



SUBMISSION BY LIGHTER FOOTPRINTS TO THE SENATE ENVIRONMENT
AND COMMUNICATIONS LEGISLATION COMMITTEE REGARDING ITS
EXAMINATION OF
THE ENVIRONMENT AND
INFRASTRUCTURE LEGISLATION
AMENDMENT (STOP ADANI) BILL 2017

CONTENTS

Letter from the Convenor of Lighter Footprints	page 2
About Lighter Footprints	page 2
Our position	page 3
A 'suitable person'	page 6
Are these amendments sufficient to ensure the best practice environmental impact assessments?	page 8
Water resources	page 9
Project study area for the Adani EIS	page 11
Allowable activities	page 13
Recommendations	page 14

LETTER FROM THE CONVENOR OF LIGHTER FOOTPRINTS

Thank you to the Senate Environment and Communications Legislation Committee for the opportunity to contribute to your examination of the proposed bill by Senator Larissa Waters which is intended to make amendments to the Environment Protection and Biodiversity Conservation Act 1999.

We understand that the purpose of these amendments is to:

- Extend and/or introduce the concept of a 'suitable person' to both the Environment Protection and Biodiversity Conservation Act 1999 and to the Northern Australian Infrastructure Facility Act 2016 to:
 - impose additional obligations on the Minister in making decisions on approvals and conditions;
 - require NAIF (the Northern Australian Infrastructure Facility) to assess whether an entity is a suitable person for the purposes of providing financial assistance
- provide for the further review of approval decisions in relation to three specified referrals under the Act, and whether the approval holder is a 'suitable person' in relation to environmental and other relevant matters

Carolyn Ingvarson
Convener, Lighter Footprints

ABOUT LIGHTER FOOTPRINTS

This submission is by Lighter Footprints, a group of concerned residents (now close to 2000) from Boroondara and Whitehorse municipalities in Melbourne who came together in 2006 to see what we could do about the serious challenge of climate change. Our community recognises that climate change has been scientifically demonstrated for some years, and the extent of the challenges leads us to be impatient for effective action.

OUR POSITION

The proposal this bill refers to is that by Adani to develop a 60 million tonne per annum thermal coal mine in the north Galilee Basin in Central Queensland and to build a greenfield rail line connecting the Mine to provide for the export of coal via the Ports of Hay Point (Dudgeon Point expansion) and Abbot Point. As a 'controlled action', this proposal has been assessed and approved under the current provisions of the Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act).

We support the provisions of the proposed Environment and Infrastructure Legislation Amendment (Stop Adani) Bill 2017. We consider the current approvals fail to take into account the character of the people and corporations behind this proposal and their past history and endeavours which are understood to include actions both in Australia and in other countries that could be construed to be deceptive, corrupt, deliberately manipulative or exploitative.

We also support the provisions requiring reassessment of current Adani approvals as mandated under *Item 12 – Review of existing approvals*, as this will enable the examination of other relevant factors for judging the overall suitability of the Adani group and its personnel person (or corporation) to conduct such a sensitive and contested project, not just on the grounds of their history on environmental matters.

We also believe that this assessment has failed to take into account a number of other significant factors apart from the failure to give regard to a range of relevant factors concerning the character and actions of the company and its personnel.

We are of the view that this is a totally unacceptable project that should not proceed. Our reasons include:

- the contradiction¹ between the granting of an approval to create a huge coal mine² and export its product for the generation of energy, and the ratification by Australia of the Paris Agreement with its aims 'to strengthen the global response to the threat of climate change (Art. 2(1));
- the lack of a business case for this project and the likelihood that the proposed mine and rail line will become 'stranded assets' due to increasing global constraint on the use of coal³ and continued steep falls in the costs of renewable energy compared to coal^{4 5};

¹ <http://www.canberratimes.com.au/comment/this-is-not-rhetoric-approving-the-adani-coal-mine-will-kill-people-20170518-gw7nv9.html>

² <https://www.environment.gov.au/system/files/pages/cb8a9e41-eba5-47a4-8b72-154d0a5a6956/files/carmichael-statement-reasons.pdf> Lifetime emissions 4.7Bt Paragraph 136

