



## Decision and Reasons for Decision

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**Citation:** *North Queensland Conservation Council Inc. and Department of State Development* [2016] QICmr 46 (4 November 2016)

**Application Number:** 312645

**Applicant:** North Queensland Conservation Council Inc.

**Respondent:** Department of State Development

**Decision Date:** 4 November 2016

**Catchwords:** ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - EXEMPT INFORMATION - CABINET INFORMATION - information relating to Government agreements, due diligence assessments and consideration of investment in proposed mining projects - whether information would reveal considerations of Cabinet or otherwise prejudice confidentiality of Cabinet considerations - whether information is exempt under section 48 and schedule 3, section 2(1)(b) of the *Right to Information Act 2009* (Qld) - whether access to information may be refused under section 47(3)(a) of the *Right to Information Act 2009* (Qld)

ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - CONTRARY TO PUBLIC INTEREST INFORMATION - information relating to Government agreements, due diligence assessments and consideration of investment in proposed mining projects - accountability and transparency - prejudice to commercial affairs of an entity - prejudice to economy of the State and deliberative processes of government - whether disclosure would, on balance, be contrary to the public interest under section 49 of the *Right to Information Act 2009* (Qld) - whether access to information may be refused under section 47(3)(b) of the *Right to Information Act 2009* (Qld)

## REASONS FOR DECISION

### Summary

1. North Queensland Conservation Council Inc. (**NQCC**) applied under the *Right to Information Act 2009* (Qld) (**RTI Act**) to the Department of State Development (**Department**)<sup>1</sup> for access to various documents relating to agreements between the Queensland Government and Adani<sup>2</sup> and mining in the Galilee Basin.<sup>3</sup>
2. The Department located 187 pages within the scope of the access application and refused access to 180 full pages and seven part pages on the basis that:
  - the information was exempt under schedule 3, section 2(1) or schedule 3, section 8(1) of the RTI Act;<sup>4</sup> or
  - disclosure of the information would, on balance, be contrary to the public interest.<sup>5</sup>
3. The applicant applied to OIC for external review<sup>6</sup> and during the review clarified the particular type of documents to which it sought access. On external review, the Department also located further documents falling within the scope of the application, which it claimed were exempt Cabinet information.
4. For the reasons set out below, I find that access to the information remaining in issue may be refused under the RTI Act. In part, my decision is based on different grounds to those relied on by the Department and therefore, I have varied the Department's decision. In summary, I find that access may be refused on the following grounds:
  - the information is exempt under schedule 3, section 2(1)(b) of the RTI Act;<sup>7</sup> or
  - disclosure of the information would, on balance, be contrary to the public interest.<sup>8</sup>

### Background

5. Significant procedural steps relating to the application and external review are set out in Appendix A.
6. The information in issue relates to the Queensland Government's assessment of the financial impact of the Adani's proposed Carmichael Coal Mine and related infrastructure projects (**Adani Projects**) and the merits of government assistance for these projects. Some of the information in issue includes proposed agreements between the Government and Adani in relation to infrastructure funding for the Adani Projects.
7. Separate but related documents available on Queensland Treasury's (**Treasury**) Disclosure Log indicate that the Adani Projects will involve the largest coal mine in Australia and multibillion dollar investments in railway and port infrastructure.<sup>9</sup> This has been recognised

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<sup>1</sup> Access application dated 30 July 2015.

<sup>2</sup> The Adani Group (**Adani**) is a group of companies seeking to develop the largest coal mine in Australia, the Carmichael Coal Mine in central north Queensland. The development of this mine will also involve the development of related rail infrastructure and port infrastructure at Abbott Point in central north Queensland.

<sup>3</sup> The Galilee Basin in central north Queensland has been declared by the Queensland Coordinator General to be a Special Development Area to allow the mining and transport of thermal coal. See <http://statedevelopment.qld.gov.au/coordinator-general/galilee-basin-state-development-area.html> (accessed on 24 October 2016).

<sup>4</sup> Under section 47(3)(a) of the RTI Act.

<sup>5</sup> Under section 47(3)(b) of the RTI Act.

