

A Fistful of Dollars:

**Adani's Preferential Treatment by Federal, State and
Local Australian Governments**

October 2017

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Executive Summary

Since announcing its intention to build Australia’s largest and most polluting coal mine, Adani has received a staggering number of special deals and preferential treatment from all levels of government. At the slightest insinuation that Adani won’t proceed with building its polluting megamining, laws have been changed, exemptions granted and public subsidies in the form of low-interest loans and water licenses handed over to ensure that the project goes ahead. This comes at a time when Australia has committed to the *Paris Agreement* ambition of limiting global warming to 1.5 degrees, and where the Great Barrier Reef has suffered the worst coral bleaching on record.

Not only are these decisions bad for our water, air, rivers, forests and wildlife, they also undermine our democracy. Financial journalist Matthew Stevens has described Adani as wielding an “unprecedented level of direct and indirect government indulgence”.¹ Meanwhile, as Adani and other large companies exert huge influence over our political representatives, new laws and practices are being introduced that attempt to silence the voices of community organisations such as ACF.² These changes come at a time where the mining industry has spent more than \$540 million over the last decade on lobbying.³ Clearly, the growth of corporate power has been accompanied by attacks on fundamental democratic principles.

This research brief details the unprecedented preferential treatment that Adani has received in the last several years. It highlights the extraordinary efforts taken by federal, state and local governments to lure Adani’s business to Queensland. In summary, these decisions include:

- Declaration of Critical Infrastructure Status to fast-track approval processes;
- Granting Adani a free water licence allowing them to take unlimited groundwater for 60 years;
- Promises by Queensland regional council to build key infrastructure such as airports to service Adani’s FIFO workers;

¹ Matthew Stevens, ‘Adani Takes Brinkmanship to New Levels’, *Australian Financial Review* (23 May 2017) <<http://www.afr.com/business/mining/adani-takes-brinkmanship-to-new-levels-20170523-gwbbhn>>.

² Human Rights Law Centre, ‘Defending Democracy’ (June 2017) <https://static1.squarespace.com/static/580025f66b8f5b2dabbe4291/t/5936933d579fb38a23dc2eda/1496748893178/DefendingDemocracy_online_June2017.pdf>.

³ Hannah Aulby, ‘Undermining our Democracy’, *The Australia Institute* (August 2017) <http://www.tai.org.au/sites/default/files/P307%20Foreign%20influence%20on%20Australian%20mining_0.pdf>.

- Flying regional mayors to India with the Queensland Premier on the public purse to court Adani's business;
- Rapidly amending the Native Title Act without proper consultation after the Federal Court put Adani's mine in doubt;
- Issuing Temporary Emissions Licences for the Abbot Point Coal Terminal during Tropical Cyclone Debbie, which Adani then breached;
- Implementing weak environmental approvals that fail to protect biodiversity and the Great Barrier Reef;
- Cutting a special deal with the Queensland Government for a massive reduction in royalty payments;
- Consideration for a \$1 billion low-interest loan from the Northern Australia Infrastructure Facility (NAIF).

Timeline

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|--------------|---|
| 7 Oct 2016 | Queensland Government declares the project a critical infrastructure project |
| 10 Nov 2016 | Queensland Parliament passes last-minute legislation creating a new form of water licence called an Associated Water Licence |
| 12 Jan 2017 | Mackay Mayor proposes that Adani use Mackay's vacant airport terminal |
| 2 Feb 2017 | Federal Court holds that Native Title Act requires consent of all claim group members |
| 6 Feb 2017 | Queensland Premier Anastacia Palaszczuk calls on Prime Minister Malcolm Turnbull to change the Native Title Act |
| 8 Feb 2017 | Rockhampton Regional Council propose building a \$20 million airport for Adani's FIFO workers |
| 16 Mar 2017 | Mackay, Rockhampton and Townsville Mayors accompany Premier Anastacia Palaszczuk to India to court Adani at taxpayer expense |
| 27 Mar 2017 | Adani granted a Temporary Emissions Licence during Cyclone Debbie |
| 29 Mar 2017 | Queensland Government grants Adani an Associated Water Licence |
| 11 Apr 2017 | Prime Minister Malcolm Turnbull promises to "fix" the Native Title Act |
| 10 May 2017 | Environment Minister Josh Frydenberg axes eight EPBC Act conditions that protected endangered flatback and green turtles at Abbot Point |
| 17 May 2017 | Leaks confirm that the Queensland Government is considering a massive royalty deal for Adani |
| 1 Jun 2017 | NAIF confirm that Adani is in the due diligence phase for a \$1 billion low-interest loan |
| 14 June 2017 | Senate passes amendments to the Native Title Act with support of Liberal, National and Labor parties |
| 10 Aug 2017 | Adani fined \$12,190 for breaching its Temporary Emissions Licence |

1. Declaration of Critical Infrastructure Status

On 7 October 2016, the Queensland Minister for State Development, Anthony Lynham, declared the Adani project a Critical Infrastructure Project.⁴ At the time, the Minister stated that the move was intended to reduce “red-tape” on Adani, and would fast-track the project’s construction.⁵

Declaring Adani’s project as critical infrastructure was unique. These powers have typically been associated with building infrastructure for water security purposes during times of drought or where water levels are dangerously low.⁶ This was the first time that this declaration has been applied for the purpose of speeding up a controversial coal mining project.⁷

The declaration of critical infrastructure centralised powers in the hands of the Queensland Coordinator-General, authorising him to accelerate and guide the approvals process for the project by excluding most normal processes for appeal and review, setting time-frames for decisions to be made and, in some circumstances, assessing and granting final approvals.⁸ Significantly, this declaration also stripped away most normal powers of the Queensland Courts to review and determine the lawfulness of decisions made by the Coordinator-General.⁹ As the Environmental Defenders Office

⁴ Queensland Government Gazette, ‘Declaration of a Critical Infrastructure Project’ (7 October 2016) <<https://www.statedevelopment.qld.gov.au/resources/publication/cg/adani-gazette.pdf>>.

