

A review of the Adani group's environmental history in the context of the Carmichael coal mine approval

Adani Mining Pty Ltd, a member of the Adani group, is seeking approval to operate the largest coal mine in the southern hemisphere, in Queensland's Galilee Basin – the Carmichael mine. Reflecting public expectations that the suitability of companies to undertake such operations should be carefully scrutinised, Queensland environmental regulation contains a 'character check' through which a company gains registration as a 'suitable operator'. This is to ensure that companies that are given approval to undertake environmentally risky activities such as large coal mines can be trusted to undertake the activities proposed.

An analysis of legal actions taken against members of the Adani group of companies in India confirms that members of the Adani group demonstrate a consistent pattern of breaching Indian laws and causing environmental harm. This report outlines the results of our investigations as to how Adani Mining Pty Ltd has nonetheless secured the necessary registration as a 'suitable operator' for the Carmichael mine.

Our investigations demonstrate that the Queensland environmental regulator undertook only a very cursory analysis of the suitability of Adani Mining Pty Ltd to hold an environmental approval and operate the largest coal mine in Australia. The convoluted process for determining suitability was inadequate to properly assess whether Adani Mining Pty Ltd should be trusted to operate the Carmichael coal mine.

The results of our investigation indicate that the public can have little confidence that important issues regarding the track record of the Adani Group have been adequately scrutinised. The issues raised in this report should be addressed by the Queensland regulators and those considering public or private financing of the Carmichael mine and associated infrastructure projects.

Inadequate scrutiny of environmental record

Under Queensland law, a company that intends to carry out activities such as mining must be registered as a 'suitable operator' under the *Environmental Protection Act 1994* (Qld).¹ The government may refuse a company's application for registration based on that company's environmental record.² Although Adani Mining Pty Ltd has been registered as a 'suitable operator', there is no indication that its environmental record since 2010 has been considered by the Queensland government. In fact, our investigations reveal that the entire process by which Adani Mining Pty Ltd was found suitable to operate in Queensland demonstrates little government scrutiny and a failure to take into account any of the numerous unlawful actions of Adani group companies that have occurred since that suitability was originally considered.

The need to investigate Adani Mining Pty Ltd's registration as a suitable operator

The *Environmental Protection Act 1994* (Qld) empowers the chief executive of the Department of Environment and Heritage Protection ('the Department') to cancel or suspend a registration if the applicant is not suitable due to its environmental record.³ Here, although the applicant is Adani Mining Pty Ltd it is clearly part of a group of companies interconnected to the extent that they should be considered as a combined operation. This group has committed serious legal violations and caused extensive environmental harm in India. It is therefore not a suitable operator, and its registration should be cancelled. In addition, it may well be that Adani Mining Pty Ltd's executive officers have been executive officers of other Adani companies that have committed disqualifying events, and on that basis the registration may be cancelled under section 318K(a).

Given the gravity of the legal violations and environmental harm in India, and the potential environmental impacts in Australia were Adani Mining Pty Ltd to fail to comply with environmental approvals, the Chief Executive of the Department should exercise her power under section 318R to investigate Adani Mining Pty Ltd's suitability to operate in Queensland.

¹ *Environmental Protection Act 1994* (Qld), ss 318F-318J.

² *Id.*, s 318H.

³ *Id.*, ss 318K(b)

How Adani Mining Pty Ltd secured registration as a ‘suitable operator’ under Queensland law

In Queensland, a company that proposes to undertake an activity such as mining requires an environmental authority, which is issued by the Department following an assessment process.⁴ Adani Mining Pty Ltd obtained its first environmental authority around 4 August 2010 by ‘transfer’. This means it purchased the environmental authority from another company, and this took place only about one week after Adani Mining Pty Ltd was incorporated in Australia on 28 July 2010.⁵ When this transfer took place, the law required the predecessor of the Department to have regard to Adani Mining Pty Ltd’s suitability to hold an environmental authority and to its environmental record.⁶ Notably, at this time, the environmental harm and breach of environmental regulations by various companies in the Adani group described later in this report had not yet occurred.

The *Environmental Protection Act 1994* (Qld) requires the Department to provide copies of environmental authorities to the public for inspection upon request.⁷ However a copy of Adani Mining Pty Ltd’s original environmental authority is not publicly available, and the Department has been unable to locate a copy. Environmental Justice Australia has filed a right to information application to obtain it.

Around 11 August 2011, the type of environmental authority that Adani Mining Pty Ltd held was changed.⁸ Then, on 14 March 2012, the environmental authority number was changed by the Department, apparently due to administrative error.⁹ As a result, the original environmental authority had three different numbers over the course of two years. This is particularly concerning given the findings of the Queensland Auditor General in 2014 that the Department is not fully effective in its supervision, monitoring and enforcement of environmental conditions and is exposing the state to liability and the environment to harm unnecessarily.¹⁰ According to that report, data being used to regulate the industries that directly harm Queensland’s environment is “unreliable, hard to access, difficult to analyse, and often incapable of providing timely and quality information to inform decisions”.¹¹

The second iteration of the permit gave Adani Mining Pty Ltd permission to undertake very limited exploration activities on the site for the proposed Carmichael coal mine including:

- (i) Drilling, costeaning, pitting or carrying out geological surveys;
- (ii) Chemical storage of 50t of chemicals or dangerous goods; and
- (iii) Sewage treatment of design capacity with a total daily peak capacity of 100 to 1500 equivalent persons.

On 31 March 2013, the *Environmental Protection Act 1994* (Qld) was amended to require a company to be registered as a ‘suitable operator’ before the Department could grant it an environmental authority. However, the amending law, the *Environmental Protection (Greentape Reduction) and Other Legislation Amendment Act 2012* (Qld), deemed the holder of an existing environmental authority to be registered as a ‘suitable operator’.¹²

This means that Adani Mining Pty Ltd was automatically registered as a ‘suitable operator’ without having to disclose any information about its environmental record and without the government investigating its suitability.¹³ The government never considered the breach of environmental approvals and laws by various companies in the Adani group described later in this report.

⁴ See generally, Queensland Government, Business and Industry Portal, Applying for an environmental authority, available at <https://www.business.qld.gov.au/business/running/environment/licences-permits/applying-environmental-authority> (accessed 23 January 2015).

⁵ ASIC search, Adani Mining Pty Ltd – ACN 145 455 205, available at https://connectonline.asic.gov.au/RegistrySearch/faces/landing/SearchRegisters.jspx?_adf.ctrl-state=hchuxn830_4 (accessed January 21, 2015).

⁶ *Environmental Protection Act 1994* (Qld) (Reprint No.9F, as in force from 5 July 2010), s 304.

⁷ *Environmental Protection Act 1994* (Qld), ss 540 and 540A.

⁸ Department of Environment and Resource Management, *Environmental Authority (exploration and mineral development) for Non-code compliant level 1 mining project*, Permit Number: MIN200857709, 11 August 2011.

⁹ Department of Environment and Resource Management, *Environmental Authority (exploration and mineral development) for Non-code compliant level 1 mining project*, Permit Number: MIN102643011, 14 March 2012.

