

11 April 2017

Ms Sharon Warburton, Chair
Ms Laurie Walker, CEO
Northern Australia Infrastructure Facility

By email only: naif@naif.gov.au

Dear Ms Warburton and Ms Walker

Financial support of Galilee Basin rail

1. The Australian Conservation Foundation has instructed us to advise on the content of duties of officials of the Northern Australia Infrastructure Facility (**NAIF**) with respect to the consideration of financial support for two Investment Proposals for rail infrastructure for the Galilee Basin.
2. In our opinion NAIF board members and executives are likely to breach their duty of care and diligence if an Investment Decision is made to offer a Financial Mechanism for any Galilee Basin rail project. This letter sets out our findings.

Background

3. Media reports two applications for NAIF support have been made for rail projects to the Galilee Basin. We understand the principal purpose of each rail project is to cart thermal coal from the Galilee Basin hundreds of kilometres to Queensland's Great Barrier Reef coast. Most of the coal is to be exported. India is a key destination. One application appears to be from a Cayman Island controlled entity associated with the proposed Carmichael mine (**Adani Investment Proposal**). The second application is by ASX-listed Aurizon Holdings Ltd (**Aurizon Investment Proposal**).

The legal framework

4. NAIF officials must perform their duties in accordance with the duty of care and diligence contained in s 25 *Public Governance Performance and Accountability Act 2013* (**PGPA Act**) and extracted below.

25 Duty of care and diligence

(1) An official of a Commonwealth entity must exercise his or her powers, perform his or her functions and discharge his or her duties with the degree of care and diligence that a reasonable person would exercise if the person:

- (a) were an official of a Commonwealth entity in the Commonwealth entity's circumstances; and
- (b) occupied the position held by, and had the same responsibilities within the Commonwealth entity as, the official.

5. Section 25 PGPA Act is the public sector equivalent of corporate directors' duty of care and diligence under s 180(1) *Corporations Act 2001 (Cth)*. The Explanatory Memorandum to the PGPA Act states:

182. As a general principle, officials in the public sector should not be held to a lower standard of account than employees of publically listed companies. If anything, they should be held to a higher standard, given that taxpayers do not have a choice as to whether they are to be 'shareholders' of public sector entities.

183. Basing duties on concepts understood across the public and other sectors will help the cause of government joining with other sectors and in recruiting directors for government bodies. It will facilitate more efficient and effective corporate governance in public sector entities if those directors can confidently draw on their knowledge and experience gained in the private sector and apply it to their government role. It can also create an overarching culture and environment of best practice corporate governance.

6. A memorandum of opinion dated 7 October 2016 by Noel Hutley SC and Sebastian Hartford Davis advised directors of corporations to consider climate related risks or invite legal action.¹ The advice states:

Accordingly, directors should consider and, if it seems appropriate, take steps to inform themselves about climate-related risks to their business, when and how those risks might materialize, whether they will impact the business adversely or favorably, whether there is anything to be done to alter the risk, and otherwise consider how the consequences of the risk can be met.

...

In some cases, the duty of care and diligence will require a director to go further than merely consider the risks. Some further action may be required.

...

In determining whether the duty of care and diligence has been breached, the Court will engage in an exercise (which is, in effect, expected of a reasonable director) of balancing foreseeable risk of harm to the company against the potential benefits that might accrue to the company from the activity or conduct in question. The Court's balancing exercise will involve consideration of factors such as the magnitude of the risk, the degree of probability of its occurrence, the expense, difficulty and inconvenience of taking alleviating action, and any other conflicting responsibilities which the director may have. That exercise will be done by reference to the facts as established by the evidence.

7. Transition risks, as outlined in Mr Hutley SC's advice, include the risk that demand for thermal coal from major trading partners decreases.

A related risk is the prospect for regulatory change in jurisdictions that are major trading partners. The resource extraction industry has obvious exposure in this regard: 97% of metallurgical coal, 71% of thermal coal and 50% of gas extracted annually in Australia is exported – coal exports alone represent 11.9% of total goods and services trading. It follows that the sector, indeed the entire Australian economy, is exposed to fluctuations in international demand for these commodities, as well as changes in markets and policies. The Paris Agreement, which is expected to lead to a reduction in demand for fossil fuels, was signed by Australia's major trading

¹ <https://cpd.org.au/wp-content/uploads/2016/10/Legal-Opinion-on-Climate-Change-and-Directors-Duties.pdf> (references omitted)

partners for coal and LNG exports (Japan, China, India, Korea and Taiwan). This presents clear financial risks...

