REQUEST TO RECOMMEND DECLARATION OF A SERVICE

Declaration of a service sought for the coal handling services at the North Queensland Export Terminal facility at Abbot Point

13 June 2025

Contents

1 Overview

1 The QCoal Users (defined **below**) of the North Queensland Export Terminal facility at Abbot Point (the **Terminal**) request that the Queensland Competition Authority (**QCA**) recommend to the Treasurer that the coal handling services at the Terminal be declared a service under Part 5 of the *Queensland Competition Authority Act 1997* (Qld) (**the Act**), with a declaration date of 1 July 2027 and a declaration period of 10 years.

2 Declaration under the Act would further the objects of Part 5 of the Act by reducing the risks to efficient operation and use of the Terminal, and to effective competition in dependent markets, created by the Adani Group's extensive vertical integration in the North Queensland coal market and the absence of a current regulatory framework for access to the Terminal.

3 A declaration would provide coal miners in the northern Bowen Basin with:

(a) certainty of access on reasonable terms, with arbitration and mediation available in the event of a dispute; and

(b) protection from risks created by the Adani Group's vertical integration.

4 This document sets out the matters that are required to addressed in the form approved by the QCA as required by s 77(3) of the Act.

5 The QCA's form requires that a request for declaration must address the following matters:

(a) Applicant details.

(b) Identify the service and the facility that provides the service.

(c) Address the access criteria (s 76 of the Act).

(i) Criterion (b) — Meet total foreseeable demand at least cost.

(ii) Criterion (a) — Access as a result of declaration would promote a material increase in competition in at least one market other than the market for the service.

(iii) Criterion (c) — State significance.

(iv) Criterion (d) — Promote the public interest.

6 The required matters are summarised in the tables **below** and further addressed throughout the body of this request.

7 In support of the QCoal Users' request for a declaration, they have also commissioned two independent expert reports from Greg Houston of HoustonKemp (**Criterion A Report** and the **Criterion B-D Report**). Mr Houston's reports are **enclosed**. The QCoal Users rely on the information in those reports in relation to their application.

8 The QCoal Users also rely on a bundle of material in support of their application. A reference to a tab number in this document is a reference to a tab number in that bundle of material.

9 This document, and the bundle of materials, contains confidential information. The QCoal Users request that any confidential information is not made publicly available. Confidential information in this document is marked with highlighting.

10 The QCoal Users will provide a separate redacted version of this document that can be made publicly available.

Figure 1 – The Terminal at the Port of Abbot Point

Source: Port procedures and information shipping – Abbot Point

2 Applicant Details

Details	
Name	The applicants, referred to in this application as the "**QCoal Users**", are: • QCoal Pty Ltd (ACN 010 911 234) • Byerwen Coal Pty Ltd (ACN 133 357 632)
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Contact Details	Samantha McNee, General Counsel, QCoal Group • **By email**: smcnee@qcoal.com.au • **By phone**: +61 07 3002 2900 Stephen Lloyd, Partner, Arnold Bloch Leibler • **By email**: SLloyd@abl.com.au • **By phone**: +61 418 676 253 Matthew Lees, Partner, Arnold Bloch Leibler • **By email**: mlees@abl.com.au • **By phone**: +61 3 9229 9684

3 Summary of Service and Facility

Summary	
Required Matters	**Details**
Service Specification	Coal Handling Services at the Abbot Point Coal Export Terminal including the unloading, storing, reclaiming and loading of coal (the **Service**).
Description of the facility that provides the service	The Terminal is a multi-user export cargo handling facility located at the Port of Abbot Point. The Terminal is described in more detail in the body of this application and in the Criterion A Report and the Criterion B-D Report.
Ownership Details	The Service is provided at the Facility by entities forming part of the Adani Group of companies. NQXT Holdings Pty Ltd (ACN 150 520 835) (formerly Mundra Port Holdings Pty Ltd) (**NQXT Holdings**) is the lessee under a 99-year lease of the land and fixtures used for the operation of the Terminal. The Terminal land is owned by North Queensland Bulk Ports Corporation Limited (ACN 136 880 218), a Queensland-government owned entity. North Queensland Export Terminal Pty Ltd (ACN 149 298 206) (formerly Adani Abbot Point Terminal Pty Limited) (**NQXT**) is the owner of the assets and chattels associated with the operation of the Terminal, and is the party that contracts with Terminal users for the provision of the Service. NQXT sub-leases the Terminal land from NQXT Holdings. Abbot Point Operations Pty Limited (**APO**) operates the Terminal, and sub-contracts the operation of the Terminal to Abbot Point Bulkcoal Pty Limited (**APB**). NQXT Holdings, NQXT, APO and APB are all members of the Adani Group. A structure chart setting out the QCoal Users' understanding of the ownership of the various Adani Group entities involved in the Terminal and the broader coal chain is at **Schedule 2.**
Declaration Period / Commencement	The QCoal Users request a declaration period of **10 years** with a commencement date of **1 July 2027**.
Access Criteria	
QCA Act, s 76(2)	**QCoal Users' submission**
Criterion (b)	Criterion (b) is satisfied in respect of the Service as: • total foreseeable demand in the market for the Service will be less than the Terminal's nameplate capacity over the proposed declaration period; • the Terminal can meet total foreseeable demand in the market over the proposed declaration period; and • the Terminal can meet total foreseeable demand in the market at least cost. Criterion (b) is further addressed in section 11 below and in the Criterion B-D Report.
Criterion (a)	Criterion (a) is satisfied as access (or increased access) to the Service on reasonable terms and conditions as a result of declaration of the Service would promote a material increase in competition in: • the market for later-stage coal tenements in the Newlands and Galilee rail systems; • the export market for metallurgical coal; • the market for the provision of below-rail services connecting the Galilee Basin to the Newlands rail system; and

	• the market for coal haulage services covering the Galilee and Newlands rail systems. Criterion (a) is further addressed in section 11 below and in the Criterion A Report.
Criterion (c)	Criterion (c) is satisfied as the Terminal is significant having regard to its size and its importance to the Queensland economy. Criterion (c) is further addressed in section 11 below and in the Criterion B-D Report.

