Queensland Rail’s 2025 Draft Access Undertaking:

New Hope Group response to QCA Discussion Paper of December 2024

7 February 2025

1 Need for West Moreton Reference Tariffs

Thank you for the opportunity to provide this submission on behalf of New Hope Group (***NHG***) in regard to the QCA's December 2024 Discussion Paper on Queensland Rail's proposed draft access undertaking (**D*AU3***).

NHG is extremely disappointed with the QCA's suggestion that AU3 should contain no Reference Tariffs for the West Moreton system, unless these are agreed between QR and customers. This outcome is not supported by users of the West Moreton system, and our understanding is that it is also not supported by QR. Stakeholders have extensive experience in seeking to reach agreement with QR, including through the Collaborative Submissions phase of the current process. That experience confirms that attempts to reach agreement with QR are likely to be unproductive. A key factor is QR's position as a Government-owned monopoly infrastructure provider. Our perception is that any concessions sought by customers in negotiations, however reasonable, are resisted by QR due to concerns that these will be viewed as being Government concessions to the coal industry. In contrast, the same solutions, if determined by the QCA, can be readily accepted by QR without this perception arising. The process to date has involved QR developing and obtaining board approval for outcomes which we would describe as a 'best case' for QR, then a process of consultation which involves little more than QR defending those positions.

Further, a fundamental premise of regulatory intervention which contributed to the initial (and ongoing) regulation of QR, and to date including Reference Tariffs within undertakings, is the absence of market forces which would contribute to resolving commercial and pricing matters. There has been little to no evidence that QR is able to resolve such commercial and pricing matters. QR is primarily focussed on providing (non-commercial) passenger services. As such, NHG is unable to reconcile the QCA's suggested departure from the use of Reference Tariffs in the absence of such market forces, or commercial focus by QR. NHG does acknowledge other regulatory models have departed from the use of Reference Tariffs (i.e. DBIM), however this has been in the context of parties having a history of, and ability to, pragmatically resolve commercial pricing matters. This is not the case with QR.

QR's reluctance to accept anything other than a risk-free and full recovery of returns on past and future capex and opex, plus capitalised losses, if it continues, will at best result in a series of protracted access disputes and at worst will result in the closure of one or more mines, underutilisation of the infrastructure, and in QR recovering far less return on its sunk investments than would be possible under a reasonable negotiated outcome or determination of the QCA. It is our hope that QR understands this reality.

NHG, on 31 January 2025, provided a commercial proposal to QR in an attempt to agree a basis for West Moreton tariffs and to settle a range of other matters. No response has been received to date. That proposal sets out the changes to QR's DAU3 proposal which, if implemented, may (subject to QR advising of the resulting tariffs) result in Reference Tariffs which are affordable from NHG's perspective. Under our proposal, NHG will face substantial increases in tariffs over current levels, and QR will be given a reasonable prospect (though not completely free of risks) of fully recovering its operating and maintenance costs, earning a full return on and of its asset base including future capital expenditure, and recovering the AU2 'capitalised loss'. A brief summary of the proposal is provided below, and the full proposal is provided in Schedule 2.

Our proposal is that Reference Tariffs be based on the revenue allowances sought by QR in the 7.5mt scenario, with limited amendments being:

- Update of tariffs to reflect the forecast variance between AU2 capital expenditure and the value of the AU2 capital indicator. We understand that this is a significant additional upward adjustment.
- Introducing a modest efficiency target within opex and maintenance budgets. NHG proposes the following reductions to the values proposed by QR in the 7.5mt scenario. Note that these are reductions to the substantial increases proposed by QR, rather than absolute reductions. We also

note that RBA inflation forecasts are now lower than the inflation forecasts used to develop QR's cost estimates.

