on the shared rail corridor.

## **4. Contract Volume Pricing & Relinquishments**

Bravus would propose that the QCA review the FY24 forecast volume as part of this pricing DAAU in light of -

- Promoting a FY24 tariff that better aligns with an efficient price that promotes user pay principles in the current year. In doing so, the FY24 tariff should minimise controllable FY24 overcollection and socialisation of allowable revenue between periods and mines; and
- For CY24, the Newlands system has been consistently performing at in excess of 20Mtpa and exceeding the FY24 forecast rate of 16.4Mt in every month even during the system shutdown month in August 2023; and
- Lower FY24 tariffs benefit all parties in the Newlands in line with the Draft Decision's rationale to stagger the introduction of NSIE assets. The impact of the proposed inclusion of NSIE assets into the Newlands RAB on Newlands tariffs in the absence of an increased forecast volume will be to the detriment of all Newlands system mines in FY24 in the form of higher tariffs.

Detailed Discussion:

**Treatment of Deferred Newlands system infrastructure enhancements based on information made available by Aurizon Network.**

- i. Bravus acknowledges that the QCA made its decisions around commencement of NSIE revenue based upon the “information made available” at the time.<sup>7</sup> Specifically, the QCA relied upon Aurizon Network submissions during the leadup to UT4 and UT5 decisions. The QCA determined in its Final Decision on UT5<sup>8</sup> with respect to the capital/deferral of NAPE that drew a line in the sand around commencing NAPE capital/revenue recovery –
- “.....the QCA considers that capital/revenue deferrals are a prudent mechanism to address:
- short-term issues such as initial uncertainty with forecast volumes due to ramp-up issues; and/or
  - circumstances where Aurizon Network is unable to recover costs from relevant customer(s).....
- However, the QCA considers that these investments can no longer be excluded from reference tariffs”.
- ii. Bravus agrees with the concern of the QCA in its Draft Decision that existing commercial arrangements (the GAPE and NAPE deeds) are likely to have dampened Aurizon Network’s incentives under the regulatory framework for Aurizon Network to recover deferred revenue. Indeed, Aurizon has itself acknowledged the potential for double recovery during any period that commencement of recovery of NSIE capital through tariffs was delayed and capitalised for regulatory purposes (whilst being recovered at the same time, separately, through unregulated GAPE revenue from other users).
- iii. It follows that the value of the NSIE which ought to be allowed to be incorporated into Newlands RAB should be limited to the depreciated value of NSIE capital rolled into the Newlands RAB as at the earliest time at which Aurizon Network could have sought to have that capital reflected in the Newlands system reference tariff. For practical purposes, that amounts to the point in time at which railings commenced from either Jax or Drake mines, that could access the relevant GAPE/NAPE project capacity. In determining that railings date, the QCA is also right to acknowledge that this needs to be defined only by the application of UT4 itself, and not based on any contractual rules governing Aurizon’s right to recover NAPE fees under the NAPE deed.
- iv. The appropriate question is therefore: what was the earliest point at which it was reasonable for Aurizon to commence recovery of NSIE capital under the regulatory framework at that time (irrespective of its commercial position under the NAPE Deed)?
- v. To the extent that any delay beyond this date was caused by Aurizon’s failure to provide the QCA with fulsome or appropriate transparency of railings from Drake or Jax mines, Aurizon should not benefit from that failure. That is to say, Aurizon should not be permitted to profit from the very uncertainty that it has created over the last decade around its NAPE railings.

---

<sup>7</sup> QCA Draft Decision -April 2023 GAPE and Newlands pricing DAAU August 2023. p7

<sup>8</sup> QCA, Decision- Aurizon Network 2017 Draft Access Undertaking . December 2018.

vi. Bravus considers that the public material evidence supports a commencement date between 2012 and 2014. For example, the Queensland Government Open Portal data outlines that two new Qcoal mines commenced railing following the commission of GAPE/NAPE capacity. This being the Jax in CY12/FY13 and Drake in CY14/FY15.

	FY2011	FY2012	FY2013	FY2014	FY2015	FY2016	FY2017	FY2018	FY2019	FY2020	FY2021	FY2022	Grand Total
Northern Hub - Drake - Open Cut					476906	1934413	3605129	4099301	3315926	2712451	2862964	3285865	22292955
Northern Hub - Jax - Open Cut			350139	140973					557694	1520132	1211181	1546100	5326219
Northern Hub - Sonoma - Open Cut	3367535	3480336	2520190	3425193	3680597	2391185	1227241	506249	883145	677743	615570		22774984
	3367535	3480336	2870329	3566166	4157503	4325598	4832370	4605550	4756765	4910326	4689715	4831965	50394158

vii. From a regulatory perspective, it appears that the commencement of railings above were consistent with commencing recovery of regulated revenues under UT4:

