

4th June 2021

Professor Flavio Menezes
Chairperson
Queensland Competition Authority
GPO Box 2257
BRISBANE QLD 4001

Online submission: www.qca.org.au/submissions

Dear Professor Menezes

**DBIM APPLICATION FOR RULING ON PRICING METHOD FOR 8X EXPANSION –
SUBMISSION TO THE QUEENSLAND COMPETITION AUTHORITY**

1. EXECUTIVE SUMMARY

- 1.1 Whitehaven Coal Limited (**Whitehaven**) thanks the Queensland Competition Authority (**QCA**) for the opportunity to make submissions in respect of Dalrymple Bay Infrastructure Management's (**DBIM**) application for a ruling under section 150D of the *Queensland Competition Authority Act 1997* (Qld) in relation to the pricing method applicable to the proposed 8X expansion of the Dalrymple Bay Coal Terminal (**DBCT**).
- 1.2 Whitehaven understands there may be some discussion as to the validity of the cost estimates provided in the submission by DBIM, but regardless of this Whitehaven submits that the QCA should rule in favour of the 8X expansion costs being socialised. In summary, this is because:
- (a) The 8X expansion occurs wholly within the footprint of the existing DBCT operations. It does not involve the development of a stand-alone facility or assets which that can be solely used by the Expansion Parties, but rather additions and improvements to the existing terminal operations. Therefore the updated facilities will be used by both existing users and future users in the same way. The extent to which the expansion assets are integrated is evident from DBIM's estimate that 46% of the 8X expansion costs actually relate to non-expansion capital works (referred to as NECAP). This means that almost half of the 8X expansion costs relate to improvements and upgrades that would have to be made to the DBCT in any event.
 - (b) On a socialised basis, the 8X expansion costs will result in only a modest increase to the Terminal Infrastructure Charge (**TIC**) payable by existing users, while the overall Terminal Access Charge (**TAC**) will likely decrease based on all known estimates. In comparison, differentiated pricing will result in future users paying a TIC more than 6 times higher than that of existing users, and a TAC more than 3 times higher. This will materially disadvantage future users in competitive downstream markets, and will disincentivise them to progress new mining projects, to the overall detriment of the Queensland economy.
 - (c) The NECAP works, along with the rest of the 8X expansion, will provide significant and long-term benefits to existing users of DBCT. These benefits include improved terminal reliability, reduced risk of significant impacts to or decreases in terminal capacity due to outages or delays, and reduced future NECAP costs due to the extent of NECAP work included in the 8X expansion program. For future users to bear the whole cost of these works would be highly inequitable. Therefore the scope of these



benefits clearly supports a conclusion that the expansion costs should be socialised in this case.

- (d) DBIM has confirmed to the Expansion Parties that it will discontinue the 8X Expansion if the costs are not socialised. Such a discontinuation may leave Expansion Parties without a viable logistics solution, which will potentially delay or reduce the likelihood of the progression of these projects.