An important subset of climate change literature concerns “stranded assets”. In the longer term, some scientists think that, if the Paris Agreement is to be achieved, only 20% of the Earth’s known fossil fuel reserves can be burned before 2050. This may mean significant reserves of fossil fuels will need to be transferred from the asset to the liability side of a company’s balance sheet. We were briefed with an investment report from Schroder’s, suggesting that the majority of assets for listed fossil fuel companies could not be burnt, and should be recognized as liabilities (ie “stranded assets”). There is research suggesting that Australia faces acute risks in this regard. This is something that directors of funds management and investment businesses, as well as companies owning such assets, may have a duty to consider.

8. On 17 February 2017, Australian Prudential Regulatory Authority (**APRA**) Executive Director Mr Geoff Summerhayes, delivered a speech to the Insurance Council of Australia. He referred to a sub-2 degree climate change scenario analysis as the new normal for all APRA regulated entities.²

Scenario analysis as the new normal

A critical implication of what I have just recounted is the importance of considering, and modelling, the potential impact of climate-related risks under different scenarios and over different time horizons. The most important scenario, in my opinion, is the sub-2 degree Celsius transition scenario that the Paris Agreement is anchored around, since that will guide much of government policy around the world.

9. The requirement to consider climate change scenarios is under APRA Prudential Standard CPS 220 *Risk Management*³ paragraph 26:

An APRA-regulated institution’s risk management framework must include forward-looking scenario analysis and stress testing programs, commensurate with its size, business mix and complexity, and which are based on severe but plausible assumptions.

10. NAIF’s Australian commercial peers or ‘Commercial Financiers’ in the Investment Mandate, are Authorised Deposit Taking Institutions (**ADIs**) regulated by APRA.⁴ Even before Mr Summerhayes’ comments, best practice for an ADI was to consider the impacts of a two degrees scenario on its business. Since his speech, consideration of a sub-2 degree scenario is not simply best practice, it can be considered a legal requirement for Commercial Financiers.

NAIF’s circumstances

11. NAIF manages over \$5 billion in tax-payer funds and has a mandate to provide financial assistance for the construction of economic infrastructure. Its business mix comprises solely of infrastructure support which is inherently long-term. It follows that NAIF is not a complex business compared to many ADIs. As such, forward-looking scenario analysis and stress testing can be implemented relatively easily.

² <https://www.documentcloud.org/documents/3467257-ICA-Speech-Geoff-Summerhayes-17-February-2017.html>

³ <http://www.apra.gov.au/CrossIndustry/Documents/Prudential-Standard-CPS-220-Risk-Management-January-2015.pdf>

⁴ <http://www.apra.gov.au/adi/pages/adilist.aspx>

12. Since his February 2017 address, Mr Summerhayes has emphasised that all APRA regulated institutions must address climate risk. In particular, Mr Summerhayes noted that credit assessments for loans of greater than one year terms had a heightened susceptibility to climate change risk, and specifically, regulatory (transition) risk.⁵
13. Relevantly, the explanatory memorandum to the *Northern Australia Infrastructure Facility Act 2016 (Cth)* (**NAIF Act**) suggests NAIF can lend on terms of up to 30 years. Accordingly, we expect the Adani and Aurizon Investment Proposals would seek long-term funding. In any event, there is little prospect that support for the Projects would be for less than one year.
14. Between \$800 million and \$900 million is reportedly required from NAIF for the Adani Investment Proposal. For Aurizon, media reports NAIF has been delivered a \$1.25 billion proposal.⁶ The amounts sought far exceed the revised \$200 million per loan that the revised costing impact of the NAIF Act were modelled.⁷ Large loan principals carry proportionate risk in what would amount to a relatively undiversified portfolio, contrary to NAIF's mandate.⁸ Climate change transition risk is therefore of immediate relevance for loans contemplated by the Adani and Aurizon Investment Proposals.
15. The Projects are subject to direct and immediate climate change risks. If demand for the low quality thermal coal product on the Investment Proposals' rail decreases, the risk of the rail line becoming a stranded asset increases. A stranded asset would not be able to service and eventually repay the NAIF loan. An expectation of repayment by an asset at significant risk of stranding could not be met if a NAIF official exercised the appropriate level of care and diligence.⁹
16. We understand that for both proposals Adani's proposed Carmichael mine is a major source of coal to be transported along the rail. As such, the viability of the mine is a lynch-pin for both Proposals' viability. In January 2016, the University of Oxford Smith School of Enterprise and the Environment published *Stranded Assets and Thermal Coal*. India, the destination for the Galilee Basin rail's coal was recognised as having the largest fossil fuel subsidies in the world (along with Indonesia) which was therefore prone to revision. Adani Enterprises Ltd, the ultimate owner of the Carmichael mine, was ranked highly for 'environment-related risk' in an analysis of the top 20 global thermal coal mining companies. Those risks expose capital expenditure to stranding.¹⁰
17. Adani Enterprises Ltd, the owner of the Carmichael mine, proposes to on-sell coal to Adani Power Ltd which is expected to execute long-dated off-take agreements for 80% of Carmichael's coal. We note Adani Power Ltd is considered an unbankable partner.¹¹ The Project Proponents may seek to ring-fence from the global market demand, and

