

30 September 2019

Hon Sussan Ley MP  
Minister for the Environment

**Referral No: 2019/8508**

Dear Minister,

I am writing to you on behalf of the Australian Conservation Foundation (“ACF”).

ACF is Australia’s national environment organisation. We represent a community of over 500,000 people who are committed to achieving a healthy environment for all Australians. For more than 50 years, ACF has been a strong advocate for Australia’s forests, rivers, people and wildlife. ACF is proudly independent, non-partisan and funded by donations from our community.

Thank you for the opportunity to comment on whether the proposed action, Adani Infrastructure Pty Ltd’s (“Adani”) North Galilee Water Scheme (“NGWS”), is a controlled action for the purposes of the *Environment Protection and Biodiversity Conservation Act 1999* (“EPBC Act”).

## RECOMMENDED DECISION

To ensure the proposed action is subjected to the best available scientific scrutiny, ACF recommends that the Minister makes the following decisions:

1. The proposed action is a controlled action.
2. As they relate to matters of national environmental significance, at a minimum the following controlling provisions apply:
  - a. Protection of water resources from coal seam gas development and large coal mining development.
  - b. Listed threatened species and communities.
3. The proposed action should be assessed by environmental impact assessment.



## RELEVANT MATTERS OF NATIONAL ENVIRONMENTAL SIGNIFICANCE

### Protection of water resources from coal seam gas development and large coal mining development

There are two elements of s 24D of the EPBC Act (commonly known as the ‘water trigger’) that must be met for it to be applied as a controlling provision. The first element is whether the action involves, relevantly, a “large coal mining development”.<sup>1</sup> The second element is whether the action “has or will” or “is likely to have” “a significant impact on a water resource”.<sup>2</sup> Both elements involve questions of law and fact.

#### *Whether the action involves a large coal mining development*

ACF attaches advice from the Environmental Defenders Office Queensland that demonstrates the NGWS involves a large coal mining development, for the purposes of the EPBC Act (**Attachment 1**). We note this advice contradicts the Department of Environment’s (“**the Department**”) construction of the water trigger, which erroneously states that “the development of associated infrastructure that is not part of the extraction process is not included in the definitions of CSG development or large coal mining development”.<sup>3</sup>

This disagreement was the original basis of ACF’s judicial review application against the Minister’s decision not to apply the water trigger to the initial NGWS (Reference No. 2018/8191). On 12 June 2019, the Federal Court set aside this decision on the basis that the Minister’s delegate had made an error of law by failing to consider some of the thousands of public comments that were made.

#### *Whether the action will have a significant impact*

ACF attaches an expert review from Professor Adrian Werner that questions the central assumptions of the water assessment provided to Adani by CDM Smith (**Attachment 2**). Professor Werner concludes that the water assessment needs significant modifications before it can properly assess the impact of the proposed action on the Suttor River. Specifically, it finds that the report focusses on the effect of the proposed action on peak flood events and does not properly address impacts on smaller river flows.

---

<sup>1</sup> EPBC Act s 24D(1)(a)(ii).

<sup>2</sup> Ibid s 24D(1)(b)(i)-(ii).

<sup>3</sup> Australian Government – Department of the Environment, *Significant Impact Guidelines 1.3: Coal Seam Gas and Large Coal Mining Developments – Impacts on Water Resources* (December 2013)  
<<https://www.environment.gov.au/system/files/resources/d078caf3-3923-4416-a743-0988ac3f1ee1/files/sig-water-resources.pdf>> 8.



These concerns mirror issues raised by the CSIRO and Geoscience Australia in its expert review of Adani's groundwater modelling.<sup>4</sup> That review identified that Adani's model underestimated groundwater impacts and contained unrealistic assumptions. Adani has a well-established track-record of downplaying the environmental impacts of its coal mine and associated infrastructure. For this reason, it is essential that the best available scientific advice is obtained about the proposed action.

Applying the water trigger would require the Minister to obtain advice from the Independent Expert Scientific Committee on Coal Seam Gas and Large Coal Mining Development ("IESC").<sup>5</sup> The IESC is best placed to provide a rigorous, independent environmental assessment of the proposed action. The Minister must subject Adani's water modelling to this scrutiny.

### *Reasonably foreseeable cumulative impacts*

The definitions of 'large coal mining development' refer to the action having a significant impact "when considered with other developments, whether past, present or reasonably foreseeable developments".<sup>6</sup> In effect, this requires an assessment of the potential cumulative impacts of the proposed action, when considered in the context of other reasonably foreseeable developments.

Adani's referral applications states, "[t]here is potential in the future for the NGWS to supply additional resource-extraction projects that are located in the surrounding area" and that the NGWS is "the preferred supply scheme to support the CCP and other potential proposed projects".<sup>7</sup> At a minimum, this is likely to include the Alpha North (Reference No. 2018/8189), China Stone (Reference No. 2014/7353) and Alpha West (Reference No. 2008/4648) coal mines, which are all at various stages of EPBC Act assessment.

A detailed water assessment undertaken for the Bioregional Assessment investigated the potential cumulative hydrological impacts of seven large coal mines in the Galilee Basin.<sup>8</sup> This assessment noted that these mines

---

<sup>4</sup> Australian Government – CSIRO & Geoscience Australia, *Advice on Groundwater Management and Monitoring and Groundwater Dependent Ecosystem Management Plans to the Department of the Environment and Energy* (February 2019) <<http://www.environment.gov.au/system/files/pages/cb8a9e41-eba5-47a4-8b72-154d0a5a6956/files/csiro-geoscience-australia-final-advice.pdf>>.

<sup>5</sup> EPBC Act s 131AB(2).

<sup>6</sup> *Ibid* s 528.

<sup>7</sup> Adani Infrastructure Pty Ltd, *Referral Application – EPBC 2019/8508* (September 2019) <<http://epbnotices.environment.gov.au/entity/annotation/9a51ca93-1fd8-e911-8923-00505684324c/a71d58ad-4cba-48b6-8dab-f3091fc31cd5?t=1569809791708>> 11, 48.

<sup>8</sup> Australian Government – Bioregional Assessments, *Outcome Synthesis for the Galilee Subregion* (6 December 2018) <<https://www.bioregionalassessments.gov.au/assessments/5-outcome-synthesis-galilee-subregion/about-subregion>>.



were all likely to impact the Burdekin catchment and that there could be significant hydrological changes to the Suttor and Belyando Rivers.

The surface water demands for other proposed coal mines in the Galilee Basin is likely to be met through the NGWS. These mines are all reasonably foreseeable developments that should be considered in the assessment of the proposed action on water resources. Despite contemplating supply for other coal mines, the water assessment provided by Adani fails to provide any cumulative impact assessment and does not reference the highly relevant Bioregional Assessment.

### Listed threatened species and communities

ACF agrees with the Department's assessment last year that the NGWS is likely to have significant impacts on listed threatened species and communities. There is nothing in Adani's updated referral application that should change that assessment. Of concern are the extremely limited population surveys that have been completed.

## RELEVANT ASSESSMENT APPROACH

Under the EPBC Act, one of six assessment processes must be used if the proposed action is deemed a controlled action.<sup>9</sup> The Department's Environment Assessment Manual advises that in identifying the appropriate assessment approach the following points should be considered:<sup>10</sup>

- Number of matters of national environmental significance affected;
- Scale and nature of impacts (including complexity of issues);
- Degree of confidence with which these impacts can be predicted;
- The adequacy and completeness of the information;
- The extent to which potential relevant impacts have already been assessed under state legislation;
- The degree of public concern associated with the proposal.

---

<sup>9</sup> EPBC Act s 87(1).

<sup>10</sup> Commonwealth of Australia, *Environment Protection and Biodiversity Conservation Act 1999 – Environment Assessment Manual – Implementing Chapter 4, EPBC Act* (May 2012) <<http://www.environment.gov.au/system/files/resources/0b0cfb1e-6e28-4b23-9a97-fdadda0f111c/files/environment-assessment-manual.pdf>> 2H-2.



For the following reasons, the most appropriate assessment process is assessment by environmental impact statement:

- At a minimum, two controlling provisions should be applied to the proposed action.
- The assessment of water impacts requires complex and independent analysis.
- The water assessment provided by Adani cannot be relied upon to predict, with high confidence, the nature of its impacts on the Suttor River.
- The adequacy and completeness of the water assessment provided by Adani is low. In addition, the assessment of impacts on listed threatened species and communities is inadequate.
- For the initial NGWS referral (Reference No. 2018/8191), the Queensland Department of Environment and Science communicated that the proposed action would not be assessed using the environmental impact statement process in Chapter 3 of the *Environmental Protection Act 1994* (Qld). As a result, it is appropriate that potential environmental impacts are assessed federally by an environmental impact statement.
- There is unprecedented public concern associated with the proposal, as evidenced by the number of individual submissions made to the Minister. Much of this concern is motivated by the reality that Queensland is experiencing record drought conditions.

