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1 October 2026

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Confidential

KARARA MINING LIMITED

Supplementary Submission on Capital Contributions

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1 INTRODUCTION

1.1 Background

1 On 26 March 2026, the Economic Regulation Authority ("**ERA**") released its Draft Determination on Arc Infrastructure Pty Ltd's ("**Arc**") Depreciated Optimised Replacement Cost ("**DORC**") for the Western Australian freight rail network ("**Draft Determination**"), for the purposes of the initial regulatory asset base ("**RAB**") under section 47J of the *Railways (Access) Code 2000* (WA) (the "**Code**"). In that Draft Determination, the ERA proposed to deduct approximately [redacted] in contributed capital from Arc's DORC. Of that amount, approximately [redacted]

2 KML submitted its initial feedback regarding the ERA's Draft Determination in May 2026 to participate in the public consultation. Following ERA's approval of its request for an extension, in July 2026 Arc filed a submission in response to the ERA's Draft Determination ("**Arc's Submission**"), in which it denied the capital contribution quantified in the Draft Determination and contested these deductions.

3 Against this background, KML hereby supplements its Feedback on the Draft Determination in relation to KML's capital contribution and appreciates the ERA's careful consideration in this regard. In KML's respectful submission, the Draft Determination adopts the interpretation that is most consistent with the text, purpose and policy of the Code, and should be maintained.

1.2 Summary of KML's Position

4 KML's position is straightforward. This submission addresses five principal issues arising from Arc's Submission.

a) **First,** KML submits that a portion of [redacted] should be characterised as contributed capital within the meaning of section 47B because, in substance and economic reality, that portion was a mechanism by which Arc recovered the capital costs associated with infrastructure constructed specifically for KML. Those payments cannot reasonably be characterised as merely charges for access.

b) **Second,** KML submits that its [redacted] constitutes contributed capital within the meaning of section 47B and must be excluded from the RAB. Arc's subsequent reliance on [redacted] does not alter the statutory position.

c) **Third,** even if there was any uncertainty as to whether a portion of [redacted] was contributed capital within the meaning of 47B, Arc's proposed RAB would still fail to comply with the statutory prohibition against double counting contained in section 47F. That is because attributing a positive valuation to the Upgrade Works as part of the RAB would allow Arc to continue to receive further returns on capital for those Upgrade Works notwithstanding that Arc has already recovered those capital costs through [redacted]

d) **Fourth,** and more importantly, the interpretation advanced by Arc would substantially undermine the statutory operation of sections 47F and 47G. If payments that economically recover user-

funded capital could be excluded from the contributed capital regime merely because they are [redacted] the statutory safeguards against double recovery would have little practical operation.

e) **Fifth**, even if the value of the Upgrade Works is to be included in the RAB (contrary the Draft Determination and KML's primary submissions), Arc's Costing Principles would require Arc to accelerate the depreciation of the Upgrade Works such that their economic life is set to reflect the term of [redacted] Arc's submissions to the contrary are not consistent with their own Costing Principles.

5 KML therefore respectfully submits that the Draft Determination correctly distinguishes between ordinary access charges and payments that, in substance, recover user-funded capital, and should be affirmed.

2 KML'S SUPPLEMENTARY SUBMISSION

6 Arc advances three principal arguments against the deduction of KML's capital contributions, each of which KML submits is misconceived.

2.1 [redacted] Constitutes Contributed Capital within Section 47B

7 Arc's central thesis is that [redacted] is a "price or charge for access" within the meaning of section 47B(c)(ii), and is therefore excluded from the definition of contributed capital[1]. KML submits that this thesis is fundamentally flawed. [redacted] is not an "ordinary" access charge of the kind that section 47B(c)(ii) was designed to exclude. It is [redacted] specifically structured to recover the capital cost of user-specific infrastructure constructed for KML's exclusive use.

(a) The Economic Substance of [redacted]

8 Section 47B(c)(ii) excludes payments that are "payments of prices and charges for access". Arc argues that "the determinative question is ... whether the payments are properly characterised as prices and charges for access, in which case section 47B(c)(ii) excludes them, or as something else" [2].

9 Section 47B is directed to identifying who has, in economic terms, funded the relevant railway infrastructure. The statutory question is therefore whether the relevant payment represents consideration for the ordinary use of existing railway infrastructure, or whether it functions, in substance, as the recovery of capital invested in infrastructure funded by a third party.