³ <http://ieefa.org/ieefa-update-increasingly-cursed-australian-coal-project/>

⁴ Bloomberg: new solar cheaper than old coal by 2032 <http://reneweconomy.com.au/base-cost-renewables-when-wind-and-solar-finally-kill-coal-72324/>

⁵ "That Rs2.44/kWh this month was 44 percent less than the Rs4.34/kWh solar tariff awarded to Fortum of Finland in January 2016 for a project at the Bhadla Solar Park-II in Rajasthan" <http://ieefa.org/ieefa-asia-indias-electricity-sector-transformation-happening-now/>

- the potential use of public funds to finance a project that appears unlikely to attract funding from the banking world for both commercial and reputational reasons⁶;
- the impact this project will have on the ecology of this region including its water resources and its indigenous heritage⁷;
- the damage likely to be caused to the Great Barrier Reef by the transport of coal;
- the health impacts on workers and the community caused by the handling and transport of coal and the coal dust generated, and wider health impacts including increasing the numbers of Indians who die from coal related diseases (currently 1 million/year)⁸;
- the falsehoods promulgated by the company about its contribution to the local economy especially the number of jobs that will be created^{9 10}, considering also probable negative impacts on NSW mining jobs¹¹;
- the precarious financial position of the company in India, impacting the viability the main off-taker for the mine¹² following an adverse Indian Supreme Court judgement in April 2017 disallowing compensatory tariffs at 110% of the value of Adani Enterprises and increased Adani Group's debt to \$15bn, placing them under pressure to sell Australian holdings¹³;
- the misrepresentation of the Indian situation including its demand for coal and the place that this will play in enhancing its economic development^{14 15};

⁶ <https://www.ft.com/content/ba3bb744-688a-11e7-9a66-93fb352ba1fe?mhq5j=e1> Schrodgers joins Black Rock and other large global investment houses in transitioning away fossil fuel risks, and has created a comprehensive dashboard which includes risk from Scope Three emissions: <http://www.schrodgers.com/en/lu/professional-investor/featured/climate-change-dashboard/>

⁷ Adani mine has been strongly opposed on both indigenous heritage and environmental grounds in the courts: summaries, references <http://envlaw.com.au/carmichael-coal-mine-case/>

⁸ https://www.dea.org.au/wp-content/uploads/2017/05/DEA-Adani-Long-Fact-Sheet_final.pdf

⁹ <https://www.theguardian.com/australia-news/2015/apr/27/adani-coalmine-would-not-deliver-jobs-and-royalties-promised-land-court-hears>

¹⁰ Canavan's staff explained that the 10,000 jobs in the PwC internal Adani report were mostly "follow" jobs (conversation in April 2017). This compares poorly to the 70,000 follow on jobs from the smaller \$5bn Cross River Rail project. Matt Rose, economist for the ACTU/ACF report on the jobs implication for strong climate action in Queensland, estimates that \$1bn of public funds, closing \$10bn of an optimised mix of energy efficiency, large scale renewables and climate friendly public infrastructure such as public transport, would be likely to generate around 25,000 jobs (conversation in April 2017). https://d3n8a8pro7vhm.cloudfront.net/auscon/pages/1520/attachments/original/1481498173/Qld_jobs_brief_8-12-16.pdf?1481498173

¹¹ http://www.abc.net.au/news/2017-07-06/galilee-basin-mining-project-will-reduce-coal-output--research/8682164?WT.ac=statenews_qld

¹² <http://economictimes.indiatimes.com/industry/energy/power/gujarat-writes-to-centre-over-electricity-crisis/articleshow/58602110.cms>

¹³ <http://www.thehindu.com/business/Industry/the-biggest-ever-fire-sale-of-indian-corporate-assets-has-begun-to-tide-over-bad-loans-crisis/article8573163.ece>

¹⁴ <http://www.livemint.com/Industry/vwT7Kru9jsF0dUFDtLKORL/Govt-plans-to-cut-coal-imports-for-power-PSUs-to-zero-in-FY1.html>

¹⁵ <https://www.oxfam.org.au/wp-content/uploads/2017/05/More-Coal-Equals-More-Poverty.pdf>

- the failure to take into account a range of relevant factors to determine the suitability of the people and the company associated with this proposal.