¹⁰ Queensland Audit Office, *Environmental regulation of the resources and waste industries – Report 15: 2013-2014*, page 1, available at <https://www.qao.qld.gov.au/files/file/Reports%20and%20publications/Reports%20to%20Parliament%202013-14/RTP15Environmentalregulationoftheresourcesandwasteindustries.pdf> (accessed 23 January 2015).

¹¹ Id

¹² *Environmental Protection Act 1994* (Qld), s 705, inserted by s 60 of the *Environmental Protection (Greentape Reduction) and Other Legislation Amendment Act 2012* (Qld) with effect from 31 March 2013. See also, *Environmental Protection (Greentape Reduction) and Other Legislation Amendment Bill 2012 – Explanatory Notes*, pages 4 and 180, available at <https://www.legislation.qld.gov.au/Bills/54PDF/2012/EnvProGRQLAB12Exp.pdf> (accessed 22 January 2015).

¹³ *Environmental Protection Act 1994* (Qld), s 705(1)(b).

If Adani Mining Pty Ltd had not held an environmental authority at the time that the law changed in 2013, it would have had to go through a statutory process to assess its suitability to operate. To be registered as a suitable operator, a company must disclose information about its environmental record – including whether it has been convicted of an environmental offence or had an environmental approval or similar permit cancelled or suspended *whether in Queensland or elsewhere*.¹⁴ A business partner includes ‘any of the corporation’s executive officers and any other corporations of which the executive officers are, or have been, an executive officer’.¹⁵ If the government is not satisfied that the company is suitable for registration, due to its environmental record, the government may refuse to register the company (or cancel its existing registration).¹⁶ The government may also refuse or cancel a registration if the company, its executive officers, or another company of which its executive officers are or have been executive officers, commit a disqualifying event.¹⁷ A ‘disqualifying event’ includes a conviction for an environmental offence or the cancellation or suspension of an environmental approval or similar permit.¹⁸

Adani Mining Pty Ltd is a wholly owned subsidiary in the Adani group, and is inextricably linked to the group’s integrated operations. The Adani group presents itself as a unified entity – ‘Adani is a globally integrated infrastructure player’¹⁹ – and does not distinguish between the operations of the different Adani group companies.²⁰ Adani Mining Pty Ltd does not even have a separate website; rather, information about Adani Mining Pty Ltd is presented as a component of the mining activities of the Adani group.²¹

Because the Adani group’s operations are so entwined we argue that the environmental harm caused by the Adani group companies in India and their breaches of environmental approvals demonstrate that Adani Mining Pty Ltd is not suitable to operate in Queensland. As noted above, these actions may even provide grounds for cancelling Adani Mining Pty Ltd’s current registration as a ‘suitable operator’ and should be the subject of an investigation by the Chief Executive of the Department under the *Environmental Protection Act 1994* (Qld).

Since its automatic registration as a ‘suitable operator’, Adani Mining Pty Ltd has received four more environmental authority permits for activities with a greatly increased risk of environmental harm – all without having its environmental record assessed. A further approval for an environmental authority to operate the Carmichael coal mine, is currently the subject of legal proceedings before the Land Court of Queensland. At the conclusion of those proceedings, the Minister for Environment and Heritage Protection will consider the court’s judgment when deciding whether to grant that environmental authority. Once again, the environmental history and record of breaches by the Adani group will not be considered. The test of Adani Mining Pty Ltd’s suitability to hold an environmental authority that would have occurred in August 2010, though we’ve not seen the documents to confirm that it did occur, remains the only time this issue has been considered by the Queensland Government – despite the increasingly risky activities that Adani Mining Pty Ltd has been authorised to undertake.

¹⁴ Department of Environment and Heritage Protection, *Application form – Environmental Protection Act 1994 – Application to be registered suitable operator*, available to download at <http://www.ehp.qld.gov.au/licences-permits/suitable-operators/> (accessed 21 January 2015).

¹⁵ *Id.*

¹⁶ *Environmental Protection Act 1994* (Qld), ss 318H(a) and 318K(b).

¹⁷ *Id.*, ss 318H(c) and 318K(a).

¹⁸ *Id.*, Schedule 4 – definition of ‘disqualifying event’.

¹⁹ Adani, *Corporate Brochure*, page 1, available at http://www.adani.com/Common/Uploads/HomePageTemplate/2_File_Adani%20Corporate%20brochure%20.pdf (accessed 21 January 2015).

²⁰ See, for example, *Id.*, pages 8-9.

²¹ See generally, <http://www.adanimining.com/> (accessed 21 January 2015).

Summary of investigations into the Adani group's environmental history

Adani Mining Pty Ltd is a wholly-owned subsidiary of a large Indian company called Adani Enterprises Ltd.²² Adani Enterprises Ltd has around 80 subsidiaries in India, Indonesia and Australia that, among other things, operate mines and coal ports.²³ Unfortunately, Adani Enterprises Ltd and its subsidiaries have a history of breaching environmental regulations and causing environmental harm in India.

As recently as December last year, another subsidiary of Adani Enterprises Ltd, Adani Mormugao Port Terminal Pvt Ltd, was issued a notice by the state pollution control board in relation to Mormugao Port in the state of Goa.²⁴ This notice asked the Adani company to show cause why its 'consent to operate' should not be cancelled, as the state pollution control board had identified a failure to install air quality monitoring, as required by law, and observed coal dust pollution caused by uncovered coal stockpiles and unutilised sprinkling and dry fogging systems.²⁵

At Mundra in India, a company called Adani Ports and Special Economic Zone Ltd ('Adani Mundra') operates one of the world's largest coal-fired power plants, together with a port and special economic zone²⁶ – all with a particular disregard for environmental regulation going back some years. In 2010, following an investigation, the Indian Ministry of Environment and Forests ('Ministry') issued a notice to Adani Mundra asking it to show cause why its environmental approval should not be cancelled.²⁷ The Ministry found violations of Adani Mundra's environmental approval, coastal zone regulation, and a Coastal Zone Management Plan (which has been in place since 1996).²⁸ The environmental harm at Mundra included destruction of mangroves and obstruction of creeks and the tidal system due to large-scale coastal reclamation.²⁹ In addition, a township and hospital had been developed without proper approval.³⁰ This demonstrates a blatant disregard for the law and the environment, and a failure to fulfill responsibilities to protect the environment and comply with environmental approvals.

Despite the Ministry's findings, Adani Mundra continued its course of environmental destruction. In 2013, an independent committee appointed by the Ministry observed more environmental damage to the coastal area.³¹ For example, mangrove forests had vanished, local creeks had disappeared, protective measures for a nearby conservation area were ignored, there was a failure to protect against salinity intrusion into groundwater, and it was possible that fly ash was being dumped – all in violation of environmental approvals.³² Adani Mundra also demonstrated disregard for government regulation: it had attempted to circumvent statutory processes for obtaining environmental approvals, constructed an airstrip without approval, and failed to adhere to monitoring and reporting standards.³³

Adani Enterprises Ltd – the Adani group's parent company – stands accused of active involvement in large scale illegal iron ore exports.³⁴ In July 2011, the Lokayukta (ombudsman) of the Indian state of Karnataka reported that Adani Enterprises Ltd, which was a service provider at a port from which iron ore was exported, had bribed customs officials, the police, the State Pollution Control Board, local politicians and others in return for favours for illegal exports.³⁵ Also, Adani Enterprises Ltd routinely accepted iron ore from traders who were not permitted to supply the ore, or in excess of the permitted

22 Adani Enterprises Limited, *22nd Annual Report 2013-2014 ('Adani Annual Report')*, page 133, available at http://www.adani.com/Common/Uploads/FinanceTemplate/1_FFReport_AEL%20AR%202014-15.pdf (accessed 20 January 2015).

