

7 October 2022

Charles Millstead
Queensland Competition Authority
GPO Box 2257
Brisbane. 4001
Email: <http://www.qca.org.au/submissions>

Dear Charles,

RE: Queensland Competition Authority's preliminary position on the Concept Study DAAU

Thank you for your feedback on our submission and for providing the Queensland Competition Authority's (QCA's) current view with regard to approving Aurizon Network's *Concept Study Draft Amending Access Undertaking (this DAAU)*.

Bravus Mining and Resources Pty Ltd (Bravus) supports your preliminary decision to be minded not to approve the DAAU in its current form, and we appreciate this opportunity to provide feedback and suggest amendments that remain necessary to ensure this process delivers the most effective, efficient and fair outcome for all stakeholders.

We reiterate our support for amendments to date that provide the Independent Expert and QCA with options to undertake expansion studies and to stage the implementation of transitional when determining the most efficient and effective projects to address the existing capacity deficit (ECD).

We encourage the QCA to go ahead with approving transitional arrangements where the choice is clear as proposed by Aurizon Network and the Independent Expert in the Independent Expert's Recommendations to Queensland Competition Authority Response to Aurizon Network's Detailed Response to the ICAR 2021 dated 17 June 2022.

The following summary outlines our further request for clarity concerning the historical root cause of the Newlands / GAPE ECD and other suggested amendments:

1. **Newlands & GAPE ECD historical root cause and financial account:** - we request the QCA reconsider its position with regards to providing a definitive view on the historical root cause of the Newlands & GAPE ECD and corresponding financial account of related transitional arrangements.
2. **Request to amend 'forecast demand' to include sources of all legitimate demand.** – we request amendment to 7.5(d)(ii) to allow inclusion of demand sources in excess of an Access Holder's Train Service Entitlements that is both legitimately provided under our access agreement and determined reasonable by the Independent Expert for deciding if transitional arrangements should be staged.
3. **Consideration of Non-expansion transitional arrangements** – we do not believe any new or modified relinquishment processes are necessary or justified in this DAAU because: -
 - a. Users had the option to nominate and relinquish surplus contracted capacity during the development of Aurizon Network's Detailed Initial Capacity Assessment Report (ICAR) response.
 - b. Surplus contracted capacity can be relinquished by access holders at any time using UT5's 7.4.8 (Relinquishments) process, or as triggered under 7.6 (Capacity

Resumption), while any associated relinquishment fee or costs can be negated through the transfer of capacity to an access seeker under these processes.

- c. The burden of relinquishment to resolve the joint GAPE / Newlands ECD, would unfairly fall to one system (Newlands), as capacity between GAPE and Newlands is not fungible due to commercial constraints of the GAPE Deed. This would result with high levels of contracted GAPE capacity still being unused and unable to be transferred to Newlands.

Your help in resolving point number one is of particular concern to Bravus, as this matter not only affects our assessment of this DAAU but is also crucial for our full and comprehensive assessment of related regulatory processes, including Aurizon Networks GAPE & Newlands Pricing DAAU and ongoing capital, maintenance, and tariff reviews.

The following submission contains further feedback and details on these matters, should you have any questions please do not hesitate to contact myself or Ian Gibbons.

Sincerely,

Steve Straughan
Rail Access Consultant
Bravus Mining & Resources
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Submission to the Queensland Competition Authority's preliminary position on the Concept Study DAAU

1. Newlands & GAPE ECD historical root cause and financial account.

As raised in our earlier submission, Bravus contends that any costs associated with implementing transitional arrangements that are for the same expansion infrastructure that was descoped by the GAPE project resulting in the shortfall of the projects 51Mtpa capacity commitment, are therefore clearly the same root cause of the Newlands ECD, should be for the account of GAPE Project users consistent with your position from the 2016 UT4 Final Decision (April 2016).

Bravus acknowledges that in itself, this DAAU does not directly affect the way in which expansion costs are to be allocated, however without the QCA's clear and definitive position on this matter, we are unable to complete our full assessment of the business impacts arising from this DAAU, and more critically our assessment of Aurizon Network's recently submitted GAPE and Newlands Pricing DAAU and of other recurring regulatory processes including annual capital, maintenance and tariff reviews.

Unfortunately, due to legal advice and despite the dire to do so, the Independent Expert was unable to provide a full and comprehensive account on the historical root cause of the Newlands ECD in its initial capacity assessment report (ICAR). Instead, the Independent Expert had to limit the cause to only listing key infrastructure factors and the geographic location of the infrastructure constraint on the rail network. the Independent Expert was also unable to separately allocate the ECD between GAPE and Newlands acknowledging the cause of the ECD is common and joint between the GAPE and Newlands, further recognizing the relationship between the failure of the GAPE project to install capacity and the joint GAPE / Newlands ECD.

Without your intervention, we do not share your optimism that this matter will be addressed by Aurizon Network using existing processes, in particular their Newlands Working Group forum. Despite this forum operating since February 2022 and having unfettered access to confidential project records and the GAPE Deed, Aurizon Network has refused to put forward its view. Instead, they have presented a very selective historical account of GAPE events, specifically those events leading to the GAPE user's decision to remove project scope following the 2009 value engineering exercise to reduce project costs. Bravus understands that the GAPE Deed formally acknowledges the risks to capacity of the revised scope project design and operating mode stemming from this value engineering exercise are for the account of project users only.