2. INTRODUCTION

- 2.1 By way of background, Whitehaven is one of a number of parties seeking future access to coal handling services provided at the DBCT, and for whom the 8X expansion capacity is required in order to provide such access (**Expansion Parties**). Whitehaven requires access in order to export coal produced at its proposed Winchester South coal mine project in the Bowen Basin, Queensland. Further information regarding Whitehaven and the Winchester South project was provided to the QCA in Whitehaven's submission on the DBCT 2019 draft access undertaking.¹
- 2.2 The Expansion Parties have funded the completed FEL 2 Feasibility Study into the 8X expansion, the outcome of which supported proceeding to the FEL 3 Feasibility Study. The 8X expansion will expand the capacity of DBCT by 14.9Mtpa, which will be sufficient to provide access to all of the Expansion Parties up to the extent of their currently agreed Conditional Access Agreements.
- 2.3 Whitehaven and other Expansion Parties are at a critical phase in their investment process in the Queensland resources industry. The Expansion Parties are required to make a financial decision to invest significant funds in further developing their interests in coal export projects: for example, Whitehaven's proposed Winchester South project will involve nearly \$1 billion in capital expenditure. When considering whether to make that investment, Whitehaven must necessarily consider the costs involved in operating that project, including its transport and infrastructure access costs.
- 2.4 In circumstances where the proposed expansion to the DBCT that will accommodate the Expansion Parties involves improvements and refinements to the existing infrastructure at the terminal, and the use and benefits of the improved facilities will be shared between existing and future users (cf. a scenario involving construction of new facilities to accommodate the Expansion Parties), Whitehaven and other Expansion Parties would naturally proceed with their project assessments on the assumption that the costs of such expansion should be socialised.
- 2.5 As is made clear in DBIM's application, there is a stark contrast in the potential cost outcomes at the DBCT for Expansion Parties such as Whitehaven, depending on the QCA's decision regarding the socialisation of the 8X expansion costs. Specifically, when considering its future investment options, Whitehaven faces:
 - (a) paying a \$15.44/tonne TIC if the 8X expansion costs are differentiated, as opposed to a socialised TIC of only \$3.55/tonne (ie almost 5 times the socialised price, and more than 6 times that of existing users); and
 - (b) paying a \$19.93/tonne TAC if the 8X expansion costs are differentiated, as opposed to a socialised TAC of only \$7.29/tonne (ie over 2.5 times the socialised price, and more than 3 times that of existing users).

¹ Whitehaven, *DBCT Draft Access Undertaking – Submission to QCA* (23 September 2019) paragraph 2, available at <https://www.qca.org.au/wp-content/uploads/2019/05/whitehaven-coal-submission-on-2019-dau.pdf>.



- 2.6 The 8X expansion is essential to generate sufficient capacity for coal produced by new and expanding projects in the Bowen Basin to be shipped to key export markets. As the QCA is aware, the DBCT is currently fully contracted by existing users.
- 2.7 Socialisation of the costs of the 8X expansion will enable that expansion to proceed, permitting the Expansion Parties (including Whitehaven) to progress the development of their projects on the basis of guaranteed port terminal access at a common price for all users. Differentiated pricing in relation to the 8X expansion will result in uncertainty regarding the viability of new projects in the Bowen Basin, given the significant costs that access seekers and future users will be required to bear through materially higher port terminal access charges. This will be particularly damaging to the competitiveness of access seekers and future users on downstream commodity markets, given the relatively homogenous nature of their product when compared against that of existing users (who will have access to the same terminal facilities for less than a third of the price). Further, DBIM has confirmed the 8X expansion will be discontinued, if the costs are not socialised.²
- 2.8 The QCA has the ability under section 11.13(c) of the DBCT 2017 Access Undertaking (**2017 Undertaking**),³ to determine that the costs related to the 8X expansion should be socialised across both existing and future users of the DBCT. Having regard to the circumstances outlined above, and the fact that the assets and infrastructure which comprise the 8X expansion will operate in a highly integrated way with the existing DBCT assets – and will materially benefit existing users of the DBCT – as explained further in this submission, Whitehaven submits that the QCA should exercise its discretion to socialise the costs.
- 2.9 It is also important to note that the QCA's ruling as to the pricing method to be applied to the 8X expansion should not affect the "negotiate/arbitrate" model that applies in respect of any access issues which arise under the 2017 Undertaking (and which will continue to apply to the extent that a new access undertaking replaces the 2017 Undertaking in the future).
- 2.10 Capitalised terms that are not defined in this submission have the meaning attributed to them in the 2017 Undertaking.

3. EXPANSION PRICING PRINCIPLES IN THE 2017 UNDERTAKING

- 3.1 Treatment of the cost of a terminal expansion, and in particular whether that cost should be socialised between users, is addressed in the 2017 Undertaking. Section 11.13 provides that where socialisation:
- (a) would decrease the Reference Tariff for existing users, the cost of the expansion should be socialised between existing and new users;⁴ and
 - (b) would increase the Reference Tariff for existing users, the cost of the expansion should become a separate capital base with its own Reference Tariff solely for the new users (**Cost Sensitive Expansion**).⁵
- 3.2 It is important to note that the expansion pricing principles in section 11.13 only consider the impact that socialisation has on the Reference Tariff (ie the TIC), and do not take into account any cost savings that users (both existing and future) might benefit from in respect

² See also the statements made in Section 7.1.3 of the Dalrymple Bay Infrastructure Limited Prospectus lodged in November 2020, to the effect that the QCA's price ruling will influence whether DBIM will proceed with the expansion.