  - FY26: no adjustment
  - FY27: reduce 1%
  - FY28: further 1% (2% total)
  - FY29: further 1% (3% total)
  - FY30: further 1% (4% total)

- Reducing the 'capital indicator' by 20% for the final three years of AU3 (no adjustment to FY26 and FY27). Our hope is that further efforts to rationalise the program will identify opportunities to reduce the expected expenditure in these years, noting that the level of analysis conducted by QR to date is relatively limited for the outer years. Note that we propose that variances between actual capex and the capital indicator are reconciled, and tariffs adjusted, annually. Therefore this proposal has no impact on QR being able to recover a full return on its investments, including prudent and efficient expenditure which exceeds the values reflected in the capital indicator.
- Accelerated depreciation is accepted (19 years life), but is to apply to all assets rather than further acceleration applying to AU3 capex. We consider that further acceleration, while designed to mitigate asset stranding risk, actually increases that risk by contributing to unaffordable tariffs. NHG notes that in 2024 marketable reserves for New Acland were increased to 199 million tonnes, supporting a mine life which is longer that QR assumed in its weighted average mine life calculations.
- AU2 capitalised losses to be recovered through a Recovery Charge triggered based on coal price thresholds. The thresholds have been chosen at levels which provide QR with a reasonable prospect of recovery of the capitalised loss, while avoiding adding a further burden to customers during periods of lower coal prices. We note that the thresholds were achieved in each of 2021, 2022 and 2023.

NHG's proposal also addresses a number of non-pricing matters:

- Seeking capex true-ups against capital indicator during the term, as applies under the Aurizon Network Access Undertaking, consistent with our previous submissions. This ensures that pricing reflects actual capex incurred, rather than an indicator which, given the current uncertainties, could prove to be materially inaccurate.
- Seeking a customer consultation and approval process for capex, consistent with our previous submissions.
- Withdrawing our request that AU3 include a process for independent capacity assessment.
- Withdrawing our request that AU3 include renewal rights for coal customers.
- Seeking reinstatement the current undertaking position preventing changes to the MTP from proceeding without resolution of bona fide disputes.
- Seeking greater transparency in QR's reporting.

We consider that the above package provides QR with a strong prospect of recovering a full return on its existing asset base and future capital expenditure, of fully recovering operating and maintenance costs, and of recovering the capitalised loss. We are hopeful that the resulting tariff would be considered affordable from NHG's perspective, but require QR to advise the tariffs which would result from the proposal, as the public information is not adequate to allow NHG to calculate the impacts of the changes.

We consider that an undertaking which includes Reference Tariffs developed based on the above approach is consistent with the Section 138(2) criteria, while an undertaking which does not include West Moreton Reference tariffs is not. Our proposal, and a version of AU3 lacking Reference Tariffs, are compared against the statutory criteria in the following table:

Statutory Criteria	**NHG proposal**	**AU3 without Reference Tariffs**

138(2)(a): Object of Part 5 (as per s 69E)	NHG's proposal promotes the economically efficient operation of, use of and investment in the West Moreton System by:
	• providing certainty of pricing, which facilitates investment decisions being made by QR in the rail
	• providing certainty of pricing at more affordable levels, which facilitates ongoing investments by the West Moreton coal producers, which is necessary to promote efficient usage of the rail; and
	• through a combination of retaining higher volumes delivering economies of scale, facilitating investment in prudent capital projects and providing incentives for efficient cost reductions, facilitating the efficient operation of the West Moreton System
		A negotiate-arbitrate regime fails to promote the economically efficient operation of, use of and investment in the West Moreton System through:
		• Not being likely to result in efficient pricing due to issues including Information asymmetry (particularly as to the efficient and prudent costs of providing the service), the extent of QR's market power and QR's focus on the passenger network;
		• Creating significant uncertainty – which will:
		  ○ deter QR from making efficient investments in capital expenditure projects in the system
		  ○ deter future access seekers from investing in projects and contracting access,
		with the likely end outcome of volumes falling, underinvestment and an economic death spiral where the high fixed costs cannot be borne by the remaining users

138(2)(b): QR's legitimate business interests	NHG's proposal is in QR's legitimate business interests as: • It provides QR with certainty as to the pricing they will achieve, facilitating decisions on capital investments • It provides the opportunity for QR to earn a full return on its capital investment by sharing in some of the upside of periods of high coal prices to recover capitalised losses • It provides QR with the opportunity to continue system-based pricing (which generally de-risks QR by tariffs adjusting for different outcomes than estimated) • It is more likely to result in coal volumes being retained to underwrite the future of the West Moreton System • It avoids protracted disputes and arbitration processes with each access seeker	A negotiate-arbitrate regime is not in QR's legitimate business interests as: • The lack of reference tariff creates significant uncertainty for QR as to the pricing they will achieve, making it very difficult to justify capital investments • It removes the current ability for QR to provide pricing on a system basis (and therefore makes recovering capitalised losses or adjustments for differences in anticipated and actual volumes problematic). • It creates significant risk of deterring future investment and contract commitments from coal producers, and exposes QR to having to significantly subsidise the remaining passenger and agricultural services on the system • It exposes QR to the likelihood of protracted disputes and arbitration
138(2)(c): Operator of service	N/A – as QR is the 'owner' of the facility such that s 138(2)(b) applies instead of s 138(2)(c)	N/A – as QR is the 'owner' of the facility such that s 138(2)(b) applies instead of s 138(2)(c)
138(2)(d): Public interest including having competition in markets	NHG's proposal is in the public interest as: • It is more likely to result in coal volume being retained which will: ○ deliver public benefits including royalties, taxes,	A negotiate-arbitrate regime is not in the public interest in these circumstances as: • The strength of QR's market power and the significant information asymmetry that exists (without any rail facilities which can easily be used for