⁵ Queensland Minister for Natural Resources and Mines, ‘Queensland Government Steps up to Progress Adani Mine Project’ (9 October 2016) <<http://statements.qld.gov.au/Statement/2016/10/9/queensland-government-steps-up-to-progress-adani-mine-project>>.

⁶ Environmental Defenders Office Queensland, ‘Legal Implications of the Declarations of Adani’s Carmichael Combined Project as a Prescribed Project and Critical Infrastructure’ (25 October 2016) <<https://d3n8a8pro7vhm.cloudfront.net/edoqld/pages/376/attachments/original/1499240420/Legal-implications-of-the-declarations-of-Adanis-Carmichael-Combined-Project-October-2016.pdf?1499240420>> p 6.

⁷ Queensland Government, ‘List of Prescribed Projects’ (20 September 2017) <<https://www.statedevelopment.qld.gov.au/infrastructure-delivery/list-of-prescribed-and-critical-infrastructure-projects.html>>.

⁸ Environmental Defenders Office Queensland, ‘Legal Implications of the Declarations of Adani’s Carmichael Combined Project as a Prescribed Project and Critical Infrastructure’ (25 October 2016) <<https://d3n8a8pro7vhm.cloudfront.net/edoqld/pages/376/attachments/original/1499240420/Legal-implications-of-the-declarations-of-Adanis-Carmichael-Combined-Project-October-2016.pdf?1499240420>> p 7-8.

⁹ Environmental Defenders Office Queensland, ‘Adani’s Contentious Combined Project Fast-Tracked as Critical Infrastructure’ (10 October 2016) <<http://www.edoqld.org.au/news/adanis-contentious-private-mining-development-fast-tracked-as-critical-infrastructure/>>.

Queensland note, “this gives the CG extraordinary powers to speed up and take control of any approvals still required for the Project to proceed”.¹⁰

Adani also received direct administrative support from the Coordinator-General. To ease the approvals process, Adani had fortnightly meetings with the Coordinator-General and could also rely on the on-going support of the Coordinator-General’s team in navigating the approvals process after the declaration.¹¹

¹⁰ Ibid p 7.

¹¹ Department of State Development Queensland, ‘Documents for Publication’ (25 August 2016) <<http://services.dip.qld.gov.au/opendata/RTI/DSD/documents-for-publication-RTIP1617-030.pdf>> p 55.

2. Free and Unlimited Groundwater Extraction Licence

In November 2016, the Queensland Parliament passed the new water laws, tightening groundwater licences requirements for Queensland mining companies.¹² However a last minute amendment to the new water laws exempt Adani's Carmichael project from public notification, public submissions and public appeal rights.¹³ No other mining project received an exemption.

In late March 2017 while Queenslanders were battling a category 4 cyclone Debbie, the State Government granted Adani its water licence.¹⁴ Because of Adani's exemption, to Queensland's water laws the previous year, the Government was not required to inform the community that the licence had been granted.¹⁵

Adani's Associated Water Licence allows water to be taken on extraordinarily good terms. The cost for the Licence is an administrative fee.¹⁶ Water extraction is otherwise free. The Licence contains no limits on the volume of water that may be extracted, does not expire for 60 years and has no formal review mechanism over that time.¹⁷ It also does not specify impact threshold levels for vulnerable nearby water aquifers. These are to be determined later, in a report provided by Adani.¹⁸ Even if Adani breaches these thresholds, there is no requirement to halt mining operations. Instead, Adani is

¹² *Environmental Protection (Underground Water Management) and Other Legislation Amendment Bill 2016* (Qld) cl 36.

¹³ Gail Burke, 'Mining companies' new water licence requirements passed by Queensland Parliament', *ABC News* (10 November 2016) <<http://www.abc.net.au/news/2016-11-10/parliament-qld-laws-water-licence-requirements-mining-companies/8011634>>.

¹⁴ Queensland Government, 'Associated Water Licence for Adani Mining Pty Ltd' (29 March 2017) <<http://www.smh.com.au/cqstatic/gvdane/adaniawl.PDF>>.

¹⁵ Peter Hannam, 'Barbaric: Adani's giant coal mine granted unlimited water licence for 60 years', *Sydney Morning Herald* (5 April 2017) <<http://www.smh.com.au/environment/barbaric-adanis-giant-coal-mine-granted-unlimited-water-licence-for-60-years-20170404-gvd41y.html>>.

¹⁶ Queensland Government, 'Forms and Fees for Water Authorisations' (21 September 2017) <<https://www.business.qld.gov.au/industries/mining-energy-water/water/authorisations/application-forms#associated>>.

¹⁷ Queensland Government, 'Associated Water Licence for Adani Mining Pty Ltd' (29 March 2017) <<https://app.box.com/s/m5zzusj0rdxm8xajgjeeyroxro5fqndb>>.

¹⁸ *Ibid* condition 57.

simply required to review its groundwater modelling and offset any water losses.¹⁹ How these losses may be offset is not explained.

As sugar cane farmer Robert Quirk notes, farmers are suffering through droughts yet, “at the same time, we're saying to a major international company that it can have as much as it likes. Sounds like two sets of rules to me”.²⁰

¹⁹ Ibid condition 61.

²⁰ Robert Quirk, 'Adani Carmichael Mine: Water is too Important for Farmers to Risk Wasting it on a Mine', *ABC News* (7 July 2017) <<http://www.abc.net.au/news/2017-07-07/adani-mine-water-is-too-important-to-farmers/8686890>>.

