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ATTENTION: JEREMY THRELFALL

Assistant Director Rail
Economic Regulation Authority
Level 4, Albert Facey House
469 Wellington Street
PERTH WA 6000

Dear Mr Threlfall

**BROCKMAN IRON PTY LTD'S PROPOSAL FOR ACCESS
SECTION 10 OF THE RAILWAYS (ACCESS) CODE 2000 ("CODE")**

The Pilbara Infrastructure Pty Ltd (TPI) appreciates the opportunity to review and respond to submissions made to the Economic Regulation Authority (ERA) in relation to section 10 of the Code.

The submission made by Brockman Mining Australia Pty Ltd (**Brockman**) dated 4 July 2013 (**Brockman Submission**) asserts that section 10 of the Code does not apply in the current circumstances. Brockman submits that section 10 only applies where

"the utilisation of the infrastructure is likely to preclude other entities from being able to access that infrastructure in absolute terms, rather than where it remains possible to expand that infrastructure".

Brockman then goes on to suggest that where the use of infrastructure only "deprives" other entities from using TPI's railway for a specific time and at a given configuration, these parties are not precluded from accessing the infrastructure for the purpose of section 10. This does not stand to reason.

It is impossible to understand how Brockman could conclude that section 10 is not enlivened in the present circumstances. The language in section 10 very clearly states that section 10 applies in circumstances where an access proposal is received and

"the railway owner *considers* that [the proposal] would involve the provision of access to railway infrastructure to an extent that *may* in effect preclude other entities from access to that infrastructure" (*emphasis added*).

It is absolutely and explicitly clear in section 10 that this is a matter entirely for the province of being something that the railway owner *considers may* preclude.

For the reasons set out in TPI's submission to the ERA dated 4 July 2013 (**TPI Submission**) and in submissions made to the ERA by Fortescue Metals Group Limited,

Winmar Resources Limited and Atlas Iron Ltd, it is clear that TPI has grounds to consider (and does so consider) that the proposal made by Brockman Iron Pty Ltd (**Brockman Iron**) may preclude (indeed does preclude) other entities from access to TPI's railway. Accordingly, there is no merit to Brockman's submission that section 10 is not enlivened in the current circumstances.

Once the railway owner gives notice that it considers the proposal (i.e. Brockman Iron's proposal) may preclude others (i.e. Fortescue, Winmar and Atlas Iron) from access, section 10 of the Code is immediately enlivened. That is the end of the matter.

Contrary to assertions made in the Brockman Submission, section 10 does not require a railway owner to demonstrate that its railway is technically or structurally incapable of being expanded. Under section 9(2) of the Code, a railway owner is only required to provide a "reasonable preliminary estimate of costs" if a proposal specifies an extension or expansion, which Brockman Iron's proposal does not. Therefore, the ERA must not, in making a determination under section 10(1) of the Code, rely on any supposed technical or structural feasibility of an expansion or extension of the railway. Further, and as set out in the TPI Submission, there is a significant amount of work, at considerable cost, that must be undertaken to determine whether or not any extension or expansion is technically, structurally or economically feasible.

The Brockman Submission places particular emphasis on the decision of the Acting Rail Access Regulator from the Office of the Rail Access Regulator in March 2002 in relation to the proposal for access made by Portman Iron Ore Ltd for access to the WestNet Rail railway. For the reasons set out in the TPI Submission, that decision has limited precedential value and cannot be relied upon by the ERA in making a decision under section 10 of the Code.

Finally, we draw your attention to Brockman's ASX announcement on 2 July 2013, in which Brockman announced the signing of a Relationship Agreement with Aurizon Operations Limited. According to Brockman, the purpose of this Relationship Agreement is to develop and implement a long term haulage and port solution, which could involve the development of a new heavy haulage railway by Aurizon or a third party.

This announcement further serves to demonstrate that Brockman Iron's proposal under the Code is not bona fide. Brockman Iron is merely seeking an option to access TPI's railway at some future time, contrary to the objectives and the requirements of the Code.

As previously requested, we require that the ERA issue a draft decision on section 10 of the Code, and provide TPI and other relevant stakeholders with an adequate opportunity to comment on the draft decision.

Yours sincerely

SPENCER DAVEY
Commercial Compliance Officer
The Pilbara Infrastructure Pty Ltd