A 'SUITABLE PERSON'

The EPBC Act currently requires the Minister to take into account under Section 136 General considerations a person's environmental history as follows:

(4) In deciding whether or not to approve the taking of an action by a person, and what conditions to attach to an approval, the Minister may consider whether the person is a suitable person to be granted an approval, having regard to:

- (a) the person's history in relation to environmental matters; and*
- (b) if the person is a body corporate—the history of its executive officers in relation to environmental matters; and*
- (c) if the person is a body corporate that is a subsidiary of another body or company (the parent body)—the history in relation to environmental matters of the parent body and its executive officers.*

This is a very limited definition of what comprises a 'suitable' person and should be extended to cover the person's or corporation's more general character and actions. The amendments will require the Minister to consider any other matter that he/she considers relevant.

There are many well researched and confirmed reports covering the alleged dishonesty, deception and unethical practices of the Adani company and its personnel, most with direct environmental impacts or consequences. These include¹⁶:

- Adani Group entities in India and Africa being under investigation for corruption and illegal dealings¹⁷;
- Irregularities in the ownership of Terminal 1 at Abbot Point Port that may create risk uncertainties for lenders.
- Adani Group entities having a concerning record of failing to comply with Indian environmental laws.
- Adani Mining Pty Ltd failure to disclose the concerning environmental record of a company formerly managed by one of its executive officers to the Australian government.
- Adani facing possible fines after sediment water eight times above authorised levels was discharged from the Abbot Point coal terminal in April 2017¹⁸.

We strongly support the provisions of the proposed Environment and Infrastructure Legislation Amendment (Stop Adani) Bill 2017 on the grounds that they will ensure that all future assessments will examine the overall suitability of the person (or corporation) and not just the narrower definition in the Act.

¹⁶ The examples quoted are extracted from An Overview of The Adani Brief released by Environmental Justice Australia on 15 February 2017 and available online: <https://envirojustice.org.au/major-reports/the-adani-brief>

¹⁷ <https://www.michaelwest.com.au/revealed-adani-embroiled-in-african-corruption-scandal>

¹⁸ <http://www.abc.net.au/news/2017-05-03/adani-faces-multi-million-dollar-fine-over-sediment-water/8494398>

This gap in the current Act needs to be rectified to ensure only people (or corporations) of high moral and ethical standing are permitted to undertake sensitive projects that run the risk of significant environmental damage unless properly managed.

We also support the inclusion of the concept of a 'suitable person' in the decision-making processes for the Northern Australian Infrastructure Facility as an important step in ensuring that Australian public funding is only provided to project proponents of demonstrated high moral and ethical standing.

The NAIF Investment Mandate already contains directions that reputation should be taken into account when making decisions about loans. This clause was written in to the investment mandate by then Resources minister Josh Frydenberg:

- Section 16 of the Investment Mandate of the NAIF states that... "The Facility must not act in a way that is likely to cause damage to the Commonwealth Government's reputation, or that of a relevant State or Territory government."

The amendments proposed by Senator Waters ensure that matters that could cause damage to the reputation of bodies dealing with Adani are given legislative standing through inclusion in the Northern Australian Infrastructure Facility Act 2016 of the concept of a 'suitable person'.

The amendments also require the re-examination of the approvals given to Adani to ensure that all relevant factors including the past history of the company and its personnel are part of a rigorous assessment process.

This will require approvals to examine other matters seen to be relevant by the Minister regarding the past record of Adani and its personnel such as allegations of corrupt and nefarious activities in India and Africa and possible attempts to avoid effective legal scrutiny in Australia.

We strongly support these provisions requiring reassessment of current Adani approvals as mandated under *Item 12 – Review of existing approvals*, as this will facilitate the examination of other relevant factors for judging the overall suitability of the Adani group and its personnel person (or corporation) to conduct such a sensitive and contested project not just on the grounds of their history on environmental matters.

ARE THESE AMENDMENTS SUFFICIENT TO ENSURE THE BEST PRACTICE ENVIRONMENTAL IMPACT ASSESSMENTS?