## ADDITIONAL MATTERS

### Person's environmental history

The Minister may only decide that the proposal should be assessed on referral information if, *inter alia*, "the person proposed to take the action has a satisfactory record of responsible environmental management and compliance with environmental laws".<sup>11</sup> Where the proponent is a body corporate, the Minister may also consider the environmental history of the executive officers of the body corporate.<sup>12</sup> An executive officer includes directors or any person concerned in the management of the corporate body.<sup>13</sup>

---

<sup>11</sup> EPBC Regulations 2000 r 5.03A(e).

<sup>12</sup> EPBC Act s 136(4)(b).

<sup>13</sup> *Ibid* s 493.

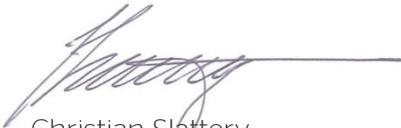


Mr Jeyakumar Janakaraj is a current director of Adani Infrastructure Pty Ltd (see **Attachment 3**). It has been publicly reported that Mr Janakaraj was the Director of Operations at Konkola Copper Mines in Zambia when the company pleaded guilty to four charges, including polluting the environment and wilfully failing to report an incident of pollution.<sup>14</sup> The charges were in relation to the company's release of highly acidic, metal-laden water generated from leaching in copper mining into the Kafue River.<sup>15</sup>

Mr Hamish Manzi, whose signature appears on Adani's referral application, is the Head of Environment and Sustainability at Adani Infrastructure Pty Ltd. Mr Manzi was also the Head of Environment and Sustainability at Adani Mining Pty Ltd when it allegedly provided false and misleading information in its 2017/18 Annual Return to the Queensland Department of Environment and Science about the amount of land clearing at the site of the Carmichael coal mine. Specifically, Mr Manzi's signature appears on the relevant Annual Return (**Attachment 4**). The Queensland Government is prosecuting Adani over this alleged offence.<sup>16</sup>

The information outlined above prevents the Minister from deciding the proposal should be assessed on referral information. Under any alternative assessment approach, this information should be considered by the Minister to determine whether Adani is likely to comply with the conditions of any approval. ACF notes that none of this information was disclosed by Adani in its referral application.

Sincerely,



Christian Slattery  
**Senior Stop Adani Campaigner**

---

<sup>14</sup> Mark Willacy, 'Adani boss Jeyakumar Janakaraj failed to disclose link to African pollution disaster before Carmichael coal mine was approved', *ABC News* (online), 10 December 2015 <<https://www.abc.net.au/news/2015-12-10/adani-boss-failed-to-disclose-link-to-african-pollution-disaster/7012554>>.

<sup>15</sup> Environmental Justice Australia, *The Adani Brief – What governments and financiers need to know about the Adani Group's record overseas* (15 February 2017) <[https://www.envirojustice.org.au/sites/default/files/files/Submissions%20and%20reports/The Adani Brief by Environmental Justice Australia.pdf](https://www.envirojustice.org.au/sites/default/files/files/Submissions%20and%20reports/The%20Adani%20Brief%20by%20Environmental%20Justice%20Australia.pdf)> 29.

<sup>16</sup> Mark Willacy and Alexandra Blucher, 'Adani facing prosecution for allegedly providing false information in Carmichael mine report', *ABC News* (online), 17 July 2019 <<https://www.abc.net.au/news/2019-07-16/adani-facing-prosecution-queensland-government-carmichael-mine/11314970>>.





**EDO** Qld.

Environmental Defenders Office

*Using the law to protect  
our environment.*

8/205 Montague Rd WEST END, QLD 4101

tel +61 7 3211 4466

edoqld@edoqld.org.au www.edoqld.org.au

30 September 2019

Christian Slattery  
Senior Stop Adani Campaigner  
Australian Conservation Foundation

*Sent via email only:* [Christian Slattery <Christian.Slattery@acf.org.au>](mailto:Christian.Slattery@acf.org.au)

Dear Christian,

**Advice on the Federal referral [2019/8508] North Galilee Water Scheme by Adani Infrastructure Pty Ltd for assessment under the *Environment Protection and Biodiversity Conservation Act 1999* (Cth)**

Thank you for your enquiry received on 16 September 2019 regarding the referral of the North Galilee Water Scheme (NGWS) 2019/8508 (**current NGWS referral**) for assessment under the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (**the Act**).

We have been instructed to advise on whether the current NGWS referral is “any coal mining activity” within the definition of “large coal mining development” in s 528 of the Act.

**BACKGROUND**

1. The NGWS will involve the construction and operation of infrastructure to harvest (initially) 12.5 gigalitres of water from the Suttor River for supply to the Carmichael Coal Mine and Rail Project (CCMP) and potentially, in the future, other coal mines and coal seam gas (CSG) developments in the Galilee Basin.<sup>1</sup>
2. This is the second time that the proponent has referred the NGWS for assessment under the EPBC Act. Following the proponent’s original referral for the North Galilee Water Scheme 2018/8191 (**previous NGWS referral**) the Minister decided on 17 September 2017 that the NGWS was a controlled action (**previous NGWS referral decision**). The original referral decision was set aside and remitted to the Minister for a decision in accordance with section 75(1A) of the Act by the Federal Court on 12 June 2019 after the

---

<sup>1</sup> Referral 2019/8508, North Galilee Water Scheme - Water Infrastructure, sections 1.2 and 1.16.1.

Minister conceded that the Minister’s delegate had materially failed to consider some of the public comments received.<sup>2</sup>

3. In documents submitted to the Minister for the purposes of the previous referral decision, the proponent described the project as follows:

“The [CCMP] requires offsite water supply infrastructure for the extraction, storage and delivery of water for the operation phase as there is insufficient onsite water available to meet the total demand. Water is a major component in the production of coal for the operational phase of mining.”<sup>3</sup>

4. The statement above has been omitted from the current NGWS referral.
5. The proponent’s application for a water licence, which was submitted to the Queensland Department of Natural Resources and Mines, described the use of water to be obtained under the NGWSP as follows:

“For construction and operation of the [CCMP] and associated infrastructure including off lease infrastructure, SP1 (part of the Carmichael Rail Network Project) and off-takes to the local community. Construction water will be required for on-lease civil work and off-lease works (for example mine access road, mine workers accommodation, airport, quarries and rail). Water for operations will be required throughout the life of the Project.

...

The majority of water will be used for earthworks conditioning, dust suppression, and mining activities.”<sup>4</sup>

6. This document continued:

“Water under this license will be used for the following:

- Construction of off-lease and on-lease infrastructure, for example including dust suppression, wash down, earthworks, civil works, firewater system, and commissioning;
- Potable water supply to meet the needs of the works; and
- Operation of the mine, for example including dust suppression (stockpiles, transfer stations, and roads), tailing cell management, coal

---

<sup>2</sup> *Australian Conservation Foundation Inc v Minister for the Environment (Commonwealth)* (12 June 2019) NSD2268/2018 (unreported).

<sup>3</sup> North Galilee Water Scheme 2018/8191 (**previous NGWS referral**) Section 8.