3. Regional Queensland Council Promises

After Adani's decision to locate its regional headquarters in Townsville,²¹ there has been intense speculation about the location of its FIFO hub for the coal mine. With an announcement still pending, a bidding war has developed between the Rockhampton, Mackay and Townsville regional councils.

The Mackay Mayor pitched to Adani that they could take over Mackay's old, vacant, airport terminal, with the Mackay Airport General Manager promising "we can activate our old terminal, we could fit that out".²² Further bidding from other councils ensued and through this process Adani was able to extract an offer from Rockhampton Regional Council to build a \$20 million airport for Adani's FIFO hub.²³ The Rockhampton Mayor acknowledged that the move was unusual but spruiked its benefits, claiming a "satellite airport" was "something we can offer that other players cannot".²⁴

The spectacle of regional councils attempting to outdo each other on infrastructure subsidies for Adani reveals the extent to which the company has managed to leverage economic support from all levels of Australian government for its mega-mine.

²¹ Chris O'Brien, 'Adani's \$22-billion Carmichael coal mine to be headquartered in Townsville', *ABC News* (5 December 2016) <<http://www.abc.net.au/news/2016-12-05/adani-carmichael-coal-mine-to-be-headquartered-in-townsville/8092896>>.

²² Cas Garvey, 'Bid to Secure FIFO Hub for Mackay not Dear', *The Daily Mercury* (12 January 2017) <<https://www.dailymercury.com.au/news/mackay-airport-terminal-to-be-offered-to-adani/3130773/>>.

²³ Tony Martin, 'Mayor 'stunned' by Rocky's airport pitch', *The Daily Mercury* (9 February 2017) <<https://www.dailymercury.com.au/news/mayor-stunned-by-rockys-airport-pitch/3141318/>>.

²⁴ Michelle Gately, 'Council's \$20M Airport Plan could Triple Rock's Population', *The Morning Bulletin* (8 February 2017) <<https://www.themorningbulletin.com.au/news/exclusive-rocky-council-offers-to-build-adanis-air/3140775/>>.

4. Australian politicians court Adani in India

In March 2017, the Queensland Premier joined the mayors of Townsville, Whitsunday, Gladstone, Mackay, Isaac and Rockhampton in India to meet with Adani.²⁵ The purpose of the trip was to court Adani's business, which included meeting with Adani Group chairman, Gautam Adani, and visiting Adani's Mundra port and power station. Ironically, Adani's Mundra facilities are now reported to be in substantial financial difficulty.²⁶

The total cost of the Premier's trip has not been released, however the Whitsunday Regional Council sent Mayor Andrew Wilcox for three days at a cost of reportedly \$10,000.²⁷ It was estimated that the cost of the trip for Gladstone Mayor Matt Burnett was \$3,000²⁸ while Mackay Mayor Greg Williamson's trip was reported as costing between \$8,000 to 10,000.²⁹ On top of these financial costs is the opportunity cost of the time spent in India by these mayors, rather than on matters within their municipality.

The combined costs of this trip for local Queenslanders demonstrates the willingness of Australia's elected representatives to spend public money courting Adani's business.

²⁵ Sydney Morning Herald, 'Queensland mayors invited to meet Adani in India', *The Sydney Morning Herald* (25 February 2017) <<http://www.smh.com.au/queensland/queensland-mayors-invited-to-meet-adani-in-india-20170225-gulc2o.html>>.

²⁶ Sajeet Manghat, 'Adani Loses Nearly all its Investment on Mundra Power Plant', *Bloomberg Quint* (4 September 2017) <<https://www.bloombergquint.com/business/2017/09/04/adani-loses-entire-investment-in-mundra-indias-biggest-thermal-power-plant>>.

²⁷ Sharon Smallwood, 'Councillors Back Adani Trip', *The Whitsunday Times* (8 March 2017) <<https://www.whitsundaytimes.com.au/news/councillors-back-adani-trip/3152317/>>.

²⁸ Sarah Barnham, 'Mayor's India Trip for Adani Jobs is not a Holiday', *The Gladstone Observer* (7 March 2017) <<https://www.gladstoneobserver.com.au/news/not-a-holiday-council-sends-mayor-on-3k-india-trip/3151702/>>.

²⁹ Emily Smith, 'Mackay Ratepayers to fork out \$10000 for Adani Visit', *The Daily Mercury* (9 March 2017) <<https://www.dailymercury.com.au/news/mackay-ratepayers-to-fork-out-10000-for-adani-visit/3152894/>>.

5. Native Title Act Amendments

After a ruling of the full bench of the Federal Court in February 2017 held that the *Native Title Act 1993* (Cth) required “all” claim group members (c.f. a majority) to agree to an Indigenous Land Use Agreement (ILUA),³⁰ Adani’s purported ILUA with the Wangan and Jagalingou people looked shaky as it has not been signed by all claim group members. Nevertheless, the Native Title Act was amended to ensure that Adani’s purported ILUA was not struck out, with traditional owners, the Wangan and Jagalingou Family Council, labelling the changes the “Adani Amendment”.³¹

At the time, youth spokesperson for the Wangan and Jagalingou Family Council, Ms Murrawah Johnson, observed, “What the major parties need to understand is that changing the Native Title Act to suit Adani won’t solve Adani’s problems with their dodgy land use deal. The matter is being litigated by W&J traditional owners in the Federal Court and does not rely on the *McGlade* decision”.³² The Federal Court have set a hearing date for March 2018 to resolve Wangan and Jagalingou’s outstanding challenge to Adani’s purported ILUA.³³

The *McGlade* decision provoked an immediate and strong reaction from Governments and the resources industry, particularly the Queensland Resources Council (QRC), who were concerned about what this would mean for the Adani project.³⁴ The Queensland Premier immediately called on the Prime Minister to resolve the Native Title issue, stating “It is imperative that this issue be addressed as soon as possible, given my government’s determination to see the Adani project proceed.”³⁵

³⁰ *McGlade v Native Title Registrar* [2017] FCAFC 10.