³ The 2017 Undertaking is available at <https://www.qca.org.au/wp-content/uploads/2019/05/33818_06-Trading-SCB-DAAU-clean-1300187_1-1.pdf>.

⁴ 2017 Undertaking, section 11.13(a).

⁵ 2017 Undertaking, section 11.13(b).



of their overall cost of using the terminal through a reduction in the overall TAC. Whitehaven submits that in approaching its consideration of DBIM's application, the QCA should pay close attention to the fact that the TAC for the DBCT is actually comprised of two components:⁶

- (a) the Capital Charge, which is predominantly the return of the capital expenditure (plus the return on investment) in respect of the DBCT to DBIM through the Reference Tariff (among other elements); and
- (b) the Operation & Maintenance Charge, which reflects the cost of operating and maintaining DBCT.

3.3 The TAC is the real cost payable by a user for the use of services at the DBCT, and when evaluating the cost of access to the DBCT export facilities, a user will necessarily take into account the entire TAC, and not just the TIC, which is only one component of the TAC.

3.4 DBIM has determined that, if socialised, the cost of the 8X expansion would increase the Reference Tariff for existing users (by approximately \$0.40/tonne, or 13%).⁷ Therefore, the starting point under the Expansion Pricing Principles in section 11.13(a) of the 2017 Undertaking is that the 8X expansion should be considered a Cost Sensitive Expansion, and the cost of that expansion should not be socialised.

3.5 Importantly, however, section 11.13(c) of the 2017 Undertaking provides that a Cost Sensitive Expansion may be treated as forming part of the Existing Terminal where circumstances exist that justify socialisation. In determining whether circumstances exist that justify socialisation, the QCA must consider:⁸

- 1. the materiality of the increase in the existing users' Reference Tariff caused by socialising the cost of the Cost Sensitive Expansion;
- 2. the extent to which assets or infrastructure which are part of the Cost Sensitive Expansion will operate wholly or partly in an integrated way with the existing assets, or whether the Cost Sensitive Expansion will operate as a stand-alone facility;
- 3. the extent to which the Cost Sensitive Expansion is likely to benefit existing users of the DBCT (for example, such as through higher efficiency, reliability or flexibility of the existing assets);
- 4. any differences in the risks of providing access to existing users of the DBCT in respect of additional capacity created by the Cost Sensitive Expansion; and
- 5. any other factor that the QCA considers relevant.

3.6 Whitehaven submits that compelling circumstances exist to justify the socialisation of the 8X expansion costs, as explained in the remainder of this submission. Accordingly, Whitehaven strongly supports DBIM's application for the QCA to make a ruling on that basis.

4. ASSESSMENT OF THE EXPANSION PRICING PRINCIPLES

Whitehaven considers that all of the principles in section 11.13(c) of the 2017 Undertaking support a conclusion that the 8X expansion costs should be socialised. For the purpose of

⁶ 2017 Undertaking, section 11.3.

⁷ DBIM application, paragraph 2.

⁸ 2017 Undertaking, section 11.13(c).



this submission, however, Whitehaven wishes to focus on sub-paragraphs (2) and (3) in section 11.3(c).

