

4 November 2022

Queensland Competition Authority
GPO Box 2257
Brisbane QLD 4001

(Submitted via QCA online submission form at www.qca.org.au)

RE: Aurizon Network revised Concept Study DAAU

The Queensland Resources Council (**QRC**) is pleased to have this opportunity to comment on Aurizon Network's November 2022 Revised Concept Study DAAU (**Revised DAAU**).

1. Consultation

Aurizon Network consulted with the QRC's Rail Working Group (**RWG**) prior to submitting the Revised DAAU. Aurizon Network provided us with revised drafts, afforded us the opportunity to comment and also met with our representatives to discuss potential solutions to areas of non-agreement.

This has led to agreement between us and Aurizon Network on almost all of the Revised DAAU, with the exception of the outstanding matters set out in section 2 below. The QCA's preliminary position paper was extremely helpful in facilitating consensus. Without the position paper we don't consider that agreement would have been possible.

Other than as described in section 2 below the QRC is supportive of the Revised DAAU.

The QRC supports the Revised DAAU for the following reasons (among others):

- The Revised DAAU does not restrict the Independent Expert's and/or QCA's consideration of potential Transitional Arrangements to only those proposed by Aurizon Network and preserves the current (appropriate) division of roles between Aurizon Network, the Independent Expert and the QCA:
 - Aurizon Network as expert adviser and analyst (but not having the ability to limit Independent Expert or QCA discretion);
 - Independent Expert as an independent body, having broad discretionary power in determine what to consider and recommend to the QCA; and

- QCA as ultimate decision maker (in reliance on Independent Expert's recommendations).
- The amendments provide a helpful level of flexibility to the development of Transitional Arrangements to address existing capacity deficit. In particular:
 - allowing some to be implemented immediately and others in a staged manner; and
 - providing the circumstances under which concept and further expansion studies are to be undertaken.

QRC is generally comfortable with the limits on flexibility in the Revised DAAU. For example, if the pre-feasibility study for an Expansion is adequate, we agree that information should be sufficient to enable the Independent Expert to determine whether the Expansion is the "most effective and efficient" way to resolve an ECD and the Independent Expert should not delay making its recommendation on that Expansion pending a requirement to complete a feasibility study. We consider the limitation strikes an appropriate balance between certainty that staged processes will progress and be finalised in a timely manner while ensuring decisions (including recommendation and determinations) are made on the basis of appropriate information.

- We are supportive of the Revised DAAU allowing Aurizon Network to recover prudent and efficient costs of undertaking an expansion study (but only where the expansion study is required by a QCA determination) and for costs which are prudent and efficient to be approved by:
 - For an Expansion that does not ultimately proceed, the QCA; or
 - for an Expansion that does proceed, the Independent Expert (as part of the requirement for Aurizon Network to obtain approval of the prudence and efficiency of the Expansion proposal itself required by the Revised DAAU).

2. Remaining matters of concern

There are some matters in the Revised DAAU in respect of which we remain concerned. These are set out below (together with reasons why we suggest they should be addressed). We have also prepared a mark-up of the Revised DAAU (based on what we understand to be the version that Aurizon Network is submitting to the QCA) to address these concerns which is attached (**QRC Mark-up**):

- **Further fee free voluntary relinquishments:** The Revised DAAU rules out any scope for allowing these. QRC members are, generally, of the view that this may be too restrictive although Bravus does not support this view for the Newlands System only. Bravus considers relinquishments should not be used as a Transitional Arrangement (for the Newlands System) and will make its own submission on this matter. The remaining QRC members consider that there may be circumstances in which the Independent Expert may wish to recommend further voluntary, fee free relinquishments as part of the most effective and efficient way to address an existing capacity deficit. In such as case, these QRC members consider that the Independent Expert should have flexibility to make such a recommendation. These members generally accept that this doesn't mean access holders should

have an unfettered/unilateral right to make further voluntary relinquishments on a fee free basis. Rather, we propose that further fee free voluntary relinquishments should be allowed where this course is confirmed by the QCA on recommendation from the Independent Expert. Please see the suggested amendments for this approach in the QRC Mark-up (clauses 7A.5(aa) and 12 (definition of "Transitional Arrangements").

- **No retrospective impact on "Report Date"**: The Revised DAAU should not have retrospective impact on the current approved undertaking. In particular, the "Report Date" definition should be interpreted in accordance with the current approved undertaking and should not be affected by this DAAU (which only applies from the date of approval). We request the QCA to note this in its decision.

In addition, we suggest that clauses 7A.5(b) and (d) of the Revised DAAU be amended (as shown in the QRC Mark-up) so that the language reflects the current approved undertaking. Descriptions of what has happened should reflect their being undertaken in the context of the current approved undertaking.

- **Ensuring all parts of ECD are addressed (7A.5(n)(v))**: The Revised DAAU sets out certain steps which Aurizon Network must follow once it has completed a Relevant Study (7A.5(n)). Aurizon Network is relieved from undertaking these steps where the Relevant Study has resulted in agreement between Aurizon Network and affected End Users that the Expansion should be implemented (clause 7A.5(n)(v)). We are concerned that there is potential for this to result in a portion of an ECD not being resolved (ie. if the Expansion will not address all of the Remaining Existing Capacity Deficit).

As part of the consultation, Aurizon Network expressed as concerns with this QRC's approach:

- firstly, it would require Aurizon Network to restart the whole process; and
- secondly, what would happen if that "further" remaining ECD is already addressed by the existing drafting in clause 8.9.4 of the Undertaking?

QRC is not suggesting the whole process should be restarted nor duplication of processes. Rather that, in the specific situation, where there is any part of the ECD which will remain (and which is not being addressed under clause 8.9.4_ that the steps in clause 7A.5(n) should be followed for just that specific portion of the ECD. (Please see QRC Mark-up clause 7A.5(n)(v)(C).)

- **Potential alternative solutions identified by IE – request for AN analysis (7A.5(q))**: The Revised DAAU allows the Independent Expert to propose alternative solutions for Aurizon Network analysis in some circumstances and the relevant clause (7A.5(q)) has been substantially agreed during consultation. There are 2 areas where the QRC considers the language to be too narrow (and drafting changes to address both are suggested in QRC's Mark-up, paragraph (q)):
 - firstly, language to clarify that the Independent Expert's proposal is "for Aurizon Network's analysis whether it will" "most effectively and efficiently" address the matter. Without these words, we are concerned that the clause may be interpreted as meaning the Independent Expert

must have already formed the view (that the alternative is the “most effective and efficient”) and is seeking Aurizon Network’s confirmation (which should not be what this clause provides for).

- o the final sentence of the clause needs to apply irrespective of the outcome of Aurizon Network’s analysis. Otherwise, there is no provision for what happens if Aurizon Network is of the view that the IE Alternative Solution is suitable.

3. Otherwise supportive of Revised DAAU

Subject to the Revised DAAU being amended to suitably address the matters, and QCA’s confirmation on the “Report Date”, as set out in section 2 above, QRC would be comfortable with the QCA approving the Revised DAAU. As noted above, we are grateful for the involvement of the QCA to help bring Aurizon Network and industry together.

Thank you for the opportunity to provide this submission. We would of course be happy to provide any further information helpful.

Yours sincerely



Andrew Barger

Queensland Resources Council