23 *Id.*, pages 28 and 65.

24 Times of India, *Adani Terminal at MDT get GSPCB notice for Pollution* (31 December 2014), available at <http://timesofindia.indiatimes.com/city/goa/Adani-terminal-at-MPT-gets-GSPCB-notice-for-pollution/articleshow/45695541.cms> (accessed 20 January 2015).

25 *Id.*

26 Adani, *Power generation – thermal*, available at <http://adanipower.com/power-thermal>; Adani, *About Mundra port*, available at http://www.adaniports.com/about_mundra_port.aspx (both accessed 20 January 2015).

27 Ministry of Environment and Forests, *Show Cause Notice under Section 5 of Environment (Protection) Act, 1986 for violation of the provisions of the Coastal Regulation Zone Notification 1991 by M/s Mundra Port & SEZ Ltd* (15 December 2010), paragraphs 1-19.

28 *Id.*, paragraph 19.

29 *Id.*, paragraphs 1-19.

30 *Id.*, paragraphs 9-11.

31 *Report of the Committee for Inspection of M/s Adani Port & SEZ Ltd, Mundra, Gujarat* (April 2013), available at <http://www.moef.nic.in/sites/default/files/adani-report-290413.pdf> (accessed 22 January 2015).

32 *Id.*, pages 77-80.

33 *Id.*, pages 76-81.

34 Karnataka Lokayukta, *Report on the Reference made by the Government of Karnataka under section 7(2-A) of the Karnataka Lokayukta Act, 1984 (Part – II)* (27 July 2011), page 55, available at http://www.thehindu.com/multimedia/archive/00736/Report_on_the_refer_736286a.pdf (accessed 22 January 2015).

35 *Id.*, pages 54-55.

quantity.³⁶ The Lokayukta concluded that this scam, in which other companies also participated, resulted in the illegal export of around 7.7 million tonnes of ore between 2006 to 2010.³⁷

Further details on our extensive investigation into Adani group's environmental history are in **APPENDIX A** to this report.

INFORMATION ON THE CARMICHAEL COAL MINE

The Carmichael coal mine will be located in the Galilee Basin, around 400km inland from Abbot Point Port, which is around 980km north of Brisbane on the coast near the Great Barrier Reef. The mine is predicted to begin production in 2017.³⁸ At full production it will be by far the largest coal mine in Australia – authorised to extract up to 74.5 million tonnes of coal per year³⁹ for an estimated 60 years,⁴⁰ disturbing over 32,000 hectares of land⁴¹ – and one of the largest in the world.⁴²

The mine will be operated by Adani Mining Pty Ltd, which was established in Australia in 2010 to mine and export coal.⁴³ Coal from the mine will be transported by rail for export via Abbot Point Port, where another company associated with the Adani group has a lease over the coal export terminal, and has also been granted approval to construct an additional terminal.⁴⁴ Adani Mining Pty Ltd also has approval to build a railway line from the mine in the Galilee Basin to Moranbah where it will join existing lines to Abbot Point Port.⁴⁵

The coal from the Carmichael mine will be predominantly exported to India,⁴⁶ where it will be burned in the Adani group's coal-fired power plants, releasing pollution that harms the local villagers, many of whom are too poor to afford electricity.⁴⁷ This process means that companies in or associated with the Adani group are responsible for the environmental management of the project throughout its supply chain – from mining the coal, to transporting it via rail and putting it on ships that will travel through the Great Barrier Reef, to importing and burning it in India.

³⁶ *Id.*, pages 23, 34, 46-49.

³⁷ *Id.*, pages 20, 34, 54.

³⁸ The Sydney Morning Herald, Wiggins J, *Adani threatens to scrap Abbot point over dredging delays* (30 June 2014), available at <http://www.smh.com.au/business/mining-and-resources/adani-threatens-to-scrap-abbot-point-over-dredging-delays-20140630-zsqki.html>; Financial Review, Heath J, *Consortium scraps plans to dump waste in Great Barrier Reef* (2 September 2014), available at http://www.afr.com/p/national/consortium_scraps_plans_to_dump_laabUjzDME6if9kKDqG8eN (both accessed 23 January 2015).

³⁹ See condition A2 of the draft environmental authority EMPL01470513 for the Carmichael mine, dated 28 August 2014.

⁴⁰ See generally, Queensland Government, Department of State Development, Infrastructure and Planning, *Carmichael coal mine and rail project: Coordinator-General's evaluation report on the environmental impact statement ("Report on Carmichael EIS")* (May 2014), page 10, available at <http://www.dsdip.qld.gov.au/resources/project/carmichael/carmichael-coal-mine-and-rail-cg-report-may2014.pdf> (accessed 20 January 2015).

⁴¹ *Id.*, page 9.

⁴² ABC News, Rollo, W, *Carmichael coal mine and rail project: Queensland mine gets federal government approval* (28 July 2014), available at <http://www.abc.net.au/news/2014-07-28/carmichael-coal-mine-project-gets-federal-approval/5628584> (accessed 20 January 2015).

⁴³ See generally, *Report on Carmichael EIS*, above n 38, page 2.

⁴⁴ Adani Abbot Point Terminal Pty Ltd has a long term lease over Terminal 1 at Abbot Point. See generally, North Queensland Bulk Ports Corporation, *Abbot Point Port*, available at <http://www.nqbp.com.au/abbot-point/>; Adani, *Abbot Point Port*, available at http://www.adaniports.com/abbot_point_port.aspx#Dudgeon%20Point; Australia Government Department of the Environment, *Referral detail – Title of referral: Adani Abbot Point Terminal Pty Ltd/Mining/Port of Abbot Point/QLD/Abbot Point Coal Terminal 0*, available at http://www.environment.gov.au/cgi-bin/epbc/epbc_ap.pl?name=current_referral_detail&proposal_id=6194 (all accessed 21 January 2015).

⁴⁵ *Report on Carmichael EIS*, above n 40, pages 2, 8.

⁴⁶ *Id.*, page 14.

⁴⁷ The Guardian, Goenka D, *Take it from us in India: the world needs renewables, not more Australian imported coal* (21 October 2014), available at <http://www.theguardian.com/commentisfree/2014/oct/22/take-it-from-us-in-india-the-world-needs-renewables-not-more-australian-exported-coal> (accessed 21 January 2015).

Appendix A

Adani's environmental record: an analysis of the evidence

There is significant evidence in India of the Adani group's failure to comply with the law and its environmental permits, and of the environmental harm it has caused.