	employment, other economic contributions, o prevent the State/QR having to subsidise passenger and agricultural services on the system to a greater extent than currently occurs o be more likely to result in at least two competing coal mines in the system (New Acland and Cameby Downs) for thermal coal requirements in the nearby region and export markets for this type of thermal coal	benchmarking) will mean that commercial negotiations will not produce an efficient or appropriate outcome • The deterrence of future coal investment arising from the uncertainty of pricing this model produces will: o Reduce the economic benefits of coal projects (royalties and taxes, employment, and other economic contributions) o Result in the public (through QR and/or the State) having to subsidise to an even greater degree the provision of passenger and agricultural services on the West Moreton system with a diminishing or no contribution to costs from coal
138(2)(e): Interests of access seekers	NHG's proposal is in the interests of access seekers as: • It provides access seekers with certainty which allows them to make investment and recontracting decisions • It provides a more affordable tariff than the alternatives proposed by QR through the DAU3 process • It removes the need for protracted negotiations and arbitration	A negotiate-arbitrate regime is contrary to the interests of access seekers as: • The resulting uncertainty of pricing will make it challenging to reach investment decisions in projects (including extensions or expansions of existing mines) which would utilise the system • The negotiate-arbitrate regime will impose significantly greater costs on individual access seekers through protracted negotiations and arbitration processes than would be incurred where tariffs are set in an access undertaking process
138(2)(f): Excluding assets for pricing purposes	N/A – the NHG proposal does not seek to exclude assets for pricing purposes	N/A – while an access determination in an arbitration could theoretically exclude assets for pricing purposes, for the purposes of this comparison NHG assumes that is unlikely
138(2)(g): Pricing Principles (as per s 168A)	NHG's proposal is more consistent with the pricing principles in section 168A as: • It creates the potential for QR to generate expected revenue for the service that is at least enough to meet the efficient costs of providing access to the service and including a return on investment commensurate with the regulatory and commercial risks involved – particularly through the inclusion of a recovery mechanism for capitalised losses • It provides incentives to reduce costs and improve productivity – particularly through phased reductions in the capital indicator and operating cost allowances	While a negotiate-arbitrate principle could, in theory, result in pricing that was consistent with the pricing principles, it makes it more difficult to do so as pricing will be resolved by individual arbitrations occurring at different times, such that it will be very difficult for the parties to achieve pricing that: • Operates on a system basis and adjusts for differences between estimated and actual system costs or volumes; • Provides for any kind of loss capitalisation and recovery regime;
138(2)(h): Other relevant matters	The NHG proposal is also considered appropriate because: • QR and Access Holders unanimously support the continuation of a reference tariff	A negotiate arbitrate model is also not appropriate given QR and Access Holders are unanimously opposed to the removal of a reference tariff.

	• The low volumes and high costs of the network effectively require a system solution (as seen during both the last undertaking process and the AU3 process)	

Finally, we are concerned that DAU3 was submitted on the basis of West Moreton Reference Tariffs continuing. A late change to a negotiate-arbitrate regime would require a series of other changes to DAU3 which are not canvassed in the Discussion Paper nor the Draft Decision. Without these changes, the undertaking as drafted would not be appropriate to approve. This issue is discussed in Schedule 1.

2 Tariff building blocks

NHG's concerns with each of the tariff building blocks were outlined in previous submissions. NHG's views on each of those matters are unchanged, and we refer the QCA to our previous submissions. However, as is reflected in our commercial proposal, we would accept the positions reflected in the Discussion Paper as part of our proposed package (except to the extent of the adjustments set out in our proposal).