In addition, behavioral obligations under UT5 and previous undertakings requires expanding users meet the full costs of their expansion. Bravus is of the view that GAPE project users should be held to account for rectifying the projects capacity shortfall and for the corresponding transitional arrangements to rectify the ECD in keeping with their commercial and regulatory obligations.

2. Consideration of Non-expansion transitional arrangements

Bravus reiterates support for the Independent Expert to re-evaluate the ECD from time to time based on up-to-date information including changes to contracts, planned system maintenance and improvements in operational performance. This also includes changes to the ECD as a result of surplus contracted capacity being relinquished using either part 7.4.8 (Relinquishments) and 7.6 (Capacity resumption) of UT5.

Bravus notes any revised or additional relinquishment process within this DAAU, that intentionally or unintentionally reduces the GAPE & Newlands ECD, would unfairly burden remaining Newlands non-GAPE users with higher tariffs.

GAPE users are unable to take part in relinquishment processes due to commercial constraints contained in the GAPE deed. Aurizon Network have the option of releasing this commercial constraint so that GAPE users can take part in relinquishments, however they have chosen not to do so. As a result, an unfair burden of relinquishments would fall solely on one system (Newlands). Under this scenario we note commercially, fungibility of capacity between GAPE and Newlands would only apply to the relinquishment of capacity and not to transfers of capacity in a reciprocal manner.

During consultation of this DAAU, some Newlands access holders have indicated they may have surplus contracted Newlands capacity to relinquish. Bravus has recently written to selected Newlands users offering to take on the transfer of surplus contracted capacity (copies of which have been previously provided to the QCA).

We also note a similar process that would allow for the one off relinquishment of Newland's capacity only has been proposed by Aurizon Network's in their recently submitted GAPE & Newlands pricing DAAU. Bravus trusts your position on this matter with this DAAU will be consistent with the pricing DAAU as the consequence to Newlands is the same for both DAAU's.

Conclusion of matters 1 and 2

In formulating a decision on these matters, Bravus recommends the following approach: -

1. The QCA decide the historical root cause of the Newlands ECD and account for associated costs in addressing the ECD.
2. If the GAPE project is found *to be responsible for* the ECD then no Newlands relinquishments should be permitted. Newlands users wanting to relinquish can do so using existing UT5 processes.
3. If the GAPE project is found *not to be responsible for* the ECD then Newlands relinquishments could be allowed provided the GAPE system users can participate in relinquishments on the same commercial terms as their Newlands system counterparts.
4. If the GAPE project is found *not to be responsible for* the ECD and GAPE project users are unable to participate in relinquishments on the same commercial terms, then no Newlands system relinquishments should be allowed and users wanting to relinquish can do so using existing UT5 processes.

3. Request to amend 'forecast demand' to include sources of all legitimate demand.

A key focus of this DAAU is to enable greater flexibility in relation to the transitional arrangements. To do this, amendments have been proposed that remove restrictions on the type and nature of transitional arrangements the Independent Expert and QCA can consider when making their final determination. It is our view that this philosophy should be extended to include the type and nature of demand information that can be included with a *forecast demand* for the purpose of considering if transitional arrangements should be staged.

Bravus notes that forecast demand is still an undefined term in UT5 however your preliminary position has confirmed *forecast demand* will be the lesser of demand and contract. Bravus would support the use of this forecast demand measure only when the access undertaking and commercial processes support the ready transfer of capacity between the GAPE and Newlands systems noting the current undertaking and commercial processes do not support ready transfers between GAPE and Newlands only.

As a result, *forecast demand* is likely to be materially less than actual demand for rail capacity as it does not reflect how capacity is actually utilised in practice. While we wait for additional capacity to be provided by Aurizon Network under our Newlands access application, we rely on using ad hoc train services to meet our demand. These ad hoc services make up a sizable portion of our weekly train orders and utilize unused capacity (contracted to others or otherwise) up to the maximum capacity available. Users with more than one load point also regularly operate train services in excess of individual load point contracts in order to balance production and shipping needs. We note the Independent Experts dynamic capacity model would need to account for this demand when evaluating network capacity to ensure results of the model are accurate including any recalculation of the remaining ECD.

In step with delivering transitional arrangements that *most effectively and efficiently address an ECD*, Bravus would also contend that *forecast demand* should be broadened to include the ongoing demonstration of supply chain rights. This would ensure *forecast demand* has both matching port and rail contracts which would further improve the accuracy of the forecast as well as identify where a misalignment occurs which Aurizon Network can address under existing processes.

Without the inclusion of these legitimate sources of demand, Bravus is deeply concerned that a misalignment between actual demand and installed capacity is likely to occur, which at worst could result in lost coal export sales, and at minimum would generate significant up and down stream efficiency losses at both the port and our mining operations. This potential outcome is neither prudent nor efficient for the supply chain given potential losses far outweigh potential savings gained through the deferred implementation of transitional arrangements.

Conclusion of matter 3

In conclusion, Bravus requests 7.5(d)(ii) *forecast demand* be amended to also allow for reasonable and legitimate demand to be included with the forecast and for the QCA to also consider amending *forecast demand* to qualify all demand has ongoing supply chain rights.

If you have any further questions or would like to discuss this submission, please contact myself using the details provided or Ian Gibbons on behalf of Bravus Mining and Resources

Regards

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