4.1 **8X expansion assets are wholly integrated into the Existing Terminal**

- (a) As noted above, section 11.13(c)(2) of the 2017 Undertaking provides that one basis on which the QCA can conclude that expansion costs should be socialised is where the assets or infrastructure which are part of the Cost Sensitive Expansion will operate wholly or partly in an integrated way with the existing assets, as opposed to operating as a stand-alone facility. Whitehaven submits this is clearly satisfied in the case of the 8X expansion.
- (b) The 8X expansion occurs wholly within the footprint of the existing DBCT operations. It does not involve the development of a stand-alone facility (or anything coming close to approximating such facility). Instead, the 8X expansion is best understood as involving improvements and refinements to the existing terminal operations, in order to release additional capacity. The updated facilities will be used by both existing users and future users in the same way, and it would be entirely artificial to treat the expansion costs as if they related to a new, stand-alone facility. For example:
- Existing users will use the new shiploader infrastructure, and will continue to use the refurbished shiploaders;
 - Existing users will use the new inloading system (IL4), and will continue to use the refurbished IL2;
 - Existing users' coal will be stored in the improved stockpile area; and
 - The Operator (whose shareholders are many of the existing users) will relocate its personnel to more efficient and safer administration facilities, from which the Operator will continue to operate the terminal.
- (c) The extent to which the expansion assets are integrated within the Existing Terminal is evident from DBIM's estimate that 46% of the 8X expansion costs actually relate to non-expansion capital works (referred to as NECAP).⁹ Put simply – almost half of the 8X expansion costs relate to improvements and upgrades that would have to be made to the DBCT in any event.
- (d) NECAP works involve capital investment in assets that comprise the DBCT in order to ensure the continued or improved operation of the facility. The cost of NECAP works is generally charged to users of a facility through the capital base. In this case, if DBIM does not progress the NECAP works through the 8X expansion project, then those same NECAP works would need to be undertaken through DBIM's ongoing NECAP program, which would inevitably increase the Reference Tariff through an increase to the Regulated Asset Base. In fact, according to DBIM's estimates, the cost of the NECAP works would be more significant in that scenario, given the loss of the efficiencies gained when incorporating the NECAP works into the 8X expansion program.¹⁰ It would be highly inappropriate for the Expansion Parties, as future users of DBCT, to be required to pay for the entire costs of the NECAP works, which are otherwise required for the continued effective operation of DBCT.

⁹ DBIM application, paragraph 17.

¹⁰ DBIM application, paragraph 16.



4.2 8X expansion will materially benefit existing users of the DBCT

- (a) Consistent with the extent to which the 8X expansion assets are inextricably linked to the Existing Terminal operations, the benefits which will arise from the expansion will extend to existing users as well as to future users. Accordingly it would be inappropriate for the Expansion Parties to be required to pay for the entire cost of the expansion.
- (b) The NECAP works, along with the rest of the 8X expansion, will provide significant and long-term benefits to existing users of DBCT, beyond the current DBCT infrastructure. These benefits for existing users include:
 - (i) significant improvements in terminal reliability, given the renewal, replacement and upgrades to many of the facilities relied on by all existing users, including the shiploader and inloader facilities. These upgrades include superior designs and technology to those incorporated in the existing DBCT facilities, and will result in more durable and efficient facilities available to all users. For example, the existing users will benefit from the reduced risk of stockpile slumping, due to the upgrades to the stockpile facility;
 - (ii) reduced risk of significant impacts to or decreases in terminal capacity due to outages or delays, as a result of the increase in available capacity through the DBCT as well as the improved reliability and efficiency of the DBCT assets from the 8X expansion. For example, the introduction of a spare shiploader not only provides additional optionality in the event of unplanned maintenance or damage to the other facilities, but also increases the availability from the 3 outloading systems from 91% to 95%;¹¹ and
 - (iii) reduced future operation, maintenance and NECAP works costs, given that a large component of these costs is integrated in the 8X expansion. This benefit will be seen immediately by existing users through a decrease in upcoming NECAP works, but will continue to be felt by all users on an ongoing basis as the 8X expansion involves replacing deteriorating older facilities with newer and more efficient facilities that will not require the same level of operation and maintenance expenditure.
- (c) Due to the clear benefits to existing users arising from the 8X expansion costs, Whitehaven submits that these criteria weigh strongly in favour of the QCA determining that the expansion costs should be socialised.

¹¹ DBIM application, paragraph 57.



5. **CONCLUSION**

- 5.1 For the reasons set out in this submission, Whitehaven considers that the facts strongly support a decision by the QCA to exercise its discretion under section 11.13(c) of the 2017 Undertaking and determine that the costs associated with the 8X expansion should be socialised among all existing and future users.

Yours sincerely

A handwritten signature in black ink, appearing to read "Keiron Rochester".

Keiron Rochester
General Manager – Infrastructure and Business Improvement
Whitehaven Coal Limited