1. In relation to the Mundra Port and Special Economic Zone ('Mundra SEZ'), which is operated by Adani Ports and Special Economic Zone Ltd ('Adani Mundra'), an investigation in December 2010 by officials from the Indian Ministry of Environment and Forests ('Ministry') found large-scale destruction of mangroves (at least some of which was caused by reclamation by dredged materials and by obstruction of tidal flow by a dredging disposal pipeline), obstruction of creek systems and natural seawater flow by reclamation, and development of a township, airport and hospital without the proper environmental approvals.

Following this report, the Ministry issued a 'show cause' notice, stating that it was of the opinion that Adani Mundra had violated the environmental regulations and the conditions of its environmental approval. The notice required Adani Mundra to show cause why its environmental approvals should not be cancelled and why it should not remove all reclamation in the mangroves and creeks and undertake mangrove afforestation.

2. In April 2013, a report on the Mundra SEZ was prepared by an independent committee established by the Ministry. The report found 'incontrovertible evidence' of Adani Mundra's violations of its environmental approvals, including failure to protect mangroves resulting in the loss of 75 hectares of mangroves in the Bocha Island conservation area and around Navinal creek, and allowing changes to creeks and creek mouths due to construction activities. The report also noted that Adani Mundra had attempted to bypass statutory procedures, including public hearings; allowed construction of an airstrip without an environmental approval; failed to use lining in its storage pond and intake/outlet channel to protect against salinity intrusion into groundwater (in violation of its environmental approvals); and failed to comply with the monitoring and reporting requirements of its environmental approvals. Finally, the report considered it was possible that Adani Mundra was dumping fly ash, in violation of its environmental approvals, and had failed to conduct regular monitoring around the ash pond area. The independent committee recommended the establishment of an environment restoration fund of around AUD\$40 million.

In September 2013, the Ministry issued another 'show cause' notice to Adani Mundra, asking (among other things) for Adani Mundra to show cause why the environmental approval for its North Port should not be cancelled, and holding that approval in abeyance pending decision on the notice. The Ministry also required the establishment of the environment restoration fund, the rehabilitation of all creeks, water bodies and reclaimed land, and the creation of a plan to protect the livelihood of fishermen whose catch and access to the sea had been seriously affected by Adani Mundra's environmental violations.

3. In July 2011, the ombudsman of the state of Karnataka found that Adani Enterprises Ltd was actively involved in large-scale illegal exports of iron ore. Adani Enterprises Ltd was a service provider at the Port of Belekeri, through which iron ore was transported. The ombudsman's report found that Adani Enterprises Ltd had bribed local officials (including port officials, customs, the police, and local politicians) to receive 'undue favour for illegal exports', and noted that forged permits were found in Adani Enterprises Ltd's offices. Adani Enterprises Ltd was also found to have routinely received trucks carrying more than the allowed amount of iron ore, and received iron ore from suppliers who did not have the required permits to supply that ore.

I. Mundra Port and Special Economic Zone

Much of the evidence of the Adani group's failure to comply with environmental regulation and the environmental harm that it has caused relates to the Mundra Port and Special Economic Zone ('Mundra SEZ'). Mundra SEZ is operated by Adani Ports and Special Economic Zone Ltd ('Adani Mundra'), which was previously called Mundra Port and Special Economic Zone Ltd.¹ The primary documents are a 2010 report by the Indian Ministry of Environment and Forests ('Ministry') and a 2013 report by a committee established by the Ministry, both of which found evidence of Adani Mundra's non-compliance with environmental conditions, and environmental damage around the Mundra SEZ.

A. 2010 site visit and 'show cause' notice

Following a complaint by a group (called Machimar Adhikar Sangharsh Sangathan (MASS)) that works with fishing communities around Mundra, officials from the Ministry conducted a site visit to the Mundra SEZ in December 2010 and reported on that visit.²

The report noted that the relevant environmental clearances for the Mundra SEZ stated that:

- 'No existing mangroves shall be destroyed';
- 'There shall be no filling up of the creek and reclamation of the creeks'; and
- 'Construction of the proposed structures, if any in the Coastal Regulation Zone area shall be undertaken meticulously conforming to... rules and regulations... . All the construction designs/drawings relating to the proposed construction activities must have approvals of the concerned State Government Departments/Agencies.'³

The report found:

- Large-scale reclamation using dredged material was being carried out on the mangrove area behind the West and North Port site;⁴
- a dredging disposal pipeline had been laid in the inter-tidal area carrying dredged material to the landward side of the port to reclaim the land area on the West and North Port side. The pipeline had been 'obstructing the tidal flow due to which the mangroves stretch on the western and northern port side have been affected and at several places they have dried up';⁵
- '[a]t several places there has been large scale destruction of mangrove area specially at the northern port side abutting the dredging pipeline';⁶
- '[t]he creeks systems and the natural flow of seawater is being obstructed by reclamation along the creeks. At some stretches destruction of mangroves has been observed';⁷
- Adani Mundra had developed an airport and township apparently without the proper clearance;⁸ and
- Adani Mundra had created a township by reclaiming coastal regulation zone area without proper clearance.⁹

The report proposed that a 'show cause' notice be issued, apparently requiring Adani Mundra to show cause why environmental clearances for the West and North Ports and the township project should not be cancelled, the pipeline for dredged material should not be removed, all reclamation in the mangrove area should not be removed, all creek systems which had been reclaimed should not be opened up to allow natural flow of seawater, and why mangrove afforestation of

1 Adani Enterprises Limited, 20th Annual Report 2011-2012, page 79, available at http://www.adani.com/Common/Uploads/FinanceTemplate/1_FFReport_Annual%20Report%202011-12.pdf (accessed 22 January 2015).

2 Site visit to M/s Mundra Port & SEZ Ltd Port site at Mundra and M/s OPG Power Gujarat Private Limited on 6th – 7th December 2010, available at <http://www.moef.nic.in/downloads/public-information/site-visit-Mundra-OPG.pdf> (accessed 5 November 2014).

3 *Id.*, page 2.

4 *Id.*

5 *Id.*, page 3.

6 *Id.*

7 *Id.*

8 *Id.*, page 4.

9 *Id.*

1000 hectares should not take place at Adani Mundra's cost.¹⁰

On 15 December 2010, the Ministry issued a 'show cause' notice to Adani Mundra.¹¹ The notice stated that, based on the information in the report described above, the Ministry was of the opinion that Adani Mundra had 'violated the Coastal Regulation Zone Notification, 1991, approved Coastal Zone Management Plan of Gujarat dated 27th September, 1996 and have not complied with the conditions listed in the environmental clearance letter issued by the Ministry...'.¹² The notice required Adani Mundra to show cause, within 15 days, why the actions proposed by the Ministry's report should not be taken.¹³

It seems that on 23 February 2011, the Ministry issued directions to 'project authorities' not to undertake any reclamation activity and not to initiate any new construction work in the coastal regulation zone.¹⁴

We do not have any more information about the outcome of this 'show cause' notice.

