



Wangan & Jagalingou Traditional Owners Family Council

Submission to Senate Economics References Committee inquiry into the governance and operation of the Northern Australia Infrastructure Facility (NAIF)

28 July 2017

Introduction

Thank you for the opportunity to make a submission to the Senate's enquiry on the governance and operation of the NAIF. Wangan and Jagalingou are the Indigenous Traditional Owners of a vast area of land in central-western Queensland. We are the first people and our country – Wangan and Jagalingou country – is in what is now called the Galilee Basin; and in the area designated as Northern Australia for the operation of the Northern Australia Infrastructure Facility (NAIF).

For many thousands of years, we have been custodians of country and it is our responsibility to protect our land, water, people, heritage and totems.

The Wangan and Jagalingou Traditional Owners Council (W&J) is a family representative group that provides direction in the affairs of the W&J people and decides matters based upon our right to self-determination.

The Council is composed presently of 27 people – 2 delegates and 1 youth representative for each of the 9 families currently working to protect our Country and develop an economic pathway that is not dependent on mining and the destruction of our lands, waters and heritage.

The Council is open to all 12 families that descend from our apical ancestors, and therefore a membership of 36. The council is a governance body representing the rights and interests, under our laws and customs, of the Traditional Owners of Wangan and Jagalingou Country.

The W&J are directly impacted upon by the NAIF Board's pending decision on an application by the Adani Group, as we are Traditional Owners of the area in which the Carmichael mine and related mining infrastructure is proposed.

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Submission

We note the public interest submission of John Quiggin, Kristen Lyons, and Morgan Brigg of the Global Change Institute, University of Queensland [attached]. Their submission refers to a research paper, “Unfinished Business”, which arises from collaboration the W&J Council is undertaking with them, and the Australian Lawyers for Human Rights, under a Global Change Institute Flagship Project [attached]. *For more information - <http://www.gci.uq.edu.au/we-are-people-land>.*

The views in their submission and accompanying documents are endorsed by the W&J Council. We particularly endorse their views on Indigenous Development. The NAIF does not proceed from the basis of a defined, transparent and meaningful Indigenous Engagement Strategy leading to a clear agenda for Indigenous development.

In fact, there are no public terms for Indigenous engagement under NAIF, much less any substantive or meaningful process that could encompass the needs, preferences and different circumstances of Indigenous peoples throughout the vast area referred to as Northern Australia.

Further, as with all matters involving the Adani project and the W&J, there are contested and litigated aspects which make it clear that Adani does not have full ‘free, prior and informed consent’ of the W&J, as required to meet the international and legal rights of Indigenous Peoples, and is subject to ongoing court hearings. The most pertinent of these challenges is to a purported Indigenous Land Use Agreement for the Carmichael mine project, which is scheduled for hearing in the Federal Court in March 2018.

As was noted by the Shadow Attorney General in the Commonwealth Parliament during the recent debates on amending the Native Title Act, a process conspicuously embroiled with the interests of Adani –

The passing of the bill did not “provide some kind of removal of a final legal hurdle for the Adani mine, as some media reports have suggested. There are in fact several very serious pieces of litigation that remain on foot... In particular, the Wangan and Jagalingou people, the traditional owners of much of the land on which the mine and its facilities are proposed to be built, have several legal actions against Adani...

"In particular, they have made clear that there are some very serious allegations of fraud against Adani regarding the processes under which the Wangan and Jagalingou agreement was purportedly reached. Those proceedings, which may very well impact on the validity of any Indigenous land use agreement, will only commence trial hearings in March of next year, and there are other legal actions underway, including a case that challenges the validity of the licences issued by the Queensland government”.

This alone should be grounds on which the NAIF Board pauses and refuses a loan of public funds unless and until these matters are resolved. If they cannot address these issues openly, publically and definitively *before* approving a high-risk concessional loan, then they are failing the broader Australian community on public interest grounds, as well as Indigenous people who should be substantial beneficiaries, not casualties, of Northern investment.

