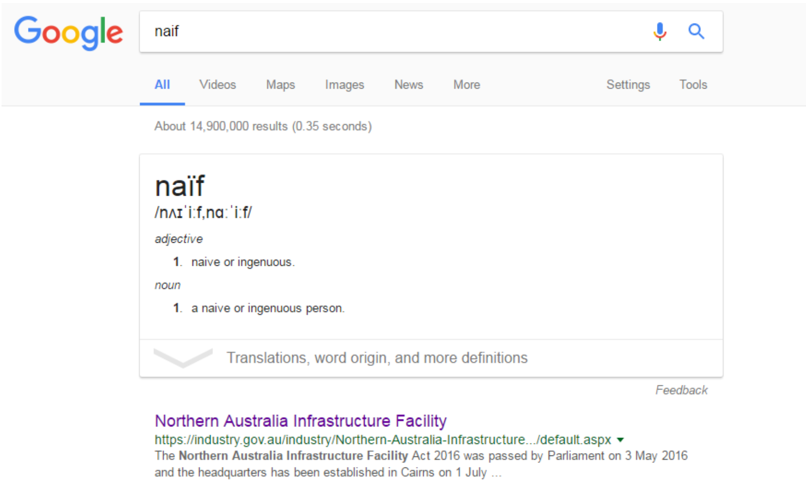

Don't be so naif

Adani and Governance of the *Northern Australia Infrastructure Facility* (NAIF)

Despite widespread coverage, little is known about the NAIF or the $1bn NAIF loan proposal for Adani's coal rail. Lacking robust governance policies, including some required by its legislation, and poorly resourced, NAIF should reject the immense political pressure to fast-track the loan.

Discussion paper

Tom Swann
March 2017

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Summary

On 3 December 2016, Queensland's main newspaper reported on its front page:

> A 310km rail corridor connecting Adani's Carmichael megamine to the coast is a step closer to being funded by the Federal Government.
>
> The Courier-Mail understands up to $1 billion has been set aside by the Northern Australia Infrastructure Facility (NAIF), which has given the $2.2 billion project conditional approval.[1]

The following week saw intense political and media attention focused on the Adani project and the proposal for a government loan to help build it. Matthew Canavan, Minister for Resources and Northern Development, strongly supported the proposal on a number of occasions, while also saying the decision was up to the NAIF's independent board.

Despite being at the centre of the story, the NAIF itself and its personnel were absent from all coverage. Indeed, the NAIF refused to comment on the proposal. It even refused to say whether such a proposal even exists, doing so only two weeks later in response to questions from the Senate.[2] The origin of reports of 'conditional approval' remains a mystery.

The NAIF is a statutory body tasked with financing economic infrastructure in the northern parts of Queensland, WA and the NT. It has $5 billion to allocate over five years in concessional loans and other financing. The projects it will support must meet certain mandatory criteria. In particular, they must:

- provide public benefits,
- be unable to get sufficient financing from commercial sources, and yet
- be able to repay the loan and recover the cost to government.

Despite its substantial funds size and recent publicity, information about the NAIF's processes is sparse. This may be because, in the Minister's words, "there is not really a formal submission or application process" but "discussions that occur".[3] The NAIF

1 Viellaris (2016) *Adani's $2b rail on track for jobs boom*, Courier Mail, p1

[2] *Economics Legislation Committee* (2016) *Answers to Questions on Notice – SI-34* http://www.aph.gov.au/Parliamentary_Business/Senate_Estimates/economicsctte/estimates/sup1617/Industry/index

[3] Hansard (2016) *Estimates, Economics Legislation Committee, 20 October,* p177

website, where the submission form includes only three fields: name, email and ‘message’.

This paper collates public information about the NAIF, its governance and Adani’s proposal.

Governance of the NAIF

The NAIF’s website provides general information about application and assessment, but it also leaves much unclear. Proponents would need substantial further guidance.

Moreover, guidance does not explain how NAIF will assess projects against its mandatory requirements and make Investment Decisions (formal decisions to offer or not offer financing). This is despite the Investment Mandate requiring public guidance on “Investment Decision processes”.

It is unclear what application and assessment policies are in place internally. Without such policies in place, it is unclear how the NAIF can assess any proposal.

At the time of the national coverage of the Adani proposal, key policies around the NAIF’s governance had not been developed:

- Despite at least one project being in due diligence stage, NAIF said it was still developing its due diligence requirements.
- NAIF did not have a Risk Appetite Statement, a policy which is required under its Investment Mandate to guide its management of risk.

Similar bodies, such as the Clean Energy Finance Corporation (CEFC) and the export credit agency Efic, have detailed internal policies and have published substantial information about investment processes and approaches to risk.

The NAIF is required to comply with ‘best practice’ policies for government and commercial financial bodies on environmental, social and governance issues. No such policies were available during the Adani coverage, and currently disclosed policies contain minimal detail.

While the NAIF website says it will consider environmental and social issues during assessment, the NAIF’s ‘Environmental and Social Review’ policy simply commits to not fund projects that have not received government approvals. The policy requires no further consideration of project or industry impacts and rejects the idea that financing could be swayed on that basis. This contrasts with many financiers, including the World Bank and commercial banks, who are now limiting their exposure to coal.

There is no sign NAIF will include assess potential negative impacts on the community and other industries, or even outline key models and parameters used in assessments.

The NAIF's Mandate and existing policies neither require nor prevent it from consulting with industries and communities that may be harmed by an applicant's project.

Specifically, there is no sign NAIF will give close attention to energy transition or stranded asset risk. Such considerations are increasingly viewed as directors duties and have seen some banks to move away from coal financing.

Similarly, has the option to wait six weeks before disclosing if it will lend out taxpayer money and to whom, and is only required to publish minimal information. NAIF could disclose Investment Decisions immediately, along with detailed information, but there is no sign it will do so.

Resourcing of the NAIF

Governance issues are not the only reason for concern around the NAIF. It is also poorly resourced. It currently has just a handful of staff and much less funding for staff than comparable agencies. The NAIF has an average annual operating cost of $8.8 million per year. By contrast, in 2015-16, the CEFC's operating expenses were $23 million and Efic's operating costs in its Commercial Account were $34 million. Notably, the NAIF expects to spend $3 million each year outsourcing assessment work to Efic, rather than building internal capacity.

Given these governance and resourcing issues, it appears that the NAIF is not sufficiently well set up to loan billions in public funds -- much less to decide whether to allocate 20 percent of its portfolio to a controversial, foreign-owned thermal coal export operation.

Adani proposal

It is unclear whether Adani's proposal is eligible for NAIF funding. Both Adani and the Minister have suggested the loan is 'not critical', meaning it would not be eligible. Yet many analysts doubt the mine is commercially viable, and the rail infrastructure being assessed by the NAIF depends on the mine. Moreover, there remain many unanswered questions about the claimed 'public benefit' of the proposal and how these will be considered by the NAIF: the employment benefits, public revenues and the negative impacts of the proposal. Finally, the need for diversification of the NAIF's portfolio would weigh against concentrating so much capital in just one project.

These concerns, and the Minister's comments promoting the proposal, amplify the need for strong policy frameworks. They raise strong doubts that the NAIF is ready to make responsible loans worth $5 billion.

Such a large volume of taxpayer funds could be used to fund a wide range of publicly beneficial activities that do not involve supporting foreign owned coal exporters. National polling shows strong opposition to funding coal infrastructure, with much greater support for funding public services, renewable energy, the NBN – or *anything else.*

While the Minister emphasises the independence of the NAIF Board, his comments create perceptions of pressure and put the NAIF in a difficult position. If the NAIF Board approves the proposal, it is likely to be viewed as politically influenced.

The NAIF, as an independent agency, should take steps to mitigate these concerns. It should not be pressured into fast-tracking Adani's proposal. Instead it should:

- not progress any assessment of funding applications until all required and expected governance arrangements are set up and disclosed;
- develop robust responsible investment processes, close consideration of energy transition and stranded asset risks;
- commit to publish as much information about Investment Decisions as possible and as soon as possible after the Decision has been made;
- commit to prioritising smaller and less risky projects while it validates its policies and processes, including through formal review.

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Introduction

On 3 December 2016, Queensland's main newspaper carried a front page 'exclusive':

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>
> The Courier-Mail understands up to $1 billion has been set aside by the Northern Australia Infrastructure Facility (NAIF), which has given the $2.2 billion project conditional approval. [4]

The NAIF proposal became central to Australian political news. In just two weeks the Australian press ran over 180 articles mentioning the NAIF – more than the previous five months put together.[5] The Adani proposal for $1bn in loan funding was mentioned in nearly every article, compared with very few in the preceding months.