<sup>6</sup> External review application dated 13 November 2015.

<sup>7</sup> Under section 47(3)(a) of the RTI Act.

<sup>8</sup> Under section 47(3)(b) of the RTI Act.

<sup>9</sup> See Treasury's Disclosure Log, Reference 577 J Tager available from: <https://www.treasury.qld.gov.au/about-us/right-to-information/previous-disclosure-log.php> (accessed on 28 October 2016). Mr Tager has represented NQCC in other applications.

as a major project by the Queensland Coordinator General<sup>10</sup> and the relevant mining leases have been granted to Adani by the State Government.<sup>11</sup>

8. The timeframe of the access application covers the time of both the former and current Queensland Governments. The former Deputy Premier announced that the Queensland Government was in negotiations with the Adani Group regarding direct investment in infrastructure to facilitate the Adani Projects.<sup>12</sup> The current Queensland Government has since indicated that it will not '*contribute taxpayer money to Adani's project*.'<sup>13</sup>
9. While considering this external review application, OIC also conducted three other related external reviews involving the same or largely similar documents, subject matter and submissions from participants. NQCC and its representative, Mr Jeremy Tager,<sup>14</sup> made separate access applications to various Queensland government agencies, requesting similar information relating to the Adani Projects. Due to the nature of the Adani Projects, information relating to this subject matter is held across a number of different Queensland government agencies, and in many cases copies of the same information appears in the records of various agencies.
10. The first of these matters was finalised by the decision of *North Queensland Conservation Council Incorporated and Queensland Treasury* [2016] QICmr 9 (29 February 2016) (**NQCC1**). The second review was finalised by the decisions of *North Queensland Conservation Council Inc and Queensland Treasury* [2016] QICmr 21 (10 June 2016) (**NQCC2**).<sup>15</sup>
11. I have also concurrently reached a decision in external review 312639 involving the Queensland Treasury Corporation (**QTC**).<sup>16</sup> The access applicant in that matter is the same individual who lodged the access applications in the other three external reviews on behalf of NQCC. The information in issue in 312639 and *NQCC2* includes some of the same CTPI Information identified at [31] below.
12. Given the commonality in the information in issue, applicant's submissions and subject matter of all of the above external reviews, in reaching this decision, I have taken into account the submissions made by the applicant's legal representatives and agencies across all four reviews, to the extent the submissions apply to the information in issue in this review. While I have made a fresh and independent decision on the merits of this matter, I have not departed from the findings in *NQCC1* and *NQCC2*, to the extent this review concerns the same information in issue.<sup>17</sup> In these reasons, I have referred to, and relied on, the reasons I gave in *NQCC2*, and therefore, a copy of *NQCC2* appears at Appendix B.

## Reviewable decision

13. The decision under review is the Department's decision dated 16 October 2015.

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<sup>10</sup> Further details of this project appear on the Coordinator General's website at <http://www.statedevelopment.qld.gov.au/assessments-and-approvals/carmichael-coal-mine-and-rail-project.html> (accessed on 25 February 2016).

<sup>11</sup> Ministerial statement dated 13 April 2016 available at <http://statements.qld.gov.au/Statement/2016/4/3/carmichael-mine-approvals-put-thousands-of-new-jobs-step-closer> (accessed on 14 April 2016).

<sup>12</sup> Media release dated 17 November 2014 available at: <http://statements.qld.gov.au/Statement/2014/11/17/historic-agreements-bring-jobs-to-queensland> (accessed on 27 October 2016).

<sup>13</sup> See relevant media at: <http://www.dailymercury.com.au/news/claims-adani-rail-could-be-taxpayer-funded-denied/3067271/> (accessed on 29 August 2016) as raised by the applicant's submissions dated 24 August 2016.

<sup>14</sup> The other related applications were either made by Mr Tager individual, or on behalf of NQCC. In each review, the applicant was legally represented by the Environmental Defenders' Office (EDO) and all written submissions were received from the EDO.

<sup>15</sup> This decision appears at Appendix B.

<sup>16</sup> *Tager and Queensland Treasury Corporation* [2016] QICmr 45 (4 November 2016).