10 KML submits that the determinative question is not the contractual label but the economic substance. [redacted] was not a standard access charge for pre-existing shared infrastructure. It was [redacted] specifically designed to allow Arc to recover the capital cost of user-specific infrastructure constructed for KML's exclusive use. Ordinary standard access charges for general-purpose infrastructure are typically determined through the Code's building-block methodology. They do not contain mechanisms under which [redacted]

[1] Arc's Submission, paragraphs 474, 481-487

[2] Arc's Submission, paragraph 474

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[redacted]

11 Arc's reliance on [redacted] does not assist its position. [redacted] A payment made outside the Code can still, as a matter of fact and law, constitute contributed capital within the meaning of section 47B.

(b) **KML's Position as the Foundation Customer is Central to Characterising the Substance of [redacted]**

12 KML was not an ordinary user seeking access to pre-existing railway infrastructure. Rather, KML was the foundation customer whose demand gave rise to the Upgrade Works.

13 Unlike ordinary users of pre-existing infrastructure, KML is the foundation customer of the Tilley Junction to Geraldton section. Arc acknowledged this critical distinction in its Issues Paper dated 17 November 2017 ("**Arc's Issues Paper 2017**")[3], submitted to the Western Australian Department of Treasury and Finance in response to the Review of Western Australia's Rail Access Regime:

> *"Given that foundation customers typically underpin network expansions, Arc considers it critical that their interests should be protected under the regulatory regime. Although Arc's railway network is technically a brownfields investment, we nevertheless consider Karara Mining to be the foundation customer for the Tilley to Geraldton section of the network due to the substantial upgrade undertaken to provide access." (paragraph 352)*
>
> *Foundation customers generally bear materially different costs and risks. They may for instance, bear significantly greater access costs, to reflect the fact that infrastructure has been built for their needs, as opposed to other customers accessing pre-existing infrastructure, who then bear a share of the operating cost of that infrastructure. Depending on arrangements, significant risk can either sit with the foundation customer, the railway owner or both. Any amendments made should be flexible enough to consider and protect the interests of both parties. This answers question 6.3 of the Issues Paper as to whether the costs and risks borne by foundation customers materially differ to those borne by subsequent customers." (paragraph 354)*

14 This distinction is critical. Arc itself recognizes that foundation customers are fundamentally different from ordinary users of pre-existing shared infrastructure. An ordinary access user pays a standard charge for the use of infrastructure that was already built and would exist regardless of that user's demand. KML, by contrast, is the very reason the upgrade was undertaken. [redacted] was not priced to recover the marginal cost of adding KML to an existing network; it was priced to recover the full capital cost of constructing new infrastructure specifically for KML's operations. The commercial purpose of [redacted] therefore differs fundamentally from that of an ordinary regulated access charge. To characterise

[3] Arc Infrastructure, Issues Paper Submission, 17 November 2017, page 56 (also cited in footnote 28 of Attachment 4 to the Draft Determination and listed as item 7 in Appendix 3 (Contributed Capital Evidence List) to KML's Initial Submission Regarding Arc's DORC Report dated 22 July 2025).

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this payment as an ordinary "price or charge for access" is to ignore the foundational user dynamic that Arc itself has acknowledged.

(c) [redacted] **consistently demonstrate a capital recovery purpose**

15 [redacted]

16 [redacted]

17 This provides a clear indication that the payment of [redacted] was intended, at least in part, to allow Arc to recover the costs of those preliminary works. To the extent that those preliminary works contributed to the value of the Arc Train Paths, that value would be "contributed capital" for the purposes of the Code and therefore cannot be included in the RAB for the Arc Train Paths.

18 This structure demonstrates that, from the outset, both parties understood and accepted that [redacted] would operate as a mechanism for Arc to recover its capital investment in the Works. [redacted] was not an ordinary standard access fee for the use of pre-existing infrastructure; it was contractually designed to incorporate the capital costs of user-specific upgrades.

19 [redacted]

20 [redacted] reflect a consistent commercial intention: [redacted] was designed, from the outset, as a mechanism to recover the capital costs of user-specific infrastructure. It was never intended to be, and cannot properly be characterised as, a mere "price or charge for access" within the meaning of section 47B(c)(ii).

(d) **The commercial features of** [redacted] **confirm its economic substance**

[redacted]

[redacted]

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22 [redacted]

[redacted]

[redacted]

25 Obviously, these features are not ordinarily associated with charges for access to existing shared railway infrastructure. Rather, they are characteristic of a negotiated mechanism designed to recover the capital cost of user-specific infrastructure over the term of that user's access agreement.