³¹ Wangan and Jagalingou Family Council, ‘Traditional Owners condemn Brandis’ ‘Adani Amendment’ to Native Title Act as a con on the Public’ (13 February 2017) <<http://wanganjagalingou.com.au/traditional-owners-condemn-brandis-adani-amendment-to-native-title-act-as-a-con-on-the-public/>>.

³² Wangan and Jagalingou Family Council, ‘Turnbull offers to sacrifice Aboriginal rights to Adani in an act of national betrayal’ (11 April 2017) <<http://wanganjagalingou.com.au/turnbull-offers-to-sacrifice-aboriginal-rights-to-adani-in-an-act-of-national-betrayal/>>.

³³ Wangan and Jagalingou Family Council, ‘Adani investment decision meaningless without Indigenous consent’ (6 June 2017) <<http://wanganjagalingou.com.au/adani-investment-decision-meaningless-without-indigenous-consent/>>.

³⁴ Rebecca Trigger and Charlotte Hamlyn, ‘Noongar Native Title agreement: \$1.3B deal rejected by Federal Court’, *ABC News* (2 February 2017) <<http://mobile.abc.net.au/news/2017-02-02/billion-dollar-noongar-native-title-deal-rejected-by-court/8235138?pfmredir=sm>>.

³⁵ Kieran Rooney, ‘Plea to PM on Adani Danger’, *The Townsville Bulletin* (6 February 2017) <<http://www.townsvillebulletin.com.au/news/plea-to-pm-on-adani-danger/news-story/549f50ef8a9f039f332e3c5cf3791bfd>>.

Ian MacFarlane, CEO of the QRC and former Abbott Government Industry Minister, said that he'd held extensive discussions about the decision's implications with former colleagues George Brandis and Matt Canavan, as well as the Queensland Mines Minister Anthony Lynham and Federal Opposition leader Bill Shorten.³⁶ He claimed that there was widespread support for the amendments.³⁷

Just days after the Federal Court's decision, the Federal Government announced they would introduce amendments to Parliament to reverse the ruling.³⁸ Although Labor initially signalled its concern about the "chaotic" process and lack of consultation over the amendments,³⁹ it was also reported that Opposition Leader Bill Shorten made a personal phone call to Adani to reassure the company and encourage it not to defer a final investment decision.⁴⁰

The Prime Minister also sought to reassure Adani. On a trip to India in April, Mr Turnbull met with Gautam Adani. Adani reportedly asked the Prime Minister to 'fix' Native Title, to which Mr Turnbull replied, the legislation "needs to be fixed and will be fixed".⁴¹

Consultation on this major change to Indigenous land rights was extremely limited, with just one public hearing in Brisbane for a Federal Inquiry into the Bill.⁴² In a submission to the Inquiry, Seed

³⁶ Babs McHugh, 'Changes to Legislation being looked at as ruling on Indigenous agreements throws Industry, Governments, into Turmoil', *ABC News* (9 February 2017) <<http://www.abc.net.au/news/2017-02-09/full-court-indigenous-land-agreement-mcglade-decision-reaction/8254408>>.

³⁷ Ibid.

³⁸ Wangan and Jagalingou Family Council, 'W&J resist mining industry push to amend Native Title Act to secure Carmichael Mine Proposal' (12 February 2017) <<http://wanganjagalingou.com.au/wj-resist-industry-push-for-amended-native-title-act-to-secure-carmichael-mine-proposal/>>.

³⁹ Joe Kelly, 'Senate to amend native title clearing way for Adani mine', *The Australian* (13 June 2017) <<http://www.theaustralian.com.au/national-affairs/indigenous/senate-to-amend-native-title-clearing-way-for-adani-mine/news-story/314b12a3838f50a6b6ad76d91640dd2f>>.

⁴⁰ Joe Kelly and Michael McKenna, 'Labor reassures Adani after Senate stalls key vote', *The Australian* (12 May 2017) <<http://www.theaustralian.com.au/business/mining-energy/labor-reassures-adani-after-senate-stalls-key-vote/news-story/1226b5fbeb5d6e47aef4c60a81f1cc7d>>.

⁴¹ Phillip Coorey, 'Malcolm Turnbull tells Adani native title issues will be fixed', *Australian Financial Review* (11 April 2017) <<http://www.afr.com/news/politics/malcolm-turnbull-tells-adani-native-title-issues-will-be-fixed-20170410-gvi6i3>>.

⁴² Parliament of Australia, 'Public Hearings' (13 March 2017) <http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs/NativeTitleLU2017/Public_Hearings>.

Indigenous Youth Climate Network commented that, “we have serious concerns about the way this Bill was rushed into Federal Parliament and is being pushed to a vote, without adequate consultation”.⁴³ A joint submission by the Cape York Land Council, Balkanu Cape York Development Corporation and the Cape York Institute for Policy and Leadership highlighted that, “the speed with which this Bill has been produced and the urgency with which it is being urged through the Parliament, is unwarranted and if not properly considered, likely to cause injustice”.⁴⁴

Further, polling of Indigenous Australians by Seed just before the amendments passed showed only half of the respondents had even heard of the proposed changes and 9 out of 10 respondents believed there should have been more consultation.⁴⁵ 84% of those polled thought that the Government was rushing the amendments and 80% of people said Native Title laws should not be amended to make it easier for mining companies to strike agreements without the consent of all Traditional Owners.⁴⁶

The fast-tracked amendments to the *Native Title Act 1993* (Cth), despite the repeated requests for wider consultation by many Indigenous groups, were passed by the Federal Parliament on 22 June 2017.⁴⁷

⁴³ Seed Indigenous Youth Climate Network, ‘Submission by SEED to the Senate Inquiry into the Native Title Amendment (Indigenous Land Use Agreements) Bill 2017’ (3 March 2017) <<http://www.aph.gov.au/DocumentStore.ashx?id=203b0182-da3d-4cea-b70d-42856ca75cae&subId=464449>>.