- The Jax mine commenced railing in CY12 after the commissioning of the GAPE project. It was able to access the benefits of the GAPE expansion at this time.
- Drake, the NAPE mine could access GAPE/NAPE expansion capacity in CY14 through a load point (in this case the Sonoma load point) without consideration of the NAPE Deed's required "mine specific infrastructure".
- Aurizon Network acknowledged in CY22 that the NAPE mine was able to be subject to a NAPE tariff/access GAPE expansion capacity at the Sonoma load point without the construction of any new required "mine specific infrastructure".<sup>9</sup>

viii. However, Aurizon Network in their UT4, April 2015 submission<sup>10</sup> appear to confirm that it was commercial GAPE/NAPE deed considerations (the construction of required "mine specific infrastructure") that prevented it from requesting commencement of NAPE regulatory revenue in CY14.

ix. Bravus submits that had Aurizon Network been transparent around these new mine start dates, the QCA and the industry would have started to explore NAPE regulatory pricing issues as early as CY12. Certainly, such arrangements would be likely to have been put in place in 2014 and well before 1 July 2017.

x. Instead, it appears that the QCA remained unaware that NAPE railings had commenced as late as April 2016 when it determined to permit Aurizon to defer allowable revenue associated with the NSIE:

*"... (the QCA) propose to defer allowable revenues until (the NAPE mine) railing commences. We also propose to assess a NAPE reference tariff if railing commences during the UT4 period"<sup>11</sup>*

<sup>9</sup> Aurizon Network – GAPE and Newlands Pricing Draft Amending Access Undertaking. 2<sup>nd</sup> September 2022 proposal to charge Drake a System Premium

<sup>10</sup> 2014 Draft Access Undertaking Queensland Competition Authority's Draft Decision on Policy and Pricing Principles. p 250

<sup>11</sup> QCA Final Decision (UT4) Aurizon Network draft access undertaking Volume III – Pricing and tariffs. p 282

- xi. Of course, by this date, it is now clear that both Jax and Drake had commenced railing several years' earlier. If this QCA finding was therefore based on a failure by Aurizon to provide accurate and timely information during the UT4 process about the commencement of railings from those mines, then this demonstrates a worrying and material failure to deal with industry and the QCA in good faith and suggests Aurizon's submissions to the QCA in relation to UT4 were incomplete in a material respect.<sup>12</sup>
- xii. Remarkably, at no time either before or since has Aurizon specified the start dates it claims applied to railings from the Jax and Drake mines to correct the record.
- xiii. However, Aurizon has (belatedly) accepted<sup>13</sup> that it was likely to have enjoyed double recovery during this period by virtue of being able to capitalise NSIE capital and returns as well as to recover NAPE costs separately under the unregulated GAPE arrangements – from GAPE users<sup>14</sup>. This shows the strong commercial incentive that Aurizon has had over the last decade to seek to delay commencement of regulatory recovery as long as possible.
- xiv. In light of these factors, Bravus reiterates its submission that the QCA should not accept a commencement date for NSIE recovery of 1 July 2017 based on the "information available"<sup>15</sup> or due to "uncertainty" associated with the railing commencement dates at Jax or Drake mines. This would amount to rewarding Aurizon for a failure to provide the QCA with fulsome and appropriate transparency around this critical issue.
- xv. Indeed, to the extent that the QCA appeared to remain of the view in 2016 that railings had not commenced, this may go as far as to suggest that Aurizon *misled* the QCA through its failure to be upfront about the start dates of the relevant mines at that time.
- xvi. The QCA act, section 150K states the circumstances in which a previous draft access undertaking ruling does not apply (relating to a relevant service).

*"(2) The circumstances are—*

*(a) information used by the authority to make the ruling was false or misleading in a material particular; or*

*(b) the circumstances relating to the service existing when the authority makes the determination or decision mentioned in subsection (1) are materially different to the relevant circumstances for the ruling; or*

*(c) if there is a relevant assumption for the ruling—the event or matter to which the assumption relates has not happened as assumed."*

- xvii. Bravus submits that the QCA should properly investigate whether Aurizon provided it with all appropriate information and evidence in support of any delay in the commencement date for NSIE

---

<sup>12</sup> See QCA Act s 231(1).

<sup>13</sup> This was only acknowledged publicly for the first time in Aurizon Network's response to industry concerns raised during the FY22 ARRT submissions.