Criterion (d)	Criterion (d) is satisfied as a declaration would promote the public interest by (among other things):
	
	• promoting investment in NQXT;
	• promoting investment in the market for below-rail services originating in the Galilee Basin;
	• promoting investment in the markets for:
	  o later-stage coal tenements in the Newlands system and the Galilee Basin;
	  o later-stage metallurgical coal tenements in the Newlands system;
	  o later-stage tenements containing both thermal and metallurgical coal in the Newlands system and the Galilee Basin;
	• promoting efficient investment in the metallurgical coal market;
	• promoting investment in the market or markets for coal haulage services on the Galilee and Newlands rail systems;
	• reducing the likelihood of NQXT incurring significant administrative and compliance costs to resolve disputes, absent declaration;
	• likely reducing the compliance costs incurred by access seekers;
	• mitigating the risk that the vertical integration of NQXT leads to increased exports of thermal coal;
	• promoting economic efficiency throughout the coal supply chain; and
	• increasing the value of royalty payments to the Queensland Government as (1) TIC/Port Charges are deductible from any royalty payments, so increased TIC/Port charges directly reduce royalties and (2) there are higher royalties payable on metallurgical coal as compared with thermal coal.
	
	Criterion (d) is further addressed in section 11 below and in the Criterion B-D Report.

4 Abridged Chronology

Chronology — QCoal & NQXT	
Date	**Event**
1984	Terminal begins operation as a single-user facility utilised by Glencore exporting both metallurgical and thermal coal.
2005-2010	New Users (including the QCoal Users) sign up to (generally) standard form user agreements with Ports Corporation of Queensland, a government owned entity, that funds the Terminal's expansion to 50 mtpa.
2011	Terminal X50 expansion project is completed, taking the Terminal's nameplate capacity to 50mtpa.
June 2011	Queensland Government sells 99-year lease to the Adani Group.
June 2011	The Queensland Government transfers existing user contracts to NQXT by legislative instrument (Transfer Notice published on 30 May 2011 under the *Infrastructure Investment (Asset Restructuring and Disposal) Act 2009* (Qld).)
2016	The Adani Group takes over operation of the Terminal from Glencore by acquiring APB from Glencore and entering into a new operation agreement with APO.

October 2016	NQXT and another Adani Group entity enter into arrangements with a Rio Tinto subsidiary with the following effect:
	• the Rio User's access rights to 9.3mtpa at the Terminal were cancelled for FY17 to FY22 (covering the entire FY18-FY22 pricing period under the existing User Agreements);
	• the Rio User's access rights to 9.3mtpa at the Terminal for FY23 to FY28 were novated to an Adani Group entity, Adani Mining Pty Limited (now Bravus Mining Pty Limited) (**Bravus Mining**) to service Bravus Mining's Carmichael Mine;
	• the Rio User paid $255 million for the cancellation and assignment, in the form of a $117 million "termination" payment from the Rio User to NQXT and a $138 million "novation" payment from the Rio User to Bravus Mining, which Bravus Mining subsequently paid to NQXT under a "security deposit agreement";
	• the effect of these transactions was that:
	    o the charges payable by the Terminal Users for the FY18-FY22 period were increased because the 9.3mtpa previously contracted to the Rio User were excluded from the calculation of the charges;
	    o the Adani Group (through Bravus Mining) secured 9.3mtpa of access to the Terminal from FY23 to FY28, aligning with the planned opening of its Carmichael Mine; and
	    o NQXT received, directly and indirectly, $255 million while still being able to recover costs relating to the Rio User's 9.3mtpa from the remaining Users under their User Agreements.

2016	QCoal Group challenges the Adani Group's approach to excluding the Rio User tonnes when calculating the Terminal Infrastructure Charge (**TIC**) and handling charges under the user agreements.
2017	NQXT commences court proceedings for a declaration that it was entitled to exclude the Rio User tonnes from the calculation of the handling charges payable under the User Agreements.

	The QCoal Users (along with another QCoal entity and Lake Vermont Resources Pty Limited) cross claim against NQXT, seeking: • declarations that NQXT had engaged in unconscionable conduct in relation to its dealings with the Rio User tonnes; and • declarations that NQXT had failed to demonstrate that the handling charges it sought to impose for FY17 and FY18 were reasonable having regarding to the efficient operation of the Terminal.
2018	Under existing user agreements, the TIC is set every five years by reference to a “regulation-style” schedule of allowable costs. In the FY18 pricing review: • NQXT sought to increase the TIC to [redacted] for QCoal Users from July 2018. • Following arbitration, in August 2019, the TIC was determined to be [redacted] representing a saving over five years of circa $38.7 million for the QCoal Group (in FY18 money).
August 2020	The Queensland Supreme Court finds that NQXT had engaged in unconscionable conduct in respect of its dealings with the Rio User tonnes, and that it had failed to demonstrate that the handling charges for FY17 and FY18 were reasonable having regard to the efficient operation of the Terminal.
August 2021	The Queensland Court of Appeal overturns the Supreme Court’s orders, meaning that NQXT was entitled to keep the benefit of the $255 million and charge users for the 9.3mtpa previously contracted to the Rio User. The Court of Appeal also found that NQXT had demonstrated that the handling charges for FY17 and FY18 were reasonable having regard to the efficient operation of the Terminal.
2022	In the FY22 pricing review: • NQXT sought to increase the TIC to [redacted] for the QCoal Users from July 2022. • Following arbitration, in December 2024, the TIC was determined to be [redacted], representing a saving over five years of circa $35.1 million for the QCoal Group (in FY22 money).
2025	NQXT and QCoal Pty Limited begin negotiations for a new access agreement. [redacted]

	[redacted]
June 2027	[redacted]
2029	The QCoal Users understand that most, if not all, of the remaining “standard form” user agreements will expire by July 2029. [redacted]

5 Introduction

5.1 Terminal Users

11 The QCoal Users are coal producers which hold mining leases and / or exploration licences for coal mines or tenements in the Bowen Basin in Queensland.

12 Other current users (as at the date of this application) are:

(a) Lake Vermont Resources Pty Ltd (Jellinbah)

(b) Middlemount Coal Pty Ltd

(c) Stanmore Coal Pty Ltd

(d) Clermont Coal Mines Ltd

(e) Bravus Mining Pty Ltd (Adani Group entity)

5.2 Summary of User Agreements

13 From 2005 to 2011, new Users (including the QCoal Users) sign up to (generally) standard form user agreements with Ports Corporation of Queensland, a government owned entity.