<sup>17</sup> Following *NQCC2*, the applicant made additional submissions to OIC on 24 August 2016. Therefore, in these reasons, I have also taken into account those submissions.

## Material considered

14. Evidence, submissions, legislation and other material I have considered in reaching my decision are disclosed in these reasons (including footnotes and Appendices).

## Information in issue

15. The information in issue comprises briefing notes, internal DSD correspondence, correspondence between Adani and the Queensland Government, various versions of a due diligence assessment and financial and economic forecast information provided by Adani to the Queensland Government.
16. During the review, OIC provided the applicant with a schedule confirming each page of information that it considered in the scope of this external review.<sup>18</sup> For the sake of clarity, the documents listed in the schedule represent the information in issue in this review and these reasons for decision apply to those documents only.

## Issues to be considered

17. In this decision, I have considered whether access to the information in issue may be refused on the basis that it is:
- A. exempt information, the disclosure of which would reveal a consideration of Cabinet (**Cabinet Information**)<sup>19</sup>; or
  - B. information, the disclosure of which would, on balance, be contrary to the public interest (**CTPI Information**).<sup>20</sup>
18. The breach of confidence exemption<sup>21</sup> is not examined in these reasons for decision. On external review, the Department submitted that disclosure of the information which it had originally decided was exempt on that basis, would, instead, be contrary to the public interest.<sup>22</sup>

### A. **Cabinet Information**

#### Relevant law

19. Under the RTI Act a person has a right to be given access to documents of an agency unless access would, on balance, be contrary to the public interest.<sup>23</sup> However, this right is subject to other provisions of the RTI Act, including the grounds on which access to information may be refused.
20. Access may be refused to exempt information.<sup>24</sup> Relevantly, the RTI Act provides that information is exempt information if:
- it has been brought into existence for the consideration of Cabinet;<sup>25</sup> or
  - its disclosure would reveal any consideration of Cabinet or would otherwise prejudice the confidentiality of Cabinet considerations or operations.<sup>26</sup>

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<sup>18</sup> Letter dated 22 April 2016.

<sup>19</sup> Under sections 47(3)(a), 48 and schedule 3, section 2(1)(b) of the RTI Act.

<sup>20</sup> Under sections 47(3)(b) and 49 of the RTI Act.

<sup>21</sup> Schedule 3, section 8 of the RTI Act.

<sup>22</sup> Department's submission to OIC dated 8 March 2016 made in response to OIC's view that the Department had not discharged its onus in relation to the breach of confidence exemption.

<sup>23</sup> Section 44(1) of the RTI Act. This is referred to as the pro-disclosure bias.

<sup>24</sup> Sections 47(3)(a) and 48 of the RTI Act.

<sup>25</sup> Schedule 3, section 2(1)(a) of the RTI Act.

<sup>26</sup> Schedule 3, section 2(1)(b) of the RTI Act.

21. The term 'consideration' is defined as including 'discussion, deliberation, noting (with or without discussion) or decision; and consideration for any purpose, including, for example, for information or to make a decision'.<sup>27</sup>
22. The following types of Cabinet documents are taken to be comprised exclusively of exempt information<sup>28</sup> without any further consideration of their contents:
  - (a) Cabinet submissions
  - (b) Cabinet briefing notes
  - (c) Cabinet agendas
  - (d) notes of discussions in Cabinet
  - (e) Cabinet minutes
  - (f) Cabinet decisions
  - (g) drafts of documents (a) to (f) above.
23. There are three exceptions to this exemption:
  - if it is more than 10 years after the information's relevant date<sup>29</sup>
  - if the information was brought into existence before 1 July 2009;<sup>30</sup> or
  - if the information has been officially published by decision of Cabinet.<sup>31</sup>

