

21 March 2025

To: Ann Jones
Director Business Performance
Queensland Competition Authority
GPO Box 2257, Brisbane QLD 4001
www.qca.org.au/submissions/

Dear Ann

Application for NECAP Prudency Ruling – Further Submission

1. Dalrymple Bay Infrastructure Management Pty Ltd (**DBIM**) refers to section 12.10 of the DBCT 2021 Access Undertaking (**AU**) under which DBIM is required to incur Non-expansion Capital Expenditure (**NECAP**) as necessary to ensure that the Terminal¹ complies with Good Operating and Maintenance Practice², and that DBIM complies with its obligations under the Port Services Agreement (**PSA**).
2. DBIM appreciates the opportunity to respond to the submission by Fitzroy Australia Resources Pty Ltd (**Fitzroy**) in respect of DBIM's application to the QCA for a NECAP Prudency Ruling pursuant to s.12.10(c) of the AU for the actual expenditure on completed works associated with two projects: NS01 Arc Flash Mitigation Phase 2 and NS06 Site Roads Upgrade Program (**the two projects**).
3. On a balance of all the relevant factors, DBIM considers that the capital expenditure on the two projects was prudently incurred.
4. Fitzroy indicated the information it received was insufficient to approve the two projects. For reference, the information supplied to Fitzroy is included in Attachment 2. DBIM considers that the information supplied, and DBIM's response to Fitzroy's queries, was reasonable and sufficient to enable Fitzroy to assess the two projects for the purposes of providing its approval under s.12.10(b)(2) of the AU. Further, DBIM considers that it has provided to the QCA sufficient and appropriate information for the QCA to make a ruling that both of the two projects are prudent, having regard to (among other things) the matters in accordance with s.12.10(c) of the AU.

Nature and intent of NECAP consultation with Access Holders

5.

[Redacted]

6.

[Redacted]

¹ Capitalised terms used in this letter and accompanying supporting material which are not otherwise defined have the same meaning given in the AU, OMC, PSA or User Agreements as applicable.

² In Schedule F – Definitions and Interpretations of the AU, Good Operating and Maintenance Practice is defined as "...adherence to a standard of practice which includes the exercise of that degree of skill, diligence, **prudence** and foresight which would reasonably be expected from a competent, experienced and qualified operator of a facility comparable with the Terminal."

[REDACTED]

7. [REDACTED] DBIM took steps to consult with individual Users for the purposes of the NECAP approval process pursuant to s.12.10(b)(2)(A)(1) of the AU, in order to facilitate each User's approval of the two projects.
8. As evidenced in Attachment 2, as part of DBIM's consultation with Fitzroy during the s.12.10(b)(2)(A) process, DBIM provided detailed technical and project information intended to enable the Fitzroy to consider the appropriateness of the NECAP works proposed, noting DBIM's obligations under the PSA and the AU with respect to ensuring that the Terminal complies with Good Operating and Maintenance Practice (refer s.12.10(a) of the AU). To support this engagement process, senior officers of DBIM, including the Group Projects Director and NECAP Manager responded directly to queries from individual Users in relation to the information provided.
9. While DBIM consults with Users as part of the s.12.10(b)(2)(A) process and provides detailed information to Users to facilitate their approval, DBIM does not consider that s.12.10(b)(2) requires DBIM to provide Users with the same level of information which may be required by the QCA for the purposes of determining a formal application for a prudency ruling under s.12.10(c). Rather, the "Presumed Prudency of NECAP" approval process under s.12.10(b) is intended to facilitate efficient and cost effective approval of appropriate and necessary NECAP, where Users agree that the relevant projects should be deemed to be prudent. In this regard, DBIM provided Fitzroy with the same level of information (and opportunity to receive information) it provided to all other Users during its s.12.10(b)(2)(A) process, which included:
 - (a) a summary of each project in the Operator's Recommendation for NECAP Series S, attached to DBIM's request for User approval; and,
 - (b) further detail as reasonably requested by the User (which in the case of Fitzroy included Project Briefs, and any other relevant context and explanatory notes, to the extent that DBIM could reasonably provide such information).
10. DBIM notes that all Users, other than Fitzroy, approved the two projects in accordance with s.12.10(b)(2)(A).
11. DBIM does not modify any final recommendation of the Operator, as that recommendation has been made independently by the Operator pursuant to its obligations under the OMC,³ in its consideration of the relevant circumstances and requirements for maintenance at the Terminal. [REDACTED]
[REDACTED] Consequently, DBIM would not typically address any "alternative projects" in detail in information provided to Users for the purposes of seeking approval under s.12.10(b)(2)(A) of the AU. Rather "alternative projects" are generally assessed as part of the project development. It is also addressed in DBIM's consultation with the Operator, the Operator's consideration of whether or not to provide its recommendation of the relevant NECAP project, [REDACTED]. Notwithstanding this, in respect the two projects, during the course of DBIM's consultation with Fitzroy for the purposes of seeking its s.12.10(b)(2)(A) approval, information in relation to "alternative projects" was provided to Fitzroy (refer Attachment 2 Item 10).
12. In the case of any proposed NECAP works (and in respect of the two projects), the Operator's recommendation is made independently and consistent with Good Operating and Maintenance Practice, and may reasonably be expected to be prudent.
13. It is a matter for Fitzroy whether it becomes a "member" (shareholder) of the Operator and becomes entitled to other information (if any) that may be available to or provided to shareholders of the Operator

