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12 November 2012

John Hall
Chief Executive Officer
Queensland Competition Authority
GPO Box 2257
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Dear John,

Standard Rail Connection Agreement - Supplementary Submission on QCA's Draft Decision

Following a helpful discussion with your staff two weeks ago, I would like to explain a number of elements of our original submission in more detail. This is to provide increased clarity on the nature of connecting infrastructure and its relationship to land ownership and train length, on land access for emergency management purposes, and further background on coal loss management.

1. Connecting Infrastructure

The definition in our proposed revised Standard Rail Connection Agreement (SRCA) is as follows:

"Connecting Infrastructure" means the rail transport infrastructure (including, without limitation, track, signaling and overhead traction electricity (if applicable)):

- (a) that is identified as Connecting Infrastructure in the plan detailed in Schedule 2; and
- (b) that:
 - A. is not identified on the plan detailed in Schedule 2 as being Private Infrastructure, Connecting Infrastructure or part of the Network;
 - B. is managed, controlled or owned by QR Network; and
 - C. connects the Network to the Private Infrastructure

As modified upgraded or replaced from time to time.

We note that there is an error in this definition (which also appeared in the QCA's draft) that should be corrected by the deletion of the words "Connecting Infrastructure" (and the comma that immediately precedes them) in sub-clause (b)(A). The revised definition would read:

"Connecting Infrastructure" means the rail transport infrastructure (including, without limitation, track, signaling and overhead traction electricity (if applicable)):

- (c) that is identified as Connecting Infrastructure in the plan detailed in Schedule 2; and
- (d) that:
 - A. is not identified on the plan detailed in Schedule 2 as being Private Infrastructure, ~~Connecting Infrastructure~~ or part of the Network;
 - B. is managed, controlled or owned by QR Network; and
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Connecting Infrastructure connects Private Infrastructure to QR Network's mainline (Mainline Network) both physically and operationally, to ensure trains safely and efficiently pass between the Mainline Network and the Private Infrastructure.

The Mainline Network provides for straight running coal traffic. Any changes required to the Mainline Network to facilitate the connection of Private Infrastructure constitute the start point of Connecting Infrastructure.

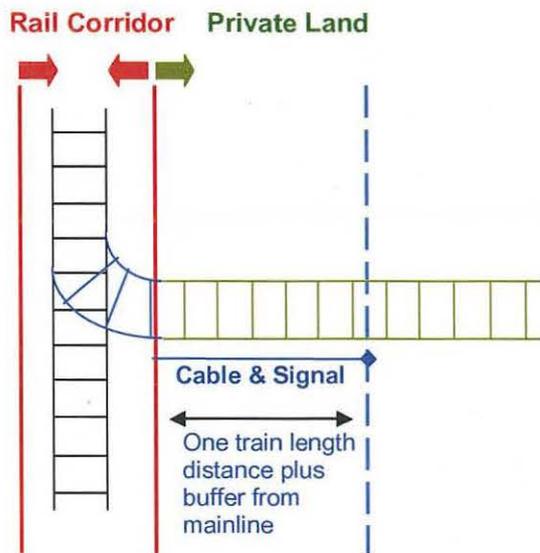
Connecting infrastructure extends from the Mainline Network start point to a defined physical connection point on the Private Infrastructure, up to and including all interface points. An interface point is the location where the connecting party's Private Infrastructure meets the Connection Infrastructure. There are a number of different interface points including (but not limited to):

- **Electrical**
The interface point for all electrical works and equipment will usually be defined by either a neutral section and/or isolation point generally located at the property boundary.
- **Signalling**
The Interface Point for all signalling works and equipment will usually be the safe clearance point being at a minimum, a full train length from the mainline network.
- **Telecommunications**
The Interface Point for all telecommunications will usually be located at the Rail Corridor property boundary, or alternatively at a dedicated location box provided for the interconnection.
- **Track & Civil**
The interface point for all Track & Civil works and equipment will usually be located at the Rail Corridor property boundary

1.1 Connecting Infrastructure Location

Every connection between the Mainline Network and Private Infrastructure is unique in terms of land constraints, length and complexity of the private infrastructure, volume of traffic, electrical requirements, communications, signaling and operational requirements. Consequently, there can be no one size fits all solution in terms of location and complexity of the Connecting Infrastructure, however the general principles outlined here operate as the starting basis for each connection negotiation.