⁴⁴ Cape York Land Council, Balkanu Cape York Development Corporation and the Cape York Institute for Policy and Leadership, ‘Submission to the Senate Constitutional and Legal Affairs Committee’ (3 March 2017) <<http://www.aph.gov.au/DocumentStore.ashx?id=a251ab3b-4c1e-43d1-849b-dcdb20a683cd&subId=464515>>.

⁴⁵ Ella Archibald-Binge, ‘Calls for Native Title Amendment Bill to be Scrapped to Allow Consultation’, *SBS News* (12 June 2017) <<http://www.sbs.com.au/nitv/nitv-news/article/2017/06/12/calls-native-title-amendment-bill-be-scrapped-allow-consultation>>.

⁴⁶ SEED Youth Climate Network, ‘Poll Finds that Government Failed Consultation on Native Title’ (May 2017) <http://www.seedmob.org.au/poll_finds_that_government_failed_consultation_on_native_title>.

⁴⁷ *Native Title Amendment (Indigenous Land Use Agreements) Act 2017* (Cth) s 2.

6. Temporary Emissions Licences at Abbot Point

Adani's Abbot Point Coal Terminal was granted a Temporary Emissions Licence (TEL) by the Queensland Department of Environment and Heritage Protection (DEHP) for 27 to 30 March 2017 (during Tropical Cyclone Debbie).⁴⁸ The TEL authorised Adani to discharge more than triple the amount of contaminated water allowed under their original environmental authority into Caley Wetlands.⁴⁹ The TEL was later amended to add a further discharge location facing a beach to the north of the coal terminal, which is part of the Great Barrier Reef World Heritage Area.⁵⁰ Adani's licence to pollute during Cyclone Debbie did not place any limit on the volume of contaminated water that it could discharge. It simply limited the concentration of pollutants in the water to over 300% the normally permitted levels.

Adani failed to meet even these relaxed levels. Adani's own report to the Department showed it breached this license by releasing eight times the permitted concentration of pollution from its coastal discharge point.⁵¹ Adani was fined \$12,190 by the Department for the breach⁵² but is contesting the fine in court.⁵³

After Cyclone Debbie, satellite imagery showed potential contamination of the wetlands⁵⁴ but these concerns were dismissed by Deputy Prime Minister Barnaby Joyce, who called the wetlands little

⁴⁸ Queensland Government, 'Environmental authorities register' (11 August 2017) <<https://environment.ehp.qld.gov.au/env-authorities/>>.

⁴⁹ Queensland Government Department of Environment and Heritage Protection, 'Abbott Point Bulk Coal Port Pty Ltd- Caley Valley Wetland Investigation' (22 September 2017) <<http://www.ehp.qld.gov.au/management/caley-valley-wetland/index.html>>.

⁵⁰ Queensland Government, 'Environmental authorities register' (11 August 2017) <<https://environment.ehp.qld.gov.au/env-authorities/>>.

⁵¹ Queensland Government Department of Environment and Heritage Protection, 'Abbott Point Investigation Update' (3 May 2017) <<https://www.ehp.qld.gov.au/mediareleases/2017-05-03-abbot-point-iinvestigation-update.html>>.

⁵² Louisa Rebgetz, 'Adani avoids multi-million-dollar fine over Abbot Point sediment water discharge', *ABC News* (11 August 2017) <<http://www.abc.net.au/news/2017-08-11/adani-avoids-multi-million-dollar-fine-over-sediment-water/8796178>>.

⁵³ Tim Swanston, 'Adani mining giant to fight \$12k fine for Environmental Breach', *ABC News* (24 August 2017) <<http://www.abc.net.au/news/2017-08-24/adani-will-fight-fine-over-sediment-discharge-at-abbot-point/8840560>>.

⁵⁴ Jorge Branco, "Abbott Point coal terminal water spill to cause significant damage", *The Sydney Morning Herald* (10 April 2017) <<http://www.smh.com.au/environment/abbot-point-coal-terminal-water-spill-to-cause-significant-damage-20170410-gvht8u.html>>.

more than a “duck shooting pond”.⁵⁵ In fact the Caley Wetlands are listed in the Directory of Important Wetlands in Australia (DIWA)⁵⁶ and are home to several threatened species.⁵⁷ The significance of the wetlands was emphasised in the DEHP’s own report, *‘Preliminary assessment of impacts to Caley Valley Wetlands from Abbot Point Coal Terminal Post Topical Cyclone Debbie’*.⁵⁸

Adani appears to have undertaken no real-time monitoring at the time of the discharge and a site visit by the Department to assess the discharge points and Caley Valley wetland was not taken until over a week after the discharge occurred.⁵⁹ This makes determining compliance highly challenging, especially as the pollution license issued by the Department did not prohibit the release of pollutants, including coal, it merely restricted their concentration in the discharged water.