3 West Moreton Capacity Assessment

NHG appreciates the QCA's initiative, following stakeholders' requests, to engage an independent party for assessing the operational capacity of the West Moreton System. HG anticipated the consultant would develop a robust, transparent and dependable capacity model to establish the capacity of the entire system and to test various input assumptions and scenarios. We appreciate the scope and time constraints Arcadis was working under as part of the DAU3 process. Limitations of the modelling approach, generally acknowledged by Arcadis, are significant and in NHG's view, mean that the conclusions of the review should not be relied upon in decision making by QR, the QCA or customers.

NHG's reservations regarding the model methodology and outcomes include:

- Overly simplistic static approach – the model is based on static capacity calculations for the constrained Toowoomba Range section only, and does not consider overall system parameters;
- Primary focus on the West Moreton System – a detailed assessment of the capacity impacts of constraints involved in trains passing through the Brisbane metropolitan area was not undertaken and was accounted for as a general adjustment to capacity. The impacts of the metropolitan system constraints are far more complex, and the simplified approach significantly undermines confidence in the conclusions; and
- Validation of input assumptions – the integrity of model outcomes would benefit from challenging and validating the input assumptions, including review of historical performance and best practice in other networks. Model outcomes are very sensitive to changes in certain input assumptions.

Given the above concerns, the model outcomes serve only to provide an indicative guide as to sustainable capacity of the system and are therefore not able to be confidently relied upon to make regulatory, commercial or operational decisions. In particular, the conclusions should not be used to make decisions on capital expenditure projects, nor on the limits of capacity available for contracting.

NHG understands that the QCA does not intend to undertake any further analysis or work on the independent capacity assessment and stakeholders may choose to enhance Arcadis' initial work in the future if they find it valuable. Such enhancements, if undertaken, should aim to provide an independent, robust, transparent and dependable reference capacity model. This would be a long term and complex project. NHG's focus, in the medium term, in regard to this issue, will be on QR's proposed capital expenditure program to ensure that projects proposed are necessary and are likely to deliver the expected benefits, including capacity enhancements.

4 Access Undertaking and Standard Access Agreement Terms

4.1 QCA Access Undertaking Proposed Drafting Amendments

The QCA Position Paper includes amendments to DAU3 (including proposed drafting in Table 9 of Appendix D) that the QCA is minded to require based on stakeholder consensus.

NHG's views on those proposed amendments are summarised below:

Issue	**Clause**	**NHG Position**
Quarterly Performance Report	5.1.2(a) (and related On-Time Train Service)	NHG is willing to support the changes proposed to QR's Quarterly Performance Report content where that reflects what has been able to be agreed in the DAU3 process. NHG continues to consider more transparency is required to address current information asymmetry and, as per other comments in this submission, requests that the QCA give further consideration to the capital expenditure consultation process NHG has proposed in prior submission and the information that should be provided to access seekers.
Definition of Planned Possessions / Removal of Ad Hoc Planned Possession	Part 7 definitions	NHG supports these amendments as appropriate consequential amendments occurring as part of the removal of the Ad Hoc Planned Possession concept.
Notification of Operators of proposed updates to MTP or DTP	Schedule F, cl 2.1 – 2.2	NHG supports this amendment so that any updates to the MTP are also shared directly with rail haulage operators (who ultimately are the ones dealing with QR around scheduling, particularly in day of operations).
QR Response to requests to change the MTP	Sch F, cl 2.1	NHG supports this amendment so that QR has obligations to respond in a timely manner and provide reasons where QR is denying requests to change the MTP.
Publication of Peak Passenger Periods	Schedule F, cl 3(i)	NHG supports the additional transparency this amendment provides by requiring that passenger peak periods have to be notified by QR.

4.2 Other Access Undertaking Drafting Issues

It is not clear to NHG whether the QCA Position Paper reflects the only amendments the QCA is minded to require to DAU3 (or is just confined to addressing matters on which the collaborative submissions demonstrated a consensus).