B. 2013 site visit and 'show cause' notice

On 14 September 2012, the Ministry constituted an independent Committee for Inspection into the Mundra SEZ, following complaints from the 'Kheti Vikas Sewa Trust' about environmental impacts at Mundra.¹⁵

In April 2013, the Committee issued its report.¹⁶ It summarised the allegations against Adani Mundra as follows:

- a. There has been widespread destruction of mangroves, which was strictly prohibited in the clearances granted;
- b. The creeks and inter-tidal system has been adversely affected, particularly, the Kotdi creek, which has been blocked;
- c. There has been mismanagement of fly ash from the thermal power plant, which has resulted in fugitive emissions during disposal and pollution of groundwater;
- d. The large volume of seawater stored in the unlined pond and conveyed through the intake and outfall channel has increased salinity and contaminated water sources;
- e. The original [high tide line/low tide line] has been distorted because of human made bunds and blocking of creeks;
- f. The company is non-compliant with conditions imposed at the time of environmental clearance.¹⁷

The report found 'incontrovertible evidence of violation[s] of [environmental clearance] condition[s] and non-compliance. It must also be recognized that [Adani Mundra] has bypassed environmental procedures in certain cases.'¹⁸ A summary of the Committee's findings are as follows:

- *Procedural lapses:*
 - Adani Mundra has attempted to bypass statutory procedures by using different agencies for obtaining environmental clearances for the same project.¹⁹
 - Adani Mundra has bypassed the public hearing procedure on a number of pretexts.²⁰

¹⁰ *Id.*, page 5.

¹¹ Ministry, *Show Cause Notice under Section 5 of Environment (Protection) Act, 1986 for violation of the provisions of the Coastal Regulation Zone Notification 1991 by M/s Mundra Port & SEZ Ltd* (15 December 2010).

¹² *Id.*, paragraph 19, and paragraphs 1-18.

¹³ *Id.*, paragraph 20.

¹⁴ Ministry, *Office Memorandum – Constitution of Committee for inspection of M/s Adani Port and SEZ Ltd, Mundra, Gujarat* (14 September 2012), paragraph 2, available at http://www.moef.nic.in/sites/default/files/01_order_AdaniPort14092012.pdf (accessed 5 November 2014).

¹⁵ *Id.*, paragraphs 5-6.

¹⁶ *Report of the Committee for Inspection of M/s Adani Port & SEZ Ltd, Mundra, Gujarat* (April 2013), available at <http://www.moef.nic.in/sites/default/files/adani-report-290413.pdf> (accessed 23 January 2015).

¹⁷ *Id.*, page 76.

¹⁸ *Id.*, page 81.

¹⁹ *Id.*, pages 76-77.

²⁰ *Id.*, page 77.

- An airstrip/aerodrome which is part of the SEZ was constructed without the SEZ having an environmental clearance.²¹
- Adani Mundra has not complied with the requirement that all projects within the SEZ have environmental clearance.²²
- *Blocking of creeks:*
 - The environmental clearances do not allow any changes to creeks or creek mouths. However, there has been a distinct change where Baradi Mata creek meets the sea, because of construction for Adani Mundra’s Water Front Development Project.²³
 - The creek branches in the proposed North Port site have completely disappeared over the years.²⁴
- *Destruction of mangroves:*
 - In violation of environmental conditions for protecting mangroves, the mangrove patch along the west of Navinal creek has vanished.²⁵
 - Adani Mundra did not take proper precautions to safeguard the Bocha Island conservation area and, as a result, around 75 hectares of mangroves in that area have been lost.²⁶
 - The mangroves at the proposed North Port site have vanished and the creek has disappeared due to reclamation work.²⁷
 - In violation of its environmental clearances, Adani Mundra failed to ensure protection of mangroves around Baradi Mata mouth (around the mangrove conservation area near the lighthouse at the south port).²⁸
- *Fly ash utilisation and disposal:*
 - Adani Mundra’s fly ash inventory does not satisfactorily demonstrate proper utilisation and disposal of fly ash. This suggests the ‘possibility of dumping of ash, which would lead to air pollution and land degradation and would be termed as non-compliance’ with the environmental clearances.²⁹
 - In violation of environmental conditions, Adani Mundra has failed to conduct regular monitoring in and around the ash pond area.³⁰
- *Increase of salinity in groundwater*
 - In violation of environmental conditions, Adani Mundra has failed to use lining to protect against salinity intrusion into groundwater.³¹
 - Adani Mundra has failed to monitor groundwater for salinity and pollution as required by its environmental clearance.³²
- *Noncompliance with monitoring and reporting conditions*
 - Adani Mundra has been ‘less than serious’ about reporting on compliance with environmental conditions, and the reports it has produced are ‘at best perfunctory and non-committal’. For example, Adani Mundra appears not to have monitored and reported on effluent discharge temperature as required by the environmental clearance.³³

²¹ *Id.*

²² *Id.*

²³ *Id.*, pages 77-78.

²⁴ *Id.*, page 78.

²⁵ *Id.*

²⁶ *Id.*, page 79.

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*, page 80.

³² *Id.*

³³ *Id.*, pages 80-81.

The report also recommended the establishment of an Environment Restoration Fund, comprised of 1% of the project cost or Rs 200 crore (whichever is higher).³⁴ The money would be used to protect marine ecology, develop new mangrove conservation areas, restore and conserve creeks, conduct independent studies and monitoring, and for social infrastructure and livelihood support for fishing communities.³⁵

The report also made many other recommendations, including cancelling the environmental clearance for the North Port, restoring all creeks around the North Port area to pre-2005 status and declaring the area as a conservation zone, protecting and regenerating mangrove areas, requiring an action plan for mangrove conservation, and requiring the proper lining of the intake/outfall channel and storage ponds to prevent salinity intrusion.³⁶

The Adani group has refuted the findings in the report. According to an article in Forbes, the 'Adani Group said salinity ingress was a local phenomenon and that its power plant used technology to ensure that there was no stray fly ash. It also refuted the observations of the [independent] committee and said while any large development would affect the environment, it was certain that its net impact was positive. Also, all government requirements were followed in setting up its various projects.'³⁷

On 30 September 2013, the Ministry issued a 'Show Cause Notice' to Adani Mundra.³⁸ The notice requests Adani Mundra to 'show cause' why the environmental clearance for the North Port should not be cancelled, and states that that clearance will be kept in 'abeyance' pending decision on the notice.³⁹ The notice also:

- requires the establishment of an 'Environment Restoration Fund,' amounting to Rs. 200 crores or 1% of the project cost, whichever is higher, to be used for remediation of environmental damage in Mundra,⁴⁰
- states that the 'North Port area and Bochha Island should be declared as [a] conservation zone and the area should be protected. All the creeks, water bodies and reclaimed land in these areas should be restored and brought back to pre-2005 status within six months';⁴¹
- requires Adani Mundra to submit certain responses and action plans, including a plan to protect the livelihood of fishermen whose catch and access to the sea have been seriously affected by violations committed by Adani Mundra,⁴²
- directs Adani Mundra to ensure all projects within the SEZ possess an environmental clearance,⁴³ and
- requests Adani Mundra to consider the voluntary return of village common land and to invest in improving productivity of this land with villagers.⁴⁴

As at March 2014 it appears that the environmental restoration fund has not yet been established.⁴⁵

See below in relation to *Writ Petition (PIL) No. 21 of 2013* for information about the outcome of this matter.

³⁴ *Id.*, pages 81-82. We understand this to be approximately USD\$32.5 million: see <http://www.kshitij.com/utilities/LnCtoMnB.shtml> (accessed 22 January 2015).