⁵ Senate Standing Committee on Economics, Inquiry into carbon risk disclosure, hearing 8 March 2017, per Mr Summerhayes at p47 of Hansard Proof, available here: http://parlinfo.aph.gov.au/parlInfo/download/committees/commsen/04cf6cef-9366-43c0-bf16-6359fb31c925/toc_pdf/Economics%20References%20Committee%202017%2003%2008%204830.pdf;fileType=application%2Fpdf#search=%22committees/commsen/04cf6cef-9366-43c0-bf16-6359fb31c925/0000%22

⁶ <http://www.afr.com/business/energy/aurizon-returns-to-the-galilee-basin-with-northern-infrastructure-fund-plan-20170315-guys3y>

⁷ NAIF Act Explanatory Memorandum, revised costings

⁸ Section 7(4) NAIF Investment Mandate Direction 2016

⁹ Section 7(2)(b) NAIF Investment Mandate Direction 2016

¹⁰ See pages 18, 39, 47: <http://www.smithschool.ox.ac.uk/research-programmes/stranded-assets/satc.pdf>

¹¹ ieefa.org/ieefa-australia-worlds-biggest-open-cut-coal-proposal-smaller-now-less-ambitious-still-unbankable

therefore pricing, for the rail carted coal by virtue of Adani's vertical integration. This is illusory. Both Adani entities are separate public companies listed on the Bombay Stock Exchange. Directors of each company have duties to the respective company. Irrespective of what each Investment Proposal may put forward, the notion that the global seaborne thermal coal price and demand will not influence the viability of the project is absurd. If that argument carried weight, the directors of Adani Power Ltd companies will be at risk of breaching their duties to the company by not paying market rates.

18. Interestingly, Aurizon in its 2016 sustainability report predicted a 43% increase in coal consumption for electricity between 2013 and 2030 pursuant to the IEA's 2015 New Policies Scenario, ignoring the 450 Scenario that best models the Paris Climate Agreement that Australia has ratified.¹² It is reasonable to assume Aurizon will not adequately consider a 2 degree global warming scenario in financial modelling provided to NAIF.
19. Blackrock, the world's largest asset manager with US\$5.1 trillion funds under management, according to its 2017-2018 engagement strategy, will place significant emphasis on the implementation of a high global price on carbon emissions. In our view, irrespective of short or medium term forecasts, this is a strong signal that the global financial community will see a price on carbon which will in turn adversely impact any coal production and sale, further heightening stranded asset risk to the Galilee rail project.¹³ This is entirely consistent with the approach for divestments of potential stranded asset companies by the Norwegian Sovereign Wealth Fund, the largest such Sovereign fund in the world.
20. NAIF's mandate invites additional considerations. The risk of a project failing to repay NAIF's loan increases when NAIF concessions are invoked. These concessions include: a longer loan tenor, extended periods of capitalisation of interest, deferral of loan repayments and ranking lower than commercial financiers for cash flow purposes.¹⁴ It is logical to assume that the later the repayments, or the more subordinated the security, the more transition risks are likely to impact adversely on a project that relies on low quality export thermal coal extraction for viability.
21. NAIF must have regard to best practice principles of corporate governance of Commercial Financiers.¹⁵ NAIF's directors must be satisfied of an expectation that any loan be repaid.¹⁶ This context gives rise to duties analogous to duties of directors of Australian corporations. NAIF's officials must consider the very real risk that global policies are implemented in the medium term compatible with a 2 degree scenario (irrespective of how the Australian government acts in the near term), and then proceed with an Investment Decision exercising the requisite care and diligence.