We welcome the amendments proposed by Senator Waters. We believe, however, that there are further major gaps in the current legislation that work against achieving best practice environmental impact assessments and funding decisions.

These include:

- The lack of recognition of the Paris Convention in either:
 - the EPBC Act for identifying proposals of National Environmental Significance; or
 - the NAIF Investment Mandate.
- The reliance of the Commonwealth on assessments done for State Governments by 'third parties' and the lack of capacity or authority at the Commonwealth level to independently assess these inputs
- The failure of the EPBC Act to include atmospheric emissions whether generated in Australia beyond the immediate location or internationally and caused by the subsequent use of the material produced by the assessable activity
- Restriction on the consideration of damage to local impacts; the failure to take into account damage done to water resources more generally and in combination with other activities, and to items of National Significance outside the immediate area such as the Great Barrier Reef

WATER RESOURCES

The Environmental Impact Assessment for the Adani proposal states:

All run of mine (ROM) coal will be transported by truck and/or overland conveyor to a centralised coal handling facility, where any high-ash (greater than 25 per cent ash) portion will be washed for blending with the bypass coal (un-washed coal). Coal will be stockpiled prior to loading to trains for transportation by rail.

The water facility in this case appears to be for washing poor quality coal of high ash content. The proportion of poor quality coal to be washed and blended isn't specified or related to a water balance. Adani appear to rely on a wordy GHD report on water resource as peer reviewed by URS in 2013¹⁹. At four years old, the report would not include consideration to intervening factors such as extreme weather events, evidence of spillage and contamination and cross utilization factors such as farming, CSG extraction and other.

In her statement to Senate of a Matter of Importance, Senator Waters has pointed out that the Queensland Government has given Adani a licence to:

... take unlimited groundwater from Queensland when about 90 per cent of the state is in drought ...

... a water licence, with unlimited and free groundwater, for the life of the mine. Nobody else gets that sort of special treatment. Farmers and other water users are asked to be very careful with their water use. They have multiple levels of bureaucratic process to go through. They have to tighten their belts in a drought situation; the mining industry do not. They get free and unlimited groundwater.

Water licences are a State issue. We consider, however, that the licence granted to Adani has a number of unsatisfactory aspects including:

- the granting of an unlimited 60-year water licence;
- the failure to consider the impact this will have on other users and on the subsequent quality of the water;
- the effect on water pressure in the Great Artesian Basin; and
- the exemption of water license application from public scrutiny²⁰.

Federal Resources Minister Matt Canavan seems to regard the fact that Adani submitted its environmental impact statement for the project over 2,392 days ago as a source of frustration. That doesn't however take away the need under the water trigger (Section 131 AB of the EPBC Act) for ongoing rigour including a water management plan. Under this provision, the Commonwealth has the authority to assess large coal mines and

¹⁹ <http://eisdocs.dsdlp.qld.gov.au/Carmichael%20Coal%20Mine%20and%20Rail/SEIS/Appendices/Appendix%20K/Appendix-K1-Mine-Hydrogeology-Report.pdf> p2 notes URS review "This addendum has been included within SEIS Volume 4 Appendix K6."

²⁰ <http://theconversation.com/why-does-the-carmichael-coal-mine-need-to-use-so-much-water-75923>

coal seam gas developments so that water resources are treated as a matter of national environmental significance, in relation to such developments.

Such a plan should cover water mass balance, sensitivity analysis, and periodic risk review amongst other unfolding factors of including other demands and experiences with water in the drought prone area in question.

The water trigger means projects are assessed by an independent expert scientific committee (IESC). The IESC assessed the Adani project and reported in 2015. The Adani project was approved by Greg Hunt in 2015 with a large number of "strict conditions", including IESC recommendations, however the decision was reported as siding with Adani against IESC advice, particularly on groundwater; the IESC said it had "little confidence" in much of the modelling used by Adani and highlighted gaps in its data."²¹

Adani is required to develop a Groundwater Management and Monitoring Plan. They also have to do a number of things such as reinject water in to aquifers when certain levels are reached: "requiring 730 megalitres of water be returned to the Great Artesian Basin every year for five years."²² The Minister has to approve this Plan when it is submitted by Adani. The government is then obligated to monitor and report on approved measures to ensure that conditions are being met.