³ Refer Schedule I of the AU. The Operator is an independent contractor of DBIM and is not an agent of DBIM.

in relation to NECAP projects [REDACTED]

14. In respect of the QCA's consideration of the prudency of the two projects, Fitzroy contends that "...it is not relevant to that assessment whether other customers have accepted a project". However, DBIM submits that the QCA may consider it relevant that the two projects were approved by all other Users, each of whom have significant expertise with designing, assessing and implementing capital projects in their own businesses and who must have reasonably satisfied themselves that the two projects should be implemented, as recommended by the Operator. Importantly, s.12.10(c) of the AU does not constrain the factors that the QCA may consider in its assessment.

NS01 – Arc Flash Mitigation – Phase 2

15. Fitzroy noted that "...the project costs across the 4 stages have basically doubled ...". DBIM understands that Users will be concerned in relation to any increased costs, however this must be balanced with the obligations of the Operator to provide the Services in accordance with the OMC. The original estimate was a concept level estimate based on pre-Covid era costs prior to completion of the NR01 Phase 1 project which developed the design, scope and implementation strategy for the entire Arc Flash Mitigation Program. [REDACTED]

[REDACTED] An increase in the cost of any proposed works does not automatically imply that the scope of the selected project is not prudent, rather that the cost increase should be considered in the context of the circumstances prevailing in the markets for engineering, equipment supply and construction, as contemplated in s.12.10(c)(4) of the AU.

16. With reference to NS01, Fitzroy notes that "... issues like safety during construction and operations ... should not be seen as favouring the existing project, where those matters would also be able to be satisfied in realistic alternative projects". DBIM submits that the scope of the project was consistent with the recommendations of studies conducted by specialist consultants, Welcon Technologies and Cell Engineering, which DBIM considers to have the relevant skills, experience, and knowledge of the Terminal requirements sufficient to be able to nominate reasonable alternative projects, if any existed. As part of DBIM's consultation process, Fitzroy was supplied with the Arc Flash Mitigation Program Overview which was also included in DBIM's submission in Section 7.3.1.1. The majority of the individual scope items were clearly identified as "the only suitable option". This indicates that there were no reasonable alternative projects, in the case of this project. In DBIM's view, it is not prudent for works on a critical safety program to be suspended indefinitely until such time as another alternative may become available. As a result, DBIM decided to proceed with the project scope that was recommended by specialists in the field, and which was recommended for implementation by the independent Operator. Having completed the project and previously engaged with Fitzroy in detail for the purposes of s.12.10(b)(2)(A), and again on completion of the works for the purposes of seeking Fitzroy's non-objection under s.12.10(b)(2)(B) (refer Item 15 in Attachment 2), DBIM has now proceeded with its application pursuant to s.12.10(c).

NS06 – Site Roads Upgrade Program

17. Fitzroy's noted that it required "... a robust analysis of the alternative, i.e. continued maintenance of the roads". As part of DBIM's consultation during the s.12.10(b)(2)(A) approval process, DBIM supplied Fitzroy with details of the maintenance options, including lifecycle cost analyses for each road, which are provided in Attachment 2 Item 10. Despite being provided with this further information, Fitzroy declined to approve this project under s.12.10(b)(2)(A) or provide its non-objection under s.12.10(b)(2)(B).

Conclusion

18. On a balance of all the relevant factors, DBIM considers that the Capital Expenditure on the two projects was prudently incurred. DBIM considers that it has provided sufficient and appropriate information to support a QCA ruling that the two projects are prudent, having regard to (among other things) the matters in accordance with s.12.10(c) of the AU.
19. DBIM notes that the two projects are a continuation of existing programs and are similar to works completed previously, which were approved by Fitzroy. The information DBIM supplied in relation to those prior works was no different to that supplied for the two projects and DBIM took steps to respond in detail to Fitzroy’s queries in respect of the two projects and provide additional information to Fitzroy in respect of its queries, over an extensive period.