<sup>4</sup> Previous NGWS referral, CDM Smith ‘Water Licence Application’ – Supporting Information, section 1.7.

washing and process, equipment and vehicle wash down, and long wall mining equipment cooling water.”<sup>5</sup>

7. In the current referral, the proponent acknowledged that it is not feasible to source water for the CCMP other than from the NGWS.<sup>6</sup>

“It is not feasible to source water from other locations given the remote location of the CCMP. The combined option of the regional flood harvesting dams and pipelines (Stage A and B) were selected by Adani and CDM Smith to be the preferred supply scheme to support the CCMP and *other potential proposed projects.*”[emphasis ours]

## **STATUTORY CONTEXT**

8. Any action involving coal seam gas or large coal mining development with a significant impact on water resources must not be taken unless that action has been referred and approved under the Act.<sup>7</sup>
9. Following referral of the action and a public notification period, under s 75(1) of the Act the Minister must decide:
- a. whether the action is a “controlled action” requiring approval; and
  - b. which provisions of Part 3 of the Act are “controlling provisions” for the action.
10. A “controlled action” is an action which, subject to presently irrelevant provisions relating to the actions of third parties,<sup>8</sup> would be prohibited if taken without the Minister’s approval under Part 9. Part 3 provides the “controlling provisions”, which prohibit the action unless an approval is in operation “for the purposes of” each controlling provision.<sup>9</sup>
11. Part 9 approvals of controlled actions are given by the Minister under ss 130 to 133 of the Act. Section 130(1) requires the Minister to decide whether or not to approve, “for the purposes of each controlling provision for a controlled action”, the taking of the action. Sections 130 to 133 provide for a formal assessment process anterior to any decision, which involves inviting comment from other relevant Ministers,<sup>10</sup> submissions by members of the public,<sup>11</sup> and consideration of formal assessment documentation.<sup>12</sup>
12. The formal assessment documentation addresses the “relevant impacts” of an action, being any impacts the action “has or will have” or “is likely to have” on the matter

---

<sup>5</sup> Ibid, section 4.2.

<sup>6</sup> Ibid, 75.

<sup>7</sup> *Environment Protection and Biodiversity Conservation Act 1999* (Cth) s 24D.

<sup>8</sup> Sections 25AA and 28AB of the Act.

<sup>9</sup> Sections 67 and 67A of the Act.

<sup>10</sup> Section 131.

<sup>11</sup> Section 131A.

<sup>12</sup> Section 133.

protected by each controlling provision.<sup>13</sup> If the Minister decides that the proposed action is *not* a controlled action in respect of a particular controlling provision, those impacts are not formally assessed or considered in deciding whether to approve an action and, if so, whether to impose conditions.

*Sections 24D and 24E of the Act*

13. Sections 24D and 24E are found within Subdivision FB, *Protection of water resources from coal seam gas development and large coal mining development*, within Part 3 of Chapter 2, *Protecting the environment*. Section 24D of the Act provides, relevantly:

**“24D Requirement for approval of developments with a significant impact on water resources**

- (1) A constitutional corporation, the Commonwealth or a Commonwealth agency must not take an action if:
- (a) the action **involves**:
    - (i) coal seam gas development; or
    - (ii) **large coal mining development**; and
  - (b) the action:
    - (i) has or will have a significant impact on a water resource; or
    - (ii) is likely to have a significant impact on a water resource.

Civil penalty:

- (a) for an individual—5,000 penalty units;
- (b) for a body corporate—50,000 penalty units.

...

- (4) Subsections (1) to (3) do not apply to an action if:

...

- (c) there is in force a decision of the Minister under Division 2 of Part 7 that this section is not a controlling provision for the action and, if the decision was made because the Minister believed the action would be taken in a manner specified in the notice of the decision under section 77, the action is taken in that manner; ...”

---

<sup>13</sup> Section 82(1).

[emphasis added]

14. Section 24D(1)(a) contains what is referred to herein as the “first limb” of the water trigger, while s 24D(1)(b) sets out what is referred to as the “second limb”.
15. Section 24D is a civil penalty provision. It is mirrored by s 24E, which is a criminal offence provision drafted in identical terms.

### ADVICE

#### *The meaning of ‘large coal mining development’*

16. The term “large coal mining development”, used in both ss 24D and 24E, is defined by s 528 of the Act as follows:

“**large coal mining development** means any coal mining activity that has, or is likely to have, a significant impact on water resources (including any impacts of associated salt production and/or salinity):

- (a) in its own right; or
- (b) when considered with other developments, whether past, present or reasonably foreseeable developments.

#### *Relevant principles of statutory construction*

17. It is now tolerably clear that the ‘text in context’ approach, rather than ‘text then context’<sup>14</sup>, is the correct approach to statutory interpretation. This requires consideration of the literal meaning of the phrase “any coal mining activity”,<sup>15</sup> the Act as a whole,<sup>16</sup> and the purposes of Parliament as expressed in the Act.<sup>17</sup>

#### *Text*

18. There are three considerations drawn from the text of “coal mining activity” in s 528 of the Act that support a broad interpretation of the term “any coal mining activity” to include the actions included in the current referral.
19. First, *prima facie*, all words in the statutory phrase “any coal mining activity” must be given meaning and effect.<sup>18</sup> Confining the operation of the phrase to the extraction of coal itself and excluding activities associated with coal extraction only gives effect to a narrow construction of the phrase “any coal mining activity” and leaves no work for the

---

<sup>14</sup> *Federal Commissioner of Taxation v Consolidated Media Holdings Ltd* (2012) 250 CLR 503, [39].

<sup>15</sup> *Amalgamated Society of Engineers v Adelaide Steamship Co Ltd* (1920) 28 CLR 129.

<sup>16</sup> *Metropolitan Gas Co v Federated Gas Employees’ Industrial Union* (1924) 35 CLR 449, 455.

<sup>17</sup> *Project Blue Sky Inc v Australian Broadcasting Authority* (1998) 194 CLR 355; *Acts Interpretation Act 1901* (Cth), s 15AA.

<sup>18</sup> *Project Blue Sky Inc v Australian Broadcasting Authority* (1998) 194 CLR 355, [71].

word “activity” to do. The use of the word “activity” in its context here is manifestly intended to expand the reach of the definition beyond the steps involved in the extraction of coal.<sup>19</sup>

20. Second, the High Court has disfavoured constructions of statutory words which introduce words that are not found in the express statutory text.<sup>20</sup> Any construction that arbitrarily distinguishes between the extraction of coal itself and activities which are associated with the extraction of coal is not suggested by the express words of the statutory text.
21. Third, judicial consideration of the bare phrase “mining operations” suggests that the ordinary reading of the phrase “coal mining activity” is wider than just the extraction of coal itself. In *Federal Commissioner of Taxation v Broken Hill Pty Co Ltd* (*‘the BHP case’*),<sup>21</sup> Kitto J said that the phrase “mining operations” “embraces not only the extraction of mineral from the soil, but also all operations pertaining to mining.”<sup>22</sup> As to whether particular operations are “mining operations”, his Honour said that it will depend in each case on the degree of “association of the work with the mining proper”.<sup>23</sup>
22. In *Commissioner of Taxation v Northwest Iron Co Ltd* (*‘Northwest Iron’*),<sup>24</sup> the Court considered the phrase “mining operations” in the context of the *Income Tax Assessment Act 1936* (Cth). Justice Lockhart (with whom Bowen CJ and Toohey J agreed) observed, “What is plain from the cases is that it is a question of fact in each case whether the particular operations or processes are ‘mining operations’”.<sup>25</sup> Of some note, was the Court’s analysis of the reasoning in the BHP case:

“In [*BHP*] the end product of the mining activities was iron ore to be taken away from the mining property. Mining operations ended when the iron ore was in a state suitable for this. The removal from the mining property of ore which had been mined was a step subsequent to the conclusion of mining operations.”<sup>26</sup>

23. In *Northwest Iron*, iron ore was extracted from a mine at the Savage River in the rugged country of Northwestern Tasmania and processed into slurry. The slurry was transported by pipeline to a facility elsewhere for processing into exportable pellets. The issue was whether the pipeline, pellet plant and other associated facilities formed part of the “mining operations”. The Court held that it was “unreal” to draw a line between the operations at the Savage River and the operations thereafter. It was held that “practical and

---

<sup>19</sup> “...the word “activities, like “mining operations”, is very broad”: *Mineralogy Pty Ltd (ACN 010 582 680) v Sino Iron Pty Ltd (ACN 058 429 708) (No 6)* (2016) 329 ALR 1, [638] per Edelman J.

<sup>20</sup> See for example *Weiss v R* (2005) 224 CLR 300, [9] and [10].

<sup>21</sup> (1969) 120 CLR 240.

<sup>22</sup> See also *Parker v Federal Commissioner of Taxation* (1953) 90 CLR 489, 494 per Dixon CJ.

<sup>23</sup> *Ibid.*

<sup>24</sup> (1986) 9 FCR 463.

<sup>25</sup> *Ibid* 474.