Figure 1: High level illustration of Connecting Infrastructure

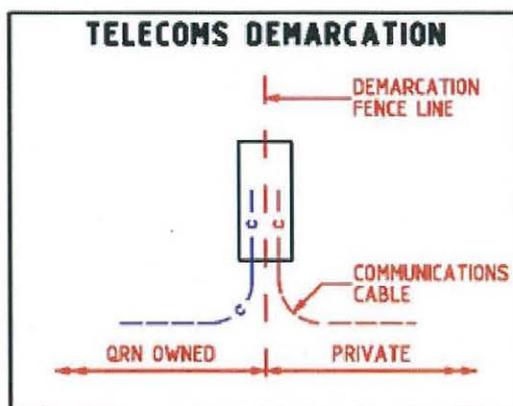


- The Mainline Network within the Rail Corridor (in red) which is owned by QR Network, and the Private Infrastructure located on private land (in green) as owned by the connecting party.
- The blue cable is the Connecting Infrastructure owned by QR Network attached to the signal (blue diamond) that is located on the Private Land being one train length (plus buffer) from the Mainline Network which allows a train to clear the Mainline Network safely.
- This is one example of where Connecting Infrastructure is required to be located on the Private Land of the Customer.

Connecting Infrastructure (shown in blue) will be located both within the Rail Corridor (QR Network Land) and on private land. The scale of this will depend on the circumstances of a particular connection. Some Connecting Infrastructure will always be located on private land, e.g. cable and signal infrastructure. Some Connecting Infrastructure may (or may not) be located on private land, e.g. telecommunications infrastructure.

Sometimes, but rarely, track infrastructure may also be on private land, e.g. if a turnout was required to be longer than could be accommodated on QR Network land owing to the physical or geographical characteristics of the particular connection.

Figure 2: Telecoms Connecting Infrastructure

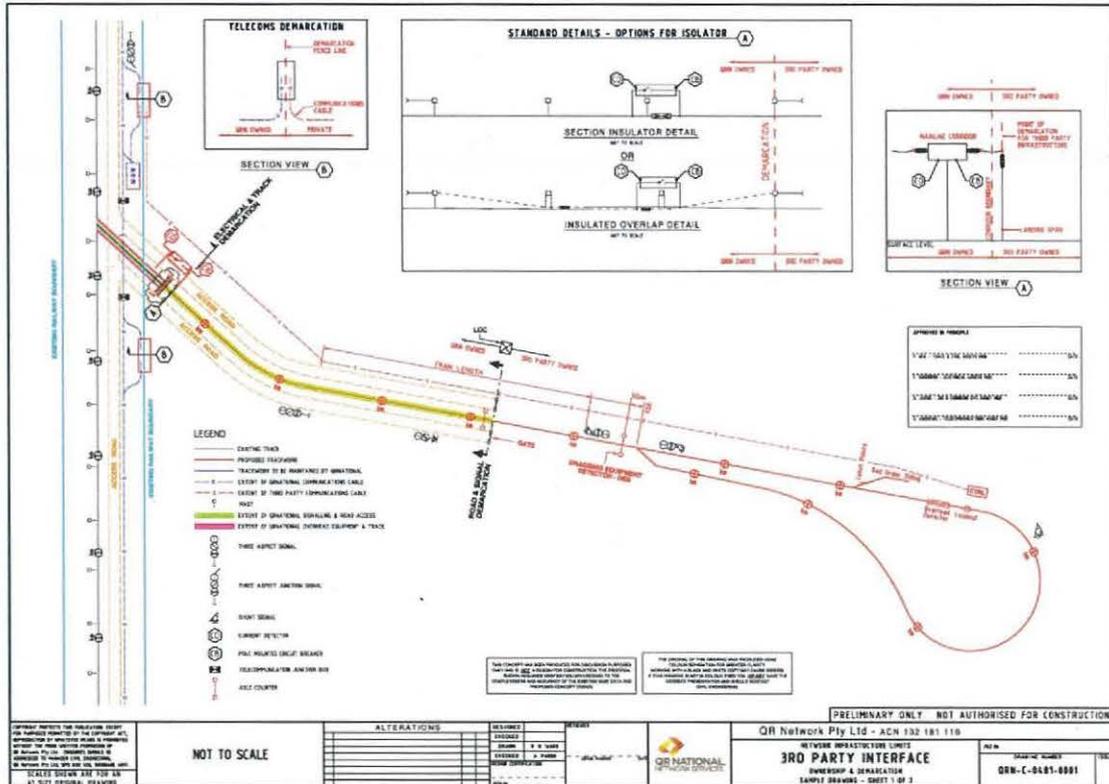


- Although this shows the demarcation boundary also being the Rail Corridor property boundary (as it is in most cases), site issues such as gradient, flooding or foundation concerns for construction can require these interface points to be located either side of the property boundary.