While NHG is (as communicated to QR) willing to not pursue a number of its previous non-pricing amendments, it still considers that each of the following amendments should be required in order for DAU3 to be appropriate to approve:

Issue	Clause	NHG Position
Customer involvement in Capex Process	Sch E	NHG considers there are real challenges in obtaining transparency on, and assessing the prudency of, QR's proposed capital expenditure program. Accordingly, the NHG February 2024 submission proposed amendments to Schedule E should be incorporated to provide customer involvement in capital expenditure process. In that regard, NHG notes that 1) forums for customer involvement exist and have proven successful in each of the Central Queensland and Hunter Valley coal chains and 2) the drafting proposed retains the ability for QR to seek QCA approval (including on an ex-post basis) even for capex that is not supported by users – such that adopting this regime should not be detrimental to QR.
Disputes in relation to Possessions	Sch F, 2.4	DAU3 completely removes this provision that provides for changes to the Master Train Plan to not take effect until any bona fide dispute has been resolved. NHG remains concerned that without this provision there is a real risk of MTP changes and possessions in circumstances not permitted by the network management principles in Schedule F without any recourse for customers (as a dispute that occurs after the change has already taken affect will not resolve). As discussed elsewhere in this submission, the Arcadis capacity modelling has its shortcomings, but it did confirm that in order for QR to provide the currently contracted capacity, possessions would need to be kept to a very low level. In that capacity constrained environment this protection is more important than ever and should be required to be reinserted. Consequently, NHG continues to believe that this protection should be reinserted, and any amendment should instead be: (a) the time frame for raising a dispute being reduced from the 30 days currently provided (to say 5 or 10 days); and (b) a specific compressed time frame / expedited process being provided for resolution of this type of dispute.

4.3 QCA Standard Access Agreement Proposed Drafting Amendments

The QCA Position Paper also includes amendments to the Standard Access Agreement (including proposed drafting in Table 10 of Appendix D) that the QCA is minded to require be made to DAU3 based on stakeholder consensus.

NHG's views on those proposed amendments are summarised below:

Issue	**Clause**	**NHG position**
Operator's obligations - insurance	16.1, 16.3, 16.4(b)	NHG supports the proposed amendments which reduce the level of burden and prescription around required insurances.
Dispute Resolution timing	19.2	NHG supports the proposed amendments which NHG considers achieve the objectives of aligning the timing of disputes under the SAA with the timing provided under the Access Undertaking provisions.
Assignment by QR	22.1	NHG supports the proposed amendments, but submits an additional paragraph should be included in 22.1(c)(ii)(C) as set out in NHG's November 2024 submission: *in the case of a partial assignment under clause 22.1(a), provide aligned scheduling for through-running services which operate across the QR and the Assignee's networks.* Given the destination for West Moreton coal services is in in the Metropolitan system, it is obviously critical to continued provision of the access rights that even if ownership/operatorship of the West Moreton and Metropolitan networks is separated – that from a user perspective access is coordinated for services running across both systems. If this is not done, there will be a significant loss of throughput / coal service capacity.

4.4 Other Access Agreement Drafting Issues

Again, it is not clear to NHG whether the QCA Position Paper reflects the only amendments the QCA is minded to require to the Standard Access Agreement or is just confined to addressing matters on which the collaborative submissions demonstrated a consensus.

For completeness, NHG requests that the QCA consider the draft issues raised in NHG's November 2024 submission which are not referred to in the QCA Position Paper. Those changes are not extensive, but are considered reasonable and appropriate changes which are justified given NHG's recent experience in negotiating with QR has been that even simple amendments of this nature are rejected simply because QR presents its standard access agreement on a take it or leave it basis.

5 Conclusion and way forward

NHG considers that an Access Undertaking without West Moreton Reference Tariffs is not appropriate to approve. The proposal which NHG put to QR provides QR with a reasonable expectation of fully recovering a return (at the level proposed by QR) on past and future capital expenditure, a ‘return of’ assets (depreciation) in an accelerated timeframe, full recovery of efficient operating and maintenance costs, and recovery of the AU2 capitalised loss. An undertaking which includes Reference Tariffs based on this proposal is likely (subject to confirmation of tariffs based on QR/QCA modelling) to be appropriate to approve.

Schedule 1 - Amendments Needed for a Negotiate-Arbitrate Regime

DAU3 was submitted by QR assuming that the QCA would continue its current practice of determining a West Moreton coal access reference tariff.

As a result, there are significant references throughout DAU3 to reference tariffs, and provisions that assume West Moreton coal services are priced on the basis of a reference tariff.