The Australian and Queensland governments went to great efforts to focus on Adani and the NAIF during this period, during which Prime Minister Turnbull met with Adani Chairman Gautam Adani. Then at a press conference in Townsville, Matthew Canavan, the Minister for Resources and Northern Australia, discussed the NAIF proposal at length. The press conference included CEO of Adani's Australian operations 'JJ' Jeyakumar Janakaraj, the Queensland Premier, Queensland Minister for Natural Resources and Mines, the Townsville Mayor and others.

Broad news coverage was also fuelled by widespread criticism. Opposition from environmental groups was not surprising,[6] but concerns were far broader. Matthew Stevens, senior business and resources writer in the Australian Financial Review, described the proposal as "billionaire welfare" and said: "This request should be rejected".[7] Public polling conducted before the NAIF story broke showed that Australians would prefer the NAIF to fund *any other option presented* rather than coal infrastructure; more opposed Adani financing than supported it.[8]

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4 Viellaris (2016) *Adani's $2b rail on track for jobs boom*, Courier Mail, p1

5 Factiva, 16 Dec 2016 – "(NAIF or "Northern Australia Infrastructure") and ("Adani" or "Carmichael")"

6 Robertson (2016) *Adani coal mine: green groups fume over plan for $1b federal loan* https://www.theguardian.com/business/2016/dec/03/adani-coal-mine-green-groups-fume-over-plan-for-1b-federal-loan

7 Stevens (2016) *Adani's request for billionaire welfare should be rejected* http://www.afr.com/business/mining/coal/adanis-request-for-billionaire-welfare-should-be-rejected-20161205-gt4ihx

8 The Australia Institute (2016) *NAIF Polling* http://www.tai.org.au/content/naif-polling

Minister Canavan wrote in defence of public investment in the undeveloped Galilee Basin coal resources, but simultaneously argued "we should let the independent board do its job".[9] Deputy Prime Minister Barnaby Joyce spoke forcefully in support.[10]

Notably, all this attention on the NAIF came without any information from the management and administrators of the NAIF itself. The original front page NAIF story announcing Adani's loan had been 'conditionally approved' did not reference the NAIF or its personnel. NAIF representatives were absent from the press conference in Townsville, and from all subsequent media. There remains no indication of where reports that the NAIF had given 'conditional approval' came from.

In fact, while Ministers are promoting the Adani NAIF proposal, the NAIF itself repeatedly declined to release information about its work, citing commercial confidentiality.

Despite all this media attention, little is known about the NAIF and how it may assess the Adani proposal.

This briefing note investigates publicly available information. Most of this information was available during the time of the media coverage, although where noted has been more recently released. The note raises a number of concerns about the current status of the NAIF's governance, its transparency, the current adequacy of its policies and capacities, and its independence from political pressure. It makes some recommendations for independent governance.

[9] Canavan (2016) *It's right to consider Adani loan* AFR 8 December, p38

[10] Ludlow (2016) *Barnaby Joyce backs federal loan for Adani mine* http://www.afr.com/news/politics/barnaby-joyce-backs-federal-loan-for-adani-mine-20161206-gt5mgh

What is the Northern Australian Infrastructure Facility (NAIF)?

The Northern Australia Infrastructure Facility (NAIF) is a Commonwealth statutory body established to finance infrastructure in 'Northern Australia' – the NT, and northern parts of Queensland and WA. The NAIF has been allocated $5 billion to distribute over five years.

The object of the *Northern Australia Infrastructure Facility Act 2016* (NAIF Act), and the NAIF's 'function' under that Act, is to "provide grants of financial assistance to the States and Territories for the construction of Northern Australia economic infrastructure"[11] – defined as infrastructure that "provides a basis for economic growth" and "stimulates population growth in Northern Australia."[12]

The Act sets up the NAIF as an independent funding body and outlines basic features of NAIF governance. For example, the Minister appoints a Board, with a Chair and four to six other members. They set strategies and policies and appoint a CEO, who runs the NAIF day-to-day, in line with Board policies and direction.

The Act provides little direction about NAIF's financing activities. Rather, the Minister must provide an Investment Mandate giving directions on how the NAIF must conduct its financing activities. However, the Minister cannot direct the NAIF to fund particular projects.[13]

The Mandate is a legislative instrument.[14] Unlike the Act, the Mandate was not passed by Parliament, nor did Parliament have an opportunity to reject the Mandate, as it was not 'disallowable'.[15] However, it was released for consultation.

The Mandate directs the NAIF to consider "Investment Proposals" and make "Investment Decisions" about whether or not to offer a "Financing Mechanism".[16] Specifically, it directs the NAIF to provide concessional financing to projects that the

[11] Northern Australia Infrastructure Facility ACT 2016 (NAIF ACT), Section 3.
The function of the NAIF is expressed in similar terms to the object of the NAIF Act. Funding will go to infrastructure projects through Qld, WA and NT. This is to comply with constitutional requirements.
[12] NAIF Act 2016, Definitions
[13] NAIF Act 2016, Section 9
[14] Northern Australia Infrastructure Facility Investment Mandate Direction 2016 (Mandate) https://www.legislation.gov.au/Details/F2016L00654
[15] NAIF Act 2016, Section 9, Note.
[16] Mandate, Definitions, Section 6(1)

Board is satisfied meet the given criteria. The basic financing mechanism is a loan. The criteria include that:

- the projects that would not otherwise go ahead because they cannot get adequate commercial financing, and
- they are able to repay the financing loan at a level that recovers the government's costs of borrowing and administration.

In other words, to be eligible for NAIF funding, projects must be commercially unviable and risky, but not so uncommercial or risky that they are unlikely to be able to cover the government's costs.

Projects must also provide deliver public benefits, including being 'multi-use'.

HISTORY OF THE NAIF

While most Australian governments have expressed policy support for developing northern Australia, the NAIF has an idiosyncratic history in Coalition policy development. Beginning with a focus on water infrastructure, it became increasingly linked in public coverage with the Adani coal project.

- **2012** – The Coalition opposition releases *Developing Northern Australia – a 2030 Vision*, proposing a Water Project Development Fund for "water projects across Northern Australia, including dams and groundwater projects".[17]
- **2013** – The proposed Fund again features in the Coalition's election policy, which claims the Fund will drive growth in both agriculture and mining.[18]
- **2014** – The Coalition government establishes the Northern Australia Advisory Group;[19] this subsequently calls for "mechanisms" to identify and fund "strategic 'game changing' and 'nation building' infrastructure investments in the north".[20]
- **2015** – The 2015-16 Budget includes funding for the NAIF.[21] The *White Paper on Developing Northern Australia* includes a page and a half of general information on the proposed NAIF, citing the NBN and mobile phone infrastructure as

[17] Coalition (2012) *Developing Northern Australia – a 2030 Vision,* available on request
[18] Coalition (2013) *The Coalition's vision for Developing Northern Australia,* accessed via http://www.markcoulton.com.au/Portals/0/2013ElectionPolicies/The%20Coalitions%202030%20Vision%20for%20Developing%20Northern%20Australia%20-%20National%20Party.pdf
[19] Minister for Infrastructure (2014) *Government Moving to Develop Northern Australia* http://minister.infrastructure.gov.au/wt/releases/2014/June/wt084_2014.aspx
[20] Unpublished, cited in the *White Paper,* see note 19
[21] Treasury (2015) *2015-16 Budget* http://www.budget.gov.au/2015-16/content/bp2/html/bp2_expense-21.htm

examples of potential beneficiaries.[22] Treasurer Joe Hockey instead suggests the NAIF could provide funds to Adani,[23] followed by Josh Frydenberg, the NAIF's new responsible Minister.[24]

- **2016** – Parliament passes the NAIF Act and then Minister Josh Frydenberg issues the Mandate. Frydenberg and the Liberal party rule out funding for Adani,[25] later reiterated by Prime Minister Turnbull.[26] After the election, Minister Canavan repeatedly promotes the Adani rail loan proposal, while also emphasising the NAIF's decisions are independent.