<sup>26</sup> *Ibid* 475.

businesslike considerations clearly lead to the conclusion that the whole of the relevant operations” were “mining operations”.<sup>27</sup>

24. The term “mining operations” is a concept which is used in Subdivisions C and G of Division 4 of the Act, which deal with Commonwealth reserves. However, it has been given an extended meaning beyond the interpretation it received in the above cases. Section 355(2) defines that phrase as follows:

“(2) The following are *mining operations*:

- (a) operations or activities connected with, or incidental to, the mining or recovery of minerals or the production of material from minerals, including:
  - (i) prospecting and exploration for minerals; and
  - (ii) milling, refining, treatment and processing of minerals; and
  - (iii) storage and disposal of minerals and materials produced from minerals;
- (b) the construction and use of towns, camps, dams, pipelines power lines or other structures for the purposes of operations or activities described in paragraph (a);
- (c) the performance of any other work for the purposes of operations or activities described in paragraph (a).”

25. It can be seen that the Act has adopted a broader meaning of the term “mining operations” than in the above cases, to include activities that are “connected with, or incidental to” mining, including prospecting and exploration, and the disposal of minerals. To adapt the analysis in the cases described above, prospecting and exploration and the disposal of minerals are either anterior to or subsequent to the conclusion of mining operations and would not therefore be encompassed in the usual reading of the term “mining operations”.

26. The defined phrase “mining operations” is deployed in provisions of the Act which variously prohibit or regulate “mining operations”, as defined by s 355(2), on or in “Commonwealth reserves” and “conservation zones”.<sup>28</sup>

27. For example, s 387 prohibits “mining operations” in Kakadu National Park. By virtue of the extended meaning of the phrase, precursor activities like prospecting are prohibited.

---

<sup>27</sup> Ibid 475.

<sup>28</sup> See ss 355, 355A, 359B, 367, 387 and 390E(2).

Absent the broader definition provided by s 355(2), such activities would not be prohibited upon the usual construction of the term.

28. The phrases “large coal mining activities” and “mining operations”, as those terms are used in the Act, have different fields of operation. The former phrase operates through ss 24D and 24E, s 131AB *Minister must obtain advice from the Independent Expert Scientific Committee on Coal Seam Gas and Large Coal Mining Development*, and s 136(3)(fa). All of these provisions are directed to the protection of the environment, and it is within the context of those operative provisions that the definition must be construed.<sup>29</sup>

### *Context*

29. The general context is that the statutory words form part of the Act, the objects of which are set out in s 3:

#### **“3. Objects of Act**

- (1) The objects of this Act are:

- (a) to provide for the protection of the environment, especially those aspects of the environment that are matters of national environmental significance; and
- (b) to promote ecologically sustainable development through the conservation and ecologically sustainable use of natural resource; and
- (c) to promote the conservation of biodiversity; ...”

30. It has been held that the Act is to be interpreted in a way that is “consistent with the high public policy apparent in the objects of the Act” and “no narrow approach should be taken to the interpretation of legislation having objects of this kind.”<sup>30</sup>
31. The specific context is that the phrase “coal mining activity” is used here in the definition of “large coal mining development” in s 528 of the Act. Section 528 of the Act defines a “large coal mining development” as a “coal mining activity” which “has, or is likely to have, a significant impact on water resources”.
32. A “large coal mining development” is an action in respect of which ss 24D and 24E of the Act are controlling provisions. A “large coal mining development” is therefore an

---

<sup>29</sup> See *Kelly v R* (2004) 218 CLR 216, [43]-[84], [103] and *Allianz Australia Insurance v GSF Australia* (2005) 221 CLR 568, [12].

<sup>30</sup> *Queensland Conservation Council Inc v Minister for Environment and Heritage* [2003] FCA 1463, [40] per Kiefel J.

action which is prohibited by those sections, unless there is in force an approval under Chapter 4, Part 9 of the Act or the action is otherwise permitted by Chapter 4 of the Act.

33. The evident object of the statutory scheme, of which the phrase “large coal mining activity” in s 528 forms a part, is to regulate large coal mining developments and their impacts on water resources.
34. This strongly suggests that the object of the statutory scheme is not limited to the extraction of coal itself. Rather, the object of the scheme is directed to the range of activities that form part of a “large coal mining development” and which have, or are likely to have, a significant impact on water resources and prohibit any such action that has not been formally assessed and approved under the Act.
35. This statutory object is confirmed by the Minister’s Second Reading Speech for the Bill which inserted ss 24D, 24E and 528 into the Act.<sup>31</sup> That extrinsic material<sup>32</sup> states that the object of the amendments was to enable the Minister to take into account the impacts of large coal mining on water resources, such as the “irreversible depletion and contamination of ... surface and groundwater resources; the impacts on the way critical water systems operate; and the related effects on ... ecosystems”.<sup>33</sup> A construction that focusses narrowly on coal extraction defeats the express statutory purpose.
36. The factual context here illustrates the artificial characterisation of the proponent’s characterisation of the action with the statutory objects. The action in question in the present case is a large scale project consisting of the construction and operation of infrastructure to harvest up to 12.5 gegalitres of water from the Belyando River for the dominant purpose of supplying the water necessary for the construction and operation of the CCMP. As observed above, the NGWSP has no other immediate purpose and the CCMP cannot operate unless that project proceeds.
37. The above submissions as to the object of the statutory scheme are reinforced by the ordinary reading of the phrase “large coal mining development”. The ordinary reading of that phrase comprehends a range of activities associated with the extraction of coal rather than just the extraction of coal itself. The usage of a defined phrase, here “large coal mining development”, to assist with the interpretation of words used to define that term requires consideration of the reasoning in *The Owners of the Ship “Shin Kobe Maru”* (*‘Shin Kobe Maru’*).<sup>34</sup>
38. In *Shin Kobe Maru*, the High Court considered the expression “a claim relating to ... ownership” within s 4(2)(a)(ii) of the *Admiralty Act* 1988 (Cth). It was argued that the provision ought to be read down by reference to the preceding words, “a *proprietary*

---

<sup>31</sup> *Environment Protection and Biodiversity Conservation Amendment Bill 2013*.

<sup>32</sup> Acts Interpretation Act 1901 (Cth), s 15AB(1)(a).

<sup>33</sup> Commonwealth, *Parliamentary Debates*, House of Representatives, 13 March 2013, 1846 (Anthony Burke, Minister for Sustainability, Environment, Water, Population and Communities).

<sup>34</sup> (1994) 181 CLR 404 (*‘Shin Kobe Maru’*).

maritime claim” [emphasis added]. In rejecting that argument, the joint judgment of the Court observed:

“The use of the word ‘proprietary’ in the term to be defined does not colour the meaning given to the definition that follows it. It would be quite circular to construe the words of a definition by reference to the term defined.”<sup>35</sup>

**(The *Shin Kobe Maru* principle)**

39. The breadth of the above statement of principle has been the subject of some consideration at intermediate appellate level.
40. In *Esso Australia Resources Pty Ltd v Federal Commissioner of Taxation*,<sup>36</sup> the Full Court of the Federal Court considered the *Shin Kobe Maru* principle and found that it precludes having regard to a defined term as an aid to the construction of the associated definition.<sup>37</sup> However, the reasons do so after expressing doubt as to whether that is the true breadth of the principle, as a result of a detailed consideration of the authorities.
41. In *Tovir Investments Pty Ltd*,<sup>38</sup> Basten JA (Macfarlan and Leeming JJA agreeing) undertook a careful review of the authorities and concluded that the *Shin Kobe Maru* principle is limited to the:

“... use of an adjective in the defined term to read down a definition which otherwise widened the ordinary meaning (in *Wacal*)<sup>39</sup> or the meaning which would derive from existing practice and principle (in ‘*Shin Kobe Maru*’).”<sup>40</sup>  
[citations omitted]

42. This is not a case where an adjective in the definition of “large coal mining development” has been applied to read down the Act’s definition of that term. Instead reliance is placed upon the phrase “large coal mining development”, which is the defined term of relevance, to support the ordinary meaning of the words “coal mining activity” in that definition, as considered in the statutory context outlined in this advice.

*Conclusion*

43. The application of the ‘text in context’ approach to the term “any coal mining activity” within the definition of “large coal mining development” in s 528 of the Act leads to a broad application of the water trigger. The literal meaning of the phrase “any coal mining

---

<sup>35</sup> Ibid 419.

<sup>36</sup> (2011) 199 FCR 226.

<sup>37</sup> Ibid 257-258.

<sup>38</sup> [2014] NSWCA 379.

<sup>39</sup> Referring to *Wacal Developments Pty Ltd v Realty Developments Pty Ltd* (1978) 140 CLR 503.