## Findings

24. The Cabinet Information in this matter includes parts of a Director General's briefing note and attachment and a chain of emails sent between staff of the Department that refers directly to a Cabinet consideration.
25. I am satisfied that the exceptions to the exemption do not apply as the Cabinet Information was brought into existence after 1 July 2009 and there is no evidence available to OIC to indicate that this information has been officially published.
26. The Cabinet Information concerns the same subject matter as the Cabinet Information considered in *NQCC1* and *NQCC2*. In *NQCC2* I found that that the Cabinet Information either comprised exclusively exempt information or its disclosure would reveal a consideration of Cabinet.<sup>32</sup> In *NQCC2*, I specifically addressed the submissions made by the applicant about the Cabinet exemption and found that the Cabinet Information, if disclosed to a reasonable person, would reveal the considerations of Cabinet to that person.
27. Having carefully considered the Cabinet Information in issue in this review, I am satisfied that if it was disclosed, it would directly reveal the considerations and/or deliberations of Cabinet. The Cabinet Information refers to specific Cabinet decisions and outlines the information and options that were presented to Cabinet in order to inform its decision making process in relation to matters concerning the Abbot Point and Carmichael Coal Mine projects.
28. On the basis of the above, I am satisfied that the Cabinet Information is exempt under schedule 3, section 2(1)(b) of the RTI Act and that access may therefore, be refused to it under section 47(3)(a) of the RTI Act on the basis that its disclosure would reveal a consideration of Cabinet.

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<sup>27</sup> Schedule 3, section 2(5) of the RTI Act.

<sup>28</sup> Schedule 3, section 2(3) of the RTI Act.

<sup>29</sup> Schedule 3, section 2(1) of the RTI Act. For information considered by Cabinet, the 'relevant date' is the date the information was most recently considered by Cabinet; otherwise, 'relevant date' is the date the information was brought into existence, schedule 3, section 2(5) of the RTI Act.

<sup>30</sup> Schedule 3, section 2(2)(a) of the RTI Act.

<sup>31</sup> Schedule 3, section 2(2)(b) of the RTI Act.

<sup>32</sup> For the reasons set out at [21] - [28] of that decision.

## **B. CTPI Information**

### **Relevant law**

29. Access to information may also be refused where disclosure, would, on balance, be contrary to the public interest.<sup>33</sup> The term 'public interest' refers to considerations affecting the good order and functioning of the community and government affairs for the well-being of citizens. This means that in general, a public interest consideration is one which is common to all members of, or a substantial segment of, the community, as distinct from matters that concern purely private or personal interests. However, there are some recognised public interest considerations that may apply for the benefit of an individual.
30. The RTI Act identifies various factors that may be relevant to deciding the balance of the public interest<sup>34</sup> and explains the steps that a decision-maker must take<sup>35</sup> in deciding the public interest as follows:
- (i) identify any irrelevant factors and disregard them
  - (ii) identify relevant public interest factors favouring disclosure and nondisclosure
  - (iii) balance the relevant factors favouring disclosure and nondisclosure; and
  - (iv) decide whether disclosure of the information in issue would, on balance, be contrary to the public interest.

### **Findings**

31. The CTPI Information in this matter comprises draft and final versions of a Due Diligence Assessment (**DDA**) of the Adani Projects completed by Department staff, as well as emails between Department staff discussing the content of the DDA. In discussions with OIC, an officer of the Department who was involved in conducting the DDA explained that it was performed for the benefit of the Coordinator General and was based on financial data and forecasts provided by Adani following express undertakings from the Department that the financial information would remain confidential.<sup>36</sup>
32. In *NQCC2* I decided that disclosure of the DDA would, on balance, be contrary to the public interest.<sup>37</sup> Following my decision in *NQCC2*, the applicant's legal representatives made additional submissions to OIC concerning the application of specific public interest factors in schedule 4 of the RTI Act. In considering those additional submissions, OIC contacted an officer of the Department who provided OIC with additional background information regarding the DDA. In assessing the public interest factors below, I have had specific reference to the additional submissions provided to OIC by the applicant's legal representatives and the Department, since the decision in *NQCC2* was issued.

### **Irrelevant factors**

33. I have not taken any irrelevant factors into account in reaching this decision.<sup>38</sup>

### **Factors favouring disclosure**

34. Under section 44(1) of the RTI Act there is a pro-disclosure bias in deciding access to documents and this is the starting point for considering disclosure of the CTPI Information.

