

Freedom of Information requests on Adani and the Northern Australia Infrastructure Facility (NAIF)

Despite overseeing \$5 billion in subsidised loans, the NAIF has limited staffing and internal documentation.

The NAIF is a \$5 billion fund for concessional financing to help build infrastructure in northern Australia. In December 2016 there was national coverage of a proposed \$1 billion NAIF loan to Adani to construct the North Galilee Basin Rail Project. This railway would be used to export coal from Adani's proposed Carmichael mega-mine. Minister Matthew Canavan and Deputy Prime Minister Barnaby Joyce gave the proposal their vocal support.

This briefing note outlines Freedom of Information (FOI) requests lodged by The Australia Institute to the Northern Australia Infrastructure Facility (NAIF) and other agencies.¹ It accompanies a discussion paper *Don't Be So Naif: Adani and Governance of the Northern Australia Infrastructure Facility* which explores concerns about NAIF governance, policies, resourcing and transparency.²

Despite being an independent agency, NAIF is facing immense political pressure to make decisions around taxpayer subsidy of a large, highly controversial project. Its responses to FOI requests show an agency only recently established, poorly resourced and lacking detailed internal process documentation.

Key elements of the FOI request are provided and highlighted in an appendix.

Secrecy around Adani proposal

While there has been widespread coverage and vocal government, the NAIF refuses to even mention the Adani proposal, citing commercial confidentiality.

¹ A number of multi-part FOI requests were lodged in late December 2016.

² Swann (2017) *Don't be so Naif*, The Australia Institute (to be released)

In response to FOI requests, NAIF refused to say whether or not it has any documents containing “Adani”, “Galilee Basin” or “Carmichael”.³

Appropriate or not, this extreme secrecy stands stark contrast to the vocal public support from senior government Ministers, raising questions about NAIF’s independence.

Moreover, NAIF has acknowledged the existence of the Adani proposal, in response to questions from Senate Estimates, weeks after the national news coverage. However it still will not say *which* Adani company has made the proposal, or provide other detail.

Similarly, in one FOI decision letter NAIF refers to the “North Galilee Basin Rail Project”, despite the fact this project not mentioned in the original FOI request.

Only 9 staff to assess \$5 billion worth of projects

Despite overseeing \$5 billion in subsidised loans, the NAIF has only a handful of staff and much lower levels of operational resources than similar financing agencies.

In response to FOI requests, NAIF said it held no documents showing total staff numbers or organisational structure, and did not provide this information.⁴

On 20 October, the Secretary of the Department of Industry said NAIF had at that time only two staff, including the CEO.⁵ In August, NAIF advertised positions for four new employees.⁶ It is not known if these have been filled or if there are any other positions. In response to Senate questions, NAIF indicated it now has seven staff.⁷

NAIF does not appear to be developing internal capacity for project assessment.

In Senate estimates the Secretary of the Department of Industry said the Export Finance and Investment Corporation (Efic) “is providing all of the assessment and the grunt work to support the CEO and the board, has already allocated two dedicated teams.” This was confirmed by the head of the Office of Northern Australia: “That is

³ NAIF claims that even mentioning whether these documents exist would make NAIF’s response to our FOI request itself exempt from release.

⁴ As outlined in Swann (2017) *Don’t be so Naif*, The Australia Institute (to be released)

⁵ Hansard (2016) *Senate Estimates, Economics Legislation Committee*, 20 October page 178-9

⁶ Office of Northern Australia (2016) *Northern Australia Infrastructure Facility - Positions Vacant* <http://northernaustralia.gov.au/page/northern-australia-infrastructure-facility-positions-vacant>

⁷ Question on Notice 138, Senate Estimates, Economics Committee http://www.aph.gov.au/~media/Committees/economics_ctte/estimates/sup_1617/Industry/answers/SI-141_Ketter.pdf

correct; I understand two teams, with a number of staff working with project proponents and providing support to the NAIF such as HR support and other supports.⁸

Despite this evidence to the Senate, Efic says it has only two staff working on assisting the NAIF.⁹ By comparison, Efic has over 100 staff in total. Moreover, NAIF's FOI correspondence with The Australia Institute shows there is no contract between NAIF and Efic. On 23 January 2017, NAIF said "As the services agreement between Efic and the NAIF has not yet been finalised and approved by the NAIF Board, there is no formal contract or other agreement in existence."¹⁰

Given this, it is unclear how NAIF can assess any projects. Similarly, it is unclear how the Minister knew in December that due diligence on the Adani project would take "a few more months".¹¹

In response to FOI requests, NAIF repeatedly highlighted that it is a small agency with limited funding, giving this as a reason for not releasing documents or requesting extensions.

Lack of guidance documents for Investment Decisions

To offer financing, the NAIF Board must be satisfied the project meets the mandatory criteria set out in the Investment Mandate. NAIF released no documentation to guide the NAIF board in when making formal Investment Decisions, and on key criteria, there is no documentation.