Accordingly, if contrary to NHG's (and other stakeholders) submissions on the appropriateness of a reference tariff, the QCA remains minded to approve an undertaking incorporating a negotiate-arbitrate regime, NHG submits that the QCA will then need to consider the consequential amendments required to DAU3 to reflect the change.

While NHG appreciates that negotiate-arbitrate has existed in QR's other systems already – the very fact of that historical application has resulted in QR and its customers in those other systems having had to resolve how to reach agreement on price without the protection of QCA involvement. NHG submits that without any such experience, is not a realistic expectation in respect of the West Moreton system where the reference tariff ceasing has effectively only come to stakeholders' attention approximately 6 months before the current access undertaking's expiry.

While the starting point is the deletion of Schedule D (which is entirely about reference tariffs) and related definitions which are used solely in that Schedule, NHG submits the required changes extend further.

In particular, NHG considers a negotiate-arbitrate pricing regime being applied to the West Moreton coal services would require that DAU3 is also amended in the following ways:

(a) All references to each of the following should be deleted (as it is inconsistent with the QCA's proposed primacy of negotiations to dictate these positions in advance of the access negotiation and arbitration):

  (i) loss capitalisation and recovery (including 3.5.2 and Schedule D);

  (ii) review events;

  (iii) adjustment charges

(b) Changes would be needed to information and disclosure provisions to seek to address the information asymmetry that exists between the negotiating parties which would otherwise undermine the ability to negotiate, including:

  (i) new provisions should be inserted which oblige QR to provide detailed information on proposed pricing to access seekers at the point of contract negotiations (akin to Schedules G and H of the DBCT 2021 access undertaking) for both the West Moreton and Metropolitan system;

  (ii) to the extent not already covered in the new provisions proposed above, clause 2.4.2(e) should require disclosure of the Regulatory Asset Base in any Indicative Access Proposal relating to coal access on the West Moreton system;

  (iii) the West Moreton Regulatory Asset Base still being required to be maintained in accordance with clause 3.8 and Schedule E so that negotiating access seekers have transparency as to the prudent capital expenditure, but with section 7 Schedule E being deleted as there is no Capital Indicator in this scenario and therefore no Capital Expenditure Carryover Account and the definition of Regulatory Asset Base would need to be modified to reflect that this is not necessary for the purposes of developing a Reference Tariff);

(c) Amendments to ensure that the non-reference tariff pricing regime will apply to West Moreton coal services including the references to 'non-coal carrying Train Services' in clause 3.1 and 3.2 will need be removed from those sections to ensure the floor (incremental cost) and ceiling (standalone cost) pricing limits apply;

(d) Given the potential that a reference tariff will be reintroduced in a future draft amending access undertaking (as recognised in the QCA Position Paper), provisions which provide for alternative settings *if* a reference tariff applies (such as 3.3(j), 3.5.1(a), 5.2.2(i)) should be retained – as they will simply become dormant and have no operation unless and until a reference tariff is included in the undertaking and it will facilitate a simpler process for reintroduction if these provisions were retained; and

(e) Provisions that assume the existence of a reference tariff for West Moreton coal services without a related provision that applies where a reference tariff will not exist (so rather than being dormant, they apply but refer to a tariff that no longer exists) will need to be deleted (clauses 3.0(b), 3.3(c) and 3.5.1(b)).

NHG also suggests that its proposed amendments in relation to customer involvement in the capital expenditure process is more important than ever in a negotiate-arbitrate environment, so as to resolve the information asymmetry that exists around QR's capital expenditure program and the justifications for each capital expenditure project.

In the absence of amendments of this nature, NHG submits that any negotiate-arbitrate regime will not achieve the outcomes the QCA Position Paper envisages for the West Moreton coal services and would not be appropriate to approve.

Schedule 2: NHG’s proposal for AU3

30 January 2025

1. Tariffs:

NHC suggests a number of amendments to QR’s proposals, some of which will reduce tariffs relative to the levels proposed by QR in the short term, to address efficiency and affordability concerns. Over a longer term, NHC’s proposals are designed to ensure that QR achieves full cost recovery of its efficient costs including a full return on prudent capital based on the WACC proposed by QR.