(e) **The ERA's Draft Determination correctly distinguishes ordinary access charges from capital recovery payments**

26 KML respectfully submits that the above interpretation is also consistent with the ERA's own analysis in the Draft Determination.

27 Arc's submission erroneously seeks to assert that the ERA must choose between two mutually exclusive characterisations: either [redacted] is a charge for access, or it is contributed capital. That binary submission should not be accepted. Rather, it should be recognised that a [redacted] may perform more than one economic function. Sections 47G is therefore not defeated merely because the payment is

[5] Arc's submission, paragraph 483 and 484.

[6] See KML's Feedback on the ERA's Pre-lodgment Consultation dated 13 May 2025, page150.

[redacted]

[8] Arc's submission, paragraph 484.

[9] Arc's submission, paragraph 484.

invoiced under [redacted] Instead, section 47G requires the ERA to identify the substance of the recoverable capital component and prevent that component from being recovered again through the RAB. Respectfully, KML submits that the Draft Determination achieves this outcome.

28 Arc's Submission entirely ignores the ERA's own analysis in its Draft Determination. At paragraph 63 of Attachment 4 (Capital Contributions), the ERA expressly stated that, while [redacted] are not considered capital contributions" as a general proposition, "in this instance, the ERA considers a component of [redacted] do not constitute charges for access." The ERA further observed: "We do not consider this to be ordinary charges for access as defined by the Code." [10]This critical distinction — between ordinary access charges for pre-existing shared infrastructure and extraordinary charges structured to recover user-specific capital costs — is precisely the distinction that KML advances. Arc's Submission does not engage with this distinction at all.

29 The ERA further recognised that assets constructed specifically for, and funded by, a single access holder should be excluded from the regulatory asset base in order to avoid double recovery. At paragraph 53, the ERA confirmed that "any assets that benefit a single access holder or are built specifically for them that are funded by the user are excluded from the regulatory asset base to avoid double recovery." [11] Arc's Submission does not engage with this analysis. Instead, it selectively attacks paragraph 63 by isolating the first clause ("capacity charges in contracts are not considered capital contributions") while ignoring the remainder of the paragraph, which expressly carves out [redacted] from that general rule.

(f) **Specificity of charges**

30 For completeness, Arc's submission asserts that contributed capital must be capable of being linked to specific assets.[12] Whether or not that view is correct, KML notes that Arc has not raised that issue with respect to [redacted] which Arc accepts are linked directly to its undertaking of the Upgrade Works.[13]

(g) **Arc's failure to provide information**

31 KML notes that the ERA's consultant, RP Infrastructure (RPI), requested information from Arc for the purpose of identifying capital contributions, including a fixed asset register. However, a fixed asset register was not provided by Arc.[14]

32 Arc is requesting that the ERA reverse a substantial part of its Draft Determination regarding capital contributions without providing RPI with information which would assist the ERA to verify Arc's submissions. The relevant asset-level records, accounting records and construction records are controlled by Arc. KML

[10] Draft Determination, Attachment 4: Capital Contributions, paragraph 63.

[11] Draft Determination, Attachment 4: Capital Contributions, paragraph 53.

[12] Arc's Submission, paragraph 473 – 477.

[13] Arc's Submission, paragraph 484.

[14] Draft Determination, Attachment 4: Capital Contributions, paragraph 32.

submits that, to the extent that Arc's failure to provide adequate information produces uncertainty, that uncertainty should not operate to the detriment of access seekers.

2.2 [redacted] Falls Within Section 47B

33 [redacted]

(a) There is No Commercial Bargain Exception to Sections 47B and 47G

34 [redacted]

Section 47G imposes a mandatory requirement to exclude from the RAB assets funded by third-party-contributions. It contains no exception where those contributions were reflected in the commercial bargain. The statutory requirement is directed to the source of funding, not the commercial allocation of consideration.

(b) [redacted]

35 [redacted]

2.3 Section 47G Gives Effect to the Contributed Capital Regime

36 Since [redacted] and KML's [redacted] are properly characterised under section 47B, the regulatory consequence required by section 47G is straightforward. Their value must be excluded from the initial regulatory asset base.

37 The ERA's Draft Determination correctly adopts that approach. Having concluded that the relevant contributions constitute contributed capital, the ERA appropriately deducted their value from Arc's proposed DORC[17].