OTHER SIMILAR AGENCIES AND POLICIES

NAIF shares similarities with existing policies and agencies. For example, many Departments offer forms of concessional loans. These include

- the *Higher Education Loan Program* (HELP), run by the Department of Education and the Australian Tax Office;[27]
- advances on welfare payments through Centrelink (essentially no-interest short term loans);[28]
- the *Farm Business Concessional Loans Scheme* and the *Drought Concessional Loans Scheme,* offered through the Department of Agriculture.[29]

By contrast with these, however, the NAIF runs largely independently – subject to a Ministerial mandate. In this respect has more in common with other agencies:

[22] Office of Northern Australia (2016) *White Paper on Developing Northern Australia* http://northernaustralia.gov.au/sites/prod.office-northern-australia.gov.au/files/files/NAWP-FullReport.pdf
[23] In Cox (2014) *Abbott government hints Adani could be considered for rail funding*, http://www.smh.com.au/federal-politics/political-news/abbott-government-hints-adani-could-be-considered-for-rail-funding-20150824-gj6ci9.html
[24] Cox (2016) *Josh Frydenberg says $5 billion northern Australia fund could be used to finance coal* http://www.smh.com.au/federal-politics/political-news/josh-frydenberg-says-5-billion-northern-australia-fund-could-be-used-to-finance-coal-20150922-gjstnp.html
[25] Robertson (2016) *Government rules out public funds for Adani coal project, activists claim* https://www.theguardian.com/business/2016/jun/10/government-rules-out-public-funds-for-adani-coal-project-activists-claim
[26] Hunter (2016) *Election 2016: Protesting Nemo finds Malcolm Turnbull and criticises Great Barrier Reef action* http://www.smh.com.au/federal-politics/federal-election-2016/election-2016-protesting-nemo-finds-malcolm-turnbull-and-criticises-great-barrier-reef-action-20160603-gpaq21.html
[27] Study Assist (2016) *HELP paying my fees* http://studyassist.gov.au/sites/studyassist/helppayingmyfees
[28] Centrelink (2016) *Advance Payment Options* https://www.humanservices.gov.au/customer/enablers/advance-payment-options
[29] Note the latter has ceased offering new loans while the former will close in 2017. http://www.agriculture.gov.au/ag-farm-food/drought/assistance

- The ***Clean Energy Finance Corporation*** **(CEFC)** offers partial loans and other co-financing to renewable energy, energy efficiency and other 'clean energy' sources to "facilitate increased flows of finance into the clean energy sector" from commercial finance.[30] CEFC mobilises commercial investment both directly through co-investment and over time by enabling learning by doing in energy and finance sectors. The CEFC is allocated $10 billion, in tranches of five years; however this is not a time limit on provision of funds.[31] However concessional financing offered by the CEFC in one year is limited to $300 million per year, and the CEFC must meet a *Portfolio Benchmark Return*, for most of its loans set 3-4 percent above the five year government bond rate.[32]
- The ***Export Finance and Investment Corporation*** **(Efic)** helps Australian companies in international markets, including through loans, bonds, export finance guarantees and insurance.[33] Efic's main account operates on a commercial basis, but has a mandate requiring it to fill 'market gaps'. It currently has available capital of just under $700 million, with just under $3 billion in total 'exposures' of all kinds.[34]

One reason governments may establish such a statutory agency is to 'firewall' financing decisions from political pressure or interference. This is important where financing decisions are likely to be controversial – as is proving the case with the NAIF. However, setting up an independent agency does not ensure that it is well governed.

GROUNDS FOR CONCERN

Compared to the CEFC and Efic, the NAIF does not currently have strong governance and staffing arrangements. For example,

- It does not yet have policies that its founding laws require;
- There is limited public information about application and assessment processes -- as stated by the Minister, there aren't any substantial policies;[35]
- The requirements for disclosure and consultation are very weak and the NAIF has made no commitment yet to go beyond requirements;

[30] *Clean Energy Finance Corporation Act 2012,* Section 3, Object,
[31] No end date mentioned in *Clean Energy Finance Corporation Act 2012,*
[32] *Clean Energy Finance Corporation Investment Mandate Direction 2016 (No.2)*
[33] Efic (nd) *Our Products* https://www.efic.gov.au/about-efic/our-products/
[34] Efic (2016) *Corporate Plan 2016-17* https://www.efic.gov.au/media/3472/corporate-plan-2016-17-final_sept.pdf
Efic (2016) *Annual Report 2015-16* https://www.efic.gov.au/media/3484/efic-annual-report-2015-2016.pdf
Exposures include both Commercial Account and National Interest Account.
[35] Hansard (2016) *Estimates, Economics Legislation Committee, 20 October,* p177

- It appears chronically under resourced.

Despite all of this, the NAIF is now facing intense expectations from the public and the Minister to make an Investment Decision for $1 billion, representing 20 percent of its portfolio.

The Minister says due diligence will be over in "a few more months". How he knows this remains unclear, given the NAIF is supposed to be independent and it claims its deliberations are confidential.[36]

As a new organisation, there is yet to be any formal review of the NAIF. Indeed, the NAIF was allocated funding without being allocated performance criteria, which were "to be developed following finalisation of program design and consultation with stakeholders".[37] The Act requires a review of the operation of the NAIF and the Act to begin three years after it commenced, by which time billions of dollars may have been disbursed.[38]

Reviews of previous government loan schemes give reason for caution. The Australian National Audit Office recently outlined problems with concessional loans programs for farmers, including:

> the department's (and the Australian Government's) limited experience in delivering concessional loan programs;
>
> the condensed timeframe set by government to design and implement the program …
>
> the absence of: an economic analysis of the costs and benefits of providing a subsidy …
>
> [the absence of] sufficiently robust arrangements to ensure that funding conditions were met before payments were made …
>
> [the absence of] a sound performance measurement and reporting framework to determine whether the objectives set by government are being achieved.[39]

The public should be concerned that the NAIF risks repeating such problems.

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[36] Hansard (2016) *Estimates, Economics Legislation Committee, 20 October,* p177

[37] Department of Industry, Innovation and Science (2016) *Portfolio Budget Statement 2016-17* https://industry.gov.au/AboutUs/Budget/Documents/PBS-2016-17.pdf p45

[38] NAIF Act (2016) Section 43

[39] ANAO (2016) *Administration of Concessional Loan Programs* https://www.anao.gov.au/work/performance-audit/administration-concessional-loans-programs

How to apply for a NAIF loan

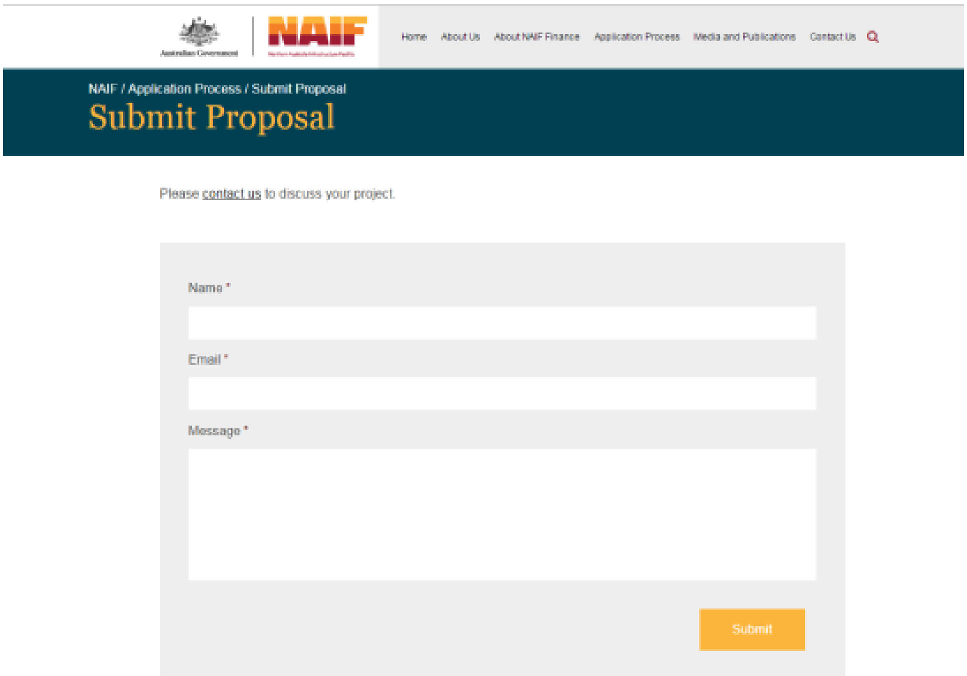
If someone has a proposal for Northern Australia infrastructure, how can they apply for funding from the NAIF? Surprisingly, Minister Canavan told the Senate,

> there is not really a formal submission or application process. There are discussions that occur between the board, the NAIF officials and proponents, and they will advance through various stages as per the board's decisions.[40]

“SUBMIT PROPOSAL”

Once a proponent has located the NAIF website,[41] clicking on “Submit Proposal” will send the visitor to a simple form, shown in Figure 1 below.

Figure 1. NAIF Website: “Submit Proposal”



Source: NAIF website

[40] Hansard (2016) *Estimates, Economics Legislation Committee, 20 October,* http://parlinfo.aph.gov.au/parlInfo/download/committees/estimate/adc62de8-dc09-471d-ac4b-326d93515f75/toc_pdf/Economics%20Legislation%20Committee_2016_10_20_4520_Official.pdf p177

[41] While many Australian government websites discuss the NAIF, most link to a Departmental website, not the official NAIF website. As a result, the official NAIF website is not readily found on web searches.