As outlined in the SRCA definition, a diagram detailing the Connecting Infrastructure and the applicable interface points and physical connection points as between the Connecting Infrastructure and the Private Infrastructure for each connection is to be attached to a Connection Agreement. This diagram will ensure clear and detailed specification of all interface and demarcation points and is always provided for any particular connection. Two examples of

Schedule 2 diagrams were included in our initial submission on the QCA's draft. We repeat one of them in Figure 3 below for clarity.

Figure 3: Example of a SRCA Schedule 2 diagram



1.2 Connecting Infrastructure Ownership

There are two elements relating to the ownership of connecting infrastructure: land ownership and infrastructure ownership.

QR Network is the owner (sublessor) of the Rail Corridor. The connecting party will be either in control (lessor) or the owner of the land adjacent to the Rail Corridor on which the Private Infrastructure is built.

QR Network owns and manages the Mainline Network and the connecting party owns the Private Infrastructure.

Control, of all of interface points is essential to maintain safe operation of the Mainline Network. Consequently, QR Network owns the Connecting Infrastructure regardless of its physical location because QR Network is responsible for the safe and efficient operation of trains on the Mainline Network. As the Rail Infrastructure Manager for the Mainline Network and the Connecting Infrastructure, QR Network is responsible for the maintenance and condition of Mainline Network and the Connecting Infrastructure. Because the maintenance of systems (such as traction or signaling) forms an integral part of the safety management system QR Network must own and control these systems to keep the Mainline Network (inclusive of Connecting Infrastructure) safe, operational and efficient.



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1.3 Train length

Clause 8.4(b) of our proposed revised SRCA requires that:

8.4 the Owner will, at its cost, at all times ensure that the Private Infrastructure is designed, constructed, operated and maintained and any future modifications are designed and constructed to a standard which....(b) enables the Train Services specified in the Train Services Plan to fully depart the Network and run onto the Private Infrastructure, or to fully depart the Private Infrastructure and run onto the Network, at the speed for which the relevant sections of the Network operate from time to time, and without causing any obstruction to the Network.

To comply with this clause, Private Infrastructure will necessarily need to be able to accommodate the relevant train length and also be of such additional length as required to enable the train to safely stop, assuming it were to exit the Network at speed (i.e. will necessarily incorporate a buffer). QR Network considers that this properly defines the nature of the Private Infrastructure. However, if the QCA considered that additional clarity would be helpful, we suggest the following could be added to the end of 8.4(b):

Without limitation, this means the Private Infrastructure must at all times be designed and constructed, and be of a sufficient length, to enable it to accommodate the full length of any Train Service specified in the Train Service Plan and any additional distance that would be required to enable such a Train Service to stop safely if it were to exit the Network at the speed for which the relevant sections of the Network operate from time to time.

Attachment 1 to this letter is a guideline document that QR Network provides to parties that have a clear intention to connect. This provides further detail about the nature of connecting infrastructure. As this document contains information that is important to the negotiation of commercial contracts we ask that it not be published by the QCA

2. Coal loss management

In July, 2007 the Department of Environment and Resource Management (DERM formerly EPA) issued the Chief Executive Officer of QR Ltd with an Environmental Evaluation Notice under section 323 of the Environmental Protection Act 1994. The Notice required identification of sources of nuisance coal dust from trains in the Goonyella, Blackwater and Moura coal rail systems. QR Network submitted a response to the Notice on 31 March 2008:

http://www.qrnational.com.au/InfrastructureProjects/Rail%20Network/Coal_Loss_Management_Project_Environmental_Evaluation.pdf

The report, prepared by Connell Hatch, found coal dust can be emitted from the following sources in the coal rail system:

- coal surface of loaded wagons
- coal leakage from doors of loaded wagons
- wind erosion of spilled coal in corridor
- residual coal in unloaded wagons and leakage of residual coal from doors
- parasitic load on sills, shear plates and bogies of wagons.