Two degree scenario analysis

22. It is reasonable to assume NAIF officers would not be exercising due care and diligence if they failed to consider the International Energy Agency (IEA) World Energy

¹²

<http://www.aurizon.com.au/~media/aurizon/files/sustainability/2016%20sustainability%20report/fy2016%20full%20sustainability%20report.ashx> at p 21

¹³ <https://www.blackrock.com/corporate/en-us/about-us/investment-stewardship/engagement-priorities#climate-risk>

¹⁴ Section 10, NAIF Investment Mandate Direction 2016

¹⁵ Section 16, NAIF Investment Mandate Direction 2016

¹⁶ Section 7(2)(b) NAIF Investment Mandate Direction 2016

Outlook (**WEO**). The WEO models energy demand under a two degree scenario called the 450 Scenario. This scenario is understood to be conservative (ie. insufficient) as it gives merely a 50% chance of holding global warming to under 2 degrees from pre-industrial levels.¹⁷

23. The IEA published the 2016 WEO in October 2016. Under the 450 Scenario it forecast a 52% decline in coal production in Australia by 2040 on 2014 levels, and a 60% decline in thermal coal exports over the same period.¹⁸ The IEA analysed Indian energy demand in detail under the 450 Scenario.¹⁹
24. In terms of regional demand, in December 2016, two months after the publication of IEA's 2016 WEO, India released its Draft 10 Year National Energy Plan. The plan emphasised the importance of the Paris Agreement and set ambitious renewable targets.²⁰ In India ever since, prices of renewable energy have plunged and market forces have pushed to make imported thermal coal energy use commercially unviable.²¹ Further, the Indian government has stated its intention to cease thermal coal imports by the end of this decade.²² On 28 March 2017, the Indian government owned NTPC, which produces 25% of India's electricity, foreshadowed plans to shelve a new thermal coal power station on the basis that it is more expensive than solar power.²³ In India, producing electricity solar power is cheaper than existing coal fired power stations, let alone new plants.
25. In our view, it is reasonable to conclude IEA's 450 Scenario for Indian thermal coal demand is excessively conservative, being well short of the Indian government's new trajectory for import coal use in light of unsubsidized solar and wind generation being immediately lower cost than that of import coal fired power plants. Further, the contracts of electricity supply from renewables explicitly build in zero price indexation, a key competitive advantage that makes the inflationary risks of imported coal materially less attractive.
26. China, and North Asia, are the other key demand drivers for Australia's seaborne thermal coal and the viability of the rail projects. China, which leads the region, is enforcing strict anti-pollution measures targeting coal use²⁴ and is a leader on the implementation of the Paris Agreement.²⁵ The outlook for thermal coal is dim.

¹⁷ IEA WEO 2016, p 21. The conservative nature of the IEA's scenario is illustrated by the Intergovernmental Panel on Climate Change Fifth Assessment Report (2014) 'RCP' Scenarios which includes 'likely' (66% to 100% likelihood) and 'more likely than not' (>50% to 100%) to limit global warming to a certain temperature: Climate Change 2014: Mitigation of Climate Change. Contribution of Working Group III to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change, p 13

¹⁸ Page 207

¹⁹ Pages 536-541

²⁰ http://www.cea.nic.in/reports/committee/nep/nep_dec.pdf

²¹ <https://www.bloomberg.com/news/articles/2017-02-10/india-solar-costs-fall-to-record-in-competitive-bidding-auction>; <https://cleantechnica.com/2017/03/01/indian-wind-prices-reach-record-low-1-gigawatt-auction/>

²² <http://reneweconomy.com.au/read-my-lips-indian-energy-minister-repeats-no-coal-imports-within-3-years-73239/>

²³ <http://economictimes.indiatimes.com/industry/energy/power/ntpc-may-drop-further-expansion-plans-of-kudgi-thermal-project-in-karnataka/articleshow/57859308.cms>

²⁴ <http://www.irishtimes.com/news/world/asia-pacific/china-issues-350bn-anti-pollution-plan-as-smog-woes-mount-1.2926872>

²⁵ <https://www.theguardian.com/world/2017/jan/19/chinas-xi-jinping-says-world-must-implement-paris-climate-deal>

27. It follows that existing brownfield thermal coal extractive ventures, those with sunk costs and minimal leverage, are largely expected to meet the declining demand profile likely to result from the global policy implementation of the 450 Scenario.
28. The IEA agrees. Critically for NAIF both rail proposals are for large greenfield projects in remote basins. Under IEA's 450 Scenario there is no scope for development of the Adani Investment Proposal or the Aurizon Investment Proposal. The relevant extract of the 2016 WEO is provided below.²⁶