The form asks for a name, email address and a 'message'. There is no further required information and no way to attach supporting documents.

By comparison, applying for

- *Farm Household Assistance* from Centrelink involves filling out 107 specific questions.[42]
- *Drought Assistance Concessional Loans* in Qld involved 15 pages of detailed financial questions about farm operations and conditions. These loans were at most 1000 times smaller than the rumoured Adani loan proposal.[43]
- CEFC financing involves outline specific aspects of their proposal and attach supporting documentation.[44]

"INVESTMENT PROPOSAL PROCESS"

A further NAIF webpage outlines the "Investment Proposal process" in four stages:

1. Enquiry and Preliminary Assessment Stages,
2. Strategic Assessment Stage,
3. Due Diligence, and
4. Investment Decision and Execution Stage.[45]

The page begins with the caveat "the below application and assessment process is a guideline only and may vary depending on the type and suitability for the project."[46]

Under each stage, the page lists the sorts of information that could be expected from applicants. In stage 1 this involves "high level" information. In stage 2 applicants provide more "detailed" plans, "analysis" and "commentary". In stage 3, applicants must develop an Information Memorandum including "comprehensive", "finalised" and "independent" reports.

Based on this, the NAIF makes decisions about progressing proposals to the next stage. The Board makes the decision about moving from Assessment to Due Diligence, and of about whether to offer financing (Investment Decision.)

[42] Centrelink (2016) *Claim for Farm Household Allowance form* https://www.humanservices.gov.au/customer/forms/su694
[43] QRAA (2016) *Drought Assistance Concessional Loans* http://www.qraa.qld.gov.au/current-programs/drought-concessional-loans-scheme/drought-assistance-concessional-loan-writable-application-form
[44] CEFC (2016) *Submit proposal* https://www.cleanenergyfinancecorp.com.au/submit-proposal.aspx
[45] NAIF (2016) *Investment Proposal process,* http://www.naif.gov.au/application-process/investment-proposal-process/
[46] NAIF (2016) *Investment Proposal process*

Notwithstanding the lists of expected information, the process is quite general. Applicants would need further guidance on format, assumptions and requirements for information expected. As the page states, the process involves close "collaboration" and "guidance to the proponent on advancing discussions further."[47]

Moreover, the process does not outline any substantial information how decisions are made. Further detailed policies would be expected to govern such decisions, although this is not present on the website.

Revisions

The public website was recently updated, some time after 24 December 2016.[48] As well as expanded detail in expected information, there are new caveats and previous statements are missing. It is unclear if this was due to changed policy or simply a revision of the public guidance.

Previously stage 2 started by saying that the NAIF will "work with proponents in developing an Investment Proposal for projects [sic], which in principle is likely to satisfy the NAIF eligibility criteria".[49] Now the process makes the opposite emphasis:

> The decision to continue investigating a project following the Strategic Assessment Stage does not constitute an Investment Decision. It does not indicate whether the NAIF investment criteria will be met or whether the NAIF Board would make an offer to participate in the financing of a project. It is also not an indication that the Board endorses any specific terms of or any conditions of any financing for that project.[50]

The reason for this change is unclear, but shows the Board is concerned to downplay the legal significance of assessment decisions. Despite this, it is unclear how a decision to progress an application is not a decision about the likelihood of meeting the criteria.

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[47] NAIF (2016) *Investment Proposal process,* accessed 23 January 2017 http://www.naif.gov.au/application-process/investment-proposal-process/

[48] NAIF (2016) *Investment Proposal process* cached version 24 December, http://webcache.googleusercontent.com/search?q=cache:http://www.naif.gov.au/application-process/investment-proposal-process/

[49] NAIF (2016) *Investment Proposal process* cached version 24 December

[50] NAIF (2016) *Investment Proposal process* http://www.naif.gov.au/application-process/investment-proposal-process/

Questions

The investment process, even as revised, leaves many questions:

- How does the NAIF decide how to focus its limited capacity, when choosing who to "assist", "engage with" or "work with" when developing an application (as made explicit in the earlier version)?
- Can the NAIF 'put aside' funds for projects it is assessing, as suggested in reports of the Adani loan?
- How does NAIF decide a proposal is "in principle likely to satisfy the NAIF eligibility criteria" (earlier version) or if "it wishes to dedicate further resources to investigating the project" (current version)?
- How does this process manage potential conflicts between assisting proponents to develop Proposals, and assessing those proposals?
- Does the Board have any role in conducting the due diligence?
- What analysis that will be used to assess the Proposal? What assumptions are "acceptable to the Board" (earlier version)? What counts as an "independent" report? Will independent reports be considered that are not commissioned by the applicant?

Most importantly, the guidance provides no information about how the Board will make Investment Decisions. The guidance simply states that the Board will make such decisions.

In response to questions from the Senate, published in December, the NAIF said they would publish the guidance as to the application process, including due diligence, once it was developed.[51] It is unclear whether either version of the webpage discussed above is that guidance, or whether that is yet to be published.

[51] *Economics Legislation Committee* (2016) *Answers to Questions on Notice – SI-39* http://www.aph.gov.au/~/media/Committees/economics_ctte/estimates/sup_1617/Industry/answers/SI-39_Waters.pdf

NAIF policies

For an agency to exercise its functions properly in a way that is accountable, it must have clear policies and procedures. The NAIF has been developing internal policies.

The function of the NAIF's Board is to decide on "the policies and strategies to be followed by the Facility" and ensuring "the proper, efficient and effective performance of the Facility's functions".[52] The Board appoints the CEO who is responsible for the day-to-day operations, following policies and directions from the Board.[53]

REQUIRED TO DEVELOP

The Investment Mandate requires certain policies and procedures. This includes:

- *Risk Appetite Statement* to guide risk assessment. This must have regard to diversification, and may have high risk tolerance for particular risks of investing in Northern Australia (e.g. distance, remoteness, and climate).[54]
- Policies for *Government and Commercial Financier Best Practice*, in particular with regards to environmental, social and governance issues.[55]

Although the Investment Mandate requires the NAIF to have these policies, it does not say *when* such policies and procedures must be established, or what activities the NAIF can conduct prior to the policies being in place.

Both policies require formal annual review. It is unclear if this means a year after implementation, or every year, for example in the Annual Report.

Risk Appetite Statement

As yet there is no public indication that the Risk Appetite Statement has been developed. The NAIF website does not mention it.

In correspondence to Environmental Justice Australia on 6 December the NAIF CEO indicated the Risk Appetite Statement had not been finalised.[56]

[52] NAIF Act 2016, Section 14(1)
[53] NAIF Act 2016, Section 28
[54] Mandate, Section 12(1)
[55] Mandate, Section 17(1)
[56] Correspondence received by Environmental Justice Australia dated 6 December 2016

The CEO indicated that guidance on the approach to risk would be published once it is complete.

It is unclear how the NAIF can assess projects without such key policies. The Board will presumably develop such policy prior to making formal Investment Decisions, but such policy could be expected to inform the entire process.

Similarly, responding to questions from the Senate in December, the NAIF said that it intends to publish "guidance on the application process, including due diligence requirements once they are approved by the Board".[57] It is unclear how the NAIF staff who conduct the due diligence (as implied by the Investment Proposal process webpage) can do so without policies from the Board.

Corporate governance policies

During 2016 the NAIF website did not mention any policies relating to corporate governance, environmental, social or governance issues.

In January 2017, five policies were listed on the NAIF website:

- Anti-Corruption Policy
- Conflict of Interest Policy
- Incident Breach and Whistleblower Policy
- Environment and Social Review
- Staff Trading Policy

Each are dated November 2016. This means NAIF had been operating and assessing projects for a number of months without any of these policies.

Most of these policies relate to general issues of governance relevant to most government agencies. The Staff Trading policy governs staff financial activities, for example banning short-selling and insider trading.

Environmental and Social Review

The key section of the *Environment and Social Review Policy* states simply that

> The Board considers its regulatory, environmental, social and Native Title requirements are met when expert regulatory, environmental, social and Native

[57] *Economics Legislation Committee* (2016) *Answers to Questions on Notice – SI-39* http://www.aph.gov.au/~/media/Committees/economics_ctte/estimates/sup_1617/Industry/answers/SI-39_Ketter.pdf

> Title due diligence reviews on which NAIF has reliance confirms (or otherwise) that all relevant approvals have been obtained.[58]

In other words, NAIF's social and environmental policy is that it will not fund projects if they have not been approved under Australian law.