14 A copy of QCoal's user agreement with the Ports Corporation of Queensland is set out Tab 1.

15 In summary, the existing User Agreements contain the following features:

(a) **Terminal Infrastructure Charge** — the Users are required to pay a Terminal Infrastructure Charge (**TIC**) calculated based on a building block approach set out in a schedule to the contract. The pricing approach set out in the schedule replicates, to an extent, a regulatory pricing model. The TIC is payable on a "take or pay" basis based on the User's contracted tonnes in the relevant financial year. That is, if a User had an entitlement to 10 million tonnes per annum at the terminal, it would pay the TIC for those 10 million tonnes regardless of whether or not it delivered 10 million tonnes per annum to the Terminal.

(b) **Handling Charges** — Users are also required to pay handling charges, being the "HCF" which is a fixed handling charge payable for each contracted tonne and the variable handling charge known as "HCV" which is payable on each tonne actually shipped. The HCF is calculated based on the total fixed costs payable by NQXT to APO in relation to the total fixed operating costs incurred by the Operator for the financial year plus the operator's margin (which is capped at 10% and which has historically been charged at that rate). The HCV is calculated by reference to the total variable costs incurred by the Operator in a financial year. The handling charges are reset each financial year based on estimates and are trued-up after the end of the relevant financial year. Importantly, the existing User Agreements provide that if the Operator is no longer the Operator which existed at the date of the contract (as has been the case since 2016), NQXT is required to demonstrate that the operating costs agreed between NQXT and the Operator represent a reasonable charge having regard to the efficient operation of the Terminal.

(c) **Pricing reset** — The User Agreements provide for the TIC to be reviewed every 5 years. Reviews have occurred in 2012, 2018, and 2022. From each review, the TIC is escalated by CPI, each financial year, until the next review date. The User Agreements provided for a dispute resolution process whereby the calculation of the TIC would be referred to arbitration if the parties could not agree the TIC. The arbitrator is bound to determine the TIC by applying the pricing approach set out in the schedule to the existing User Agreements. The User Agreements provide that where one or more User is involved in a dispute, each disputing User will be bound by the outcome of that arbitration. However, the arbitrator is not bound to determine the same TIC for each user.

(d) **Changes to Tonnage** — The User Agreement gives NQXT absolute discretion over requests to reduce a User's contracted tonnage, and provides that NQXT is not obliged to increase the User's tonnage, however NQXT may do so if it determines that there is available unallocated capacity at the Terminal.

(e) **Assignment** — the User Agreements provide that NQXT may assign any or all of its benefits under the agreement, or novate the agreement, to a suitable person with the prior written consent of the User (consent to which is not to be unreasonably withheld). User consent is not required for an assignment to a Queensland government owned entity. Users may assign all or part of their rights under the User Agreements with NQXT's consent, and such consent is not to be unreasonably withheld. (As mentioned elsewhere in this application, the transfer of PCQ's rights under the User Agreements was effected by a statutory instrument without the consent of the affected users).

(f) **Additional Term** — the User Agreements provide that a user may make a written request to NQXT for it to handle the User's Coal at the Terminal for a further period beyond the expiration of the Term of the User Agreement. By no later than 30 months prior to the end of the Term, NQXT is to advise the User of the new User Agreement to apply for the Additional Term. The form of any new User Agreement will be the standard form of User Agreement offered by NQXT to all Access Holders and Access Seekers. If a User does not execute the new User Agreement by the date that is 24 months prior to the end of the Term then NQXT may reallocate the available tonnages that were the subject of the written request in its absolute discretion.

(g) **Terminal Regulations** — the User Agreements provide that the Operator may, with the consent of NQXT, establish and amend Terminal Regulations for the operation and maintenance of the Terminal. The Users must observe the Terminal Regulations. NQXT is only to consent to the establishment or amendment of Terminal Regulations if it reasonably considers that the Terminal Regulations as a whole operate equitably among Access Holders. NQXT will not be liable to the User as a result of consent to Terminal Regulations.

5.3 Abbot Point Coal Export Terminal

16 Further detail on the Terminal is contained in the Criterion A Report and the Criterion B-D Report.

17 The Terminal is a multi-user export cargo handling facility, situated at the end of the Newlands System rail line, and located at the Port of Abbot Point 25 kilometres north of Bowen.

18 The Port of Abbot Point is one of only three major resource ports located within 200 km of the Bowen Basin.

19 The Port of Abbot Point has operated as a dedicated coal port since 1984, exporting both metallurgical and thermal coal.

20 The Port of Abbot Point is the only available coal port for the Galilee Basin and the Bowen Basin. The Galilee Basin is adjacent to the Bowen Basin.

5.4 The operator

21 As set out in the above summary:

(a) NQXT Holdings is the lessee under a 99-year lease of the land and fixtures used for the operation of the Terminal. The Terminal land is owned by North Queensland Bulk Ports Corporation Limited, a Queensland-government owned entity. NQXT Holdings is a member of the Adani Group.

(b) NQXT is the owner of the assets and chattels associated with the operation of the Terminal, and is the party that contracts with Terminal users. NQXT sub-leases the Terminal land from NQXT Holdings. NQXT is a member of the Adani Group.

(c) APO operates the Terminal under a contract with NQXT, and sub-contracts the operation of the Terminal to APB. Both APO and APB are members of the Adani Group.

5.5 Coal shipping infrastructure

22 Coal produced by users of the Terminal in the Bowen and Galilee Basins is exported from the Terminal. This requires transportation of coal by rail from each mine site to the Terminal. The logistics chain from the mine to port involves:

(a) **below rail infrastructure**: Aurizon is the below-rail provider for the Newlands and Goonyella to Abbot Point extension (**GAPE**) rail systems. Bowen Rail Company (a member of the Adani Group) provides the below-rail services for the Carmichael rail system. Below-rail services consist of the provision and management of rail infrastructure, including the construction, maintenance and renewal of rail infrastructure assets;

(b) **above rail infrastructure**: Aurizon and Pacific National provide above-rail services on the Newlands and GAPE rail systems. Bowen Rail Company provides above-rail services for the Carmichael rail system and the Newlands system. Above-rail services consist of the provision and operation of train services such as rolling stock, train crewing, terminal provision and freight handling; and

(c) **port infrastructure**: NQXT owns the port infrastructure associated with the Service at the Terminal.

Carmichael, Newlands, GAPE and Goonyella rail systems

23 The rail and coal haulage services market, and the extent of that market, are described in the section 7 of the Criterion A Report, and the network generally is described at section 2.2 of the Criterion B-D Report. We set out below a brief overview of the rail network.

24 The Central Queensland Coal Network (**CQCN**) is a rail system exclusively operated and owned by the Aurizon Network.