<sup>40</sup> *Tovir Investments Pty Ltd* [2014] NSWCA 379, [20], quoted in *Woodside Energy Ltd v Electricity Generation and Retail Corp* [2015] WASC 397, [36]-[37].

activity”<sup>41</sup> when read within the Act as a whole to regulate large coal mining developments and their impacts on water resources,<sup>42</sup> includes consideration of the impacts of surface water harvesting.<sup>43</sup>

44. Accordingly, in our view, the NGWS is a ‘coal mining activity’ under the Act.
45. Based on the current referral material the proponent appears to attempt to exclude the action from that scheme by relying on a previous referral of part of the pipeline within the CCMP and simultaneously contending that the current referral is separate to the CCMP because it relies on a separate ‘investment decision’. That is a distinction which is not found within the express words of the statute and is not supported by the statutory context.
46. The proponent’s conclusion that its proposed flood harvesting for use in coal mining at the CCMP does not require assessment under the water trigger to determine the impacts it will have on water resources is incorrect.

We hope the information we have provided in this response is of assistance and we will now attend to closing your file. We will keep your file for 7 years, after which time it will be destroyed.

Please do not hesitate to contact us if you have any questions or would like to discuss this matter further.

Yours faithfully



**Alison Rose**

*Solicitor*

*To provide feedback on EDO services, write to us at the above address.*

**IMPORTANT INFORMATION ABOUT LEGAL PROFESSIONAL PRIVILEGE**

Any legal advice provided by EDO Qld is confidential and subject to legal professional privilege (i.e. it cannot be required to be disclosed to another person in a proceeding). While you may do as you wish with the advice, communicating or disclosing the advice to another person may disadvantage you by making the advice no longer confidential and privileged. Please contact EDO Qld if you have any questions about communicating or disclosing any advice.

<sup>41</sup> *Amalgamated Society of Engineers v Adelaide Steamship Co Ltd* (1920) 28 CLR 129.

<sup>42</sup> *Metropolitan Gas Co v Federated Gas Employees’ Industrial Union* (1924) 35 CLR 449, 455.

<sup>43</sup> *Project Blue Sky Inc v Australian Broadcasting Authority* (1998) 194 CLR 355; *Acts Interpretation Act* 1901 (Cth), s 15AA.



Dear Christian,

### **Review of NGWS Report (CDM Smith, 2019)**

I am writing in response to your request to assess the report CDM Smith (2019; *North Galilee Water Scheme EPBC Act Environmental Assessment: Prepared to Support a Commonwealth Referral for Water Harvest, Storage Infrastructure and the Belyando Pipeline*, Project no. 1000244, 83 pp), with respect to the following issues:

1. Whether the assessment documentation is sufficient to determine the impact the proposed action is likely to have on a water resource; and
2. If so,
  - a. The impact the proposed action is likely to have on a water resource; and
  - b. Whether you consider the impact to be a significant impact on a water resource.

My review of the report finds, in summary, that:

1. The assessment document requires modifications to be able to properly assess the impact on the water resource of the proposed action. Suggested improvements are described in the comments that follow. A key aspect of the report that needs to be improved is the issue that the report focuses on the effect of NGWS on peak flood events, whereas the NGWS pumping will impact mostly small-to-medium flooding events. The effect on the latter is not properly addressed.

The assessment of impacts in the report needs to be broadened. Impacts on the water resource that should be considered include: (1) impact to the total discharge volume of the river system, (2) impact to the flow regime more generally – i.e., assessing the change to low, medium and high flows, and, importantly, to periods of zero flow, (3) impact to frequencies and durations of inundation of riparian and floodplain regions, (4) impact to inundated areas (i.e., flooded areas) considering a range of flood types (low, medium and high), (5) implications of changes to the flow regime on riparian, floodplain and in-stream ecosystems, and (6) impacts to the accessibility to river water by other water users.

The report only partly assesses the above types of impact. Type (1) is assessed, while types (2), (3), (4), (5) and (6) are partly assessed.

The issue of zero flows raised above may seem counterintuitive given the proposed threshold of 30 m<sup>3</sup>/s (i.e., which is intended to avoid impacts to low flow events). However, the threshold is applied at St Ann's gauge, which is distant from the extraction site. It is

likely that flows are less than 30 m<sup>3</sup>/s at the offtake for the NGWS when flow at St Ann's gauge is 30 m<sup>3</sup>/s. Given the maximum capacity of the offtake of 11.6 m<sup>3</sup>/s, it is therefore possible that NGWS pumping causes increased frequency of zero flow at some locations within the Suttor River.

2. (a) The impacts of the proposed project on peak discharge rates and the total volume of discharge will likely be small. This leads to impacts to the Scartwater Lagoon that are expected to occur rarely, because the Lagoon relies on high flow rates in the river.

However, it is unclear whether impacts to the river flow regime during other (non-peak) times will be significant. I expect that there will be some discharge events that are reduced in frequency (i.e., occur less often) more markedly than the reduction in peak flows arising from NGWS pumping, but this is not clear from the report. Importantly, it is not clear what effect the NGWS will have on low-flow periods. I note that in most of the presented hydrographs, modelling results show an over-estimation of low flows (i.e., the model predicts low flows that are higher than they are in reality). Thus, it is possible that the model is not well-suited to this assessment. However, this is currently unclear from the report. Nevertheless, the persistence of aquatic refugia is an important consideration and therefore, the effect of the NGWS on low flows should be considered and assessed within the limitations of the modelling methodology.

Certainly, the NGWS impact on peak flows is likely smaller than the NGWS impact on other flows, and yet statements about impact in the report are based almost exclusively on whether peak flows are impacted or not. This includes assessment of the impacts to ecosystems.

2. (b) Whether or not the impact on the water resource is likely to be "significant" is currently difficult to ascertain from the report, given the lack of investigation of flow regimes aside from peak flows. Some factors to consider in arriving at an interpretation of "significant impact" include that:

- a. The threshold for the initiation of pumping is 30 m<sup>3</sup>/s. Comparing this to the capacity of pumping infrastructure to extract from the river (11.6 m<sup>3</sup>/s; up to 830 ML/d or 20 hours per day of pumping), it is reasonable to suggest that the proposed infrastructure can prima facie reduce stream flow by at least one-third at certain river discharge rates. Taking into account the cumulative river pumping by other users, there is a potential for the Suttor River to run dry when it would have otherwise flowed. The need to assess cumulative impacts on stream flow, particularly low flows and the frequency of occurrence thereof, is an important aspect that has not been adequately addressed in the report.
- b. The available off-stream storage of 10 GL could be filled in ~12 days at 830 ML/d. Therefore, the NGWS is unlikely to have year-round impacts to stream flow, but rather, impacts will be intermittent. As licensing is based on a water year, impacts to stream flow will tend to occur closer to the start of each water year (1 October) because this marks the restart to the allowable annual extraction volume. The effect of this should be considered in ascertaining impact.
- c. Whether the ecological assets that are at risk are significant is an important consideration (beyond the scope of the current review). The current study

considers primarily the change in peak flows, whereas it may be the case that smaller events play a key role in ecosystem health, although this is a question for specialists in this research field. Nevertheless, it is widely accepted that the frequency of inundation is an important factor in floodplain health, rather than simply the extent of peak flood inundation, which is the focus of CDM Smith's report.

Measures should be taken to minimise environmental degradation from NGWS extraction, which may cause significant impact to medium flows (of the order of 10s of cumecs) in the Suttor River (in the absence of evidence to the contrary presented in the NGWS report). For example, imposing pumping rules that encourage extraction during higher-flow events is likely to reduce potential downstream impacts. A staged-threshold policy that depends on the stored volume in the off-stream storage could potentially achieve this aim. Otherwise, NGWS impacts to large flooding events are demonstrably likely to be negligible-to-small.

Specific comments follow that are based on my reading of the report's sections 2.1-2.4.5, 4.3-4.3.2, App. F, and App. H (and other readings where these helped in interpreting those sections). These are opinions upon which my summary conclusions pertaining to the above-mentioned issues were reached:

- (1) §2.2.4 – It would help to see 120301B and 120310A on a map.
- (2) §2.3 – It would help to better explain the calibration process. Automated? Trial-and-error?
- (3) §2.3 – Shifting the inflow boundary is not really a calibration activity per se. This process may have introduced some uncertainty in flow rates (e.g., because of tributary inflows between the gauge and the upstream model boundary), although this should be apparent as calibration mismatch.
- (4) §2.3.1 – Fig 2-2 indeed shows a reasonable calibration match, although it is worth noting that low water levels are not well reproduced. It would be helpful to see the match also to flows, and be able to interpret which water levels match the threshold for NGWS pumping.
- (5) §2.3.2 – The explanation for mismatch in the validation seems reasonable.
- (6) §2.3.2 – It is unclear why inputs from tributaries (“local creek runoff”) have been omitted.
- (7) §2.4.2 – I don't follow the argument that “the analysis presented herein is likely to be somewhat conservative”. The basis for this assertion requires clearer explanation.
- (8) Table 2-6 – More is needed to assess the influence of pumping on the water resource. The number of days at particular flow rates (perhaps there are meaningful thresholds available) should be reported – including without existing pumping, with existing pumping, and with future pumping. This should be offered at more than one location but including just downstream of the mine offtake AMTD.