The share of global steam coal production that is traded internationally [in the 450 Scenario] drops, from 18% in 2014 to 15% in 2040. The main reason behind this trend is that by 2040 the majority of the coal used in the power sector is combusted in plants with CCS, which is often best suited to integrated operations that focus on the least-cost deposits near the power stations. The de-globalisation of the steam coal market hits exporters across the board, but those with low production costs and proximity to key importers in developing Asia, are slightly better off than exporters that have large market shares in the Atlantic basin. India, where CCS makes limited inroads in the 450 Scenario, also tends to focus on the exploitation of domestic deposits, meaning that steam coal imports peak around 2030; but the subsequent import decline is less steep than, for example, in China or Japan. In the 450 Scenario, cumulative investments are, unsurprisingly, the lowest in the three WEO scenarios. Nevertheless, cumulatively some \$730 billion of investments still go into the global supply coal supply chain over the projection period to sustain production in existing mines and to compensate for depletion. **Investment is focussed on small incremental projects in well-established mining regions, as the scenario leaves no scope for the development of large greenfield projects in remote basins.**

(our emphasis)

29. We reiterate that this appears to be a conservative statement. Bloomberg states the IEA “has tended to overestimate coal production”.²⁷
30. It is not just the IEA that concludes large greenfield projects like the rail projects for Galilee Basin coal will be unviable under a 2 degree scenario. On 29 September 2016 EJA wrote to NAIF informing you that NAIF support of Galilee Basin infrastructure was incompatible with a 2 degree scenario. We cited two sources. A September 2016 report that relied on IEA data from 2015 and a January 2015 *Nature* article.²⁸

²⁶ International Energy Agency, World Energy Outlook 2016, October 2016, Page 208

²⁷ <https://www.bloomberg.com/gadfly/articles/2017-04-02/coal-s-dirty-australian-secret-it-s-not-coming-back>

²⁸ Oil Change International, *The Sky's Limit: Why the Paris Climate goals require a managed decline of fossil fuel production*; http://priceofoil.org/content/uploads/2016/09/OCI_the_skys_limit_2016_FINAL_2.pdf. At p24 ‘The consequence of our analysis is that no new extractive or facilitating infrastructure should be built anywhere in the world’. A 2015 article in the journal *Nature* reveals Australia will need to leave 97% of hard coal in the ground if the 2°C target is to be met: C McGlade and P Ekins, ‘The geographical distribution of fossil fuels unused when limiting global warming to 2 °C’, *Nature*, 8 January 2015, vol 517, from 187, ‘Extended Data Table 3: Regional distribution of resources unburnable before 2050 in absolute terms and as a percentage of current resources under the 2°C scenario that allows CCS’. See also Extended Data Table 6. Importantly, this estimate may be conservative as CCS (Carbon Capture and Storage) is currently not commercially viable and may never be. In October 2015, the International Energy Agency, the premier economic modelling agency for global energy, stated that coal companies have five years to prove that clean coal could be commercially viable: ‘Five year deadline for clean coal: International Energy Agency’, *The Australian*, 6 October 2015. The IEA WEO 2016 states the 450 Scenario relies increasingly less on

Application of the legal framework

31. NAIF can only support projects that would not otherwise proceed or be significantly delayed.²⁹ So, in applying for NAIF support, both proposals at the outset must not be commercially viable without NAIF support. The Board must tread a thin line that, on the one hand, supports the expectation of full repayment and, on the other, assesses each project as non-viable without NAIF support and offers concessions favouring Commercial Financiers. A heightened, and precise, standard of diligence and care is therefore required.
32. Corporate directors owe duties to the company. Hutley SC noted the interests of a company may be limited.³⁰ Here, the context of the duty owed by NAIF officials has a slightly different, but similar scope. Broadly speaking, the scope is established by the NAIF Act, Investment Mandate and the PGPA Act.
33. The NAIF Act requires the 'proper, efficient and effective' performance of NAIF's functions.³¹ Further, the PGPA Act requires NAIF Board to promote the efficient, effective, economical and ethical management of NAIF's resources³² as well as to promote the financial stability of NAIF.³³
34. Financial risk is therefore a key component of NAIF officials' duties. It is reinforced by the mandatory requirement that NAIF has an expectation to be repaid by a project³⁴ which is, in turn, founded on the requirement to cover borrowing and administrative costs.³⁵
35. If a Court were to review NAIF's consideration of the Adani and Aurizon Investment Proposals, we expect the judiciary would find a sub-2 degree scenario risk analysis was entirely necessary. Pursuant to APRA comments, it would be the most reasonable base scenario upon which NAIF would evaluate any Investment Decision exposed to climate change risks, particularly one such as this that is bound to a low quality, at best marginally viable, source of new thermal coal supply. That supply will act to lower the end market pricing as a result of oversupplying a market where global demand is already in structural decline that will only accelerate with further technology enhancement of new competing sources of electricity. In performing a sub-2 degree scenario analysis, NAIF would need to take into account IEA models and other models from reputable organisations.
36. Furthermore, financial modelling provided to NAIF in the Investment Proposals must be made on a reasonable basis.³⁶ To satisfy that test, those models would not be able to contradict the IEA's forecasts.
37. If NAIF were to justify an expectation of repayment based upon repayment flexibility, repayments weighted in later periods, or financial models that contradicted reputable 2