³⁵ *Id.*

³⁶ *Id.*, pages 82-85.

³⁷ Megha Baree, Forbes, *Doing Big Business in Modi's Gujarat*, Forbes (13 March 2014), page 2, available at http://www.forbes.com/adani_gsites/meghabahree/2014/03/12/doing-big-business-in-modis-gujarat/ (accessed 5 November 2014).

³⁸ Ministry, *Issue of Show Cause Notice for alleged violations* (30 September 2013), available at <http://www.moef.nic.in/sites/default/files/Adani%20SCN.pdf> (accessed 6 November 2014).

³⁹ *Id.*, page 3.

⁴⁰ *Id.*, page 2.

⁴¹ *Id.*

⁴² *Id.*, pages 2-3.

⁴³ *Id.*, page 2.

⁴⁴ *Id.*

⁴⁵ Megha Baree, Forbes, *Doing Big Business in Modi's Gujarat*, Forbes (13 March 2014) available at <http://www.forbes.com/sites/meghabahree/2014/03/12/doing-big-business-in-modis-gujarat/> (accessed 5 November 2014).

C. Litigation in relation to the Mundra SEZ

The Mundra SEZ has been the subject of significant litigation.

Writ Petition (PIL) No. 194 of 2011

Adani Mundra had leased parts of the Mundra SEZ to two companies to establish power generating infrastructure, in return for rent and maintenance charges. Adani Mundra did not have an environmental clearance for the Mundra SEZ.⁴⁶

Six petitioners (who were farmers and residents of the village of Navinal, near Mundra) sought to restrain the lessees from undertaking construction until Adani Mundra had received an environmental clearance for the Mundra SEZ.⁴⁷

On 9 May 2012, the High Court of Gujarat found that the lessees were not entitled to undertake construction until Adani Mundra obtained an environmental clearance, and ordered the lessees to cease construction until Adani Mundra received the clearance.⁴⁸

Writ Petition (PIL) No. 21 of 2013

This litigation is similar to PIL No. 194 of 2011. Four petitioners (all of whom are residents of Navinal Village near Mundra) sought an order of the court requiring a number of the respondents (being lessees of Adani Mundra that were undertaking development and operations within the Mundra SEZ) to cease their operations until Adani Mundra was granted an environmental clearance for the Mundra SEZ.⁴⁹ The petitioners also sought an order directing various governments bodies to take action against Adani Mundra for violating environmental laws and to 'take over complete control, administration and supervision of [Adani Mundra], looking to the grave violations of Environmental Impact Assessment Notification, 2006.'⁵⁰

Adani Mundra pleaded that it had a deemed environmental clearance. On 13 January 2014, the High Court of Gujarat agreed that Adani Mundra still had no environmental clearance and, as such, the lessees were operating in the absence of an environmental clearance.⁵¹ The Court directed the government to decide whether to grant an environmental clearance to Adani Mundra for the Mundra SEZ, and suspended any further activity (including construction and operation of generating units) until the government decided whether to grant the clearance.⁵²

The decision was appealed to the Supreme Court of India (Petition for Special Leave to Appeal (Civil) No. 1526/2014). On 27 January 2014, the Supreme Court held that units in the SEZ may continue to function, but no further construction activity was permitted whilst the case was pending.⁵³

On 14 July 2014, the Supreme Court granted a final extension of time to the Ministry to issue the new environmental clearance for the Mundra Port and SEZ.⁵⁴

On 15 July 2014, the Ministry issued the environmental clearance.⁵⁵ The letter from the Ministry states that 'to comply with the orders of [the courts], [the] Ministry hereby accords necessary Environment Clearance for proposed Multi-Product SEZ in an area of 6641.2784 ha and [coastal regulation zone] clearance for desalination, seawater intake, outfall facility and pipeline for as per the provisions of Environmental Impact Assessment Notification – 2006 and its subsequent amendments and Coastal Regulation Zone Notification, 2011, subject to strict compliance of the terms and conditions as follows.'⁵⁶

The letter sets out a large number of conditions for the environmental clearance, including conserving creeks, rivers and

⁴⁶ *Ranubha Rajmali Jadeja and others v Union of India and others* (judgment of 9 May 2012), Writ Petition (PIL) No. 194 of 2011 before the High Court of Gujarat, pages 4, 42-43.

⁴⁷ *Id.*, pages 2-4.

⁴⁸ *Id.*, pages 35, 42-43.

⁴⁹ *Gajubha (Gajendrasinh) Bhimaji Jadeja and others v Union of India and Others* (judgment of 13 January 2014), Writ Petition (PIL) No. 21 of 2013 before the High Court of Gujarat, pages 3-4.

⁵⁰ *Id.*, page 3.

⁵¹ *Id.*, page 184.

⁵² *Id.*, page 185.

⁵³ *Skaps Industries India Pvt Ltd v Gajuba (Gajendrasinh) Bhimji Jadeja & Ors* (order of 28 January 2014), Petition for Special Leave to Appeal (Civil) No. 1526/2014 before the Supreme Court of India.

⁵⁴ *Id.*, order of 14 July 2014.

⁵⁵ Ministry, *EC for proposed Multi-Product SEZ and CRZ clearance for Desalination, sea water intake, outfall facility and pipeline, at Mundra by M/s Adani Port and SEZ Ltd* (15 July 2014).

⁵⁶ *Id.*, paragraph 10.

mangroves, certain remediation, and no disturbance of sand dunes.⁵⁷

Although not entirely clear, it seems that this environmental clearance retroactively legalises the previous actions that Adani Mundra had taken without the proper environmental clearance. However, this does not diminish the concern that Adani Mundra had caused serious environmental harm, and had undertaken significant works for many years without the required environmental approvals.

Writ Petition (PIL) No. 210 of 2014

In this current litigation, a public interest litigant is seeking an order that Adani Mundra be directed to stop all activities on sand dunes not allotted to it in and around Mundra.⁵⁸ According to news articles, the petitioner also alleges that Adani Mundra illegally flattened dunes and destroyed vegetation (including mangroves), and that it obtained environmental clearances based on false facts.⁵⁹

On 10 July 2014, the Gujarat High Court ordered the Kutch District Collector (a state government administrative/revenue officer) to file a report about the allegations in the petitioner's application.⁶⁰

The Collector filed an interim report on 28 July 2014 (the findings of which are unclear), and was directed to file a further report.⁶¹ Also on that date, the Court ordered the Forest Department to see that no alterations are made to the dunes whilst the matter is pending.⁶²

It appears that judgment was reserved in the matter on 17 December 2014.