- (9) §2.4.2 – The issue of water use is typically not simply whether the NGWS license reduces water volumes available to the receiving environment, but rather, the period that flow occurs above a particular rate is also important, and the length of time that the river is not flowing is often a limiting factor in river health because this impacts the persistent of aquatic refugia. On this basis, I disagree with the conclusion that one can simply evaluate the final row of Table 2-6 to form an opinion about the state of the system that arises from the new pumping rates. Certainly, the change in volume is small, but there is not enough information here to assess whether this change is impactful or not. Similar to the suggestion above, flow-duration curves should be assessed, and these should be considered in the context of ecological dependency on particular flow regimes.
- (10) §2.4.2, p62 – The view here of whether effects are small or not based on annual volume only is narrow compared to the aspects of stream important to ecosystems and other users. Whether or not important flow thresholds are changed should also be considered.
- (11) §1.9.4.2, §2.4.2 – The pumping capability of the Suttor River intake pump station is an important factor here.
- (12) Figure 2-8 – At what moment in time are these flood heights from? This comparison of flood depths (is this the peak flood depth?) does not explore the influence of pumping on downstream flow regimes.
- (13) Figure 2-9 – We see from Figure 2-9 that there is no effect on the peak flood because the annual limit of 12.5 GL was already reached, and so pumping had stopped. What about the smaller floods during the first half of the year – what effect did pumping have on those? It is concerning that the rules have led to the scheme pumping water not during the peak flood events but during small floods, when pumping may have a larger impact on the flow regime, and thus the impact based on volume should be supplemented with evaluation of impacts based on lower-flow regimes.
- (14) p64 – The change in entitlements to other users should be given, rather than conflating the access of other users and the NGWS.
- (15) p65 – The 2001 year is almost a best-case scenario for the effects of the NGWS on downstream ecosystems and users, because there is an opportunistic large flow event early in the year that precludes the need to pump from many of the smaller events later in the year. This is recognised later in the report.
- (16) §2.4.4 – The inundated areas of peak events are going to be impacted minimally when there is pumping for the NGWS. Rather, the inundated areas should be assessed to determine how these differ at lower flows, when the NGWS is expected to have a more significant impact. That is, there may be ecosystems that rely on regular inundation (rather than inundation from only the peak events) that are influenced by NGWS pumping that have not been considered. What should be assessed is the change to the period and frequency of inundation of particular riparian and floodplain landscapes for the entire year, rather than for only the peak events.
- (17) Table 2-10 – This table refers to the inundation at peak flow, when inundation at lower flows are likely to be more significantly impacted.

- (18) Tables 2-10, 2-11, 2-12 – % of impact could be given. This would show that there are several categories with small areas that have significantly (>20%) modified inundated areas.
- (19) §4.3 – I have similar reservations in this section as for previous sections, regarding the reporting of volume impacts of NGWS. I also have concerns that only three selected years are being assessed. Other years should also be evaluated.
- (20) §4.3.1 – The statement “will be consistently subject to a reduction in future flood inundation from the NGWS extraction” has not been assessed, because only peak inundation has been considered rather than total period of inundation or frequency of inundation.
- (21) Appendix F – no comments to make on this part of the report.
- (22) Appendix H – In general, I agree that the areas of impact from steady-state analysis are small relative to the total inundated areas, and that the influence on the Scartwater Lagoon will occur *infrequently* or *rarely* (“very rarely” seems overly optimistic).

Yours sincerely,



Adrian Werner  
Professor of Hydrogeology

29 September 2019



**ASIC**

Australian Securities & Investments Commission

# Current & Historical Company Extract

**Name:** ADANI INFRASTRUCTURE PTY LTD

**ACN:** 606 764 827

Date/Time: 30 September 2019 AEST 12:49:22 PM

This extract contains information derived from the Australian Securities and Investments Commission's (ASIC) database under section 1274A of the Corporations Act 2001.

Please advise ASIC of any error or omission which you may identify.

EXTRACT

Organisation Details	Document Number
<b>Current Organisation Details</b>	
Name: ADANI INFRASTRUCTURE PTY LTD	029289353
ACN: 606 764 827	
ABN: 16606764827	
Registered in: Queensland	
Registration date: 30/06/2015	
Next review date: 30/06/2020	
Name start date: 30/06/2015	
Status: Registered	
Company type: Australian Proprietary Company	
Class: Limited By Shares	
Subclass: Proprietary Company	

Address Details	Document Number
<b>Current</b>	
Registered address: ADANI MINING PTY LTD, Level 25, 10 Eagle Street, BRISBANE QLD 4000	7E7339332
Start date: 05/10/2015	
Principal Place Of Business address: Level 9, 120 Edward Street, BRISBANE QLD 4000	7EAP65912
Start date: 23/09/2019	
<b>Historical</b>	
Registered address: ADANI MINING PTY LIMITED, Level 30, 10 Eagle Street, BRISBANE CITY QLD 4000	029289353
Start date: 30/06/2015	
Cease date: 04/10/2015	
Principal Place Of Business address: Level 25, 10 Eagle Street, BRISBANE QLD 4000	7E7339332
Start date: 21/09/2015	
Cease date: 22/09/2019	
Principal Place Of Business address: Level 30, 10 Eagle Street, BRISBANE CITY QLD 4000	029289353
Start date: 30/06/2015	
Cease date: 20/09/2015	

Officeholders and Other Roles	Document Number
<b>Director</b>	
Name: SAMIR SEVANTI VORA	7EAL03784
Address: Unit 4704, 71 Eagle Street, BRISBANE QLD 4000	
Born: 21/10/1970, CLEVELAND OHIO, UNITED STATES	
Appointment date: 30/06/2015	
Name: JEYAKUMAR JANAKARAJ	7EAM74956
Address: 4b Berrima Road, Singapore 297630, Singapore	
Born: 11/11/1970, MADURAI TAMIL NADU, INDIA	
Appointment date: 30/06/2015	

<b>Secretary</b>	
Name: RAJESH GUPTA	7E7339332
Address: 23 Rothburn Street, DOOLANDELLA QLD 4077	
Born: 29/04/1971, DUMRI, INDIA	
Appointment date: 25/09/2015	
<b>Previous Secretary</b>	
Name: SHERIDAN M'LISS GROTH	029289353
Address: 18 Plymouth Street, ALDERLEY QLD 4051	
Born: 26/05/1968, NEWCASTLE, NSW	
Appointment date: 30/06/2015	
Cease date: 30/09/2015	
<b>Appointed Auditor</b>	
Name: ERNST & YOUNG	7E9116284
Address: 111 Eagle Street BRISBANE QLD 4000	
Start date: 28/04/2017	
<b>Ultimate Holding Company</b>	
Name: ADANI ENTERPRISES LTD	029289353
Org No.: 151 649 884	

<b>Share Information</b>					
<b>Share Structure</b>					
Class	Description	Number issued	Total amount paid	Total amount unpaid	Document number
ORD	ORDINARY SHARES	1000	1000.00	0.00	029289353
<b>Members</b>					
<p>Note: For each class of shares issued by a proprietary company, ASIC records the details of the top twenty members of the class (based on shareholdings). The details of any other members holding the same number of shares as the twentieth ranked member will also be recorded by ASIC on the database. Where available, historical records show that a member has ceased to be ranked amongst the top twenty members. This may, but does not necessarily mean, that they have ceased to be a member of the company.</p>					
<p>Name: ADANI GLOBAL PTE LTD  Org No.: 151 649 919  Address: 80 Raffles Place #33-20, Uob Plaza li Lvl 33, Singapore 048624, Singapore</p>					
Class	Number held	Beneficially held	Paid	Document number	
ORD	1000	yes	FULLY	029289353	

<b>Financial Reports</b>						
Balance date	Report due date	AGM due date	Extended AGM due	AGM held date	Outstanding	Document number
31/03/2017	31/07/2017				no	7E9116284

31/03/2018	31/07/2018				no	7EAB05505
31/03/2019	31/07/2019				no	7EAN33352

**Documents**

Note: Where no Date Processed is shown, the document in question has not been processed. In these instances care should be taken in using information that may be updated by the document when it is processed. Where the Date Processed is shown but there is a zero under No Pages, the document has been processed but a copy is not yet available.