The preliminary assessment report of the wetlands was released by the DEHP in September 2017.⁶⁰ The report found significant coal sediment present at the Abbot Point discharge point to the Caley Valley Wetlands.⁶¹ Separate independent testing commissioned by the Australian Conservation Foundation and Australian Marine Conservation Society of water samples taken at the same time as the Department confirmed coal pollution at higher levels.⁶² The assessment stated, “coal fines do not

⁵⁵ Heath Aston, Barnaby Joyce’s Duck Pond claims under fire as Adani coal row deepens’, *The Sydney Morning Herald* (April 13 2017) <<http://www.smh.com.au/federal-politics/political-news/barnaby-joyces-duck-pond-claims-under-fire-as-adani-coal-row-deepens-20170413-gvkfgk.html>>.

⁵⁶ Australian Government, ‘A Directory of Important Wetlands in Australia: Third Edition’ (2 October 2017) <<http://www.environment.gov.au/water/wetlands/publications/directory-important-wetlands-australia-third-edition>>.

⁵⁷ Mackay Conservation Group, ‘Save the Caley Valley Wetlands’ (2 October 2017) <http://www.mackayconservationgroup.org.au/save_the_caley_valley_wetlands>.

⁵⁸ Queensland Government, ‘Caley Valley Wetlands’ (July 2017) <<http://www.ehp.qld.gov.au/management/pdf/caley-valley-wetlands-assessment-impacts-cyclone-debbie.pdf>>.

⁵⁹ Queensland Government, ‘Abbot Point Bulk Coal Pty Ltd – Caley Valley Wetland Investigation’ (22 September 2017) <<http://www.ehp.qld.gov.au/management/caley-valley-wetland/index.html>>.

⁶⁰ Queensland Government, ‘Caley Valley Wetlands’ (July 2017) <<http://www.ehp.qld.gov.au/management/pdf/caley-valley-wetlands-assessment-impacts-cyclone-debbie.pdf>>.

⁶¹ Ibid.

⁶² Peter Hannam, ‘Abbot Point spill further proof Adani can’t be trusted on coal, green groups say’, *The Sydney Morning Herald* (20 September 2017) <<http://www.smh.com.au/environment/abbot-point-spill-further-proof-adani-cant-be-trusted-on-coal-green-groups-say-20170920-gyl2dp.html>>.

appear to have caused widespread impacts in the wetland”⁶³ but determined further investigation was warranted and the DEHP ordered further environmental assessment of the wetlands to identify and monitor adverse impacts.⁶⁴

These events raise serious questions about the adequacy of Adani’s systems at Abbot Point Terminal. It appears Adani cannot safely operate its current coal port on a cyclone-prone coast. The risks to the protected wetland and Great Barrier Reef are only set to increase if Adani’s Carmichael coal mine is constructed and Adani proceeds with it’s approved Abbot Point Terminal expansion.

⁶³ Queensland Government, ‘Caley Valley Wetlands’ (July 2017) <<http://www.ehp.qld.gov.au/management/pdf/caley-valley-wetlands-assessment-impacts-cyclone-debbie.pdf>> p I.

⁶⁴ Queensland Government, ‘Abbot Point Bulk Coal Pty Ltd – Caley Valley Wetland Investigation’ (22 September 2017) <<http://www.ehp.qld.gov.au/management/caley-valley-wetland/index.html>>.

7. Weak EPBC Act Approval Conditions

One of the Federal Environment Minister's widely cited defences of the potential environmental impacts of the project has been that Adani must abide by "some of the strictest environmental conditions in Australian history".⁶⁵ These conditions are applied under the Federal Government's key national environment law, the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (EPBC Act). However, the conditions are woefully inadequate and will not protect the environment as claimed.⁶⁶

First, the environmental approval conditions over the mine site allow Adani to destroy critical habitat for the Black-Throated Finch, if it offsets the destruction by providing alternative habitat for the species at another location. Adani is not required to protect this alternative habitat before starting construction of the mine, nor is it required to provide evidence that the offset will protect the Finch. Perhaps most extraordinarily, should the impact on the Finch from the mine be greater than expected, Adani is not required to take further action or make good the unexpected harm.

The Adani Carmichael coal mine also threatens the Doongmabulla Springs complex. These springs are culturally significant to the local Aboriginal people and are a precious source of water for a unique ecological system of species in this dry landscape. The Minister has granted approval for the mine without being certain about how it could affect the Springs. The Minister has not even been able to ascertain what level of interference will cause the Springs to dry up. The approval conditions require research programs to be conducted to establish the full extent of the impact, but these are not required before mining excavation is allowed to begin. The damage could be done before the results of any studies are known. Once a spring goes dry, it cannot be restored.

Second, the approval conditions fail to address global warming, which poses an existential threat to the Great Barrier Reef, Australia's most iconic World Heritage Area. Burning the coal from Adani's Carmichael coal mine will result in 4.7 billion tonnes of climate pollution being pumped into the

⁶⁵ Minister for the Environment, 'Media Release - Strictest conditions on Carmichael Coal Mine Project' (28 July 2014) <<http://www.environment.gov.au/minister/hunt/2014/mr20140728.html>>.

⁶⁶ Australian Conservation Foundation and EDOs of Australia, 'Licence to Kill: Commonwealth environmental approval for Adani's Carmichael coal mine project' (12 September 2016) <https://d3n8a8pro7vhtml.cloudfront.net/auscon/pages/1330/attachments/original/1473390616/Carmichael_conditions_report.pdf?1473390616>.

atmosphere and will significantly contribute to global warming. Not one of the 36 approval conditions addresses greenhouse gas emissions.

Finally, the Carmichael coal mine and rail project EPBC Act approval reflects a recent trend towards a lack of transparency and accountability for mining projects. Instead of requiring the up-front disclosure and analysis of environmental impacts and management plans, these processes have been deferred to post-approval timeframes. For example, the EPBC Act approval for the project only requires Adani to submit environmental management plans 3 months prior to commencing mining operations. Should Adani fail to comply with the management plan, there is no requirement to halt mining. Moreover, the reliability of a proponent-led management scheme is highly-contestable. Expert analysis of the groundwater system at the Carmichael mine site has revealed high uncertainty about the likelihood of severe losses in water pressure in the adjacent subterranean aquifers.