25 The Carmichael Rail Network is owned and operated by the Adani Group via Bowen Rail Company.

26 The CQCN is the largest export coal rail network in Australia. Aurizon says that: “This 2,670 kilometre multi-user track network [which] comprises four of the major coal systems and one connecting system, serving Queensland’s Bowen Basin coal region: Newlands, Goonyella, Blackwater and Moura with Goonyella Abbot Point, the connecting system link” (Tab 43).

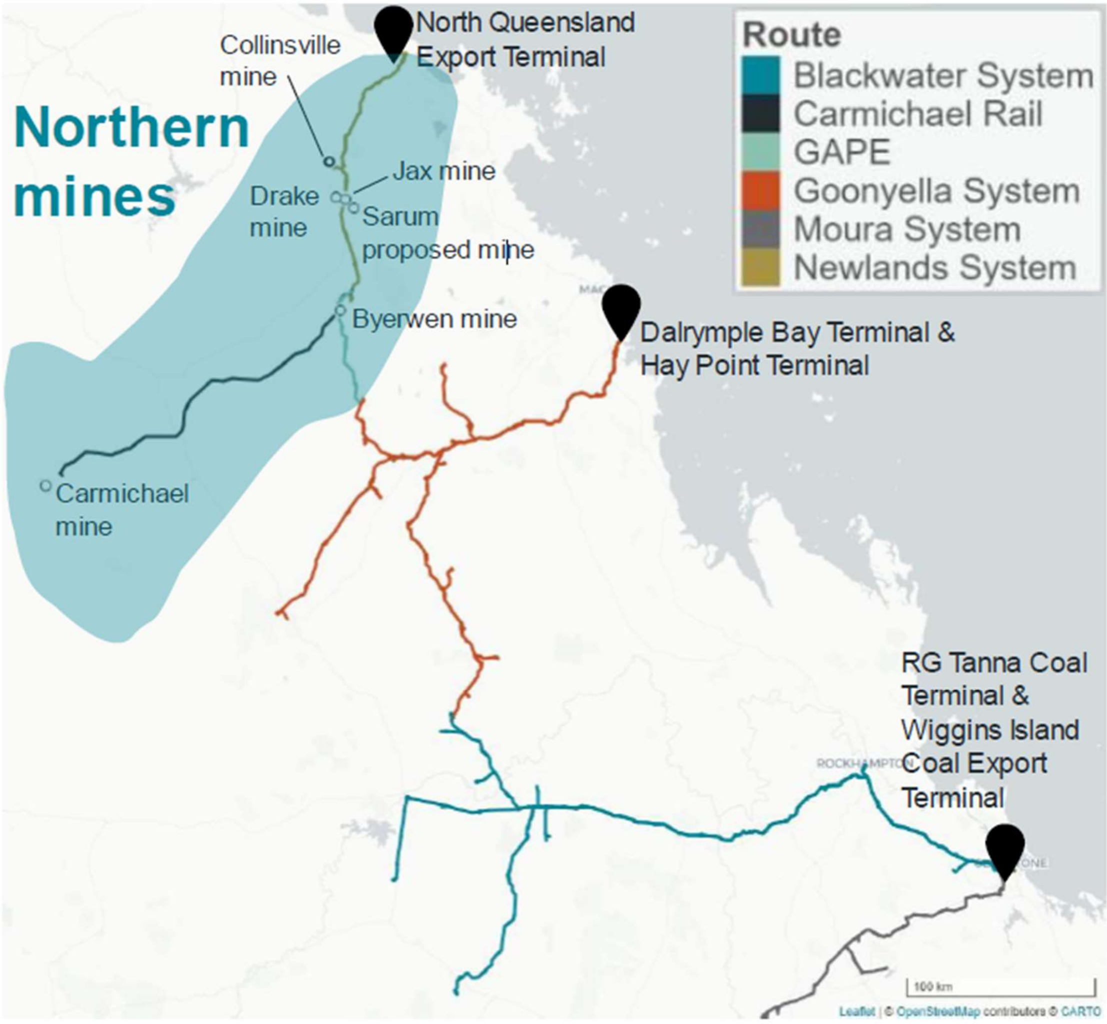
27 The Aurizon rail systems are a declared service under the Act. Access by third-party above rail operators is governed by the Aurizon Network’s access undertaking.

A description of the rail lines connected, and adjacent to, NQXT are set out in the table **below.**

Rail Lines and Coal Haulage	
Rail Line / Coal Haulage	**Description**
Newlands	The Newlands system is located at the Northern end of the Bowen Basin, North Queensland. The rail line connects to the Terminal at Abbot Point.
Carmichael	The Carmichael Rail Network is a 200 km narrow gauge railway connecting Queensland’s Galilee Basin to the Newlands System, which in turn connects to the Terminal. Currently, the Adani Group’s Carmichael Mine is the only mine connected to and using this system.
GAPE	A line that connects the Goonyella system to the Newlands system.
Goonyella	The Goonyella system services the Bowen Basin in Central Queensland and carries product to the ports at Hay Point and other destinations. The Goonyella system is a

	bidirectional duplicated track with crossovers.

Figure 2: HoustonKemp Map (Houston Report B, Figure 4.4: Region of northern mines)



5.6 The Service

28 The QCoal Users submit that the relevant service is the handling of coal (including unloading, storing, reclaiming and loading) at the Terminal.

5.7 The facility

29 The relevant facility is the Terminal, being the port infrastructure located at the Port of Abbot Point operated by NQXT (including loading and unloading equipment, stacking, reclaiming, conveying and other handling equipment; wharfs and piers; deepwater births and ship loaders).

30 North Queensland Bulk Ports Corporation Limited's land use plan indicates that the Terminal makes use of the following facilities, plant and equipment to achieve its 50 mtpa nameplate capacity:

(a) trestle jetty 2.8 kms in length;

(b) service jetty;

(c) inloading and outloading conveyors;

(d) two ship loaders;

(e) two offshore berths, approximately 268 and 252 metres in length;

(f) six stockpile rows all greater than 1 km in length; and

(g) three stacker / reclaimers.

6 Northern Bowen Basin mines are Captive

31 Mines in the Northern Bowen Basin cannot transport their coal to any other port. This inability to access other ports also applies to mines which connect directly to GAPE — of which Byerwen is the only current mine. This inability to access another port is structural as well as commercial:

(a) Structural factors include:

(i) No ability to run trains south to DBCT.

(ii) New rail infrastructure would need to be constructed to run trains south to DBCT.

(iii) DBCT and the Goonyella system are currently fully contracted.