Further, NAIF has not had advanced conversations, as noted in the submission by Quiggin, Lyons and Brigg, “with Indigenous peoples across northern Australia as part of the Northern Australia

agenda”, and in view of the huge opportunity cost of “the proposed high risk Adani rail project [which] is being strongly resisted by Wangan and Jagalingou people as part of overall resistance to the proposed Adani Carmichael coal mine”.

We reiterate the concerns arising from this and the adverse effects on our people from the proposed Carmichael mine. These effects are described in the report *Unfinished Business: Adani, the State, and the Indigenous Rights Struggle of the Wangan and Jagalingou Traditional Owners Council*, available in full at <http://earthjustice.org/sites/default/files/files/Unfinished-Business.pdf>.

These impacts, which must be considered as part of the assessment of the public interest, include –

- The destruction of our ancestral homelands, thereby irreversibly devastating culture, customs and heritage if the mine was to proceed
- An Indigenous Land Use Agreement (ILUA) process that has divided our people, including both within and across families, severing relationships
- Our people carry the costs of these conflicts and divisions (as do other Aboriginal people caught up in similar conflicts) in deeply personal ways, including in the form of stress, fatigue and a range of health problems. These impacts double down on our people who are already living with the legacies of violent settler-colonialism and destruction of country and heritage

The Carmichael mine would deliver massive destructive impacts on our ancestral homelands, leading to large scale destructive impacts on the ecology and water resources, alongside producing huge carbon emissions.

On his visit to Australia in September 2016, Michel Forst, the United Nations Special Rapporteur on the Situation of Human Rights Defenders, said that Indigenous rights defenders “face lack of cooperation or severe pressure from the mining industry with regard to project activities, *as has been exemplified in the case of the proposed Carmichael Coal Mine in central-western Queensland.*” (emphasis added).

Mr Forst identifies a pattern of the business and resource industry “portraying landowners, environmental human rights defenders and watchdogs as activists who obstruct economic development of the country. Mining and extractive industry has been reported as the most aggressive, sometimes exerting excessive pressure against indigenous peoples trying to protect their land, environment or cultural heritage”.

The Rapporteur said that “many indigenous human rights defenders still experience severe disadvantages compared with non-indigenous defenders. They are marginalised and unsupported by state and territory governments” and the Commonwealth government uses “the federal system as limitation on its ability to exercise responsibility for supporting indigenous rights defenders”. He said that our “right to free, prior and informed consent is not protected under Australian law, and government officials frequently fail to meaningfully consult and cooperate with indigenous and community leaders”.

And in the face of this we receive extremely limited compensation in return for forfeiting our rights and land. Employment benefits from the project will not offset these adverse effects. The Adani impact assessment indicates very limited job creation associated with the mine for Aboriginal people.

The fact is Adani’s offers have always been insulting and meagre compensation for the destruction of our land, waters and heritage. And we have rejected them.

Adani's much touted Indigenous Participation Plan talks in big headline numbers but would deliver the equivalent to Aboriginal people in the region of about \$5,000 a person per year.

The re-allocation of a relatively small proportion of the public investment sought for this project from NAIF could deliver substantially greater employment and development benefits to our people than anything available from this project. And it could instead be focused on sustainable, innovative and culturally compatible ventures and support for growth in new 21st Century industries, including renewable energy.

The development model deployed under current policy settings simply undervalues our peoples' land, knowledge and cultural resources; perpetuates an economic model in which we cannot aspire to high levels of employment and education and enterprise; and assigns us the role of marginal mendicants to the dominant economic interests of a society grounded in colonial appropriation, and mired in an archaic industrial model.

In conclusion

The governance and operation of the Northern Australia Infrastructure Facility (NAIF) does not serve us specifically as Traditional Owners who are potentially adversely affected by the Carmichael mine project, with enabling funding from NAIF; nor as Indigenous people in Northern Australia, historically disenfranchised while others have and still prosper from the economically productive land base which was taken from us without consent or restitution.

The NAIF mandate does nothing to address this in a just and equitable manner and should be redrawn to bring about a proper consideration of, and investment in, culturally-aligned and self-determined Indigenous development.

We are available to address the matters raised in our submission at a hearing of the committee.



Yours faithfully,

Adrian Burragubba & Murrawah Johnson

For the Wangan & Jagalingou Traditional Owners Family Council