It is doubtful this constitutes 'best practice' corporate governance on these issues.

The "Environmental and Social Review" policy notes, quite correctly,

> Understanding a Project's environmental and social impacts is also commercially prudent for NAIF as significant environmental and social issues can impact the repayment of a financing facility.[59]

To this end, the NAIF requests applicants to provide "social and environmental analysis or commentary" and "detailed environmental and social impact assessment", which will be part of the assessment process.[60] Yet the Review Policy does not mention this, say what information would be expected or say how such information would be assessed.

Indeed, the Review Policy rejects the idea that it may be required to do more than make financing conditional on approvals:

> NAIF is a financier not a regulatory authority. … [61]
>
> Some commercial financiers have adopted additional policies related to environmental and/or social issues in in different industry sectors. NAIF's role is to implement the Investment Mandate provided to it by Government. Consistent with this role, NAIF cannot bias NAIF financing to one industry or another outside of the guidelines contained in the NAIF Investment Mandate and the Act.[62]

However, this simply evades the key question: what does the Mandate require? The requirement for best practice on social and environmental issues implies NAIF should

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[58] NAIF (2016) *Environmental and Social Review of Transactions Policy*https://naif-gov-au.industry.slicedtech.com.au/wp-content/uploads/2016/08/NAIF-Environmental-and-Social-Review-of-Transactions-Policy.pdf p2

[59] NAIF (2016) *Environmental and Social Review of Transactions Policy*

[60] NAIF (2016) *Investment Proposal process,* accessed 23 January 2017 http://www.naif.gov.au/application-process/investment-proposal-process/

[61] NAIF (2016) *Environmental and Social Review of Transactions Policy* p1

[62] NAIF (2016) *Environmental and Social Review of Transactions Policy* p4

indeed bias against environmental and social risks and impacts – whether understood as financial risks, or in terms of external impacts of financing.

Similarly, such risks and impacts claimed public benefits of projects, and so must be taken into account when evaluating eligibility for financing.

The policy says that financing projects approved under Australian law means the policy is “consistent” with the Equator Principles.[63] The Equator Principles (EPs) are transnational financial standards for social and environmental risk management. However, even in such cases Equator Principles Financial Institutions (EPFIs) must

> still categorise and review projects in accordance with EP 1 [Review and Categorisation] and 2, [Environmental and Social Assessment], and EPFIs would still require independent review and monitoring over the life of the loan for all Category A [high risk] projects regardless of geography and covenanting.[64]

It does not appear that NAIF will do this, as it is not a EPFI.

Moreover, the EPs state “The EPFI may, at their sole discretion, apply additional requirements.”[65] In other words, the EPs reject the idea that approval under Australian law is in principle sufficient for social and environmental review. While compliance with such principles could be considered necessary for ‘best practice’, it does not follow that it is sufficient.

‘WITH REGARD TO BEST PRACTICE’

In addition to specific required policies, the NAIF must also have regard to “Australian best practice government governance principles, and Australian best practice corporate governance for Commercial Financiers”.[66] As such, it could reasonably be expected that NAIF would have detailed policies and processes for applications and assessments, including reference to other examples of best practice.

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[63] NAIF (2016) *Environmental and Social Review of Transaction Policy* https://naif-gov-au.industry.slicedtech.com.au/wp-content/uploads/2016/08/NAIF-Environmental-and-Social-Review-of-Transactions-Policy.pdf

[64] Equator Principles (n.d.) The Equator Principles, Frequently Asked Questions http://equator-principles.com/resources/Frequently%20Asked%20Questions.pdf

[65] Equator Principles (2013) *Equator Principles III*, http://www.equator-principles.com/resources/equator_principles_III.pdf p6

[66] Mandate, Section 17(1)(a-c)

Such policies would help ensure the NAIF Board meets any duties inherent in their responsibilities as directors of an agency operating "on a commercial basis".[67]

In contrast to this ideal, Minister Canavan told the Senate,

> there is not really a formal submission or application process. There are discussions that occur between the board...[68]

It is unclear how the NAIF can operate with regard to best practice if it does not have formal policies governing its basic functions, including those it is required to have by law. Failure to do so exposes the government to reputational risks, in contravention of its requirement "not to act in a way that is likely to cause damage to the Commonwealth Government's reputation."[69]

Key policies or guidelines that could be expected in order to comply with the mandatory criteria in the Mandate include those for determining:

- whether or not a project is otherwise unable to attract commercial financing,
- what is the minimum needed level of concessional financing,
- whether a project is 'will be able' to repay the financing,
- what is a project's 'public benefit' and what level is sufficient, and
- whether a project is 'multi-use'.

Moreover, the need to give regard for best practice and the general duties of the Board would suggest the NAIF should consider further policies or guidelines:

- Being a new organisation, NAIF should prioritise smaller projects to test and refine processes, such as through required annual reviews. This should be done prior to assessing larger, riskier, more controversial projects, to minimise risk.
- NAIF should consult broadly and publicly on strategy and in particular around large, complex decisions with social and environmental risk. It should disclose decisions in a proactive way at the earliest practical time, including statements of reasons, consistent with cross-government principles of Open Government.
- NAIF should consult on and disclose all key economic models, assumptions and parameters used to assess 'public benefit'. It should assess all claims about

[67] Parliament of Australia, (2015) *Replacement Explanatory Memorandum, Senate, Northern Australia Infrastructure Facility Bill 2016* http://parlinfo.aph.gov.au/parlInfo/download/legislation/ems/r5631_ems_ea10f108-86c1-4c2a-82c3-c5fe3041e9f2/upload_pdf/16029repem.pdf;fileType=application%2Fpdf p2

[68] Hansard (2016) *Estimates, Economics Legislation Committee, 20 October,* http://parlinfo.aph.gov.au/parlInfo/download/committees/estimate/adc62de8-dc09-471d-ac4b-326d93515f75/toc_pdf/Economics%20Legislation%20Committee_2016_10_20_4520_Official.pdf p177

[69] Mandate, Section 16

economic benefit against impacts on other industries, the community and the environment.[70]

- NAIF should analyse energy transition and stranded assets risk.
    - This should include multiple energy scenarios and sensitivity analysis. For example, rather than just the IEA's 'business as usual' or 'current policies' scenarios, analysis should use the IEA's '450' climate scenario, or scenarios from Bloomberg New Energy Finance.
    - Similar considerations apply to other greenhouse gas intensive sectors.
    - As Noel Hutley SC wrote in a recent Minter Ellison legal advice, "it is conceivable that directors who fail to consider "climate change risks" now could be found liable for breaching their duty of care and diligence in the future."[71]
- NAIF should adopt existing responsible investor principles.[72] Commercial financiers are starting to limit coal exposure: the World Bank has announced it will avoid coal financing (except in limited circumstances);[73] ANZ recently announced reduction in exposure to coal;[74] numerous international banks have ruled out financing the Adani coal project.

At present there is no sign that the NAIF is considering any of these measures.

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[70] Project proponents publicly emphasise positive impacts, while ignoring negative impacts due to pressure on exchange rates, currency prices, labour markets, and so on. Ironically, these effects have been included in expert analyses commissioned by project proponents, including Adani's expert economic witness in court.

[71] Hutley SC, Hartford Davis (2016) *Climate Change and Directors' Duties – Memorandum of Opinion*, Minter Ellison http://cpd.org.au/wp-content/uploads/2016/10/Legal-Opinion-on-Climate-Change-and-Directors-Duties.pdf p3

[72] For example becoming a formal member of the Equator Principles, the United Nation Principles of Responsible Investment, Climate Principles, the Investor Group on Climate Change, CDP.

[73] Vidal (2014) *World bank to focus future investment on clean energy* https://www.theguardian.com/environment/2014/nov/23/world-bank-to-focus-future-investment-on-clean-energy

Although note the allegations in Robertson (2016) *Adani coalmine 'covertly funded' by World Bank, says report* https://www.theguardian.com/environment/2016/dec/22/adani-coalmine-covertly-funded-by-world-bank-says-report

[74] Gluyas (2016) *ANZ effectively rules out funding Adani's Carmichael coalmine* http://www.theaustralian.com.au/business/financial-services/anz-effectively-rules-out-funding-adanis-carmichael-coalmine/news-story/59b2a756082a5cd2c61cf9959debff95

Disclosure and transparency

The NAIF Act and Mandate outline certain matters the NAIF is required to publish. While it is remarkable how little is required beyond an Annual Report, there are few explicit restrictions. There is substantial scope to disclose and consult, but as yet the NAIF has made few commitments to go beyond the minimum requirements.

INVESTMENT DECISIONS

The NAIF must publish details about Investment Decisions – a decision either to offer or not to offer a Financing Mechanism – on their website within 30 business days.[75] (That is 6 weeks, including weekends.)