(b) Commercial factors include:

(i) Increased and uncommercial costs associated with a longer haul distance to DBCT and additional GAPE charges for users on the Newlands system.

(ii) Uncommercial costs associated with creating new rail infrastructure at mine sites, including sterilisation of mineral deposits.

32 This captivity of the mines in the Northern Bowen basin was observed in *Adani Abbot Point Terminal Pty Ltd v Lake Vermont Resources Pty Ltd & Ors* [2020] QSC 260 where Justice Dalton found (at [1]) that: *"The respondents [including the QCoal Users] have coal mines in central Queensland. To export coal, they need access to the terminal;* ***there is no other terminal they can use".***

7 QCoal History with NQXT

33 NQXT's operation of the Terminal has resulted in a number of disputes with the QCoal Users, a related QCoal entity, and Lake Vermont Resources Pty Limited (**LVR**), including:

(a) Court proceedings; and

(b) Arbitrations under the existing User Agreements.

7.1 Court Proceedings

34 In October 2016, an Adani Group entity entered into arrangements with a Rio Tinto subsidiary with the following effect:

(a) the Rio User's access rights to 9.3mtpa at the Terminal were cancelled for FY17 to FY22 (covering the entire FY18-FY22 pricing period under the existing User Agreements);

(b) the Rio User's access rights to 9.3mtpa for FY23 to FY28 were novated to an Adani Group entity, Bravus Mining, to service its Carmichael Mine;

(c) the Rio User paid $255 million for the cancellation and assignment, in the form of a $117 million "termination" payment from the Rio User to NQXT and a $138 million "novation" payment from the Rio User to Bravus Mining, which Bravus Mining subsequently paid to NQXT under a "security deposit agreement";

(d) the effect of these transactions was that:

(i) the charges payable by the Terminal Users for the FY18-FY22 period were increased because the 9.3mtpa previously contracted to the Rio User were excluded from the calculation of the charges;

(ii) the Adani Group (through Bravus Mining) secured 9.3mtpa of access to the Terminal from FY23 to FY28, aligning with the planned opening of its Carmichael Mine; and

(iii) NQXT received, directly and indirectly, $255 million while still being able to recover costs relating to the Rio User's 9.3mtpa from the remaining Users.

35 When the QCoal Group challenged NQXT's approach, NQXT commenced Court proceedings against the QCoal Users and LVR for a declaration that it was entitled to calculate the handling charges payable for FY18 under the User Agreements without including the cancelled Rio User tonnes. The QCoal Users and LVR counter-claimed, claiming, among other things, that NQXT had engaged in unconscionable conduct by failing to include the 9.3mtpa previously contracted to the Rio User in the calculation of the handling charges and TIC payable under the User Agreement.

36 The Queensland Supreme Court found that NQXT had engaged in unconscionable conduct.[1] That finding was overturned in the Queensland Court of Appeal and the QCoal Users' application for special leave was dismissed by the High Court. This meat that the Adani Group was entitled to keep the benefit of the $255 million and as well as charge users for the 9.3 mtpa which was previously contracted to the Rio User.[2] This result gave the Adani Group a $255 million windfall.

37 The Court of Appeal decision shows the vulnerability the QCoal Users (and other users) have to the Adani Group exercising their market power, and the threat this poses to fair market competition.

7.2 User Agreement Arbitrations

38 Under existing user agreements, the Terminal Infrastructure Charge (TIC) is set every five years by reference to a "building-block" schedule of allowable costs.

FY12 review

39 From 1 July 2012, NQXT sought to increase the TIC for the QCoal Users and others to [redacted] A group of users referred the TIC dispute to arbitration. NQXT settled with the QCoal Users and agreed a TIC [redacted] and the arbitration was terminated.

40 Copies of the 2012 settlement deeds for QCoal Pty Limited, Byerwen Coal Pty Limited and Sonoma Mine Management Pty Limited are at tabs 13 to 15.

FY18 review

41 NQXT sought to increase the TIC for QCoal Group users from July 2018. Following arbitration, in August 2019, the TIC was determined by the arbitrator [redacted]

42 A copy of the relevant 2018 partial award is at tab 16, and the final award is at tab 17.

FY22 review

43 NQXT sought to increase the TIC for the QCoal Users from July 2022. Following arbitration, in December 2024, the TIC was determined by the arbitrator [redacted]

44 Copies of the 2022 partial awards are at tab 18 and 19.

Handling Charges

45 Under existing user agreements, the handling charges payable by Users based on the budget agreed between the Adani Group Terminal owner and the Adani Group operator. The Adani Group operator is paid a 10% margin on the agreed costs. The Users do not have any meaningful oversight of or input into the budgeting process and are not included in the discussions between NQXT and APO.

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1 *Adani Abbot Point Terminal Pty Ltd v Lake Vermont Resources Pty Ltd & Ors* [2020] QSC 260.

2 *Adani Abbot Point Terminal Pty Ltd v Lake Vermont Resources Pty Ltd & Ors* (2021) 399 ALR 302.

46 Existing user agreements require the Adani Group to demonstrate that the charges agreed with the operator represent a reasonable charge having regard to the efficient operation of the Terminal.

47 NQXT did not provide any detailed information to Users when it notified them of the proposed handling charges for FY17 and FY18.

48 For FY17 and FY18, the QCoal Users disputed that the Adani Group had demonstrated that the charges were reasonable. The matter was required to be litigated.

49 In August 2020, the Queensland Supreme Court declared that the Adani Group had failed to demonstrate that the charges were reasonable.

50 NQXT only provided further, more detailed, information about the agreed costs following the start of each financial year, including as part of the litigation and (in the case of FY18 and FY19) through "a demonstration report" provided to the Users in August 2021 during the course of its appeal of the Supreme Court's decision. The Court of Appeal subsequently overturned the Supreme Court's decision that NQXT had failed to make the required "demonstration" for FY17 and FY18.

51 Users have very little ability or recourse to monitor or challenge the charges agreed between the Adani Group Terminal owner and the Adani Group operator and in practice have very little ability to enforce the requirement that the Adani Group demonstrate that the agreed budget is reasonable having regard to the efficient operation of the Terminal.

Costs of disputes

52 The QCoal Users, NQXT, and LVR have incurred significant legal costs in connection with the multiple arbitrations and the Queensland Supreme Court proceedings (which involved an appeal to the Queensland Court of Appeal and an application for special leave to the High Court). Those costs run into the millions of dollars.