[15] Arc's Submission, paragraphs 506.

[16] Arc's Submission, paragraphs 507-508.

[17] Draft Determination, Attachment 4: Capital Contributions, paragraph 63.

38 Arc's submissions seek to avoid that statutory consequence by contending that [redacted] falls outside the definition of contributed capital and that the [redacted]

39 For the reasons set out in Sections 2.1 and 2.2 above, KML respectfully submits that Arc's arguments should not be accepted. Once the relevant contributions are properly characterised under section 47B, section 47G leaves little scope for a different regulatory outcome.

2.4 Arc's Proposed DORC Is Contrary to Section 47F

40 More importantly, even if there were any uncertainty regarding the application of sections 47B and 47G, Arc's proposed DORC would still fail to comply with the independent statutory prohibition against double counting contained in section 47F.

(a) Section 47F imposes an independent statutory constraint on the valuation of railway infrastructure

41 Section 47F performs a different function from sections 47B and 47G. Whereas those provisions identify and regulate contributed capital, section 47F is directed to the valuation outcome itself.

42 Section 47F(1) provides that a railway owner "must not, when valuing railway infrastructure under or for the purposes of this Code, engage in double counting of assets." The prohibition is expressed in mandatory terms and applies directly to the valuation exercise presently before the ERA.

43 Section 47F(2) provides that double counting occurs where "the sum of the return of capital that is attributable to an asset over its economic life, via depreciation or otherwise, exceeds the value of the asset at the time at which it is first included in a regulatory asset base."

44 Section 47F(3) defines when an asset is "first included in a regulatory asset base" as including when "the Regulator approves or determines under section 47J(3) the depreciated optimised replacement cost of the railway infrastructure that includes the asset". The ERA's present DORC determination is therefore the relevant point for assessing whether double counting will occur. At that point, the value of the Works will be fixed in the regulatory asset base. If that value is positive, and Arc has already recovered its capital investment through KML's [redacted], the condition in section 47F(2) is necessarily satisfied.

(b) Section 47F asks a different question from section 47B

45 Arc's submissions primarily seek to characterise [redacted] as a "price or charge for access" for the purposes of section 47B.

46 However, Section 47F does not ask how a payment is characterised. Rather, it asks whether the railway owner has recovered capital attributable to the relevant asset in excess of the value attributed to that asset when it enters the regulatory asset base.

47 This distinction is reflected in the statutory language. Section 47F is concerned with the return of capital "via depreciation or otherwise". Had legislative intent been the enquiry to be confined to regulatory

depreciation, the words "via depreciation" would have sufficed. The additional words "or otherwise" necessarily extend the enquiry to any mechanism by which the railway owner recovers its capital investment.

48 Accordingly, a payment may simultaneously constitute consideration payable under an access agreement and a mechanism through which the railway owner recovers its capital investment. The [redacted] of the payment does not determine the operation of section 47F.

(c) **Arc's proposed DORC would produce the very outcome prohibited by section 47F**

49 Applying section 47F to the present case, Arc's proposed DORC would permit the very outcome that the provision seeks to prevent.

50 Arc's own submission is that [redacted] was designed to provide Arc with a return of, and return on, its capital investment in the Upgrade Works over the term [redacted]

51 If, following [redacted] those same assets are included in the initial regulatory asset base at a positive DORC value, Arc will continue to recover that same capital through future regulated access charges.

52 The total return of capital attributable to those assets, "via depreciation or otherwise", would therefore exceed the value of those assets when first included in the RAB.

53 Arc argues that no double recovery arises because KML has exclusive access to the Upgrade Works during the term of [redacted]. This analysis improperly confines the assessment to the present.

54 With respect, that submission focuses on the wrong period. Section 47F expressly requires the assessment to be undertaken over the economic life of the relevant assets, not merely over the duration of a particular access agreement.

55 DORC is a regulatory benchmark for future access charges. After [redacted], Arc will retain the Works and charge new users prices that embed recovery of the Works' capital costs. Arc has acknowledged that it has fully recovered its capital investment in the Upgrade Works through KML's [redacted] If the Works remain in the RAB, Arc will recover those same costs again. That is precisely the "double counting of assets" that section 47F(2) prohibits.

56 [redacted]

57 [redacted]

[18] Arc's Submission, paragraph 487.

[19] Arc's Submission, paragraph 495.

[20] Arc's Submission, paragraphs 488, 504.