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<sup>33</sup> Sections 47(3)(b) and 49 of the RTI Act.

<sup>34</sup> Schedule 4 of the RTI Act lists factors that may be relevant when deciding whether disclosure of information would, on balance, be contrary to the public interest. This list is not exhaustive and therefore, other factors may also be relevant in a particular case.

<sup>35</sup> Section 49(3) of the RTI Act.

<sup>36</sup> Telephone discussion between OIC staff and Department staff on 18 January 2016.

<sup>37</sup> At [42] - [82]. In that decision, I also considered additional documents that are not in issue in this matter.

<sup>38</sup> In particular, I have not considered whether the disclosure of the relevant information could reasonably be expected to embarrass or cause a loss of confidence in the current or former Governments.

35. Given the particular nature of the CTPI Information, the level of community interest in the Adani Projects and the potentially significant impact of the Carmichael Coal Mine and related infrastructure to the Queensland economy, I also consider the below factors favour disclosure of the information, as disclosure could reasonably be expected to:
- promote open discussion of public affairs and enhance the Government's accountability<sup>39</sup>
  - contribute to positive and informed debate on important issues<sup>40</sup>
  - inform the community of the Government's operations;<sup>41</sup> and
  - ensure effective oversight of expenditure of public funds.<sup>42</sup>
36. For the reasons I gave in *NQCC2*, I am satisfied that each of the above factors carries significant weight in favour of disclosure of the CTPI Information.
37. The RTI Act also recognises a factor in favour of disclosure where disclosure of the CTPI Information could reasonably be expected to reveal the reason for a government decision and any background or contextual information that informed the decision. In my view, the CTPI Information reveals background and contextual information that informed some government decisions with respect to the Adani Projects. Specifically, I note that the DDA informed the Coordinator General's decision making process. For this reason I consider that this factor also carries significant weight in favour of disclosure.
38. The applicant has also argued that the disclosure of the information could reasonably be expected to reveal the information was out of date, misleading, gratuitous, unfairly subjective or irrelevant and refers to a recent decision of the Land Court relating to financial and economic statements provided by Adani. In *NQCC2*, I considered this submission as follows:<sup>43</sup>
- I have considered the Land Court decision and while I am prevented from describing the CTPI Information in any significant detail, on the evidence available to OIC, I am unable to identify how its disclosure could reasonably be expected to reveal that it was incorrect, out of date, misleading, gratuitous, unfairly subjective or irrelevant. Accordingly, I consider that this factor does not apply.*
39. I am satisfied that the above reasoning continues to apply and therefore, I find that this factor does not apply to the CTPI Information.
40. The applicant also contends that disclosure of the CTPI Information could reasonably be expected to:
- contribute to the protection of the environment<sup>44</sup>
  - allow or assist inquiry into possible deficiencies in the conduct or administration of an agency or official;<sup>45</sup> and
  - advance the fair treatment of individuals and other entities in accordance with the law in their dealings with agencies.<sup>46</sup>

<sup>39</sup> Schedule 4, part 2, item 1 of the RTI Act.

<sup>40</sup> Schedule 4, part 2, item 2 of the RTI Act.

<sup>41</sup> Schedule 4, part 2, item 3 of the RTI Act.

<sup>42</sup> Schedule 4, part 2, item 4 of the RTI Act.

<sup>43</sup> At [53] (internal footnotes and citations omitted).

<sup>44</sup> Schedule 4, part 2, item 13 of the RTI Act.

<sup>45</sup> Schedule 4, part 2, item 5 of the RTI Act.

<sup>46</sup> Schedule 4, part 2, item 10 of the RTI Act.