Date received	Form type	Date processed	Number of pages	Effective date	Document number
29/06/2015	201C Application For Registration As A Proprietary Company	30/06/2015	8	29/06/2015	029289353
28/09/2015	484 Change To Company Details 484B Change Of Registered Address 484C Change Of Principal Place Of Business (Address) 484A1 Change Officeholder Name Or Address 484E Appointment Or Cessation Of A Company Officeholder	28/09/2015	3	28/09/2015	7E7339332
01/10/2015	484E Change To Company Details Appointment Or Cessation Of A Company Officeholder	05/10/2015	4	05/10/2015	029387300
11/04/2017	484A1 Change To Company Details Change Officeholder Name Or Address	11/04/2017	2	11/04/2017	7E8959332
02/06/2017	388 (FR 2017) Financial Report 388I Financial Report - Small Proprietary Company That Is Controlled By A Foreign Company 388E Company - Appoint Change Name/address Of Auditor	02/06/2017	20	31/03/2017	7E9116284
24/11/2017	484A1 Change To Company Details Change Officeholder Name Or Address	24/11/2017	2	24/11/2017	7E9682820

14/06/2018	388I (FR 2018) Financial Report Financial Report - Small Proprietary Company That Is Controlled By A Foreign Company	14/06/2018	26	31/03/2018	7EAB05505
07/05/2019	484A1 Change To Company Details Change Officeholder Name Or Address	07/05/2019	2	07/05/2019	7EAL03784
27/06/2019	484A1 Change To Company Details Change Officeholder Name Or Address	27/06/2019	2	27/06/2019	7EAM74956
11/07/2019	388I (FR 2019) Financial Report Financial Report - Small Proprietary Company That Is Controlled By A Foreign Company	11/07/2019	26	31/03/2019	7EAN33352
24/09/2019	484 Change To Company Details 484B Change Of Registered Address 484C Change Of Principal Place Of Business (Address)	24/09/2019	2	24/09/2019	7EAP65912

\*\*\*End of Extract of 4 Pages\*\*\*

# Notice

## Environmental Protection Act 1994 Annual return

This annual return is relevant to environmental authorities for resource activities or prescribed environmentally relevant activities under sections 308 and 309 of the Environmental Protection Act 1994.<sup>2</sup>

### GUIDE

**IMPORTANT:** This is the period for which all of the questions within this return relate to.

If the anniversary day has changed you must ensure that there is no gap in reporting because of the change.

Annual return notices will be sent to the nominated holder or their identified financial contact. These can be updated at any time via Connect or by contacting the department.

All other correspondence will be sent to all holders. This information must be kept current as it is used for all ongoing correspondence in relation to your environmental authority.

If you require assistance in answering any part of this form, or have any questions about your application please contact Permit and Licence Management. Contact details are at the end of this form.

### Annual return details

If you have registered your details in EHP's Connect you can now lodge your annual return online. If you haven't yet registered for Connect, you can do so at : <http://qld.gov.au/EnvironmentConnect>

#### 1. Annual return period

FROM	03/04/2017
TO	02/04/2018

#### 2. Environmental authority details

ENVIRONMENTAL AUTHORITY NUMBER	
EPML01470513	
ENVIRONMENTAL AUTHORITY HOLDERS NAMES	
Adani Mining Pty Ltd	
NOMINATED HOLDER TO RECEIVE ANNUAL RETURNS	
Adani Mining Pty Ltd	
REGISTERED ADDRESS	POSTAL ADDRESS
Level 25, AMP Place 10 Eagle Street BRISBANE QLD 4001	C/- Hamish Manzi GPO Box 2569 BRISBANE QLD 4001
CONTACT PERSON	PHONE
Adani Mining Pty Ltd	07 3223 4800
FACSIMILE	MOBILE
07 3223 4850	0407 340 125



EMAIL

hamish.manzi@adani.com.au

**3. Have any of the activities on your environmental authority been altered?**

Yes → Your environmental authority may need to be amended.

No

**4. Have you fully complied with all of the conditions of your environmental authority (including if applicable the eligibility criteria)?**

Yes

No →  I/We have already provided all non-compliance information to the administering authority. No further documentation has been attached.

OR

I/We have not yet provided non-compliance information and have attached the following documentation.

- a) A statement describing the non-compliance/ incident including photographs where appropriate.
- b) A statement describing the environmental impacts resulting from the non-compliance/ incident.
- c) A statement describing the actions taken to repair any damage to the environment resulting from the non-compliance/incident.
- d) Details of any monitoring data which exceeded any of the environmental limits set out in the environmental authority.

An ineligible resource activity for CSG means one which is not subject to an ERA Standard and therefore does not have eligibility criteria and standard conditions.

Management criteria for CSG water would have been provided as part of the environmental authority application.

**5. Is the environmental authority for an ineligible resource activity for coal seam gas (CSG)?**

Yes  
→

I/We have attached the following documentation.

- a) An evaluation of whether the management of CSG water has been effective when assessed against the management criteria.
- b) If the evaluation (mentioned above), determines that water has not been effectively managed against the management criteria, also include details of the action that will be taken to ensure that the water will be effectively managed in the future, including timeframes for action.

\*No

If a plan of operations applies and financial years are used to align the plan this can be stated. Otherwise, state the period on which the plan is based (e.g. Jan 2009 to Jan 2010).

'Progressive certification' means that a particular area within a relevant tenure for a resource project has been rehabilitated under all relevant requirements as set out in section 318Z of the EP Act

Total area of remaining disturbance at the end of the period is the total area of disturbance prior to the period plus any additional disturbance less any areas rehabilitated and approved under progressive certification during the period.

To determine if you are eligible for a reduced annual fee, please refer to the information sheet "Paying a reduced annual fee" (ESR/2015/1723)<sup>4</sup> which is available at [www.qld.gov.au](http://www.qld.gov.au)

## 6. Is the environmental authority for a resource activity?

- Yes →  I/We have provided a summary of the onsite disturbance and rehabilitation in the table below based on the annual return period.
- OR
- I/We have provided a summary of the onsite disturbance and rehabilitation in the table below based on a period which aligns with a plan of operations being \_\_\_\_to\_\_\_\_.
- No

Area of disturbance/rehabilitation (hectares)	Planned	Actual
Total area of disturbance prior to reporting period	0	0
Total area disturbed during the period	0	0
Total area rehabilitated and approved under progressive certification during the period	0	0
Total area of remaining disturbance (including rehabilitated areas that have not yet been progressively certified) at the end of the period	0	0
Total area of ongoing (uncertified) rehabilitation for the period	0	0

## 7. Are you claiming a reduced annual fee?

- Yes →  I/We have completed Attachment 1: Claiming a reduced annual fee.
- No

Monitoring and reporting does not need to be resubmitted with this return, unless it is a specific requirement within the conditions of your environmental authority, in which case monitoring must be provided.

**8. Does a condition of your environmental authority require you to carry out any monitoring and/or reporting?**

- Yes →  Go to question 9
- No

WaTERS is the Wastewater Tracking and Electronic Reporting System (WaTERS) database formerly known as the Point Source Database.

**Important note:** Only certain operations will submit data to the WaTERS database. If your site has not been implemented to WaTERS, select 'no' at question 9 and go to question 10.

For more information about WaTERS, email [psd\\_help@qld.gov.au](mailto:psd_help@qld.gov.au)

**9. Have you submitted the monitoring and reporting to the WaTERS database (formerly point source database)? – (if this annual return is for a mining lease, please select Not applicable)**

- Yes →  All monitoring and reporting has been submitted to WaTERS.
- OR
- Only some of the monitoring and reporting has been submitted to WaTERS. Go to question 10. Any data that has not been submitted to WaTERS needs to be detailed at question 11.
- No
- Not Applicable

**10. Has all of the monitoring and reporting been carried out in accordance with your environmental authority? – (if this annual return is for a mining lease, please select Not applicable)**

- Yes
- No → Please ensure question 4 is filled out correctly and includes all of the necessary details.
- Not Applicable

Please do not submit the monitoring data or report(s) with this annual return.

You must keep reports so they can be accessed if requested. You may need to provide them following a request by an authorised officer or when surrendering or cancelling your environmental authority.