[redacted]

58 In short, Section 47F provides an independent and compelling reason why Arc's proposed DORC should not be accepted.

2.5 Arc's Alternative Position on Depreciation Does Not Resolve the Double Recovery Issue

59 Arc further submits that, if [redacted] is characterised as an access charge rather than contributed capital, there is no basis to accelerate depreciation of the Works assets[21]. KML submits that this argument is internally inconsistent with Arc's own approved Costing Principles.

(a) Arc's Costing Principles recognize the need to reflect economic reality

60 Section 2.5 of Arc's approved Costing Principles (May 2024) requires that contributed capital be excluded from the RAB:

> "*As part of the calculation of the Initial RAB, the Railway Owner will exclude any Railway Infrastructure that has been funded by Contributed Capital. The Railway Owner will reduce the replacement cost of the asset equivalent to the proportion of the original development cost in respect of the particular asset that was funded by another entity.*"

61 Section 3.4 of the Costing Principles further provides that:

> *"…If an investment which is contributed is not classified as Contributed Capital – for example if capital recovery is earned through access charges rather than a separate capital recovery charge – the contribution should be reflected as accelerated depreciation within the depreciations schedule, with the economic life for the investment set to reflect the term of the access agreement."*

62 Accordingly, if (contrary to KML's primary submission) [redacted] were not treated as contributed capital, section 3.4 would nevertheless require the capital recovery to be reflected as accelerated depreciation, with the economic life of the Works [redacted]

63 Arc cannot have it both ways. Either [redacted] contains a capital contribution (which must be deducted under section 47G and Section 2.5 of the Costing Principles), or the capital recovery must be reflected through a corresponding adjustment to depreciation in accordance with section 3.4 of the Costing Principles. Arc's position that neither deduction nor depreciation adjustment is warranted is internally inconsistent.

64 Therefore, KML respectfully submits that the depreciation analysis advanced by Arc does not provide an alternative basis upon which the Draft Determination should be varied. Rather, it reinforces the broader principle that the RAB must be adjusted in a manner that prevents double recovery.

[21] Arc's Submission, paragraphs 496-505.

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(b) **At a minimum, the DORC must reflect capital already recovered**

65 KML's preliminary analysis indicates that if the [redacted] Works investment were depreciated [redacted] the time-value-adjusted amount that should be reflected in the DORC would be materially lower than the undepreciated value Arc currently claims. KML is willing to provide further quantification should the ERA consider this alternative analysis relevant to its final determination.

3 CONCLUSION AND RELIEF SOUGHT

3.1 Conclusion

66 KML respectfully submits that the Draft Determination correctly applies the contributed capital provisions of the Code and gives coherent effect to the statutory framework as a whole.

67 As set out above, [redacted] are in economic substance, a mechanism through which Arc recovered the capital cost of infrastructure constructed specifically for KML as the foundation customer. Likewise, KML's [redacted] constitute contributed capital within the meaning of section 47B of the Code. Sections 47F and 47G mandate exclusion from the RAB. Arc's arguments to the contrary are misconceived. Arc's denial of KML's capital contributions, if accepted, would have broader implications for the integrity of the regulatory framework. It would signal that a railway owner may recover capital costs from a foundation user through [redacted] retain the assets in its regulatory asset base, and then recover the same costs again from future users through depreciation. Such an outcome would undermine the Code's clear statutory purpose of preventing double recovery, discourage private investment in rail infrastructure, and distort the competitive landscape by allowing incumbent railway owners to extract value from contributed capital twice over.

68 KML respectfully submits that the approach adopted in the Draft Determination best reflects the text, structure and purpose of the Code and promotes the long-term objectives of ensuring efficient investment, fair access and economically sustainable regulation of Western Australia's freight rail network.

3.2 Relief Sought

69 For the reasons set out above, KML respectfully requests that the ERA:

(a) confirm in its Final Determination the deduction from the DORC of the affected route sections of [redacted]

(b) reject the contrary submissions advanced by Arc in relation to the treatment of [redacted], depreciation of the Upgrade Works and [redacted]; and

(c) make such consequential adjustments to the DORC valuation as are necessary to ensure that the RAB accurately reflects the requirements of sections 47B, 47F and 47G of the Code and does not permit the recovery of capital that has already been funded by, or recovered from, third parties.

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70 KML appreciates the opportunity to make these submissions and would be pleased to provide any further information or assistance that may assist the ERA in its consideration of these matters.