Writ Petition (PIL) No. 137 of 2013

In this litigation, residents of Siracha village (near Mundra) accused Adani Mundra of encroaching on 40 acres of the village's pastoral land that was not allotted to the Mundra SEZ.⁶³ It seems that Adani Mundra was building employee accommodation on the land, despite the villagers' protests.⁶⁴ The petitioners sought an order that Adani Mundra remove the construction.⁶⁵

On 30 September 2014, the court heard that Adani Mundra had demolished the construction and removed the debris. The case was dismissed.⁶⁶

Other litigation

A public interest litigant has alleged that Adani Power Ltd is causing ecological damage in the Mundra SEZ and surrounding areas. Adani Power Ltd has constructed a 3.5km long and 50ft deep canal to obtain sea water for its power plant. The petitioners argue that the seawater has contaminated drinkable groundwater and caused salinity in agricultural areas, rendering them unfit for agriculture. In addition, the petitioners allege that Adani Power Ltd releases hot water contaminated with chemicals from its power plant without treating that water, and that this is damaging fisheries and, accordingly, the livelihood of the local fishermen.⁶⁷

In the final litigation of which we are aware (Writ Petition (PIL) No. 12 of 2011),⁶⁸ Kheti Vikas Seva Trust has alleged the violation by Adani of an environmental clearance for the Mundra SEZ. We have limited information about this litigation,

⁵⁷ *Id.*, paragraph 11.

⁵⁸ See generally, *Affidavit of the Collector Kutch* (28 July 2014), page 3, filed in *Pravinsingh Bhurabha Chauhan v State of Gujarat and Others*, Writ Petition (PIL) No. 210 of 2014 before the High Court of Gujarat.

⁵⁹ The Indian Express, *HC orders Kutch Collector to appear before it over PIL against Adani group* (25 July 2014) available at <http://indianexpress.com/article/cities/ahmedabad/hc-orders-kutch-collector-to-appear-before-it-over-pil-against-adani-group/>; Times of India, *Save Mundra dunes, HC tells forest dept* (29 July 2014) available at <http://timesofindia.indiatimes.com/city/ahmedabad/Save-Mundra-dunes-HC-tells-forest-dept/articleshow/39191150.cms> (both accessed 5 November 2014).

⁶⁰ *Pravinsingh Bhurabha Chauhan v State of Gujarat and Others* (order of 10 July 2014), Writ Petition (PIL) No. 210 of 2014 before the High Court of Gujarat.

⁶¹ *Id.*, order of 28 July 2014.

⁶² *Id.*

⁶³ The Indian Express, *PIL accuses Adani SEZ of land grab, HC issues notices* (21 June 2013), available at <http://archive.indianexpress.com/news/pil-accuses-adani-sez-of-land-grab-hc-issues-notices/1131956/> (accessed 6 November 2014).

⁶⁴ *Id.*

⁶⁵ *Pravinsingh Bhurabha Chauhan and Others v State of Gujarat and Others* (order of 30 September 2014), Writ Petition (PIL) No. 137 of 2013 before the High Court of Gujarat.

⁶⁶ *Id.*

⁶⁷ See generally, DNA India, *HC issues notices to Gujarat government, Adani Power on PIL alleging damage to environment* (7 August 2014), available at <http://www.dnaindia.com/india/report-hc-issues-notices-to-gujarat-government-adani-power-on-pil-alleging-damage-to-environment-2008826>; The Indian Express, *HC notices to govt, Adani Power over 'ecological damage' in Kutch* (8 August 2014), available at <http://indianexpress.com/article/cities/ahmedabad/hc-notices-to-govt-adani-power-over-ecological-damage-in-kutch/> (both accessed 6 November 2014).

⁶⁸ *Kheti Vikas Sewa Trust and Others v State of Gujarat and Others*, Writ Petition (PIL) No. 12 of 2011 before the High Court of Gujarat.

but it appears to still be pending. The Gujarat High Court ordered an inquiry into the allegation that Adani was destroying mangroves, and imposed a stay on the development works. The inquiry was conducted by the Gujarat Coastal Zone Management Authority. The High Court then passed an interim order allowing Adani to carry out development within certain areas.⁶⁹

II. Illegal iron ore dealings

In July 2011, the ombudsman of the state of Karnataka (called the 'Lokayukta') reported on illegal mining and export of iron ore between around 2000 and 2010.⁷⁰ The report found that Adani Enterprises Ltd was 'actively involved in large scale illegal exports of iron ore causing huge loss to the Government'.⁷¹

Adani Enterprises Ltd was one of four operators at the Port of Belekeri ('Port') in Karnataka.⁷² Iron ore was transported from the mines to the Port where it was loaded onto ships for export. Port operators were required to maintain records of the amount of iron ore received by truck at the Port, the quantity of iron ore loaded onto ships for export, and relevant payments.⁷³ The report found that:

- Adani Enterprises Ltd paid bribes to officials at the Port department, customs, police, the State Pollution Control Board, local politicians and others to receive 'undue favour for illegal exports'.⁷⁴
- Adani Enterprises Ltd routinely received trucks that were loaded with iron ore above the allowable amount.⁷⁵ For example, the average truckload of iron ore received at Adani's plots was 20.26MT, but the permitted load was only 16 MT.⁷⁶ Indeed, 'over loading of trucks carrying iron ore is a routine practice leading to substantial iron ore theft'.⁷⁷
- Adani Enterprises Ltd also received iron ore from suppliers without permits to supply that ore.⁷⁸
- In February 2010, police raided the Port and seized documents from Adani Enterprises Ltd's offices, including forged permits.⁷⁹ Based on the information seized, around 7.7 million tonnes of iron ore was illegally exported from Port between 2006 and 2010.⁸⁰

The report recommended that Adani Enterprises Ltd, and the other port service providers, should be stripped of their rights to operate the Port and be banned from further business dealings with the government.⁸¹

III. Litigation in relation to Adani Pench Power Ltd

Adani Pench Power Ltd is establishing the Pench Thermal Power Project in Chhindwara.⁸² The project is being challenged before the National Green Tribunal by a number of activists (led by Medha Patkar). The activists are arguing that the environmental approval granted to Adani Pench Power Ltd is illegal and the Ministry failed to take account certain considerations, that Adani Pench Power Ltd has been violating the Environment Protection Act and certain other Acts, and that Adani Pench Power Ltd made its application and draft environmental impact assessment on the basis of using Indian coal, but switched to imported coal.⁸³

It seems that proceedings before the National Green Tribunal were stayed by the Supreme Court on 6 January 2014.⁸⁴

⁶⁹ See generally, Office Memorandum, Ministry, *Constitution of Committee for inspection of M/s Adani Port and SEZ Ltd, Mundra, Gujarat* (14 September 2012), paragraph 3, available at http://www.moef.nic.in/sites/default/files/01_order_AdaniPort14092012.pdf (accessed 5 November 2014).

⁷⁰ Karnataka Lokayukta, *Report on the Reference made by the Government of Karnataka under section 7(2-A) of the Karnataka Lokayukta Act, 1984 (Part - II)* (27 July 2011), available at http://www.thehindu.com/multimedia/archive/00736/Report_on_the_refer_736286a.pdf (accessed 6 November 2014).

⁷¹ *Id.*, page 55.

⁷² *Id.*, page 32.

⁷³ *Id.*

⁷⁴ *Id.*, pages 54-55.

⁷⁵ *Id.*, pages 23 and 34.

⁷⁶ *Id.*

⁷⁷ *Id.*, page 34.

⁷⁸ *Id.*, pages 46-49.

⁷⁹ *Id.*, page 34.

⁸⁰ *Id.*, pages 20 and 34.

⁸¹ *Id.*, page 55.

⁸² See Adani, *Power generation – thermal*, available at <http://www.adanipower.com/power-thermal> (accessed 22 January 2015).