²¹ <http://www.abc.net.au/news/2014-07-28/carmichael-coal-mine-project-gets-federal-approval/5628584>

²² <http://www.abc.net.au/news/2014-07-28/carmichael-coal-mine-project-gets-federal-approval/5628584> -given that hydrologists estimate times of the order of 10,000 years to repair aquifer contamination due to very slow flows, then it would be imperative to assess the treatment of re-injected water to ensure it does not contaminate the aquifer. Of note: reverse osmosis merely treats salinity, not the very many toxic compounds present in coal beds.

THE PROJECT STUDY AREA FOR THE ADANI EIS

The EIS prepared by GDH for the Queensland Government defines the project study area in very specific terms as follows:

The Project comprises of two major components:

A) The Project (Mine): a greenfield coal mine over EPC1690 and the eastern portion of EPC1080, which includes both open cut and underground mining, on mine infrastructure and associated coal processing facilities (the Mine) and the Mine (offsite) infrastructure including:

- A workers accommodation village and associated facilities (including: industrial area and rail siding)*
- A permanent airport site*
- Water supply infrastructure*

B) The Project (Rail): greenfield rail lines connecting the Mine to the existing Goonyella and Newlands rail systems; including:

- Rail (west): a 120 km dual gauge portion from the Mine site running west to east to a junction with proposed lines running south-east to the Goonyella rail system and north-east to the Newlands rail system*
- Rail (east): a 69 km narrow gauge portion connecting to the Goonyella rail system south of Moranbah to provide for export of coal via the Port of Hay Point (Dudgeon Point expansion)*

As a consequence of this, the potential for damage to significant places such as the Great Barrier Reef are downplayed because of their distance from the project and outside the area of immediate consideration; damage from Scope 3 /mine lifetime emissions are not considered^{23 24}. Damage caused by activities other than the immediate construction and operation of project components are consequently ignored as shown from the following extract from the EIS.

World Heritage Properties, National Heritage Places and the Great Barrier Reef Marine Park

The DSEWPac Projected Matters Search Tool did not identify any world heritage properties or National Heritage Places of relevance to the Project. The Wet Tropics World Heritage Area is located over 300 km north of the Study Area with no direct terrestrial, aquatic or biodiversity links to the Study Area. No influences from the Project are predicted to occur on the Wet Tropics World Heritage Area and this area

²³ Scope 3 emissions are now being considered as an integral part of climate risk assessment e.g.: Schroders cites CDP which attaches Scope 3 emissions to entities <http://www.schroders.com/en/lu/professional-investor/featured/climate-change-dashboard/> and <https://b8f65cb373b1b7b15feb-c70d8ead6ced550b4d987d7c03fcd1d.ssl.cf3.rackcdn.com/cms/reports/documents/000/002/327/original/Carbon-Majors-Report-2017.pdf>

²⁴ At 4.7Bt, if all had been burnt, Carmichael mine would rank 36th in the top 100 entities that have caused 71% of global warming <https://b8f65cb373b1b7b15feb-c70d8ead6ced550b4d987d7c03fcd1d.ssl.cf3.rackcdn.com/cms/reports/documents/000/002/327/original/Carbon-Majors-Report-2017.pdf> using Appendix One

has not been considered further within this assessment. The Tree of Knowledge and curtilage at Barcardine is the closest National Heritage Place to the Study Area. It is located approximately 200 km south-west of the western extent of the Study Area. No direct or indirect influences on this Place will occur as a consequence of the Project and this Place has, therefore, not been considered further.

The Great Barrier Reef World Heritage Area and the Marine Park, are located over 300 km downstream of the Study Area and although connected aquatically via watercourses, substantial watercourse and overland barriers exist between the ocean and the Study Area, including the Burdekin River dam. Significant controls will be established to manage onsite and offsite water and sediment quality impacts. These measures will mitigate potential for offsite impacts to aquatic values that could affect the downstream reefal environment. The distance from the GBR and the extant barriers would impede site conditions from having an influence on the values for which the reef is protected. Accordingly no impacts to the ecological, cultural or social values which the Great Barrier Reef is recognised will occur as a result of the Project.