NHC does not have access to information required to accurately model the impact of the suggested changes on tariffs. Therefore, any agreement based on the principles set out below will be subject to QR advising the values for Reference Tariffs which would arise from the proposals, and on those tariffs being acceptable to NHC. Reference Tariffs provided by QR should be based on latest information available, including regarding AU2 capital expenditure (and account for any variance from the value of the capital indicator) and should be based on a WACC recalculated using latest available market parameters. We note that the QCA’s tariff estimates were 8% higher (per gtk) than those indicated by QR, due mainly to an update of AU2 capital expenditure.

In order to be able to reach an informed agreement, we are looking for genuine estimates of AU3 tariffs rather than a calculation which may technically be accurate at a point in time but excludes the effect of known or likely adjustments.

We are focussed on the 7.5mt scenario and consider that this should be the basis of Allowable Revenues and Reference Tariffs.

2. Loss Capitalisation Account:

NHC does not accept the QR proposals which seek to recover capitalised losses in ways which were not contemplated by the last undertaking decision in which capitalised losses were introduced. The expectation reflected in the last undertaking decision was that increasing volumes would allow repayment of the capitalised loss, while maintaining tariffs at an affordable level. This expectation has not come to fruition due to the very high capital expenditure program QR has indicated is needed. Therefore, a different approach is required if QR wishes to be able to recover the previously capitalised losses.

NHG proposes a recovery mechanism which provides QR with a reasonable level of confidence that the capitalised loss will be recovered, but which will not further increase tariffs during phases of the coal market during which a Recovery Charge is likely to be unaffordable. Key principles are shown below:

- Balance of Loss Capitalisation Account at 30 June 2025 is to be escalated in the same manner as under AU2.
- AU3 Reference Tariffs will be designed to provide full recovery of Allowable Revenue based on forecast tonnage, therefore no further capitalisation of losses will apply under AU3.
- Tonnage variations will be QR’s risk/benefit within a reasonable range of tonnages. For outcomes beyond that range, a review mechanism applies – but that needs to be an open mechanism that ultimately requires a QCA determination of what adjustment is appropriate, rather than a mechanistic and prescriptive calculation of how tariffs would change.
- Recovery Charge (to apply in addition to base reference tariffs) as follows:

- If, in the 12-month period ending 31 December 2025, 2026, 2027 or 2028, the Average Coal Price exceeds the Threshold Coal Price, then a Recovery Charge will apply from 1 July of the following financial year (e.g. from 1 July 2026 if the Threshold Coal Price is exceeded in the 12 months ending 31 December 2025).
- Average Coal Price means the average of each weekly API5 Index (FOB), expressed in Australian dollars.
- The Threshold Coal Price means AUD 150/t and the Upper Threshold Coal Price means AUD 175/t.
- Where a Recovery Charge is triggered, each of AT1 and AT2 will be increased for the next financial year commencing 1 July, by:
  - 5%; or
  - If the Average Coal Price exceeds the Upper Threshold Coal Price, 10%.

- New Hope's understanding is that based on the API5 Index the Upper Threshold Coal Price would have triggered in 2022 and the Threshold Coal Price would have triggered in 2021 and 2023.
- The Recovery Charge will apply as an adjustment to Allowable Revenue and therefore to Reference Tariffs and so will apply to actual railings and to ToP.
- Actual revenue from Recovery Charge will be deducted from the Loss Capitalisation Account monthly.
- Recovery Charge ceases when Loss Capitalisation Account balance is zero. Any over-recovery returned to customers.

3. Accelerated Depreciation:

- NHC will support the acceleration of depreciation, for the term of AU3, such that assets are fully depreciated over 19 years rather than over the technical life of assets, which range up to 100 years.
- The 19-year maximum asset life would apply to both new and existing assets (i.e. capital expenditure over the AU3 period will be recovered over 19 years, not accelerated to 14 years as proposed by QR).
- NHG notes that in 2024 marketable reserves for New Acland have been increased to 199 million tonnes (supporting a longer mine life than QR assumed in its weighted average mine life calculations) – see the 17 September 2024 ASX release of NHG's JORC coal resources and reserves statement

4. Reduce capital indicator:

NHC encourages QR to continue its efforts to rationalise the capital expenditure program, while continuing to meet safety and performance objectives. We note that some of the program, particularly projects scheduled for delivery in the later years of the undertaking period, are at early stages of assessment. Our hope is that a rigorous process (including customer consultation as addressed in item 6 below) may result in identification of more cost-effective alternatives for some of these projects. To reflect this objective, we propose a 20% reduction in the capital indicator for the 7.5mt case for the final three years of the undertaking term, reducing the indicator by around $31m. Note that, under our proposal discussed in item 5 below, QR will be made whole in the event that these savings cannot be achieved, as there will be a true-up process largely within the undertaking period for differences between the value of the capital indicator and actual capex approved for inclusion in the RAB. NHC's proposal to reduce the capital indicator therefore represents no cost or risk to QR.