Far from being the strictest in Australia history, the environmental conditions placed on Adani's Carmichael coal mine and rail project have so many gaps you could drive a mining truck through them. The Federal Environment Minister failed to put in place adequate protections for Australia's unique biodiversity and important water sources.

8. Queensland Royalty Deal

On 17 May 2017 it was leaked to the media that the Queensland Government was considering offering Adani a royalty holiday which would rob the state of \$320 million.⁶⁷ While details and terms of the royalty 'deferment' deal remain secret, it has been estimated it could be the equivalent of a \$725m subsidy, but would be at least \$370m⁶⁸ - all on the bank account of the Queensland public.

This news was deeply unpopular with voters, with one poll revealing that 58.8% were opposed or strongly opposed to the Queensland Government giving Adani financial support.⁶⁹ Nevertheless, Premier Palaszczuk and Treasurer Curtis Pitt quickly announced that they had fashioned a new resource framework which widened any concessions in the royalty regime to other mining projects in the Galilee and Surat basins.⁷⁰ The Treasurer also claimed that the framework "puts an end to ad hoc deals... it is a transparent policy framework".⁷¹

However, Right to Information documents obtained by Energy & Resource Insights, show a different story. Public servants were scrambling to find an economic justification for the announcement.⁷² This suggests that far from moving away from ad hoc deals, the new arrangement was in fact designed specifically to allow Adani's secret royalty holiday to go ahead.

⁶⁷ Mark Willacy, 'Queensland Government offers Adani mining group a 'royalties holiday' that could cost state \$320 Million', *ABC News* (18 May 2017) <<http://www.abc.net.au/news/2017-05-18/queensland-government-gives-adani-royalties-holiday/8536560>>.

⁶⁸ Michael Slezak, 'Adani royalties deal: Queensland's 'transparent policy framework' Kept Secret', *The Guardian* (2 August 2017) <<https://www.theguardian.com/australia-news/2017/aug/02/adani-royalties-deal-queenslands-transparent-policy-framework-kept-secret>>.

⁶⁹ Christopher Knaus and AAP, 'Queensland says it won't play any role in funding for Adani Project', *The Guardian* (27 May 2017) <<https://www.theguardian.com/environment/2017/may/27/queensland-drops-plan-to-give-adani-carmichael-coalmine-royalty-holiday>>.

⁷⁰ ABC News, 'Adani to pay full royalties for central Queensland Carmichael coal mine, Government decides', *ABC News* (26 May 2017) <<http://www.abc.net.au/news/2017-05-26/adani-carmichael-coal-mine-to-pay-full-royalties-queensland-gov/8564412>>.

⁷¹ Queensland Treasurer and Minister for Trade and Investment, 'Media Statement - Northern Australia Infrastructure Facility' (29 May 2017) <<http://statements.qld.gov.au/Statement/2017/5/29/northern-australia-infrastructure-facility>>.

⁷² Michael Slezak, 'Adani royalties deal: Queensland's 'transparent policy framework' Kept Secret', *The Guardian* (2 August 2017) <<https://www.theguardian.com/australia-news/2017/aug/02/adani-royalties-deal-queenslands-transparent-policy-framework-kept-secret>>.

9. Northern Australia Infrastructure Facility (NAIF) Loan

Just one day after Adani announced that it has made a final investment decision to proceed with the project, an Adani spokesperson was already saying that they would have to “look at our options” if they didn’t get a \$1 billion loan through the Northern Australia Infrastructure Facility (NAIF).⁷³ Journalist Mark Ludlow commented in *The Australian Financial Review* that “if that doesn’t look like a gun being put to the head of the nation’s taxpayers, I don’t know what is”.⁷⁴

It is no secret that investors have been unenthused by Adani’s coal project. Australia’s big four banks have ruled out funding for the mine, joining 22 other international financiers that have publicly distanced themselves from the project.⁷⁵ Currently the only obvious investor in Adani’s coal project is the Federal Government, via a \$1 billion concessional loan from NAIF.

NAIF is a \$5 billion investment fund, established by the Commonwealth Government to further the economic development of northern Australia. This is to be achieved via the provision of concessional financial assistance to project proponents.⁷⁶ Specifically, this includes extremely low-interest, long term loan contracts.⁷⁷

NAIF has been plagued by concerns about conflicts of interests,⁷⁸ inadequate transparency⁷⁹ and flawed assessment processes.⁸⁰ Tellingly, ACF’s Dirty Deeds report revealed the web of influence

⁷³ LGAQ, ‘Adani Board Give go ahead but await Loan’ (8 June 2017) <http://lgaq.asn.au/news-in-brief/-/asset_publisher/SK5jPimthGWG/content/adani-board-give-go-ahead-but-await-loan>.

⁷⁴ Mark Ludlow, ‘Time for Adani to put its money where its mouth is’, *The Australian Financial Review* (6 June 2017) <<http://www.afr.com/news/politics/time-for-adani-to-put-its-money-where-its-mouth-is-20170606-gwlpf1>>.

⁷⁵ Market Forces, ‘The Adani List’ (25 September 2017) <<https://www.marketforces.org.au/info/key-issues/theadanilist/>>.

⁷⁶ *Northern Australia Infrastructure Facility Investment Mandate Direction 2016* (Cth) s 9.

⁷⁷ *Ibid* s 10(2).