An FOI request asked for "Any policies, procedures or guidelines to be used to satisfy the [NAIF] Board that the project meets the following Mandatory Criteria", listing:

- that the project *provides public benefits*,¹²
- that it *is unlikely to proceed without NAIF financing*,¹³ and
- that it *will be able to repay NAIF financing*.¹⁴

⁸ Efic's legislation was altered in 2016 to give it a new function of 'assisting' the NAIF. "Grunt work" is the term used by the Secretary of the Department of Industry, Innovation and Science, in October 2016 Senate Estimates.

⁹ As of 23 December 2016, information given by Efic via NAIF under Administrative Access, 18 January 2017. The request was originally made to Efic, which transferred it to the NAIF.

¹⁰ NAIF FOI correspondence, 23 January

¹¹ Coorey, Ludlow (2016) *Parties Split Over Adani Loan Proposal*

<http://www.afr.com/news/politics/parties-split-over-adani-loan-proposal-20161204-gt3va4>

¹² Investment Mandate, Mandatory Criteria 2

¹³ Investment Mandate, Mandatory Criteria 3, NB: this includes "or will only proceed at a much later date, or with a limited scope", however the strict requirement is included in Section 7(2b), Section 9(2)

¹⁴ Loan or other mechanism, concessional but covering the cost to the government.

NAIF said it had no documents for Board assessment of whether a project will proceed without NAIF financing or be able to repay financing.¹⁵

Documents that did exist included:

- *"Public benefit policy (draft)" (5 pages).*
- *"NAIF Guideline - Indigenous Engagement Strategy Criterion (Draft)" (6 pages) -*
- which addresses another Mandatory Criterion.

NAIF did not release either document. Despite addressing Mandatory Criteria, both policies are still in draft form.

NAIF provided no information about how it will assess the public benefit of a proposal. There is no indication that it will consider potential negative impacts from projects on other industries or the community.

No detailed Application and Assessment process

NAIF does not have detailed internal policies and procedures for application and assessment. The Minister says there is "there is not really a formal submission or application process" but "discussions that occur".¹⁶ Public guidance is very general.¹⁷

The Australia Institute's FOI requests asked for "Any policies, procedures or guidelines to be used to decide whether a project moves between Eligibility, Assessment and Due Diligence" – the assessment stages outlined on the NAIF website.

The NAIF found only one document that directly met this description, which it did not release: *"Applications and Approvals Procedure -- Diagram"* (6 pages).

Other related documents, also not released, included:

- *Risk Appetite Statement* (15 pages). Note this is dated November 2016, and is a 'draft'. Yet in early Dec NAIF said that this policy was not finalised.
- *Credit Policy Guidelines* (5 pages Aug 2016). Note that NAIF did not report holding a Credit Policy.
- *Public Benefit policy (Draft)*

Investment Mandate, Mandatory Criteria 6, see also Section 7(2c)

¹⁵ NAIF FOI Statement of Reasons, 19 January,

¹⁶ Hansard (2016) Estimates, Economics Legislation Committee, 20 October, p177

¹⁷ The NAIF application webpage asks only for "name", "email" and "message"; there is nowhere to attach a document. The assessment webpage says there are four stages and lists information expected from proponents in general terms.

- *NAIF Guideline - Indigenous Engagement Strategy Criterion (Draft)*

NAIF refused to release any of these documents, saying it would interfere with the efficient operation of the agency:

[Releasing these documents] would reveal to proponents and other interested parties the NAIF's methodologies beyond what is required or appropriate to disclose publicly. Disclosure of this information could provide certain parties with an advantage, and could cause proponents to alter their contact with the NAIF and possibly the content of their application, in a manner that makes it harder for the NAIF to objectively and accurately assess applications.¹⁸

It is unclear how disclosing how NAIF makes its decisions would provide undue advantage or interference with those decisions.

Governance policies

NAIF is required to have policies for corporate governance, giving regard to best practice in government and commercial finance. NAIF has that would be expected, which it released, including a 'Compliance Program', 'Confidentiality Policy', a FoI policy and 'Public Interest Disclosure Policy', the latter three being in draft form. These policies do not relate to project assessment.

In January 2017 NAIF published five policies on its website, apparently in response to public requests for NAIF policies. All were created earlier in 2016. These policies contain no substantive information about assessment of applications.

NAIF Board decisions and meeting schedule

One heavily redacted document released under FoI shows NAIF Board members are making decisions outside of formal meetings. (This is permitted under the NAIF Act).¹⁹

The minutes for the "1st NAIF Audit and Risk Committee Meeting" on 7 October record that: "Members noted the Risk Management Policy was approved by the Board via circular resolution on 19 September 2016."²⁰ NAIF redacted all other sentences in this document.

Note NAIF did not list a "Risk Management Policy" among its policies for corporate governance or project assessment.

¹⁸ NAIF (2017) *Statement of Reasons*, 18 January, page 6.