**11. Provide a summary of your monitoring and reporting. – (if this annual return is for a mining lease, please select Not applicable)**

REPORT AND/OR MONITORING DATA TITLE	PREPARED BY	DATES COVERED BY REPORT	LOCATION OF REPORT

\*Not Applicable

**Declaration**

**Note:** If you have not told the truth in this annual return you may be prosecuted.

- I/We, being the holders identified in question 2, acknowledge that all information supplied on or with this annual return may be made available upon request, subject to the provisions of the Right to Information Act 2009 and the Evidence Act 1977.
- I am the holder of or the appointed signatory for the environmental authority.
- I am aware that under section 480 of the Environmental Protection Act 1994, it is an offence to knowingly give information that I know is false, misleading or incomplete in any material particular.
- I have supplied all of the required information.

SIGNATURE 	
NAME OF SIGNATORY (IF APPLICABLE) Hamish Manzi	
POSITION OF SIGNATORY (E.G. DIRECTOR, CEO, MANAGER, OWNER, PARTNER) Head of Environment and Sustainability	DATE 14/03/2018

**Complete and submit the annual return by 03/04/2018 one of following methods:**

**Online via Connect** (Preferred method)

Go online and complete the annual return via <http://qld.gov.au/EnvironmentConnect>

Further information about the department's digital platform for online services can be found at the link above.

**Email** [palm@ehp.qld.gov.au](mailto:palm@ehp.qld.gov.au)

**Post** Permit and Licence Management

Department of Environment and Heritage Protection

GPO Box 2454 Brisbane QLD 4001

**Privacy statement**

The department is committed to protecting the privacy, accuracy and security of your personal information in accordance with the Information Privacy Act 2009. The information is being collected in accordance with sections 308–309 of the Environmental Protection Act 1994. The information will only be accessed by authorised employees within the department. Some of this information may be given to the Department of Natural Resources and Mines for the purpose of the joint regulation of mining activities. Your information will not be given to any other person or agency unless you have given us permission or we are authorised or required by law. All information supplied on this form may be disclosed publicly in accordance with the Right to Information Act 2009 and Evidence Act 1977. For queries about privacy matters email: [privacy@ehp.qld.gov.au](mailto:privacy@ehp.qld.gov.au) or telephone: (07) 3330 5436.

**Applicant checklist**

- \* Annual return signed and completed (all questions applicable are answered)
- \* Attachment 1—Reduced annual fee documentation attached (if applicable)
- \* Annual fee paid or enclosed (if applicable)

## Attachment 1: Claiming a reduced annual fee

This attachment is to be used to claim a reduced annual fee under sections 121 to 127 of the Environmental Protection Regulation 2008 and is to be attached to the annual return for an environmental authority.

### 1. Eligibility for a reduced annual fee

Refer to the information sheet "Paying a reduced annual fee" (ESR/2015/1723) for details of the eligibility criteria for claiming a reduced annual fee and the information to accompany the annual return before completing this attachment.

A reduced annual fee of up to 50% is available if all of the following are met.

- ✱ The holder of the environmental authority has been operating under the environmental authority for at least one year.
- ✱ There has been no compliance action event for the holder in the past 3 years (or for the duration of the authority if it is less than 3 years old).
- ✱ No holder of the environmental authority has had a disqualifying event in the past year.
- ✱ The reduced annual fee will be paid by the due date.
- ✱ The annual return will be completed and submitted by the due date.
- ✱ All information required under section 2 (below) will be submitted by the due date.

### 2. Criteria for a reduced annual fee

I/We are claiming a reduced annual fee for the following criteria and have attached the documents as required.

- All holders of the environmental authority are approved partners of ecoBiz—10% discount

INSERT DATE OF MOST RECENT APPROVAL
-------------------------------------

- ✱ The environmental authority is operating under an environmental management system (EMS) certified by an accredited body as being compliant with ASNZ ISO: 14001: 2004 Environmental Management Systems—20% discount

✱ I/We have included a statutory declaration, completed by a suitably qualified person, verifying that:

- all the activities carried out under this environmental authority were carried out in accordance with the EMS last year; and
- I am complying with the conditions of the environmental authority.

- The environmental authority is operating under the National Feedlot Accreditation Scheme, Rules of Accreditation published in 2011 by AUS-MEAT Limited ABN 44 082 528 881—20% discount

I/We have completed and included a statutory declaration<sup>9</sup> verifying that:

- all the activities carried out under this environmental authority were carried out in accordance with the EMS last year; and
- I am complying with the conditions of the environmental authority.

- Reduced emissions profile—20% discount**
  - I/We certify that the relevant activity, or the activity with the highest aggregate environmental score (AES), has an **emissions score** that is at least 25% less than the **emissions score** stated to apply for the activity under the environmental emission profile.
  
- Relevant resource activity environmental authority<sup>10</sup>—50% discount**
  - I/We have included a statutory declaration<sup>11</sup> verifying that:
    - the holder has stopped extracting the resource that is the subject of the environmental authority and does not intend to recommence extracting the resource.
    - the holder is currently carrying out rehabilitation of the land that is the subject of the environmental authority.

## Declaration

**Note:** There are significant penalties under the Environmental Protection Act 1994 for supplying false and/or misleading information that will apply in relation to claiming reduced annual fees.

- I/We, being the holders identified in question 2, acknowledge that all information supplied on or with this annual return may be made available upon request, subject to the provisions of the Right to Information Act 2009 and the Evidence Act 1977.
- I am the holder of or the appointed signatory for the environmental authority.
- I am aware that under section 480 of the Environmental Protection Act 1994, it is an offence to knowingly give information that I know is false, misleading or incomplete in any material particular.
- I have supplied all of the required information.

SIGNATURE 	
NAME OF SIGNATORY (IF APPLICABLE)  Hamish Manzi	
POSITION OF SIGNATORY (E.G. DIRECTOR, CEO, MANAGER, OWNER, PARTNER)  Head of Environment and Sustainability	DATE  14/03/2018

## Checklist

- If claiming a reduced annual fee for environmental management system, the statutory declaration is attached.
- If claiming a reduced annual fee for a relevant resource activity<sup>10</sup> environmental authority, the statutory declaration is attached.

## Privacy statement

The department is committed to protecting the privacy, accuracy and security of your personal information in accordance with the Information Privacy Act 2009. The information is being collected in accordance with sections 308–309 of the Environmental Protection Act 1994. The information will only be accessed by authorised employees within the department. Some of this information may be given to the Department of Natural Resources and Mines for the purpose of the joint regulation of mining activities. Your information will not be given to any other person or agency unless you have given us permission or we are authorised or required by law. All information supplied on this form may be disclosed publicly in accordance with the Right to Information Act 2009 and Evidence Act 1977. For queries about privacy matters email: [privacy@ehp.qld.gov.au](mailto:privacy@ehp.qld.gov.au) or telephone: (07) 3330 5436.

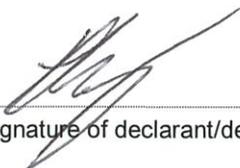
## Statutory declaration

I, **Hamish Manzi of Level 25 10 Eagle St Brisbane**, do solemnly and sincerely declare that:

- 1 I am the Head of Environment & Sustainability for Adani Mining Pty Ltd and have held this or a similar role since November 2011.
- 2 I have 20 years of environmental management experience and have a Bachelor Degree and Master's Degree qualification in this field.
- 3 I am a member of the Environment Institute of Australia and New Zealand.
- 4 Each relevant activity carried out under Adani's Environmental Authority (EPPR00745013) in 2016/17 has been carried out in accordance with an Environmental Management System (EMS) that has been certified as conforming to AS/NZS ISO14001:2015 "Environmental management systems – Requirements with guidance for use" by a conformity assessment body.
- 5 The holder of the Environmental Authority – Adani Mining – is complying with the conditions of the authority.
- 6 In making this declaration I have not knowingly included false, misleading or incomplete information in the document and have not knowingly failed to reveal any information or document to the administering authority.
- 7 The documents prepared and submitted for the Annual Return for the Environmental Authority address all relevant matters for the function and is factually correct. All opinions expressed in these documents are honestly and reasonably held.

And I make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of the *Oaths Act 1867*.

Signature:

  
(Signature of declarant/deponent)

Taken and declared before me, at Townsville in Queensland,  
(location)

this 22nd day of March 2018

N. Moraitis  
(Signature of person before whom  
declaration is made)

JP (Qual)  
(Qualification of witness)