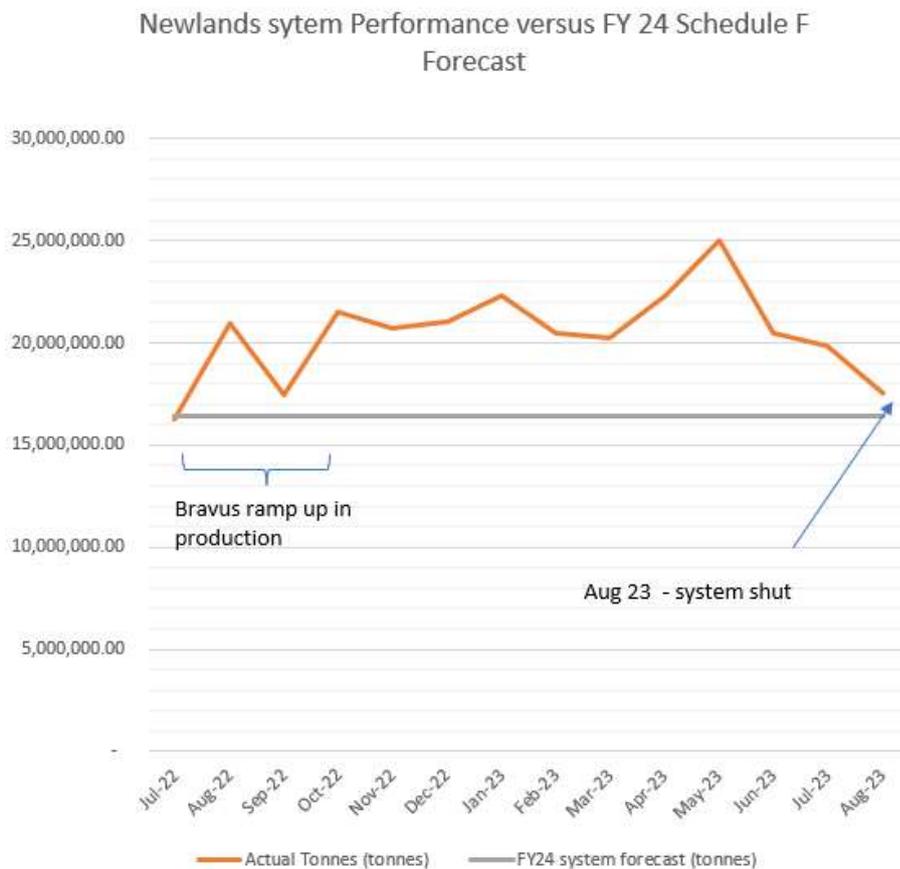
<sup>14</sup> This was referred to by both QCoal in its submission to the QCA on Newlands GAPE Pricing DAAU dated 2<sup>nd</sup> November 2022 and Rio Tinto in its submissions to the QCA FY22 ARRT. 9<sup>th</sup> April 2021 & 10<sup>th</sup> June 2021.

<sup>15</sup> Draft decision at page 8.

recovery. If it did not do so, then the appropriate NSIE regulatory commencement date should be no later than the start of railings from the Drake mine in CY2014.

- xviii. If, despite this, the QCA retains a regulatory recovery date for NSIE as 1 July 2017, Bravus notes that this is conservative and likely allows Aurizon to over-recover regulated NSIE capital (together with potentially allowing several years of double recovery). There is certainly no reasonable basis to permit continued deferral of any further amounts (such as the \$26.7m claimed by Aurizon). Bravus therefore strongly supports the QCA’s decision to reject this unjustified, ambit claim by Aurizon.

**Contract Volume Pricing & Relinquishments**



- xix. Bravus supports the use of forecast system volumes given the QCA position on all parties benefiting from NSIE assets and agrees, that in the absence of contract volume pricing there is no requirement for any once off additional relinquishments.

- xx. Bravus accepts the Schedule F forecast method endorsed by the QCA will self-correct for the step up in Bravus volumes in FY25, however this DAAU provides an opportunity to review additional actual volume data points to better inform the FY24 forecast volume that was significantly and negatively influenced by once off start up production data of the Carmichael mine during the Schedule F data collection process.

xxi. Currently, Aurizon Network is set to recover in excess of 125% of its FY24 allowable revenue in the Newlands system because of the significant underestimation of Bravus volumes and the impact of Bravus railings on GTK/NTK outcomes.

xxii. Bravus would propose that the QCA review the FY24 forecast volume as part of this pricing DAAU in light of -

- Promoting a FY24 efficient tariff that only seeks to recover allowable revenue in the current year, avoiding excessive overcollection in FY24 and subsequent socialisation of allowable revenue between years and mines in future years ; and
- The Newlands system has been consistently performing at in excess of 20Mtpa (see above) and exceeding the FY24 forecast rate of 16.4Mt even during the system shutdown month in August 2023.
- Lower FY24 tariffs benefit all parties in the Newlands. The impact of the proposed inclusion of NSIE assets into the Newlands RAB on Newlands tariffs in the absence of an increased forecast volume will be to the detriment of all Newlands system mines in FY24.
- Aurizon Network will be kept whole from an FY24 Allowable Revenue perspective even if the FY24 forecast volume is increased.

### **Application of PIC Discounts**

xxiii. Bravus agrees with the QCA's views around its approved PIC, Notably -

- Retrospective changes to the Bravus QCA approved PIC would create uncertainty for future access seekers investing in Private Infrastructure
- The benefit Bravus receives under its PIC approval are competitively neutral and reflect the historic benefit other Newlands system parties have enjoyed; Noting .
- Bravus remains the only access holder utilising the CRN.

### ***Allocation of Asset Replacement and Renewal Expenditure on the shared rail corridor***

xxiv. Bravus continues to support the QCA Draft decision on asset replacement and renewal expenditure on the shared rail corridor.