41. With respect to the first of the above three factors, the applicant argues that:
- ...it is not irrational, absurd or ridiculous that disclosed economic or financial information could be used to indirectly contribute to environment protection by highlighting a basis as to why a proposed project, that will have significant environment impacts, should not proceed.*<sup>47</sup>
42. The potential environmental impacts of the Adani Projects have been the subject of media attention.<sup>48</sup> However, having carefully considered the CTPI Information I have formed the view that the disclosure of this information could **not** reasonably be expected<sup>49</sup> to contribute to the protection of the environment. This is because these documents do not discuss environmental issues nor do I have any evidence to suggest that the disclosure of this information could reasonably be expected to prevent some sort of environmental harm.
43. The applicant asserts that the information would assist him in challenging the proposed Adani Projects, which he considers will have detrimental effects on the environment if allowed to proceed, and for this reason, disclosure will contribute to the protection of the environment. Accepting this submission would require me to find not only that the Adani Projects are likely to lead to environmental harm but that disclosure of the CTPI Information would directly lead to the applicant succeeding in stopping the Adani Projects from proceeding.<sup>50</sup> To make such findings would, in my view, be a hypothetical exercise. In any event, based on my assessment of the CTPI Information, I do not consider there is any evidence to suggest that disclosure could lead to the outcomes predicted by the applicant.
44. I consider that, save for a mere possibility,<sup>51</sup> there is no evidence available to OIC to establish that the disclosure of the CTPI Information could reasonably be expected to contribute to the protection of the environment. Accordingly, I consider that this factor favouring disclosure does not apply.
45. I am also satisfied that disclosure of the CTPI information could not reasonably be expected to allow or assist inquiry into possible deficiencies in the conduct or administration of an agency or official. This is because the nature of the information in issue is limited to drafting a DDA based on information authored or provided by Adani. I am not satisfied that the CTPI Information contains the type of information that would ordinarily be required to assess the conduct or administration of an agency or official, in order for this factor to apply.

### **Factors favouring nondisclosure**

#### **Prejudice the private, business, professional, commercial or financial affairs of entities<sup>52</sup> or the business affairs of a person<sup>53</sup>**

46. Having considered the CTPI Information, I am satisfied that the focus of this information is on the commercial and financial affairs of Adani. Specifically, I note that the CTPI Information details Adani's own economic and financial forecasts. In considering the specific CTPI Information, I am satisfied, for the reasons I gave in *NQCC2*,<sup>54</sup> that significant weight can be attributed to both factors in favour of nondisclosure.

<sup>47</sup> Applicant's submissions dated 24 August 2016.

<sup>48</sup> See for example: <http://www.abc.net.au/news/2015-08-05/federal-court-overturns-approval-of-adani-s-carmichael-coal-mine/6673734?pfmredir=sm> (accessed on 3 November 2016).

<sup>49</sup> The applicant correctly submits that the words '*could reasonably be expected*' are to be given their ordinary meaning and the relevant expectation must be reasonably based and not irrational, absurd or ridiculous: see *Attorney-General's Department v Cockcroft* (1986) 10 FCR 180 at 190.

<sup>50</sup> The expectation of what '*could reasonably be expected to occur*' must be considered as a consequence of disclosure rather than other circumstances. *Murphy and Treasury Department* (1995) 2 QAR 744 at paragraph 54.

<sup>51</sup> Previous decisions of the Information Commissioner have established that a mere possibility is not sufficient to show that a particular consequence could reasonably be expected; see *Murphy and Treasury Department* (1995) 2 QAR 744 at paragraph 44, citing *Re B and Brisbane North Regional Health Authority* (1994) 1 QAR 279 at paragraph 160.

<sup>52</sup> Schedule 4, part 3, item 2 of the RTI Act.

<sup>53</sup> Schedule 4, part 3, item 15 of the RTI Act.

<sup>54</sup> See [54] - [58].



47. The applicant argues in its additional submissions to OIC that the weight of these factors should be reduced as the Treasurer has since indicated that the current Queensland Government will not 'contribute taxpayer money to Adani's project.'<sup>55</sup> I am not satisfied that this submission affects the application of these public interest factors as the relevant business, commercial and financial interests of Adani extend beyond the granting of taxpayer funds for its projects and extend to its ability to negotiate with investors, in a broader sense.
48. The CTPI Information details sensitive economic and financial forecasts that, on their face, are likely to underpin Adani's business case in deciding to invest in the proposed projects. I am satisfied that disclosure of the CTPI Information could reasonably be expected to prejudice Adani's ability to negotiate funding for its proposed mine as well as its ability to compete with other similar mining ventures. Accordingly, I am satisfied that both of these factors carry significant weight in favour of nondisclosure.

