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## **Draft Amending Access Undertaking – Concept Study in response to Existing Capacity Deficit**

8 June 2022

Dear Charles,

Aurizon Network's UT5 Access Undertaking (**UT5**) allows for an Independent Expert to produce an Initial Capacity Assessment Report (**ICAR**) to determine whether there is an Existing Capacity Deficit (**ECD**) across any of Aurizon Network's Coal Systems.

On 28 October 2021, the Independent Expert released the ICAR identifying ECDs across all central Queensland Coal Systems. In accordance with UT5, Aurizon Network provided a recommendation to the Independent Expert and the Queensland Competition Authority (**QCA**) on how to resolve these ECDs through the publication of its detailed response to the ICAR on 14 March 2022 (**Detailed Report**).

Capitalised terms in this letter have the meaning given to those terms in UT5, unless the context otherwise requires.

### **Background**

Aurizon Network engaged extensively with its customers to develop the recommended Transitional Arrangements. From this engagement, it became evident that customers are seeking a pragmatic program of work to resolve the ECDs in each rail corridor. Customers are seeking to ensure that any investments made are prudent and consider likely future changes to demand and operational performance.

To address this, Aurizon Network recommended that certain Expansions progress immediately, based on their efficiency in resolving constraints on the network. In other cases, there are one or more alternative Expansions that could assist in resolving the ECD, however there is currently insufficient detail to properly assess the potential costs, benefits and risks in undertaking each of the potential Expansions. Consequently, for those cases, Aurizon Network recommended that a Concept Study is required to determine the most effective and efficient resolution.

Throughout the consultation process prior to the publication of the Detailed Report, a number of End Users confirmed that they consider undertaking Concept Studies to be a productive step in identifying the most effective and efficient resolution to the ECD. However, consensus was not reached with all affected End Users on which of the Transitional Arrangements should

progress. Consequently, clause 7A.5(d) of UT5 applies and the Independent Expert must make a recommendation to the QCA on the most effective and efficient Transitional Arrangement to resolve the ECD.

### **Summary of Draft Amending Access Undertaking (DAAU)**

Aurizon Network notes that the approach to undertake Concept Studies to address the ECD identified by the Independent Expert is not considered in UT5, where the Independent Expert must make a recommendation on which Transitional Arrangements it considers will most effectively and efficiently resolve the ECD. Similarly, the QCA must then make a determination, and Aurizon Network must implement those Transitional Arrangements within its control. UT5 does not expressly contemplate any flexibility in this process to account for changes in the annual performance of the network, or staged implementation of initiatives.

Accordingly, Aurizon Network has developed a DAAU which seeks to address these issues. In summary, Aurizon Network's DAAU seeks to:

#### 1. Facilitate further studies to be undertaken on Transitional Arrangements

The DAAU seeks to provide the ability for Aurizon Network to recommend to the Independent Expert that a Concept Study be undertaken on certain Transitional Arrangements before the Independent Expert makes its recommendation to the QCA as to the most effective and efficient resolution to the ECD.

It also provides for the Independent Expert to recommend, and for the QCA to determine, that Aurizon Network is to undertake Concept Studies, Prefeasibility and Feasibility studies for Expansions in order to provide additional information prior to it making a recommendation to the QCA on the most efficient and effective Transitional Arrangements to resolve an ECD.

The DAAU seeks to ensure that where Transitional Arrangements can be recommended without further studies, these can progress in parallel to Concept Studies, and enable the ECD to be partially remedied.

Where possible, the DAAU seeks to preserve the principles agreed in UT5 for:

- End Users to be consulted and have the ability to agree on Transitional Arrangements after Concept Studies are complete, and Aurizon Network will release a Supplementary Detailed Report with recommendations from the Concept Studies; and
- the role of the Independent Expert to review and recommend which Transitional Arrangements to proceed with where agreement with End Users cannot be reached.

#### 2. Enable the Independent Expert to consider other factors in making its recommendation

The DAAU addresses the interaction between the first Annual Capacity Assessment completed in accordance with clause 7A.4.2 of UT5, and the determination to be made by the Independent Expert in relation to the Transitional Arrangements proposed by Aurizon Network in its Detailed Report.

It is likely that in the period since the ICAR was provided, an Annual Capacity Assessment will also have been undertaken by the Independent Expert pursuant to clause 7A.4.2. Given the Annual Capacity Assessment will provide an up-to-date analysis of the Deliverable Network Capacity, it is logical to require the Independent Expert to consider the Annual Capacity Assessment in making recommendations to the QCA on the most effective and efficient Transitional Arrangement.