⁷⁸ Australian Conservation Foundation, ‘Dirty Deeds’ (19 May 2017) <https://d3n8a8pro7vhm.cloudfront.net/auscon/pages/2991/attachments/original/1495492896/DirtyDeedsReport_FINAL_230517.pdf?1495492896>.

⁷⁹ Mark Willacy and Alexandra Blucher, ‘Freedom of Information request blocked by agency assessing \$1b loan to mining giant Adani’, *ABC News* (13 February 2017) <[http://www.abc.net.au/news/2017-02-13/agency-assessing-\\$1b-loan-to-adani-rejects-foi-request/8259342](http://www.abc.net.au/news/2017-02-13/agency-assessing-$1b-loan-to-adani-rejects-foi-request/8259342)>.

⁸⁰ Tom Swann, ‘Don’t be so NAIF’, *The Australia Institute* (March 2017) <<http://www.tai.org.au/sites/default/files/P318%20Dont%20be%20so%20naif%20FINAL.pdf>>.

between the mining industry and the NAIF Board, which is skewed towards the interests of fossil fuel companies.⁸¹ NAIF have also refused to reveal whether Board member Karla Way-McPhail, CEO of two mining companies that might benefit from Adani's rail line, has been recused from decisions about the project.⁸²

In ACF's submission to the Senate Inquiry on the Operation and Governance of the NAIF, we noted that, "NAIF's current design and governance give little confidence that \$5 billion in public funds are being directed towards projects that are in the long-term interest of Northern Australian communities".⁸³

Despite these issues, the former Resources Minister Matt Canavan and the Deputy Prime Minister Barnaby Joyce, now Resources Minister, have consistently advocated for a concessional loan to be provided to Adani through NAIF.⁸⁴ Prime Minister Turnbull has also stated his support for NAIF funding for the project.⁸⁵ And although the Queensland Government has publicly stated that they will not provide public money for the mine,⁸⁶ the requirements of NAIF's governing legislation require the consent of the State Government for any funds to flow.⁸⁷ Among the Australian public, the loan

⁸¹ Australian Conservation Foundation, 'Dirty Deeds' (19 May 2017)

<https://d3n8a8pro7vhm.cloudfront.net/auscon/pages/2991/attachments/original/1495492896/DirtyDeedsReport_FINAL_230517.pdf?1495492896>.

⁸² Matthew Doran, 'Conflicts of interest concerns over \$900m Adani loan spark Senate estimates questions', *ABC News* (2 June 2017) <<http://www.abc.net.au/news/2017-06-02/naif-grilled-over-members-conflict-of-interest-in-adani-loan/8582052>>.

⁸³ Australian Conservation Foundation, 'Submission to the Senate Standing Committees on Economics on the Governance and Operation of the Northern Australia Infrastructure Facility (NAIF)' (25 September 2017)

<https://d3n8a8pro7vhm.cloudfront.net/auscon/pages/4729/attachments/original/1506920911/Submission_to_NAIF_Inquiry_and_ACIL_Allen_Report.pdf?1506920911> p 22.

⁸⁴ Minister for Resources and Northern Australia Matt Canavan, 'Media Release - It's Right to Consider Adani Loan' (8 December 2016) <<http://minister.industry.gov.au/ministers/canavan/articles/its-right-consider-adani-loan>>.

⁸⁵ Paul Karp, 'Turnbull says Government could subsidise Gas Pipelines and Adani Rail', *The Guardian* (27 April 2017)

<<https://www.theguardian.com/australia-news/2017/apr/27/turnbull-says-government-could-subsidise-gas-pipelines-and-adani-rail>>.

⁸⁶ Joshua Robertson, 'Barnaby Joyce condemns Queensland's refusal to process federal loan for Adani rail line', *The Guardian* (29 May 2017) <<https://www.theguardian.com/business/2017/may/29/barnaby-joyce-condemns-queenslands-refusal-to-process-federal-loan-for-adani-rail-line>>.

⁸⁷ *Northern Australian Infrastructure Facility Act 2016* (Cth) s 7.

remains deeply unpopular, with a ReachTEL poll showing that just 7% of people support public money for coal infrastructure.⁸⁸

In the face of community opposition, Adani's loan application has entered the final phase of consideration by NAIF.⁸⁹ It is expected that a decision to provide the loan will be made in the next few months. If this occurs, the Federal Government will be providing Adani with a high-risk, heavily-subsidised \$1 billion loan to build the most polluting coal mine in the Southern Hemisphere.

⁸⁸ Adam Gartrell, 'Just 7 per cent of voters water the government to invest in Adani mine: Poll', *The Sydney Morning Herald* (22 May 2017) <<http://www.smh.com.au/federal-politics/political-news/just-7-per-cent-of-voters-want-the-government-to-invest-in-adani-mine-poll-20170521-gw9k4g.html>>.

⁸⁹ NAIF, 'Opening Statement - Senate Estimates' (1 June 2017) <<https://naif-gov-au.industry.slicedtech.com.au/wp-content/uploads/2017/06/NAIF-Opening-Statement-June-2017.pdf>>.

Conclusion

Unprecedented measures have been taken to ensure that Adani's project proceeds. Government handouts have taken many forms, from direct support in the form of infrastructure and subsidies, exemptions from existing regulation and weak environmental and regulatory conditions. Despite many of these decisions being deeply unpopular with the public, Australian governments continue to gift Adani further massive concessions.

The next decade will determine whether the international community can meet its *Paris Agreement* ambition of limiting global warming to 1.5 degrees. Australia's reckless promotion of Adani's mega coal mine place these targets at risk and underscores our elected representatives lack of concern for the Great Barrier Reef and our air, rivers, forests and wildlife.

Australians will continue to stand against this project and speak up together to prevent big polluting companies from destroying our environment.

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