### Prejudice the economy of the State

49. I am satisfied that disclosure of the CTPI Information could reasonably be expected to prejudice the economy of the State<sup>56</sup> in being able to:
- obtain commercial investment advice without concern of broader disclosure; and
  - negotiate on competitive commercial terms with third parties regarding State investment in large infrastructure projects.
50. In NQCC2, I stated<sup>57</sup> that:

*Treasury has explained that negotiations remain ongoing between the Government and Adani regarding infrastructure investment options. Specifically the Due Diligence Assessment ...includes internal advice provided to Government in relation to the various investment options available to it and the likely returns and risks of those investments. Disclosure of the Government's internal investment advice to the general public, including the private sector entities which the Government seeks to conduct commercial negotiations with could reasonably be expected to have a significant adverse impact on the Government's ability to conduct these negotiations on a commercial and competitive basis. For this reason I have attributed this factor in favour of nondisclosure significant weight.*

51. I am satisfied that the above reasoning continues to apply and in accordance with my findings in NQCC2<sup>58</sup>, I find that this factor carries significant weight in favour of nondisclosure.

### Deliberative process

52. The RTI Act recognises that a public interest factor favouring nondisclosure will arise where disclosing information could reasonably be expected to prejudice a deliberative process of government (**Nondisclosure Factor**).<sup>59</sup> The RTI Act also provides that disclosing information could reasonably be expected to cause a public interest harm through disclosure of an opinion, advice or recommendation that has been obtained, prepared or recorded or a consultation or deliberation that has taken place in the course of, or for, the deliberative processes involved in the functions of government (**Harm Factor**).<sup>60</sup>

<sup>55</sup> See relevant media at: <http://www.dailymercury.com.au/news/claims-adani-rail-could-be-taxpayer-funded-denied/3067271/> (accessed on 29 August 2016) as raised by the applicant in submissions dated 24 August 2016.

<sup>56</sup> Schedule 4, part 3, item 12 of the RTI Act.

<sup>57</sup> At [60].

<sup>58</sup> At [60] - [62].

<sup>59</sup> Schedule 4, part 3, item 20 of the RTI Act.

<sup>60</sup> Schedule 4, part 4, item 4 of the RTI Act.

53. In *NQCC2* I attributed both the Nondisclosure Factor and Harm Factor significant weight in favour of nondisclosure of the CTPI Information.<sup>61</sup> The applicant has since argued that lower weight should be attributed to these factors as a recent announcement made by the Queensland Treasurer, The Honourable Curtis Pitt indicated that the current Queensland Government will not '*contribute taxpayer money to Adani's project*'.<sup>62</sup> The applicant argues that on the basis of this announcement the current Government has finished deliberating on some of the investment options.<sup>63</sup>
54. I do not consider that the Treasurer's announcement necessarily confirms that the Government's deliberative processes with respect to supporting the Adani Projects are finalised. While the current Government may have ruled out some support options, I am satisfied that there are other options on which a final decision has not yet been made. Having carefully considered the information in issue in this review and the other related external reviews, I am satisfied that the Treasurer's recent statement cannot be interpreted as unequivocal confirmation that the Government has completed all of its deliberations with respect the way in which it will support (if at all), the Adani Projects.
55. Accordingly, I adopt the reasons I gave in *NQCC2* and find that disclosure of the CTPI Information could reasonably be expected to have a detrimental impact on the Government's ability to continue considering its options and engage in open and frank negotiations with third parties including Adani.<sup>64</sup> I am therefore satisfied that disclosure of the CTPI Information is likely to prejudice the deliberative processes of government and cause significant public interest harm to these processes. I have therefore attributed both the Nondisclosure Factor and Harm Factor significant weight in favour of nondisclosure of the CTPI Information.