¹⁹ Section 27, *Northern Australia Infrastructure Facility Act 2016*,

²⁰ *FoI Document 13, 1st NAIF Audit and Risk Committee Meeting Minutes* released 18 January, page 2

NAIF refused to release the future schedule of Board meetings:

The NAIF is a small agency with a small team providing administrative support to the Board. The lead-up to Board meetings is a peak time of busyness for that team, on whom the Board relies to ensure its meetings run smoothly and effectively. If the dates of Board meetings were disclosed, there is a reasonable likelihood that this would lead to a concentration of media and other enquiries which those same officers would be required to manage at the same time as preparing materials and arrangements for the Board.²¹

²¹ NAIF (NAIF) Statement of Reasons, 18 January, page 7

Appendix: Screenshots



18 January 2017

Mr Tom Swann
Researcher
The Australia Institute
By email: tom@tai.org.au

Dear Mr Swann,

Decision on your Freedom of Information Request of 19 December 2016

I refer to your application under the *Freedom of Information Act 1982* (the FOI Act) received by the Northern Australia Infrastructure Facility (NAIF) on 19 December 2016. Your request sought the following:

1. *The most current version of the following documents:*
 - a. *The Risk Appetite Statement (s12 of the Investment Mandate);*
 - b. *Corporate Governance policies (s17(1) of the Investment Mandate);*
 - c. *Any policies, procedures or guidelines to be used to decide whether a project moves between Eligibility, Assessment and Due Diligence (as outlined on the NAIF website);*
 - d. *Any policies, procedures or guidelines to be used to satisfy the Board that the project meets the following Mandatory Criteria:*
 - i. *the project delivers sufficient "public benefit" and will "have the capacity to serve multiple users" (MC 2);*
 - ii. *"The proposed Project is unlikely to proceed, or will only proceed at a much later date, or with a limited scope, without financial assistance" (MC 3);*
 - iii. *"the loan will be able to be repaid or refinanced" including any assumptions acceptable to the Board for the financial analysis (MC 6);*
2. *The most recent document/s containing:*
 - a. *the date/s of all currently scheduled forthcoming Board meetings;*
 - b. *whether the Board has decided to make decisions outside of meetings, and if so what decisions and how;*

c. The NAIF organisation chart or similar document showing the number of staff at the NAIF (please redact all personally identifying information).

3. All documents created between 1 October 2016 to 19 December 2016 containing at least one of the following terms: "Adani", "Carmichael", "Galilee Basin".

Please redact all elements deemed commercial in confidence.

I would be pleased to receive any of the above information under an administrative access agreement, in which case I will withdraw those elements on my request.

This letter sets out my decision on your request for access.

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FOI request section	Access decision	Document/s ¹
1(a)	Refuse access	Document 12
1(b), 1(c), 1(d)(i)	Grant access in full	Documents 1, 2, 6, 10
	Grant access in full	Administrative access release of five policies available online ² and one further Process document
	Grant access in part	Documents 3-4
	Refuse access	Documents 5, 7-9
1(d)(ii), 1(d)(iii)	Nil documents	N/A
2(a)	Refuse access	Document 11
2(b)	Grant access in part, irrelevant matter deleted	Document 13
2(c)	Nil documents	N/A
3	s26(2) statement of reasons	Release of this information would make these reasons an exempt document (ss 45, 47, 47E).

Attachment A

Schedule of documents / Decision of 18 January 2017
Freedom of Information Request made to the NAIF by Tom Swann, 19 December 2016

Doc No.	Pgs	Date	Description	Decision	Exemption
1.	4	August 2016	Compliance Program	Grant access in full	--
2.	7	August 2016	Public Interest Disclosure Policy (Draft)	Grant access in full	--
3.	7	August 2016	Freedom of Information Policy (Draft)	Grant access in full	--
4.	4	August 2016	Confidentiality Policy (Draft)	Grant access in part	s47C – Deliberative processes s47E(d) – Operations of agencies
5.	5	August 2016	Credit Policy Guidelines	Refuse access	s47E(d) – Operations of agencies
6.	6	August 2016	Human Resources – Code of Conduct (Draft)	Grant access in full	
7.	6	November 2016	Applications and Approvals Procedure – Diagram	Refuse access	s47C – Deliberative processes s47E(d) – Operations of agencies
8.	5	November 2016	Public Benefit Policy (Draft)	Refuse access	s47C – Deliberative processes s47E(d) – Operations of agencies
9.	6	November 2016	NAIF Guideline – Indigenous Engagement Strategy Criterion (Draft)	Refuse access	s47C – Deliberative processes s47E(d) – Operations of agencies
10.	5	November 2016	Director & CEO Travel and Expenses Policy	Grant access in full	--

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Attachment A

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11.	2	30 November 2016	2016-2017 Board and Audit Committee Meeting Schedule	Refuse access	s47E(d) – Operations of agencies (s22 – Irrelevant matter)
12.	15	November 2016	Risk Appetite Statement	Refuse access	s47E(d) – Operations of agencies
13.	4	7 October 2016	NAIF Audit and Risk Committee Meeting Minutes	Grant access in part, ¹ irrelevant matter redacted	(s22 – Irrelevant matter)