The report recommended the following mitigation methods as being the most practical and cost-effective, and could be implemented in the Goonyella, Blackwater and Moura rail systems:

- coal surface veneering using dust suppressants at the mine loading facility

- improved coal loading techniques at the mine to reduce parasitic load on horizontal wagon surfaces and reduce over-filling hence spillage during transport
- load profiling to create a consistent surface of coal in each wagon. To be implemented at the mine, and
- improved unloading techniques to minimise coal ploughing and parasitic load on wagons.

The recommendations from the report formed the basis for DERM to request a Transitional Environmental Plan (TEP1) for QR Network in cooperation with the Central Queensland coal industry to implement the report's findings. Amongst other things TEP1 required:

1. Consultation, finalisation and submission of a Coal Dust Management Plan (CDMP), inclusive of requirements to veneer coal in transit, profile loaded coal wagons and conduct pilot trials for wagon washing, to DERM for approval; and
2. Installation of a dust monitoring program.

QR Network submitted TEP1 to DERM in August 2008. TEP1 set out a plan, associated objectives and a program to finalise the CDMP in conjunction with the Central Queensland coal industry. DERM approved TEP1, inclusive of the program to develop the CDMP, in September 2008. Detailed requirements for TEP1 can be found at Appendix A of the following link:

http://www.qrnational.com.au/InfrastructureProjects/Rail%20Network/Coal_Dust_Management_Plan.pdf

In approving TEP1 DERM required a further TEP, (TEP2), to be prepared and submitted for approval. TEP2 was to include a detailed CDMP.

TEP2, inclusive of the CDMP, was submitted to DERM in February 2010. The CDMP was jointly developed by QR Network and the Coal Supply Chain incorporating miners, rail operators, and port and other unloading facilities. DERM approved TEP2 inclusive of the CDMP in April 2010.

2.1 Rollout of CDMP

The CDMP sets out coal dust mitigation strategies, and details the parties responsible for the implementation of each strategy. The CDMP is detailed and specific in terms of its requirements to implement coal dust mitigation measures. The plan does not leave it to users to determine methods for addressing coal dust, nor does it leave it to users to determine which party to the supply chain undertakes specific obligations. Rather the CDMP sets out specific requirements for mitigation measures and places responsibility for each measure on specific sections of the supply chain. As an example it is the Producer (mine), not the rail operator, which is responsible for the loading, profiling and veneering of loaded coal wagons.

The CDMP places the requirement to veneer and profile wagons on Producers and not Train Operators as the dominant source of coal dust has been attributable to the loading practice. Furthermore, veneering stations are integrated into both the loadout itself and the loading methodology. Operationally the veneering system is integrated into the mine train loadout (TLO) software for automation purposes. The loadout operator (mine staff) and not the train Operator has control of the veneering station. Similarly, mine staff and not train Operators control the profile of wagons loaded.

The CDMP requires QR Network to incorporate the CDMP's requirements into its commercial arrangements. QR Network implements this through two commercial agreements: the Transfer Facilities License (TFL) and the Standard Rail Connection Agreement (SRCA). The TFL addresses the requirements of the CDMP in respect of all train loading facilities operating on the QR Network network (that is TLOs located on QR Network owned balloon loops), with the SRCA utilised to address the CDMP requirements for trains entering the QR Network from private infrastructure (that is TLOs located on Privately owned balloon loops).

The TFL is a license for a Producer to build, operate and maintain a TLO on Rail Corridor land. The TFL sets out the commercial obligations, operational risks and associated controls of each party in respect of the interface between the TLO and the Mainline Network. As the primary purpose of the TLO is to load trains, and the fundamental cause of coal dust is the way in which trains are loaded, coal loss mitigation obligations relating to the loading practice logically must be included within the TFL. Consequently, veneering and profiling obligations are included in TFLs.

QR Network considers that the SRCA is a particularly effective mechanism to implement the CLMP in instances where TLOs are located on private infrastructure. In this scenario, as the TLO is not located on QR Network rail corridor there is no TFL. Nor for the reasons outlined below, is the standard Access Agreement an effective mechanism. The SRCA captures parties not covered by TFLs to ensure all trains entering the QR Network from the private infrastructure do so in accordance with the requirements of the CDMP.

Operator Access Agreements are not the appropriate mechanism to address the veneering and profiling requirements of the CDMP, as to do so would place an obligation on train Operators which is outside their control as the Mine/Producer controls the loading practice and veneering stations (particularly when veneering stations are automated). Furthermore this would be inconsistent with the requirements of the CDMP.