53 Further, NQXT includes as part of the "corporate costs" forming part of operating expenses in the calculation of the TIC an amount each financial year for the costs associated with arbitrating the TIC. In the FY18-FY22 period, this amount was approximately $600,000 per financial year. This means that Terminal users compensate NQXT for costs it incurs in disputes with the users over the applicable TIC.

7.3 New agreement — proposed by Adani commencing FY28

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

55 For reference, current DBCT price ($3.44 per tonne FY24/25) escalated by 8% per annum gives a price of $4.33 per tonne for FY27/28.

56 Despite QCoal's inquiries, the Adani Group have failed to provide any details of how the "Access Charge" in the new Proposed User Agreement is calculated. The relevant correspondence between the QCoal Users and the Adani Group is set out at tabs 7 to 12.

7.4 Terminal Regulations and Royalties

57 The Terminal users are required to comply with the Terminal Regulations. The Terminal Regulations are agreed between the Operator and NQXT. NQXT is required to seek comments from the Users before amending the Terminal Regulations, and NQXT must only consent to the regulations changes if it reasonably considers that they operate equitably amongst users. In practice, the Terminal Regulations give NQXT and APO the ability to prioritise the interests of one user over another. The QCoal Users have been disadvantaged by NQXT refusing to permit users to load coal onto geared vessels (meaning vessels that have loading gear attached to their deck). This refusal has adversely affected users who have customers who require the use of geared vessels.

58 By way of a brief overview:

(a) the Terminal Regulations since 2008 have set out that vessels need to be gearless. But despite this requirement geared vessels have consistently been permitted to load at the Terminal.

(b) in 2019, NQXT started to enforce the Terminal Regulations banning the use of geared vessels.

(c) in 2019, following objection from QCoal, NQXT entered an agreement with the QCoal Users permitting the use of geared vessels on certain terms until 20 June 2022.

(d) in 2022, NQXT refused to renew the above agreement (even if only for a specific customer) despite:

(i) the vital need of a specific QCoal customer to continue to use geared vessels at the Terminal; and

(ii) that (as far as the QCoal Users are aware) geared vessels from other companies were still being permitted to load at the Terminal in the next financial year (and potentially other users until after this time).

59 A copy of the relevant correspondence and agreements is set out at tabs 3 to 6.

8 Vertical Integration of Adani

60 The Adani Group is vertically integrated across the coal supply chain that ends in the Terminal. Entities in the Adani Group mine coal, and then rails it via a rail line it owns, using rails cars it owns, to a port it owns and operates. There is no aspect of the coal supply chain in the Bowen Basin that the Adani Group does not directly participate in.

61 A structure chart setting out the QCoal Users' understanding of the ownership of the various Adani Group entities involved in the Terminal and the broader coal chain is at **Schedule 2**.

62 The Adani Group Corporate Brochure (Tab 40) (and as at the date shortly prior to the filing of this request was available on the Adani Group website) sets out that the following entities are all part of the Adani Group's Australian businesses:

(a) NQXT;

(b) APO;

(c) Bowen Rail Company; and

(d) Bravus Mining.

63 All of these entities used to be ultimately owned by Adani Enterprises however Adani Special Ports and Economic Zone Ltd recently announced on 17 April 2025 that (Tab 41):

> *The Board of Directors of Adani Ports and Special Economic Zone Ltd. (APSEZ), India's largest integrated Transport Utility company has approved the acquisition of*

> *Abbot Point Port Holdings Pte Ltd (APPH), Singapore from Carmichael Rail and Port Singapore Holdings Pte Ltd, Singapore (CRPSHPL).* ***CRPSHPL is a related party.***
>
> *APPH holds the entities which own and operate the North Queensland Export Terminal, a dedicated export terminal with a current nameplate capacity of 50 million tonnes per annum (**MTPA**). The terminal is located at the Port of Abbot Point, approximately 25 km north of Bowen, in North Queensland on Australia's east coast…*

64 Relatedly, the Bravus Mining website (Tab 42) states that *"we are part of the global Adani Group"* and sets out the below infographic of the related Adani entities:

Figure 1 Adani Entities

65 Further details of the specific Adani Group entities vertically integrated to NQXT, and their relevant background is set out below.

8.1 Mining — Bravus Mining and Resources

66 The Adani Group owns and operates the Carmichael Mine via its Australian subsidiary, Bravus Mining.

67 The Carmichael Mine is currently producing circa 10mtpa with approvals for up to 60mtpa. Adani has announced a planned production expansion to 25mtpa. This production expansion will require port and below rail capacity on the Newlands rail system.

8.2 Rail — Bowen Rail

68 The Adani Group owns and operates the Carmichael Rail Network including rail fleet via one of its subsidiaries Bowen Rail Company. The network has a capacity of 40mtpa in stage one.

8.3 Terminal ownership — NQXT

69 The role of NQXT and NQXT Holdings is described above at 5.4, but both entities are ultimately owned by the Adani Group as set out in their Corporate Brochure.

8.4 Terminal operator — Abbot Point Operations Pty Ltd

70 In 2016, the Adani Group acquired the shares in the existing Terminal operator, APB. In 2016, NQXT entered into a new operating agreement with APO, which then subcontracted the provision of operator services at the Terminal back to APB. The January 2024 Adani Corporate Brochure states that *"Today, Abbot Point Operations (APO) manages the operations of the NQXT"*.

9 Implications of Adani Ownership – change from government ownership

71 The below table is a short summary of the situation that the Terminal Users now find themselves in following the Adani Group's acquisition of NQXT.

What Users signed up for	What Users have now
A long-term contract with a government-owned counterpart	A long-term contract with a vertically-integrated competitor

Confidence of long-term access on fair terms	Access subject to competitor's consent to renew contract
Pricing set by reference to a regulation-style approach, with arbitration rights in case of disagreement	Pricing set by competitor
Operator owned by Glencore with incentive to minimise costs	Operator owned by the Adani Group with reduced incentive to minimise costs due to "pass-through" mechanism of costs to users and margin charged on costs incurred

10 S 76(2) Access Criteria Satisfied

72 As above, The QCoal Users have obtained the Criterion A Report and Criterion B-D Report that address why the coal handling service provided at NQXT satisfies the criteria in section 76(2) of the Act. The QCoal Users instructed Mr Houston to have regard to the methodology that was adopted by the Queensland Competition Authority and the Queensland Treasurer in reviewing the declaration status of the coal handling service provided at the Dalrymple Bay Coal Terminal.