5. Include efficiency allowance in opex and maintenance costs:

QR has proposed substantial increases in operating and maintenance costs. Some increases are to be expected given the higher forecast volumes, however, the extent to which costs will vary with volumes, and the extent to which the capex program will lead to maintenance costs savings, is difficult to estimate. NHC proposes that an efficiency target be built into the opex and maintenance costs. We suggest a target of 0% for FY26 (given that resources and plans may be partially locked in for that period), 1% for FY27, 2% for FY28 etc. Percentages would apply to the allowances previously proposed by QR.

If the above pricing outcomes could be achieved, and QR provided modelling demonstrating that resulted in a headline tariff that NHC considered appropriate, NHC would be willing given the limited time remaining to put that position forward as part of an agreed package. The balance of the proposed agreed package would be non-pricing related amendments where NHG would make concessions on a number of items in return for QR's agreement on a number of the other outstanding non-pricing related amendments. NHC's position on the key items it would see as forming the balance of the package are set out below.

6. Capex true ups within term:

As previously proposed NHC considers there needs to be annual reconciliation of actual capital expenditure incurred against that assumed in the capital indicator (acknowledging that any differences arising in the last two years would instead need to be carried over to the next undertaking). NHC remains comfortable with the need for reconciliation being qualified by a materiality threshold (which it previously proposed as meaning reconciliations are not required if the difference is $30 million or less). This is important to NHC such that where savings are found and capital expenditure is avoided, tariffs are adjusted in a timely manner. Conversely, if QR incurs prudent and efficient capex which is accepted into the RAB and which exceeds the capital indicator, tariffs will be adjusted in a timely manner for QR's benefit.

Full drafting is provided on this issue in NHG's February 2024 submission.

7. Customer consultation and approval of capex:

As previously proposed NHG consider that it is critical that the capital expenditure process includes a process for customer consultation and pre-approval. As discussed, it would remain open for QR to seek approval from the QCA (even if capex was opposed by one or more customers), such that we see no detriment to QR in this process. However, we strongly consider greater customer input on capital expenditure planning is necessary and will result in more efficient trade-offs between capex and opex/maintenance and a sharper assessment on the extent to which capex is needed or needed right now.

Full drafting is provided on this issue in NHG's February 2024 submission.

Independent capacity assessment

Where the other capex related items are accepted (as above) and the dispute rights in relation to possessions are retained as is (8 below), NHC is willing to forgo the insertion of an independent capacity assessment process for the purposes of resolving this undertaking. It is hoped that greater user inclusion in the capex process (item 7 above) will provide users with greater insight into capex which is required to maintain capacity and NHC would intend to revisit this item if that does not become the case over the term of this undertaking.

8. Renewal rights:

NHG is willing to accept the renewal rights provisions as proposed by QR for the purposes of resolving the undertaking (i.e. no special right for coal services). Again, customer consultation on capex will provide customers with better insight into the extent to which capital expenditure is needed to maintain or increase capacity. NHC may wish to revisit this in future undertakings if the network becomes clearly capacity constrained.

9. Disputes in relation to possessions

NHG continues to consider reinstating the current undertaking position preventing changes to the MTP from proceeding without resolution of bona fide disputes is critical.

The increasing number of possessions that are occurring on the network, has elevated the need for greater ability for users to prevent possessions proceeding that could be accommodated in less harmful ways. As flagged in previous submissions we have no concerns with a shorter or expedited timeframe for raising and resolving disputes, but the right for QR to simply make these changes and override any objections is highly problematic given the knock-on consequences for the rest of NHC's marketing and logistics chain.

10. Reporting measures

NHG continues to consider that the extent of reporting should at least be maintained as it is in the existing access undertaking. As noted in previous submissions we have less concerns with amendments in relation to timing, but NHC sees a need for more transparency not less. If QR genuinely believes that it cannot report particular metrics, then the discussion should be around alternative measures that can be reported that provide information on the same issue of concern.