If you require any further information, please do not hesitate to contact me.

Yours sincerely



Jonathan Blakey
Chief Commercial & Sustainability Officer

Attachments

Attachment 1: Matters set out in Fitzroy Submission

Attachment 2: DBIM consultation with Fitzroy

Attachment 1: Matters set out in Fitzroy Submission

The table below addresses specific matters raised in Fitzroy's submission:

Item	Relevant Matters	DBIM response
1	Fitzroy submits that there needs to be a robust analysis of the alternative(s) methods for mitigating the risk of arc flashes, a cost benefit comparison and a consideration of the extent to which it is prudent to continue investing to mitigate this particular risk.	<ul style="list-style-type: none"> • Section 16 above notes that the approach to arc flash mitigation was recommended by specialist consultants, and no alternatives were available for a majority of the scope] • Refer to Section 7.3.1.1 in the DBIM submission, which is the same as the Addendum provided to Fitzroy as shown in Attachment 2 Item 10. The Group Projects Director addressed this in DBIM's response to Fitzroy's query during consultation on NS06, which is also included in Item 10.
2	Fitzroy submits that there needs to be a robust analysis of the alternative to NS06 , i.e. continued maintenance of the roads	<ul style="list-style-type: none"> • On a whole of asset life basis, having regard to the protection of the underlying road base, the approach taken by NS06 is most appropriate and this is why it was recommended by the Operator • That alternatives were addressed is noted in Section 5.2.1 in DBIM's submission, and the detail assessments were provided to Fitzroy as demonstrated in the life cycle cost analyses included in Attachment 2 Item 10 in this submission.

Attachment 2: DBIM consultation with Fitzroy

This attachment details the email correspondence between DBIM and Fitzroy (**FAR**) in respect of the NS01 & NS06. Highlighted rows indicate milestones or additional reference material.

Item	Date	From	To	Content	Att.	
00	01-Jun-22	Operator	FAR	Operator courtesy offer of consultation with FAR	1	
01	03-Jun-22	DBIM	FAR	DBIM Request for User Approval for NECAP Series S	1	
02	10-Jun-22	DBIM	FAR	DBIM provision of NECAP S Project Briefs	1	
03	16-Jun-22	FAR	DBIM	Fitzroy Round 1 queries on NECAP S projects		
04	29-Jun-22	DBIM	FAR	DBIM response to Fitzroy Round 1 queries		
05	11-Jul-22	FAR	DBIM	Fitzroy Round 2 queries		
06	19-Jul-22	DBIM	FAR	DBIM response to Fitzroy Round 2 queries		
	20-Jul-22	All NECAP Series S projects approved by all Users other than Fitzroy				
07	04-Aug-22	DBIM	FAR	DBIM follow-up on email of 19-Jul-22, requesting approval of supported projects and any further queries on other projects		
08	11-Aug-22	DBIM	FAR	DBIM further follow-up on email of 19-Jul-22		
09	12-Aug-22	FAR	DBIM	Fitzroy letter approving all projects except NS01 & NS06, and Round 3 queries on NS01 & NS06 projects	1	
10	04-Nov-22	DBIM	FAR	DBIM response to Fitzroy Round 3 queries, with additional information from the Operator including Addendum for NS01 & lifecycle cost analyses s for NS01 & NS06.	6	
11	16-Nov-22	DBIM	FAR	DBIM follow-up on email of 04-Nov-22		
12	08-Dec-22	DBIM	FAR	DBIM further follow-up on email of 04-Nov-22, including Request for User Approval for NS01 & NS06	1	
13	19-Dec-22	DBIM	FAR	DBIM further follow-up on email of 04-Nov-22		
14	20-Dec-22	FAR	DBIM	Fitzroy notification that NS01 & NS06 were not approved		
	24-Feb-23	DBIM approval of NS01 & NS06 to proceed without unanimous User approval				
15	21-Oct-24	DBIM	FAR	DBIM Notification of NECAP Expenditure per s.12.10(b)(2)(B)	1	
16	18-Nov-24	FAR	DBIM	Fitzroy letter objecting to expenditure on NS01 & NS06 pursuant to s.12.10(b)(2)(B)	1	
17	01-Jun-21	DBIM	FAR	DBIM issue of NECAP R request for approval and summary table, relating to NR01 Arc Flash Mitigation - Phase 1 (for reference)	5	
18	08-Jun-21	DBIM	FAR	DBIM provision of NECAP R Project Briefs and responses to Fitzroy queries relating to NR01 Arc Flash Mitigation - Phase 1 (for reference)	1	

Attachment including actual email correspondence was redacted