### **Balancing the public interest factors**

56. The CTPI Information was created by, or communicated to, the former Queensland Government in order to inform its decision making processes with respect to the Adani Projects. These documents are based on financial data provided to the Queensland Government by Adani. I am satisfied that, in addition to the pro-disclosure bias, several factors favouring disclosure carry significant weight due to the potential significance of the Adani Projects to the Queensland economy, and the level of community interest in the subject matter, generally.
57. I am however, also satisfied that disclosure of the CTPI Information could prejudice the economy of the State, the business and commercial affairs of Adani and the deliberative processes of government. I consider that disclosing the CTPI Information is likely to have a detrimental impact on the economy of the State and the State's ability to fully consider and deliberate upon the financial and economic merits of large scale mining projects through open and direct communication with private entities such as Adani. I am satisfied that these factors carry significant and determinative weight in favour of nondisclosure.

### **Conclusion**

58. On the basis of the above, I find that disclosure of the CTPI Information would, on balance, be contrary to the public interest and therefore, access to it may be refused under section 47(3)(b) of the RTI Act.

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<sup>61</sup> See [73] - [78].

<sup>62</sup> See <http://www.dailymercury.com.au/news/claims-adani-rail-could-be-taxpayer-funded-denied/3067271/> (accessed on 29 August 2016) as raised by applicant in its submissions to OIC dated 24 August 2016.

<sup>63</sup> Applicant's submissions to OIC dated 24 August 2016.

<sup>64</sup> See *NQCC2* [73] - [78].

## DECISION

59. For the reasons set out above, I vary the decision under review and find that:

- access may be refused, under section 47(3)(a) of the RTI Act, to information the disclosure of which would reveal a consideration of Cabinet on the basis that it is exempt information<sup>65</sup>; and
- access may be refused, under section 47(3)(b) of the RTI Act, to information, the disclosure of which would, on balance, be contrary to the public interest.

60. I have made this decision as a delegate of the Information Commissioner, under section 145 of the RTI Act.

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**K Shepherd**  
**Assistant Information Commissioner**

**Date: 4 November 2016**

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<sup>65</sup> Under section 48 and schedule 3, section 2(1)(b) of the RTI Act.

## APPENDIX A

Date	Event
31 July 2015	The Department received the access application.
16 October 2015	The Department issued its decision on the access application.
<b>13 November 2015</b>	<b>OIC received the external review application.</b>
13 November 2015	OIC notified the applicant and the Department that the external review application had been received and requested supporting documents.
25 November 2015	OIC notified the applicant and the Department that the external review had been accepted. OIC requested documents from the Department.
1 December 2015	OIC received the information in issue from the Department.
15 December 2015	OIC spoke to the applicant's representatives regarding the information in issue across four related external reviews.
18 January 2016	OIC contacted Department staff by telephone and obtained additional submissions relevant to the Due Diligence Assessment.
4 February 2016	OIC requested the Department for copies of additional documents within the scope of the access application.
5 and 8 February 2016	The Department provided OIC with additional documents within the scope of the access application.
16 February 2016	The Department provided OIC with information about the searches it conducted on the application.
18 February 2016	OIC wrote to the Department requesting further information in support of its decision.
8 March 2016	The Department provided OIC with the requested documents and submissions.
7 April 2016	OIC obtained additional submissions from the Department during a telephone discussion.
12 April 2016	OIC contacted an officer of Queensland Treasury to obtain additional background information relevant to the information in issue.
26 April 2016	OIC conveyed a written preliminary view to the applicant and invited the applicant to provide submission. OIC also provided the applicant with a schedule identifying the documents in issue.
16 May 2016	OIC received submissions from the applicant.
14 July 2016	The applicant's representatives contacted OIC to discuss the progress of this external review.
24 August 2016	OIC received further submissions from the applicant.
30 August 2016	OIC contacted an officer of the Department by telephone and obtained additional submissions.
20 October 2016	OIC provided the applicant with an update on the progress of the matter.

## APPENDIX B

Copy of *North Queensland Conservation Council Inc and Queensland Treasury* [2016] QICmr 21 (10 June 2016) as published on the OIC Website.

Available from: <https://www.oic.qld.gov.au/decisions/north-queensland-conservation-council-inc-and-queensland-treasury-2016-qicmr-21-10-june-2016>