CCS (p208). Reputex says CCS will not be economically viable before 2030:

<https://www.reputex.com/media-releases/rising-gas-price-falling-storage-costs-makes-renewables-cheapest-for-reliable-power-in-australia/>

²⁹ Section 7(2)(a), Mandatory Criterion 3, NAIF Investment Mandate Direction 2016

³⁰ At paragraph [10].

³¹ Section 14 NAIF Act

³² Section 15(1)(a) PGPA Act, noting the definition of 'proper' in s 8 PGPA Act.

³³ Section 15(1)(c) PGPA Act

³⁴ Section 7(2)(b) NAIF Investment Mandate Direction 2016

³⁵ Section 7(2)(c) NAIF Investment Mandate Direction 2016

³⁶ *GIO Australia Holdings Ltd v AMP Insurance Investment Holdings Pty Ltd* (1998) 29 ACSR 584.

degree scenarios, a Court would, in our view, find no reasonable basis for that justification. If NAIF officials were to rely on unreasonable forecasts, the officials would not meet the required standard of care and diligence.³⁷

38. Mr Hutley SC set out considerations a Court would make to determine a breach of directors' duty (paragraph 6 above). For NAIF, we expect a Court would take into account the same factors. Subsequently, if a Court reviewed NAIF officials' consideration of the Adani and Aurizon Investment Proposals it would conclude:
- (a) the magnitude of risk to NAIF to be so high as to be unreasonable;
 - (b) the degree of probability of loss to NAIF to be so high as to be unreasonable;
 - (c) the expense, difficulty and inconvenience of taking alleviating action, for example by not providing financial support, to be negligible given the existence of other Investment Proposals and the 2021 time-frame for the facility to operate; and
 - (d) the directors had no other conflicting duties because the Board is strictly independent of government and cannot be directed to provide support for a particular project.³⁸

Conclusion

39. APRA has determined that climate change risks are irrefutably financial risks. The risks are real. They are no longer 'ESG criteria' which some consider non-mandatory. The financial risks to NAIF for the Adani Investment Proposal and Aurizon Investment Proposal crystallise under a 2 degree scenario. This is the appropriate scenario for NAIF to consider. It is reasonable, foreseeable, a required consideration and best practice.
40. Upon considering a base 2 degree scenario a NAIF official must, if they act with the appropriate care and diligence, conclude that each of the Adani and Aurizon Investment Proposals is an unviable proposition for NAIF support. It follows that a NAIF official exercising the requisite standard of care and diligence can, and must, make only one decision, and that is to refuse to provide any financial support to any Galilee Basin rail project.

³⁷ By not considering a 2 degree scenario, or by considering providing support to a project that contradicts the sub 2 degree climate goals of the Paris Agreement, NAIF also acts in a way that is likely to cause damage to the Commonwealth's Government's reputation in contravention of section 16 NAIF Investment Mandate Direction 2016. This hypocrisy, perceived or otherwise, is embarrassing both internationally and domestically. It arises by virtue of Australia's express support for the Paris Agreement by ratifying it on 9 November 2016.

³⁸ NAIF Act s 9(4). In fact, the directors have other duties coloured by requirements for a diversified portfolio and to prioritise multi-user facilities.

Given our advice on this matter, our client seeks an undertaking from NAIF officials that NAIF will not provide financial support to the Adani or Aurizon Investment Proposals.

In addition, we offer to meet at your convenience to discuss our client's concern and the contents of this letter. Please contact us on (03) 8341 3100 to arrange a meeting.

Yours sincerely

A handwritten signature in black ink, appearing to read 'DBO', followed by a horizontal line extending to the right.

David Barnden
Lawyer
Environmental Justice Australia