Additionally, the DAAU seeks to enable the Independent Expert to consider forecast demand in making its recommendation. This consideration enables the Independent Expert to assess

at this initial stage, the prudence of proceeding with Transitional Arrangements with the market conditions at the time.

3. Enable Aurizon Network to recover all reasonable costs of undertaking further studies

Aurizon Network considers that where there is a requirement to undertake Concept Studies, Pre-feasibility Studies, or Feasibility Studies as part of this ICAR process, it is reasonable to recover such costs.

The DAAU seeks to introduce a mechanism that enables Aurizon Network's reasonable costs to be treated as follows:

- if the Expansion to which the Concept Study relates is not ultimately determined by the Independent Expert as the most effective and efficient Transitional Arrangement, the costs associated with that Concept Study will be recoverable by Aurizon Network as a Revenue Adjustment under Schedule F, clause 4.3 of UT5 and subsequently included within the Annual Review of Reference Tariff for the relevant year. The costs will be deemed additional to Aurizon Network's Non-Electric Operating Expenditure Allowance for the Allowable Revenues in the relevant year; and
- if the Expansion to which the Concept Study relates does proceed, the costs will be included in the value of the Regulatory Asset Base(s) to which the Concept Study relates.

**Customer Engagement**

Aurizon Network engaged with customers via the Rail Working Group (**RWG**) on proposed drafting changes to UT5. A high-level summary of a preliminary draft of the RWG's drafting is within Appendix A, including Aurizon Network's response on each matter.

Aurizon Network notes that customer engagement has been brief due to the need to submit this DAAU prior to the Independent Expert making its recommendation to the QCA. Aurizon Network is seeking to ensure that the Independent Expert has the scope to recommend a practical approach aligned to UT5 requirements, so as not to delay the process. As such, the DAAU seeks minimal change in building in the additional process for further studies. Where possible, the principles of the existing UT5 process have been preserved.

Should you have any questions or require further information, please do not hesitate to contact Tiffany Bruce at [tiffany.bruce@aurizon.com.au](mailto:tiffany.bruce@aurizon.com.au)

Sincerely,



Dan Kearney  
Head of Finance & Regulation  
Aurizon Network

# Appendix A

## Draft Rail Working Group Feedback and Consideration

Draft RWG Feedback	Details
Forecast demand and Annual Capacity Assessment considerations (clause 7A.5(d)(ii))	<p>Aurizon Network agreed with RWG that in making its recommendation to the QCA in respect of proposed Transitional Arrangements, the Independent Expert could take into account:</p> <ul style="list-style-type: none"> <li>• "forecast demand for Capacity (but excluding any forecast demand by an Access Holder which is in excess of its Train Service Entitlements)"; and</li> <li>• any Annual Capacity Assessment undertaken by the Independent Expert pursuant to clause 7A.4.2 since the ICAR was published.</li> </ul>
Pre-Feasibility execution plan (clause 7A.5(ba))	<p>Aurizon Network agreed to RWG's request that a Concept Study could include a Pre-feasibility execution plan.</p>
Timing of recommendation by Independent Expert (clause 7A.5(da))	<p>RWG proposed that the Independent Expert could elect, from a number of alternatives, the timing at which the Independent Expert would provide its recommendation to the QCA on Transitional Arrangements pending completion of various measures.</p> <p>Aurizon Network considered that the 'timing points' which industry included were unnecessarily restrictive. However, Aurizon Network agreed that guidance should be given on the timing of the recommendation and included drafting that confirms that the Independent Expert should be able to make such a recommendation at any point in time.</p>
Staged implementation of Transitional Arrangements (clause 7A.5(ea)(i))	<p>RWG proposed drafting that allowed for staged implementation of Transitional Arrangements pending the outcome of a Concept Study as determined by the QCA. RWG's drafting reflected the staged implementation approach by references to "temporary" or "permanent" measures.</p> <p>Aurizon Network agreed to the concept of a staged implementation of Transitional Arrangements (without accepting industry's nomenclature of temporary and permanent measures) and accepted the concept of having to address "Remaining Existing Capacity Deficits" following the implementation of the first round of Transitional Arrangements.</p>
Alternative Transitional Arrangements	<p>Aurizon Network agreed with the RWG-proposed concept of requiring Aurizon Network, as part of its Supplementary Detailed Report, to make a recommendation on alternative Transitional Arrangements which, in Aurizon Network's view, could effectively and efficiently address any Remaining Existing Capacity Deficit or whether, in Aurizon Network's view (acting reasonably), affected Access Holders and Customers would prefer not to do anything to address the Remaining Existing Capacity Deficit.</p>
Completion of Pre-Feasibility Study or Feasibility Study (clause 7A.5(n)(ii)(B))	<p>RWG recommended that, following the completion of either a Pre-feasibility or Feasibility Study, the relevant Expansion will be subject to a further requirement for either End User approval of the Expansion or QCA determination that the Expansion is the most effective and efficient option to address the ECD.</p>