73 The QCoal Users do not intend to reproduce the contents of those reports in this application form, but set out below a summary of why the relevant criteria under section 76(2) of the Act are satisfied.

74 The sub-headings below correspond to the bullet points that the QCA requests applicants address as set out in the form provided by the QCA and required by section 77(3) of the Act.

11 Section 76(2)(b)

11.1 The Market in which the service is provided

75 The Criterion B-D Report concludes that *"the relevant market for criterion (b) is the market for NQXT's coal handling service for mines that connect directly to the Goonyella to Abbot Point extension (GAPE), Carmichael rail line or the Newlands system, which we refer to collectively as 'northern mines"*.

11.2 Whether there are substitutes for the service in the relevant market

76 The Criterion B-D Report concludes that *"there are no close substitutes to NQXT's coal handling service for mines in this market, and NQXT is the dominant coal handling facility in this market."* The QCoal Users agree with that conclusion. It is practically impossible for the QCoal Users, or other mines in the Northern Bowen Basin, to rail coal to a different terminal.

11.3 The period for which the service should be declared

77 As above, the service should be declared for a period of 10 years with a commencement date of 1 July 2027 as this is when User Agreements begin to expire. A period of 10 years is required because the nature of coal mining and the investment required to access and extract coal requires a long period of certain access to give miners as much certainty as possible that they will receive a return on their investment.

11.4 Expected demand in the market over the proposed declaration period

78 The Criterion B-D Report at section 4 sets out calculations showing the total foreseeable demand in the market over the proposed declaration period, based on mine production forecast data provided by AME and Wood Mckenzie.

79 Table 4.3 of the Criterion B-D Report sets out the expected demand in the market as follows:

Table 4.3: Outcome of QCA approach to forecast mine production / terminal throughput

	FY30	FY31	FY32	FY33	FY34	FY35	FY36	FY37	FY38	FY39
Throughput or mine production (mtpa)	37.0	40.0	40.0	40.0	40.0	40.0	40.0	40.0	41.3	41.2

80 The total foreseeable demand in the market is therefore less than the Terminal's capacity of 50mtpa.

11.5 Whether the facility for the service can meet expected demand in the market either in existing or expanded form (if relevant)

81 The Criterion B-D Report concludes that total foreseeable demand over the proposed declaration period will be less than NQXT's current nameplate capacity and it can therefore meet total expected demand.

82 In addition, the Criterion B-D Report also sets out the multiple "expansion" options available to NQXT and indicates that (based on publicly available information) that NQXT has approvals both to expand capacity at the Terminal and to construct a new terminal. As a result, there are unlikely to be any capacity constraints if demand materially increases from NQXT's current nameplate capacity.

83 This analysis is set out in more detail at section 4.4 of the Criterion B-D Report.

11.6 Whether the facility for the service can meet expected demand in the market at lower cost than any two or more facilities

84 The Criterion B-D Report says that "*we conclude that NQXT can meet total foreseeable demand in the market at least cost, and test that conclusion against potential higher levels of total foreseeable demand*".

85 Some of the reasons supporting this conclusion are that:

(a) the average supply chain costs of accessing NQXT in the market for the service is lower than for other terminals;

(b) applying the approach the QCA took to DBCT gives rise to an equivalent conclusion that NQXT can meet total foreseeable demand up to 50 mtpa — its existing capacity — at least cost; and

(c) forecasted demand in the market is lower than NQXT's nameplate capacity.

86 This analysis is set out in more detail at section 4.5 of the Criterion B-D Report.

12 Section 76(2)(a)

12.1 Details of a market or markets that are separate to, but dependent on, the market for the service

87 There are number of markets that are separate to, but dependent on the market for the Service. Specifically, the Criterion A Report identifies the following markets are likely to be relevant dependent markets:

(a) coal tenements markets, including three functionally distinct tenements markets, ie:

(i) exploration stage tenements;

(ii) development stage tenements; and

(iii) operating mines;

(b) coal export market(s);

(c) coal haulage services market;

(d) secondary capacity trading market;

(e) rail access market; and

(f) other markets, such as port services, coal shipping services and various mining inputs and services markets.

12.2 Details of the ability and incentive of the service provider to exert market power

88 NQXT has the ability and incentive to exercise market power, and that ability is not constrained without a declaration. This ability is not constrained because:

(a) **The Adani Group is fully vertically integrated in the relevant market**. This gives NQXT both the ability and the incentive to exert market power.

(b) **There is no competition from other coal export terminals**. The mines in the Northern Bowen Basin are "captive" due to commercial and structural reasons set out above. Of most consequence, is that (1) rail does not run south to DBCT and (2) that DBCT has no spare contracted capacity. As a result, the QCoal Users (and other users in the Northern Bowen Basin) have no ability to switch to an alternative terminal.

(c) **There is little countervailing power of users**, because users do not have a credible threat of switching to an alternative terminal.

(d) **There are no evergreen contracts or access arrangements in place.** This is in contrast to DBCT where there are deed polls and access frameworks that apply in the absence of a declaration. There are no such arrangements at NQXT, indicating that NQXT is not constrained by any threat of declaration or regulatory action.

89 Further details of the incentives on the service provider to exert market power are set out at section 2.1 and Section 4 of the Criterion A Report.

12.3 Details of how access (or increased access) to the service as a result of declaration would promote a material increase in competition in one or more dependent markets

90 The QCoal Users submit that access (or increased access) to the Service, on reasonable terms and conditions, as a result of a declaration of the Service, would promote a material increase in competition in at least one market other than the market for the service.

91 Access to the Service as a result of declaration would be likely to increase competition:

(a) between Bravus Mining and third parties in the later-stage coal tenements market in the Newlands and Galilee systems. The increase in competition is because the third parties would be offered similar or equal access terms and price as against the risk of no, poor quality, or prohibitively expensive access where there is no declaration (see section 5 of the Criterion A Report).

(b) between third parties in markets for later-stage coal tenements, because without declaration those third parties may not be willing to undertake any transactions, and the certainty over access as a result of declaration may incentivise those parties to undertake transactions (see Section 5 of the Criterion A Report).

(c) in the global markets for export of metallurgical coal as NQXT has the ability and incentive to restrict throughput of metallurgical coal and instead favour thermal coal mined by Bravus Mining. In contrast, all other Terminal Users ship metallurgical coal. The metallurgical coal exported from NQXT accounts for a sizeable portion of the global metallurgical coal trade. As a result, access to NQXT on reasonable terms is likely to increase the competition in the metallurgical coal export market by increasing supply and decreasing costs (see section 6 of the Criterion A Report).