The Mandate requires that the NAIF publish only very limited details of projects it will support: the project name and location, the amount and terms of financing, and the goods or services involved.

However, there is no restriction on the NAIF publishing more information, other than it being "subject to commercial confidentiality", the terms of which are set by NAIF.[76] Despite this, the NAIF website says only that it will publish the minimum required information.

Similarly, the NAIF may publish details earlier than 30 days after the Decision. However there as yet is no indication whether they will do so.

Note that 30 business days after an Investment Decision is twice as long as the Minister's 21 day (3 week) *consideration period,* during which they can reject an Investment Proposal.

In other words, if the NAIF publishes at the end of its required period, the public will only find out about a proposal 3 weeks after it has in effect been politically approved.

The NAIF should commit to publish as much information about Investment Decisions as possible, subject to commercial confidentiality, and to publish such information as soon as possible after the Decision has been made.

[75] Mandate, Section 17 (2)

[76] This is the only mention of confidentiality in either the Act or the Mandate. Mandate, Section 17(2)

POLICIES AND PROCESS

Section 17 of the Mandate says:

> (3) The Facility must publish guidance on its website on:
>
> (a) the format of an Investment Proposal;
>
> (b) Investment Decision processes; and
>
> (c) any other matters it considers necessary.

The "Submit Proposal" webpage discussed above clearly does not meet (a) and, while "Investment Proposal process" webpage may do so, that 'process' is still quite general.

However, the "Investment Proposal process" does *not* explain the Investment *Decision* process required under (b). It states that the Board makes such Decisions, following earlier decisions about developing and progressing proposals.

In response to questions from the Senate, the NAIF said "NAIF intends to publish … guidance on the application process, including due diligence requirements once approved by the NAIF Board".[77] This suggests that it does not consider the current process to satisfy the existing requirements.

What 'other matters' does the Board consider necessary to publish? So far, the NAIF website includes only five short policies, mentioned above.

By correspondence, the NAIF CEO was asked about whether it will publish policies that it is required to develop, such as a Risk Appetite Statement. The CEO said simply that "The Board determines which documents will be disclosed" and that any documents they decide to publish will published "in due course."[78]

REQUESTS FOR DOCUMENTS AND REASONS

Under the *Freedom of Information Act 1982*, the NAIF is required to release and publish requested documents when the positive factors in favour of release being in the public interest outweigh the negative factors. Decisions not to release information can be reviewed at the Administrative Appeals Tribunal or in Court.

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[77] *Economics Legislation Committee* (2016) *Answers to Questions on Notice – SI-39* http://www.aph.gov.au/~/media/Committees/economics_ctte/estimates/sup_1617/Industry/answers/SI-39_Waters.pdf

[78] Correspondence, 12 December 2016.

Some NAIF decisions may be reviewable under administrative law. Under the *Administrative Decisions (Judicial Review) Act 1977*, the NAIF may be required to provide a statement of reasons for a decision if requested by a person who is aggrieved.[79] Note there are exceptions for some decisions under the *Public Governance, Performance and Administration Act 1993*, which applies to NAIF.

COMMERCIAL CONFIDENTIALITY

The main restriction on publication is commercial confidence. The NAIF website states "The NAIF Board's deliberations in respect to proposals, applications, expressions of interest or strategic assessments are confidential".[80] The NAIF repeatedly cites this as a reason to not answer questions about project proposals.[81]

When the NAIF Secretariat was asked to confirm the existence of the Adani proposal and clarify its status, the NAIF CEO said simply that: "NAIF has an independent Board whose members are committed to meeting NAIF's obligations to maintain the confidentiality of its dealings."[82]

Despite all of the public attention to the Adani proposal, the NAIF was not willing to confirm the existence of the proposal. This finally occurred only in response to questions from the Senate, released two weeks after the story broke.[83]

Yet the NAIF has declined to confirm any other information, including the loan proposal or which Adani company has made the proposal.

There are no obligations regarding confidentiality in the Act. There is only one peripheral mention in the Mandate.[84] Moreover, this does not justify failing to disclose matters of policy and process. Confidentiality appears on the basis of agreements made with proponents. [85]

As noted above, the NAIF is required to consult on Proposals, although only with certain parties. This would involve managing commercial confidence while releasing sufficient information. It is not clear why this cannot be done more broadly.

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[79] *Administrative Decisions (Judicial Review) Act 1977*, Section 5
[80] NAIF (2016) *Investment Proposal process* cached, accessed 23 December
[81] In correspondence from the CEO, and in answers to Questions on Notice from Senate Estimates.
[82] Personal correspondence 8 December 2016
[83] *Economics Legislation Committee* (2016) *Answers to Questions on Notice – SI-34* http://www.aph.gov.au/Parliamentary_Business/Senate_Estimates/economicsctte/estimates/sup1617/Industry/index
[84] See note 53.
[85] NAIF (2016) *Investment Proposal process* http://www.naif.gov.au/application-process/investment-proposal-process/

Comparison with other financing agencies

Compared with the CEFC and EFIC, the NAIF at present falls short on a number of matters of governance. The argument here is not that the CEFC or Efic are 'best practice'. Brief, selective points are presented for the purpose of comparison.

Both CEFC and EFIC have detailed internal policies about their financial assessment and decisions, and publish substantial detail about these matters on their website.

- The CEFC is required to develop and publish
  - an investment strategy,
  - "benchmarks and standards for assessing the performance of the Corporation's investments and of the Corporation itself"
  - and a policy on risk management.[86]
- The CEFC's 33 page *Investment Policies* document outlies a wide range of matters in considerable detail, including:
  - their *Corporate Governance Framework,*
  - how they interpret the investment criteria in their Mandate, and
  - a detailed outline of their *Investment Screening Process.*[87]
- Efic has published a *Corporate Plan.* Its current Plan covers the coming four years, outlining key strategies, activities, and financial targets.[88] Efic also publishes information about its risk management framework.[89]
- CEFC proactively consults widely with a broad range of stakeholders, beyond those narrowly involved in project proposals. The Efic Corporate Plan outlines plans for stakeholder engagement .
- Both CEFC[90] and Efic report on performance on environmental, social and governance issues. Efic participates in investor principles for responsible

[86] Clean Energy Finance Corporation Act 2012, Section 68, https://www.legislation.gov.au/Details/C2012A00104

[87] CEFC (2016) *CEFC Investment Policies* http://www.cleanenergyfinancecorp.com.au/media/222517/CEFC-Investment-Policies_161101.pdf

[88] Efic (2016) *Corporate Plan 2016-17* https://www.efic.gov.au/media/3472/corporate-plan-2016-17-final_sept.pdf

[89] Efic (2016) *Annual Report 2015-16* https://www.efic.gov.au/media/3484/efic-annual-report-2015-2016.pdf p76-81

Efic (2016) *Risk Management Framework* https://www.efic.gov.au/about-efic/our-governance/governance-framework/risk-management-framework/

financing, including the Equator Principles, on which it publicly reports. It conducts audits biannually.[91]

- Efic has both a *Policy* and a *Procedure for environmental and social review of transactions.*[92] This includes rating proposals in terms of their social and environmental risks and processing them differently. For 'Category A' proposals, with the highest risks, Efic conducts public consultation *prior* to making financing decisions. This includes public notification and submissions.[93] Public scrutiny allows Efic to better consider risks.

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[90] CEFC (2015) *Annual Report - Appendix B Environmental Performance And Ecologically Sustainable Development* http://annualreport2015.cleanenergyfinancecorp.com.au/appendices-glossary-abbreviations/appendix-b/

[91] Efic (2015) *Independent Audit* https://www.efic.gov.au/about-efic/our-corporate-responsibility/transactions/independent-audit/

[92] Efic (2015) *Efic Procedure for Environmental and Social Review* https://www.efic.gov.au/media/1225/efic-procedure-environmental-social-review-aug15.pdf

[93] Efic (2015) *Transaction Disclosure* https://www.efic.gov.au/about-efic/our-corporate-responsibility/transactions/transaction-disclosure/

People and capacity

BOARD

The NAIF has a Board, including a Chair and four to six other members. The Board's functions are deciding "the policies and strategies to be followed by the Facility" and ensuring "the proper, efficient and effective performance of the Facility's functions".[94]

The Board is appointed by the Minister; Board members must have "experience or expertise in one or more" of relevant fields provided in a list.[95]

The Board is required to meet twice a year, last in November. In Senate Estimates it was revealed they intend to meet about every two months.[96]

CEO AND STAFF

The NAIF Act provides for a CEO, appointed by the Board, to run the NAIF day-to-day, in accordance with policies and directions from the Board.[97]

The NAIF CEO is currently Ms Laurie Walker. Ms Walker was previously a banking executive, including as ANZ's global head of loan product and execution. Ms Walker began in in late October.