The Project will not impact upon any World Heritage Areas, National Heritage Places or the Great Barrier Reef Marine Park.

ALLOWABLE ACTIVITIES

As part of the Minister's approval, there will be a number of both allowable and disallowable activities that can take place as part of the project. At present, the Act only concerns itself with activities immediately related to the mine and rail line construction and operation.

Supporters of the Indian conglomerate's planned giant coal mine in Queensland claim it will improve air quality and lower greenhouse gases²⁵, because it would supply India with "high quality" Australian coal. This however is in contradiction to other reports which identify the poor quality to be produced by these mines²⁶.

Associate Professor Gavin Mudd, from RMIT University, has mapped the quality of coal deposits across Australia. He said²⁷:

"If you look at the Galilee Basin coal, there's a reason why it hasn't been developed — it's poorer quality coal, compared to other places of Australia," Dr Mudd said.

"It's certainly not as bad as brown coal from an energy point of view, but from an ash point of view it's almost 10 times more ash content."

The average energy content of coal at Adani's planned mine is about 18 per cent below benchmark Australian coal.

Adani conceded in court the ash content was about 26 per cent, roughly double the Australian benchmark.

We believe that we have a duty to the Indian people to ensure their health and wellbeing is not comprised by Australian products. If the project goes ahead, the approval should include requirements on the burning of the product that reflect this duty. One approach we would suggest is to exclude burning of the product unless 85% of the emissions from such burning are captured and permanently contained in secure containment.

²⁵ Barnard argues that any improvement will be very soon outweighed by India's accelerating transition to renewables, and if you ran the numbers Adani coal would have a minuscule, very temporary improvement to India's emissions: <http://reneweconomy.com.au/fact-check-is-australian-coal-really-cleaner-than-indian-coal-and-does-it-even-matter-76430/>

²⁶ Carmichael coal is not high quality, rather low energy, high ash coal: <http://reneweconomy.com.au/fact-check-is-australian-coal-really-cleaner-than-indian-coal-and-does-it-even-matter-76430/>

²⁷ <http://www.abc.net.au/news/2017-04-03/adani-plans-to-export-low-quality-coal-to-india-report-says/8409742>

RECOMMENDATIONS

1. Suitable person concept

Lighter Footprints supports the amendments proposed in the Bill by Senator Waters to:

- extend and/or include the 'Suitable Person' concept in the EPBC Act and the Northern Australian Infrastructure Facility Act 2016 and
- require a further review of the three approvals already given to Adani to enable the consideration of any other relevant matter when deciding whether the applicant is a suitable person to be given an approval.

2. Water trigger

We recommend that the committee investigate ways to ensure that the Adani proposal does not proceed until its Groundwater Management and Monitoring Plan has been completed and approved by the responsible Federal Minister.

The Plan should include:

- Parliamentary processes to make sure adequate and appropriate monitoring, reporting and contamination risk mitigation mechanisms are in place should the project go ahead.
- Measures to ensure unfolding risks are covered off under best practice by risk reviews, adjustment to mitigation measures and in a worst case scenario by abandonment of the project

3. Allowable activities

We recommend that the allowable activities be re-defined as to exclude burning of the product unless 85% of the emissions from such burning are captured and permanently contained in secure containment.

4. Measures to remedy gaps in the existing EPBC Act

We consider that while the amendments put forward by Senator Waters cover an important deficit in both the criteria for all EIS and the particular assessment of the Adani proposal, they do not remedy the substantial gaps in the existing EPBC Act. We recommend that the Committee extend its reference to examine how these gaps can be remedied.

For example, the possible damage done to the Great Barrier by this project is of deep concern to Australians wherever they live in this country. At present, these fears are not taken into account in the EIS prepared for the Queensland Government.

In particular, we recommend that the following changes to the EPBC Act be investigated

- The inclusion of a national interest criteria that extends the concepts of environmental and social impact or damage beyond the area local to the proposed project to include that experienced by all Australians who value the environmental or heritage worth of that specific area.

- The restoration of authority to give the Commonwealth power to undertake its own independent EIS of projects that can be demonstrated to have an impact beyond state borders and with implications under the Paris Convention

Carolyn Ingvarson
Convenor, Lighter Footprints