(d) in rail markets as equality of access to NQXT is likely to:

(i) increase the likelihood of entry or the threat of entry for the provision of below-rail services connecting the Galilee basin to the Newlands system; and

(ii) promote an increase in competition in the market(s) for coal haulage services covering the Galilee and Newland systems (or wider) (see Section 7 of the Criterion A Report).

92 Declaration may also promote an increase in competition in the secondary capacity markets and other "derivative markets" such as such as port services, coal shipping services and various mining inputs and services markets for the reasons set out in section 8 of the Criterion A Report.

13 Section 76(2)(c)

93 NQXT is a significant piece of infrastructure and is important to the Queensland economy. Notably:

(a) the Queensland government has highlighted Port of Abbot Point as strategically significant due to its proximity to naturally deep water close to shore and the fact that it is situated away from urban development.

(b) the Port of Abbot Point was declared to be a priority port by *the Queensland Sustainable Development Act (2015)*.

(c) a significant volume of coal is exported through the Terminal. In the financial year ended 30 June 2024, NQXT exported 34.5 million tonnes of coal, with a total value of $7.2 billion. Consequently, NQXT exports accounted for 12.4% of the total value of coal exports from Queensland in the financial year ended 30 June 2024.

(d) the Terminal provides jobs for approximately 180 local employees and over 200 contractors. This is in addition to the thousands of employees who work at the connected mines and rail lines.

94 Additionally, the charges imposed by NQXT are directly related to the level of royalties paid by coal miners to the Queensland Government, because port charges are deducted from the royalties payable.

95 The QCoal Users have calculated that, on the basis of the proposed TIC charge and pricing mechanism in the Proposed User agreement, there would be a considerable reduction in the royalties they would pay to the Queensland government.

96 By way of example, the QCoal Users have calculated the reduction in royalties payable from the following mines (on a retrospective basis) for the years 1 July 2022 to 31 December 2025 on the basis of the proposed price and mechanism in the new Proposed User Agreement:

(a) **Byerwen Mine** — would pay **$12,229,021.78** *less* in royalties over the above period.

(b) **Drake Mine** — would pay **$6,860,789.54***less* in royalties over the above period.

(c) **JAX Mine** — would pay **-$4,989,603.62** *less* in royalties over the above period.

97 Criterion C is addressed further in Section 5 of the Criterion B-D Report.

14 Section 76(2)(d)

14.1 If the facility extends outside Queensland and is regulated by another jurisdiction, the desirability of consistency in regulating access to the service

98 The Terminal does not extend outside of Queensland and is not regulated by another jurisdiction.

14.2 The effect of declaration on investment in facilities and markets that depend on access to the service

99 Increased access would promote the public interest as it would promote investment in the related markets and NQXT.

100 In Section 6 of the Criterion B-D Report, HoustonKemp conclude that declaration would likely:

(a) promote investment in NQXT by:

(i) removing incentives which might otherwise prevent or delay NQXT in expanding the Terminal to meet any excess demand from non-Adani users on reasonable terms;

(ii) encouraging NQXT to invest in improving the ongoing operation of the Terminal by removing any ability to push inefficiencies onto third parties;

(b) promote investment in rail infrastructure in the Galilee Basin by removing uncertainty over access to NQXT;

(c) promote investment in:

(i) later stage thermal coal tenements in the Newlands System and Galilee Basin;l

(ii) later stage metalluirgical coal tenements in the Newlands System;

(iii) later stage tenements continaing both thermal and metallurgical coal in the Newlands System and the Galilee Basin;

(d) promote investment in the global market for metallurgical coal;

(e) promote investment in the market for coal haulage services on the Galilee and Newlands Rail systems.

14.3 The administrative and compliance costs that would be incurred by the service provider if the service were declared

101 The QCoal Users and the Adani Group have both incurred significant legal and administrative costs in relation to the existing contractual relations including multiple arbitrations, and Court proceedings (as described above). As a result, any compliance costs as a result of complying with or administering access requirements following declaration are likely to be insignificant compared to the costs incurred under the current arrangements.

102 The Criterion B-D Report also notes that to the extent a declaration reduces NQXT's incentive to exercise market power in favour of related parties then the likelihood of disputes is reduced and so to will any corresponding costs.

103 Additionally, it is likely that any costs of complying with a regulatory regime would not materially change the cost of co-ordinating with multiple users under contract, so there is likely to be no increase in compliance costs for the service provider.

14.4 Any other relevant matter

A declaration of the Service would among other things:

(a) mitigate the risk that the vertical integration of NQXT leads to increased exports of thermal coal that scores relatively poorly against ESG criteria in comparison to metallurgical coal produced by third parties; and

(b) promote general economic efficiency throughout the coal supply chain.

15 Schedule 1 — Key Entities

Key Entities	
Entity	**Description**
Adani Group Entities	
Abbot Point Bulkcoal Pty Ltd (ACN 010 183 534)	Operator of the terminal between 2000 and 2016, and a related entity of Glencore. Until 2011, it operated the terminal under a contract with Ports Corporation of Queensland.
North Queensland Export Terminal Pty Ltd (ACN 149 298 206) (formerly called Adani Abbot Point Terminal Pty Ltd).	Owners of assets and chattels at the Terminal, and contracts with the Terminal Users for provision of the Service.
North Queensland Export Terminal Holdings Pty Ltd (ACN 150 520 835) (and formerly Mundra Port Holdings Pty Ltd)	NQXT holding company.
Adani Ports and Special Economic Zone Ltd	Ultimate holding company of Abbot Point Port Holdings.
Abbot Point Port Holdings Pte Ltd	Holding company of various NQXT related entities.
Adani Mining Pty Ltd, trading as Bravus Mining and Resources (ACN 145 455 205)	An Adani Group entity and operator of the Carmichal mine.
Bowen Rail Company (ACN 638 074 889)	Adani owned entity and rail operator.
Q Coal Entities	
QCoal Pty Ltd (ACN 010 911 234)	One of the QCoal Users.
Byerwen Coal Pty Ltd (ACN 133 357 632)	One of the QCoal Users.
Government and Other Entities	
Glencore Coal Queensland Pty Ltd (formerly Mount Isa Mines Limited)	Glencore owned the sole user of the Terminal until 2005.
Ports Corporation of Queensland (ACN 126 302 994)	Until May 2011, the owner of the terminal.

16 Schedule 2 — QCoal Users Simplified Adani Group Structure