The interim CEO left NAIF on 2 December.[98] Strangely, the NAIF-Adani story broke the very next day.

On 20 October, the Secretary of the Department of Industry said the NAIF had at that time only two staff, including the interim CEO. [99] A job advertisement from August sought applicants for four positions at the NAIF.[100] Nonetheless, it appears that the NAIF, administering $5 billion of funds, has very few direct staff.

[94] NAIF Act, Section 14
[95] NAIF Act, Section 15
[96] *Economics Legislation Committee* (2016) *Answers to Questions on Notice – SI-34* http://www.aph.gov.au/~/media/Committees/economics_ctte/estimates/sup_1617/Industry/answers/SI-34_Waters.pdf
[97] NAIF Act, Section 28, 29
[98] Hansard (2016) *Senate Estimates, Economics Legislation Committee*, 20 October page 178
[99] Hansard (2016) *Senate Estimates, Economics Legislation Committee*, 20 October page 178-9
[100] Office of Northern Australia (2016) *Northern Australia Infrastructure Facility - Positions Vacant* http://northernaustralia.gov.au/page/northern-australia-infrastructure-facility-positions-vacant

The Secretary also said "Efic, who is providing all of the assessment and the grunt work to support the CEO and the board, has already allocated two dedicated teams."[101] In other words, many of the NAIF's core functions are being outsourced to Efic instead of building internal capacity.

It is unclear if Efic has hired new staff, or if Efic is now providing fewer services under its mandate. It is unclear why the NAIF is not choosing to establish its own capacity for its five years of operation.

RESOURCING

The 2016-17 Budget provided "$43.8 million over five years … to establish the Northern Australia Infrastructure Facility".[102] In other words, the NAIF has an average annual operating cost of $8.8 million per year.

Efic's reporting suggests NAIF is expected to pay them around "on average $3 million" annually for their work assessing projects for the NAIF.[103]

By contrast, in 2015-16

- the CEFC's operating expenses were $23 million.[104]
- Efic's operating costs in its Commercial Account were $34 million.[105]

Note that each agency aims to recover operational costs out of financing activities. However, the NAIF has been given operating resources that are less than half the size of either the CEFC or Efic, despite administering a comparable volume of funds.[106]

[101] Hansard (2016) *Senate Estimates, Economics Legislation Committee*, 20 October page 178-9
[102] Treasury (2016) *2016-17 Budget, Budget Paper 2* http://parlinfo.aph.gov.au/parlInfo/download/publications/tabledpapers/9ee1ba8d-df10-45d7-b903-6bda5b10d21d/upload_pdf/BP2_consolidated.pdf page 127
[103] Described as an 'expense saving'; Efic appears to be treating NAIF payments as reduced expenses. Efic (2016) *Efic 4-Year Corporate Plan 2016-17 to 2019-20* https://www.efic.gov.au/media/3472/corporate-plan-2016-17-final_sept.pdf
[104] Employee benefits, suppliers, and depreciation and amortization. CEFC (2016) *Annual Report 2015-16* http://annualreport2016.cleanenergyfinancecorp.com.au/financial-statements/statement-of-comprehensive-income/
[105] "Operating expenses" Efic (2016) *Annual Report 2015-16* https://www.efic.gov.au/media/3484/efic-annual-report-2015-2016.pdf p86
As noted in the text above, the
[106] While CEFC's total loanable funds are larger than the NAIF's, CEFC is not confined to allocate this over five years. Efic's available capital is much smaller than NAIF's loanable funds, although its current financial exposure is of the same order.

The NAIF's resourcing and staff challenge is further shown by the fact that the NAIF CEO is listed on the website as the contact for processing FOI requests.[107] It is unusual for routine administrative tasks to fall to the most senior person at an agency.

In response to an FOI request, one of the reasons against disclosure given by the NAIF (via the Australian Government Solicitor) was that the NAIF was a small agency that would struggle to process substantial requests.[108]

[107] NAIF (2016) *Freedom of Information* http://www.naif.gov.au/freedom-of-information/

[108] Note there were other reasons given that would likely have been sufficient.
AGS (2017) *Notice of intention to refuse FOI requests – request consultation process*, correspondence 13 January

The Adani proposal

Having examined what is known about the NAIF, let us now return to the Adani loan proposal.

The specific proposal under consideration is a concessional $1 billion loan towards the *North Galilee Basin Rail Project*. This is a 310 km rail link from the Galilee Basin, a large undeveloped coal region, to the Abbot Point coal export terminal.

STATUS OF ADANI PROPOSAL

While the loan proposal attracted significant political attention and public controversy, surprisingly little is known about its content or current status.

The loan proposal itself is almost completely opaque. For example, it is not known what term the loan is over (the mine is approved for 60 years of operation), what kind of concession is sought or what other financiers are involved.

The original story about the proposal said it was ‘conditionally approved’.[109] Asked to confirm this, Minister Canavan replied

> My understanding is that your characterisation is a little strong. It's not preliminary approval, they're conducting further **due diligence** on the project now. They've done **an initial assessment**. That will take them a few more months. … it’s up to them and we'll let them do their job.[110]

Then at the joint Townsville press conference the Minister said the NAIF proposal had entered “a **due diligence** phase, they are terming an **assessment procedure** with Adani”.[111]

It remains unclear whether the project is in the assessment or due diligence phase.

Asked about this in the days following the breaking news, the NAIF CEO declined to acknowledge the existence of the proposal, citing commercial confidence. This was remarkable, given the extent of the public coverage of the proposal.

[109] Viellaris (2016) *Adani’s $2b rail on track for jobs boom*, Courier Mail
[110] bold added, Canavan (2016) *Transcript RN Breakfast with Fran Kelly 5 December* http://www.mattcanavan.com.au/transcript_rn_breakfast_with_fran_kelly_5_12_16
[111] Taken from TVeeder online transcript, ABC 24, 6 December 2016.

Responding to questions from Senate Estimates (held in October, with responses given in December)[112] the Minister and later NAIF said there were

- 80 'expressions of interest' in total;
- 13 investment proposals; and
- 1 formal Investment Proposal at 'due diligence stage'.[113]

Asked specifically if the Adani rail project is "one of the 13 proposals that have been submitted", the NAIF answered simply: "Yes".[114]

However, asked about the single project in due diligence, the NAIF said its name and location was "commercial-in-confidence".[115]

This implies that the Adani proposal was not yet a formal Investment Proposal and is not undergoing 'due diligence'.

It is unclear how the Minister knows that the Adani project is undergoing 'due diligence' and will take "a few more months", given that the NAIF's deliberations are supposed to be confidential and independent and the NAIF refuses to disclose even basic information publicly.

In response to media enquiries about whether the project was proposed by an Adani subsidiary located in a 'tax haven', the NAIF declined to even identify *which* Adani company has made the proposal.[116]

IS ADANI ELIGIBLE?

It is not clear that the Adani proposal is eligible for financing under the NAIF Mandate's mandatory criteria. This makes the NAIF's apparent lack of detailed procedures even more concerning.

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[112] It is unclear if the NAIF's responses (published mid-December) are current as of the response or as of the submission of the questions (in October).

[113] Hansard (2016) *Senate Estimates, Economics Legislation Committee*, *20 October* p76
Economics Legislation Committee (2016) *Answers to Questions on Notice – SI-39* http://www.aph.gov.au/~/media/Committees/economics_ctte/estimates/sup_1617/Industry/answers/SI-39_Ketter.pdf

[114] Economics Legislation Committee (2016) *Answers to Questions on Notice – SI-39*

[115] Economics Legislation Committee (2016) *Answers to Questions on Notice – SI-40* http://www.aph.gov.au/~/media/Committees/economics_ctte/estimates/sup_1617/Industry/answers/SI-40_Waters.pdf

[116] Long (2016) *Adani's Galilee Basin complex corporate web spreads to tax havens* http://mobile.abc.net.au/news/2016-12-21/adani-corporate-web-spreads-to-tax-havens/8135700

Criterion 2. “The project will be of public benefit”

> “In considering public benefit, the Board will give preference to those Projects that will:
>
> serve or have the capacity to serve multiple users; and
>
> produce benefits to the broader economy and community beyond those able to be captured by Project Proponents.”