Aurizon Network agreed to the proposal that the relevant Expansion should be the subject of a further determination by the QCA and has included drafting to that effect. However, Aurizon Network did not agree to the proposal for a further round of End User approval as it is more appropriate for the QCA to make the determination on the most effective and efficient option to address the ECD.

Relief from Concept Study obligation

RWG requested a change that would relieve Aurizon Network of the obligation to comply with a determination made by the QCA to undertake a Concept Study where the Aurizon Network and the affected End Users have also already agreed that a Concept Study is not required for that Expansion.

Aurizon Network rejected this proposed change because the outcome contemplated by that change (i.e. the express agreement that a Concept Study is not required) is not one contemplated by the Detailed Report and its consultation with End Users.

Delay to carrying out Expansion

RWG suggested a new clause which provided that:

*“Notwithstanding Aurizon Network and the affected End Users having jointly agreed that an Expansion is the most effective and efficient option to address the Existing Capacity Deficit, if the Independent Expert makes a recommendation to the QCA that Aurizon Network undertake a Concept Study” the Expansion will not proceed “unless and until the first to occur of:*

- I. Aurizon Network and the affected End Users jointly agree that a Concept Study under clause ... is not required for that Expansion;*
- II. the QCA does not agree with the Independent Expert’s recommendation to require, and declines to make a determination requiring, Aurizon Network to undertake the Concept Study for that Expansion; and*
- III. the Concept Study is completed and the application of clause ... to that Expansion is confirmed pursuant to clause ... (subject to any further application of this clause in respect of a Pre-feasibility Study or Feasibility Study, as applicable pursuant to clause ...”*

Aurizon Network rejected RWG’s proposal because it does not reflect the fact that the affected End Users and Aurizon Network have not jointly agreed that an Expansion is required. In other words, the circumstances in which the clause operates (i.e. the wording in the opening paragraph) have not arisen.

Expansion of Independent Expert’s role (clause 7A.5(d))

RWG proposed that the Independent Expert may make a recommendation to the QCA for Transitional Arrangements beyond those that have been identified by Aurizon Network in consultation with affected End Users, and that, in making such recommendation, the Independent Expert could consider anything that the Independent Expert considered appropriate.

Aurizon Network rejected this proposal because the DAAU relates to Concept Studies, and it was never intended to vary the roles of the Independent Expert and the QCA under UT5 in ways that did not relate to Concept Studies.

RWG also proposed an expanded role for the Independent Expert in approving the timing of the proposed Expansion. Aurizon Network did not accept this drafting as it is beyond the scope of the Independent Expert's remit in UT5.

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Compliance with Chapter 8

RWG proposed that where the Independent Expert made a recommendation (and/or the QCA made a determination) that an Expansion was the most effective and efficient Transitional Arrangement, then the Independent Expert and/or the QCA may include a recommendation or determination (as applicable) that "any one or more of the provisions of clauses 8.3 and 8.4 (or any part thereof)" would apply.

Aurizon Network did not include this drafting as clauses 8.3 and 8.4 were expressly not intended by UT5 to apply in respect of Expansions under clause 7A.5 and the breadth of the proposed drafting only served to create uncertainty.

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Relinquishments

Customers have raised the potential to be able to further relinquish access rights where the ECD has not yet been resolved, or a plan is not in place to resolve this. Aurizon Network considers there may be merit to this, however due to timing, and as the principle has not been consulted on more broadly with customers, it has not included this in the DAAU. Further, consideration must be given to the impact of one customer relinquishing access rights at no cost on other customers' access charges, and the costs already incurred by customers in undertaking studies.

Aurizon Network is willing to consider and work with the RWG on this concept, and for any agreed positions to be proposed to the QCA as part of its consultation process.

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