⁸³ See *In the matter of Ms. Medha Patkar and others v Ministry of Environment & Forests and others* (judgment of 11 July 2013), Appeal No. 1 of 2013 before the National Green Tribunal, paragraphs 2-3.

⁸⁴ *Adani Pench Power Ltd v Medha Patkar and Others* (judgment of 6 January 2014), Civil Appeal D.No(s) 21001 of 2013 before the Supreme Court of India.

IV. Other accusations of improper behavior in India

- In July 2014, the Indian Competition Commission of India found Adani Gas Ltd guilty of using its dominant market position to impose unfair conditions on gas customers. Adani Gas Ltd was ordered to modify its gas supply contracts and to pay approximately \$AUD4.8 million.⁸⁵ Adani Gas Ltd has appealed the matter.⁸⁶
- The Adani group has been accused of using its political connections with the then Modi state government of Gujarat to secure land for the Mundra SEZ at a fraction of market value. According to news articles, the government has indicated that it sold 14,305 acres of land at Mundra to the Adani group at between 1 and 32 rupees per square metre (which is extremely cheap).⁸⁷
- Three Adani companies (Adani Power Maharashtra Ltd, Adani Power Rajasthan Ltd, and Maharashtra Eastern Grid Power Transmission Company) are being investigated by the Central Bureau of Investigation, Directorate of Revenue Intelligence ('DRI'), and a special investigation team appointed by the Supreme Court for overvaluing imported power generation and transmission equipment. On 16 May 2014, the DRI apparently issued a show cause notice to the Adani companies alleging the total declared value of goods imported under power and infrastructure heads, which attracts zero or less than 5 per cent duty, was Rs 9,048.8 crore, but that the actual value of the goods was Rs 3,580.8 crore, meaning that Rs 5,468 had been siphoned to accounts held by non-Indian companies related to the Adani group.⁸⁸
- According to media reports, the Adani group colluded with the Gujarat state power authority to supply electricity at rates higher than offered by competing electricity providers, and the power authority prevented the Adani group's competitors from having an equal opportunity to bid for supply contracts (for example, the power authority failed to offer bidding opportunities to the Adani group's competitors). In addition, the power authority was buying short-term power from the Adani group at extremely high prices as Gujarat was suffering from power shortages, whilst refusing the tenders of the Adani group's competitors for cheaper, long-term supply. The Adani group's competitors subsequently brought litigation against the power authority.⁸⁹
- The Indian Comptroller and Auditor General has found instances of the Adani group allegedly availing itself of tax benefits to which it was not entitled. For example, in the financial year ending March 2013, the Adani group allegedly obtained an approximately Rs 400 crore tax deduction with minimal recorded income.⁹⁰

V. Adani's actions in Australia: Abbot Point Stormwater Return Dam

A Construction Compliance Report, prepared for the purposes of meeting a condition of the approval under the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) ('EPBC Act') for Abbot Point Stormwater Return Dam (approval #2010/5561) identifies a number of non-compliances with the EPBC Act approval, the Construction Environment Management Plan, and associated sub-management plans.⁹¹ These non-compliances include failing to comply with:

- conditions in relation to marking and eradicating weeds and separating weeds prior to mulching (2 conditions breached);
- a condition to complete pest declarations for all earthmoving vehicles;

⁸⁵ *In Re Faridabad Industries Association and M/s Adani Gas Limited (Competition Commission of India – Case No. 71 of 2012)* (3 July 2014), available at <http://www.cci.gov.in/May2011/OrderOfCommission/27/712012.pdf> (accessed 7 November 2014).

⁸⁶ Live Mint, *Compat issues notice to CCI in Adani Gas case* (7 August 2014), available at <http://www.livemint.com/Industry/vuWrAsDZuR2w0sAFYbBF/Compat-issues-notice-to-CCI-in-Adani-Gas-case.html> (accessed 7 November 2014).

⁸⁷ See generally, NDTV, *Does Gujarat government's own data show Adani group got land cheap?* (29 April 2014), available at <http://www.ndtv.com/elections/article/election-2014/does-gujarat-government-s-own-data-show-adani-group-got-land-cheap-515451>; DNA India, *Gujarat state government gifts Adani Group land in Kutch for peanuts* (1 March 2012), available at <http://www.dnaindia.com/india/report-gujarat-state-government-gifts-adani-group-land-in-kutch-for-peanuts-1656997> (both accessed 7 November 2014).

⁸⁸ Indian Express, *SIT, CBI to look into Adani Group case* (24 July 2014), available at <http://indianexpress.com/article/business/companies/sit-cbi-to-look-into-adani-group-case/>; DNA India, *Adani group in trouble? CBI registers preliminary enquiry for over valuation and custom evasion* (24 July 2014), available at <http://www.dnaindia.com/money/report-adani-group-in-trouble-cbi-registers-preliminary-enquiry-for-over-valuation-and-custom-evasion-2004969>; DNA India, *Adani group under CBI scanner in Rs 2,300 crore alleged invoice scam* (25 July 2014), available at <http://www.dnaindia.com/india/report-adani-group-under-cbi-scanner-in-rs-2300-crore-alleged-invoice-scam-2005101> (all accessed 7 November 2014).

⁸⁹ Gulail, *How Adani got contracts for supplying power despite being the most expensive* (7 October 2013), available at <http://gulail.com/how-adani-got-contracts-for-supplying-power-despite-being-the-most-expensive/>; Gulail, *People of Gujarat will bear the brunt of the Modi-Adani nexus* (7 October 2013), available at <http://gulail.com/the-people-of-gujarat-will-bear-the-brunt-of-the-modi-adani-nexus/>; Gulail, *Adani-Modi nexus to cost 23,625 cr* (9 September 2013), available at <http://gulail.com/adani-modi-nexus-to-result-in-loss-of-rs-23625-crore-to-gujarat-in-one-deal-alone/>; The Economic Times, *Gujarat Urja Vikas Nigam moves SC against PTC* (November 4 2007), available at http://articles.economicstimes.indiatimes.com/2007-11-04/news/27667046_1_ptc-award-contract-jindal-power (all accessed 7 November 2014).

⁹⁰ The Times of India, *Adanis got Rs 234 crore undue tax exemption, CAG says* (19 July 2014), available at <http://timesofindia.indiatimes.com/india/Adanis-got-Rs-234-crore-undue-tax-exemption-CAG-says/articleshow/38637190.cms> (accessed 7 November 2014).

⁹¹ Adani, *Abbot Point Stormwater Return Dam Construction Compliance Report* (30 September 2013), available at <http://www.adaniports.com/pdfs/ConstructionComplianceReport2013.pdf> (accessed 5 November 2014).

- a condition to wash down vehicles;
- pest monitoring conditions;
- a condition regarding requirement for supplier certification that soils brought onto site are free of contaminants;
- a condition to maintain register of flammable liquids;
- a condition in relation to site inductions and induction about environmental objections and requirements; and
- the water quality monitoring plan (although this was due to the discharge location being changed as the original design not practicable).

The Construction Compliance Report considered the impacts from the non-compliances to be negligible.⁹²

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⁹² *Id.*, page 16.