While it is unclear how the NAIF will assess the public benefit, it is important to note substantial unresolved doubts and questions about the benefits of the Adani proposal:

> 1 - Will the Adani mine pay full coal royalties to the Queensland Government, or has it been granted a ‘royalty holiday’, as was promised under the Newman Government?
>
> 2 - Will the Adani mine pay the full company tax rate in Australia, or will Australian coal be sold through Adani’s entities in tax havens like the Cayman Islands and Singapore?
>
> 3 - How will the project employ ten thousand workers when Adani says, under oath, that only 1,464 jobs will be created, and boasts “everything will be autonomous from mine to port”?
>
> 4 - Will the Adani mine be made to pay for the billions of litres of water it will use?
>
> 5 - If Adani exports 60 million tonnes per year of new subsidised coal, will this reduce coal exports and jobs in other parts of Queensland and NSW?
>
> 6 - Does the Australian government think the world will really use more coal, not less, in the future under the Paris climate agreements?[117]

It is also unclear how the NAIF will assess ‘multi-use’. While the Minister highlights the rail project’s role in potentially opening up the Galilee Basin, on any account the rail will mostly be used by Adani. Moreover it cannot be considered to open up the Galilee Basin if the other mine proposals are even less likely to proceed.

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[117] The Australia Institute (2016) *Open letter puts unanswered economic questions on Adani project to PM* http://www.tai.org.au/content/open-letter-puts-unanswered-economic-questions-adani-project-pm

Criterion 3. “The project is unlikely to proceed, or only at a much later date, without NAIF financial assistance”

The latter part of this criterion, that financing is allowed where it would bring a project forward, is in effect ruled out by a requirement in the body of the mandate: “The Facility must not provide a Financing Mechanism unless the Board is satisfied the Project would not otherwise have received sufficient financing from other financiers.”[118]

Given that this criterion is mandatory, it is surprising that both Adani and the Minister have suggest that the NAIF financing is not necessary for the project.

- An Adani spokesperson said

  > "It's not critical. We have obviously applied for it because it's available … It doesn't necessarily mean it's make or break for the project."[119]

- The Minister later said

  > “There are risks for any first mover, so while Adani may yet decide to take all those risks on itself, it may not.”[120]

Both of these statements imply that Adani’s application is discretionary. In that case, it does not meet the criteria and cannot be accepted.

As noted above, it remains entirely unclear how NAIF will test projects against this criterion.

Criterion 6. The loan will be able to be repaid or refinanced

Notwithstanding the above comments, numerous analysts have doubted whether the Carmichael coal mine project on which the rail proposal depends is viable without unexpected and sustained high coal prices. This includes from BIS Shrapnel,[121] UBS,[122]

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[118] NAIF Investment Mandate (2016) Section 7(1)

[119] In Koziol (2016) *'It’s not critical': Adani says it doesn't even need controversial $1 billion government loan* http://www.smh.com.au/federal-politics/political-news/its-not-critical-adani-says-it-doesnt-even-need-controversial-1-billion-government-loan-20161205-gt425r.html

[120] Canavan (2016) *It’s right to consider Adani loan* AFR 8 December, p38

[121] BIS Shrapnel Chief Economist Dr Frank Gelber, on ABC RN (2016) *Does Adani's Carmichael Coal project stack up financially?* http://www.abc.net.au/radionational/programs/drive/adani-agrees-to-employ-local-workers/8097794

IEEFA[123] and Qld Treasury.[124] Despite the recent increase in prices – driven by Chinese supply policies reducing supply even faster than demand – numerous factors raise doubts about the situation changing for the Adani proposal over the medium term relevant for such a large, long term project.

- The Indian Power Minister plans to end coal imports; India's draft National Electricity Plan implies there is no need to start new coal power plants in the next decade.[125]
- Solar costs continue to fall fast; solar in India has already come in cheaper than imported coal[126] and McKinsey thinks they may soon be cheaper than domestic coal;[127] Adani is itself is exploiting this trend in India with world-record breaking solar developments.[128]
- Global coal markets are flat, and many analysts have called peak coal;[129] the IEA says Chinese demand peaked in 2013, and has yet again downgraded its Medium Term Forecast, seeing no growth in coming years;[130] beyond that, the world has effectively committed to phase out coal.

The proponent also gives grounds for concern.

- Adani's corporate structure is opaque. The presence of 'tax haven' jurisdictions in its structures may hamper attempts to recover financing, assign responsibility and deliver claimed public revenues.[131]

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[122] UBS analyst Daniel Morgan, in Paul and Wilkes (2014) *Adani steps up Australia coal plans ahead of Modi visit* http://www.reuters.com/article/adani-ent-australia-coal-idUSL3N0T126820141112

[123] IEEFA (2015) *Galilee Coal Basin: Carmichael – A Stranded Asset?* http://ieefa.org/wp-content/uploads/2015/05/IEEFA-key-points-Adani-in-Galilee.pdf

[124] Cox (2015) *Treasury doubts over Adani's Carmichael coal mine: 'It is unlikely to stack up'* http://www.smh.com.au/business/mining-and-resources/treasury-doubts-over-adanis-carmichael-coal-mine-it-is-unlikely-to-stack-up-20150630-gi185y.html

[125] Burton and Fernandes (2016) *Is the Indian coal domino about to fall?* http://reneweconomy.com.au/indian-coal-domino-fall-91973/

[126] Vorath (2016) Solar Cheaper than Imported Australian Coal http://reneweconomy.com.au/solar-cheaper-in-india-than-imported-australian-coal-60317/

[127] McKinsey & Company (2016) *Beyond Fossil Fuels* http://petrotech.in/uploadfiles/Speakerprofiles/TS%20-%202%20Aletrnative%20energy%20-%20Beyond_Fossil_Fuels_print%20(1).pdf page 8

[128] Times of India (2016) *Adani unveils world's largest solar power plant in Tamil Nadu* http://timesofindia.indiatimes.com/city/delhi/Adani-unveils-worlds-largest-solar-power-plant-in-Tamil-Nadu/articleshow/54444571.cms

[129] See note 85

[130] See Bainbridge, (2016) *China's coal use likely peaked in 2013 amid rapid shift to renewables, global energy report says* http://www.abc.net.au/news/2016-11-16/china27s-coal-use-peaked-in-20132c-report-says/8030428

[131] Long (2016) *Adani's Galilee Basin complex corporate web spreads to tax havens* http://mobile.abc.net.au/news/2016-12-21/adani-corporate-web-spreads-to-tax-havens/8135700

- High coal prices required to make the Carmichael mine viable risk making Adani's coal power plants less competitive.[132]

Diversification

The Mandate requires the Board to give regard to the need for diversification. The proposed Adani loan would represent 20 percent of the allocated funds. This would not be a diversified portfolio.

[132] Barker (2016) *Coal Price Rally puts Adani Power under Catastrophic Financial Pressure* https://independentaustralia.net/politics/politics-display/coal-price-rally-puts-adani-power-under-catastrophic-financial-pressure,9815

Conclusion

Like other independent financing agencies, the NAIF is intended to allocate funding on an expert basis without political interference. That is its defence against allegations it could end up a "$5 billion slush fund for polluting industries."[133]

Yet the political focus on the Adani proposal creates pressure on the NAIF to fast-track this Decision and raises expectations that it will be approved.

While the Minister has stressed that Investment Decisions are for the NAIF Board, his repeated support for the Adani proposal puts pressure on the NAIF Board and staff, threatens their independence and puts them in a difficult situation. If the Adani proposal project is now approved, it will be widely viewed as politically influenced. That perception would be only reinforced if the NAIF decides to meet only its bare requirements for transparency and process.

The NAIF is still in the process of establishing its basic administrative functions and governance framework. It lacks key policies it is required to have under its founding legislation. It appears to be under-resourced. There are substantial concerns about its governance and transparency, and the current adequacy of its policies and capacities.

In short, there is little indication it is ready to make responsible loans worth $5 billion.

Such a large volume of taxpayer funds could fund a wide range of publicly beneficial activities that do not involve supporting foreign owned coal exporters. Virtually any other decision would have greater public support.

National polling conducted prior to the Adani NAIF controversy showed strong opposition to funding coal industry infrastructure. Indeed, this was the *least* preferred option, contrasting with strong support for funding public services, renewable energy and the National Broadband Network.[134]

The NAIF should not be pressured into fast-tracking $1 billion to a financially and socially risky project supporting a foreign owned export thermal coal operation.

[133] Joint Select Committee on Northern Australia (2016) *Advisory Report on the Northern Australia Infrastructure Facility Bill 2016 - Minority Report* http://parlinfo.aph.gov.au/parlInfo/download/publications/tabledpapers/59241311-923f-4a86-acff-51193889cdc8/upload_pdf/Advisory%20Report%20on%20the%20Northern%20Australia%20Infrastructure%20Facility%20Bill%202016.pdf page 30
[134] The Australia Institute (2016) *NAIF Polling* http://www.tai.org.au/content/naif-polling