There are 36 operating train loading facilities on the QR Network corridor. QR Network is in the process of negotiating TFLs to cover all of these 36 TLOs. Each TFL being negotiated contains coal loss mitigation provisions. The negotiations are being undertaken on a priority basis and at the time of writing, 22 TFLs inclusive of the CLMP have been executed, with a further six in advanced stages of negotiations. TFLs for the remaining eight TLOs are at varying stages of negotiations. QR Network is confident TFLs will be finalised for each operating TLO on the QR Network in line with the requirements of the CDMP.

Attachment 5 is a marked up comparison of the relevant SRCA provisions to the TFL provisions on coal loss management. We suggest that it could be useful for us to take you through this document. This document is provided for QCA purposes only and QR Network would appreciate it not being published for general consumption.

The combination of TFLs and the SRCA will ensure there is a commercial obligation to address the requirements of the CDMP for all Producers in the central Queensland coal region.

3. Access for emergency response purposes

QR Network's revised SRCA allows QR Network to:

1. Inspect connecting sections of private infrastructure.

8.9 *QR Network may, and the Owner must permit QR Network to, have reasonable access to inspect (from time to time) the connecting sections of the Private Infrastructure and any construction or maintenance of those connecting sections of the Private Infrastructure, in relation to the Owner's compliance with this clause 8. QR Network will:*

- (a) *give the Owner reasonable notice of any such inspection, except in an emergency when QR Network must give as much notice as is practicable in the circumstances; and*
- (b) *at all times comply with the requirements of clause 29 in relation to access to Private Land, including in the event of an emergency.*

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2. Address an emergency incident or potential incident.

29.5 *QR Network may, subject to clause 29.6, enter any Private Land without the consent of the Owner if immediate entry is necessary to prevent, minimise or alleviate any threat or danger to any person or property that has resulted, or is expected to result, from an Incident.*

29.6 *If QR Network enters land in accordance with clause 29.5 it must:*

- (a) before entering the land, give the Owner as much notice as is practicable in the circumstances; and*
- (b) within 48 hours of entering the land, provide details to the Owner outlining the nature of access, the reasons for entering the land and details of the emergency, any actions carried out on the land to address the risks posed by the emergency and, if applicable, when QR Network will withdraw from the land.*

In order to ensure that access under emergency circumstances is only exercised for reasonable and legitimate purposes, our revised SRCA places limits on emergency access as follows:

1. Scope (area) – access is limited, so that it applies only to “the extent that some part of the Connecting Infrastructure has been, or will be, constructed upon land owned or controlled by the Owner or a Related Party” [see clause 29.3 which defines the term “Private Land” used in clause 29.5].
2. Scope (immediate threat) – QR Network may only enter under the emergency provisions “if immediate entry is necessary to prevent, minimise or alleviate any threat or danger to any person or property that has resulted, or is expected to result, from an Incident” [clause 29.5]
3. Process and transparency – QR Network must give as much notice as practicable and also provide a report within 48 hours of entering the land [clause 29.6].

The most likely scenarios under which these emergency provisions might be invoked include:

1. Allowing key maintenance staff to enter an affected area of private land under urgency to respond to an incident that affects Mainline Network operation, assess a threat (e.g. flood or vandalism) in order to establish if operations should be ceased or track/speed restrictions are required, or for safe working and repair procedures to be carried out to ensure safe use of the connecting infrastructure.
2. Effecting emergency and other repairs to signals, points or support systems which comprise connecting infrastructure which is located on private land, to ensure safe use of the connecting infrastructure. We envisage this would be very rare as in general ceasing of operations on private land would not affect the functioning of the mainline.
3. Enabling QR Network to attend the site to provide fire-fighting, medical or other support in advance of emergency services.

Please feel free to contact us if further clarification would be useful. (Bryan Wilson, Manager Regulation and Policy, 07 3019 5695, bryan.wilson@qrnational.com.au).

Yours sincerely


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Attachments:

1. Connecting Private Infrastructure: Third Party Requirements Guide
2. Comparison of the relevant coal loss provisions in a rail connection agreement with those in a TFL.
 - TFL is the base document
 - Red deletions are removed from the TFL provisions, blue insertions are inclusions. Green are items moved from one location and inserted elsewhere.
3. Three formal DERM approval documents on various components of coal loss management plan