



MARYLOU POTTS PTY LTD
ACN 074 696 263

Objection to the Narrabri Gas Project (NGP) and comment on draft conditions B30-33 Compensatory Water

Marylou Potts Pty Ltd (**MLPPL**), an incorporated legal practice, objects to the Narrabri Gas Project on the basis of the issues raised in this objection including in the attached mindmap¹ and seeks that the IPC reject the project.

MLPPL has acted for landholders in NSW, QLD and the NT who have mining and petroleum title holders seeking access to their land since early 2011 and wishes to impress upon the Commissioners of the IPC the very significant negative long term social, environmental and economic impact CSG projects have upon landholders, their land and their businesses. Landholders should be no worse off as a consequence of these projects, yet they are very significantly worse off.

A review of the NSW DPIE Executive Summary recommending the NGP is indicative of inconsistency², active ignorance³ and or misrepresentation⁴ and making a recommendation based on factors which are not included in the recommended project approval conditions⁵ in relation to the environmental, economic and social impact of the project.

¹ As a PDF if magnified to 400% one can manoeuvre around in the doc

² Inconsistency of DPIE decision making, as the DPIE in 2019 recommended against the Hume Coal Project because it had no approval for access to market. Yet here it recommends approval of the project subject to access to market but after the most environmentally damaging phase 1 has occurred. As such we may get irreparable damage and no access to market.

³ Active ignorance or misrepresentation: Gas prices in NSW have increased with increases in production in Australia. This is common knowledge. The issue is not supply, it is price. Santos does not guarantee price even at international spot price levels. Narrabri gas is high cost gas [see Bruce Robertson submission.]

⁴ Misrepresentation by omission and we note there is no condition that Santos not drill exploration wells at 250m apart in the critical recharge zone of the GAB. In fact, there is no mention of the critical recharge zone of the GAB and no protection of it in the conditions.

⁵ Disingenuous as significant statements are made in the recommendation as the foundation for the basis for recommending the project as approvable which are not contained in the draft conditions. For example there is no condition that all the gas must be supplied to the NSW market. There is no condition that such gas must be supplied at cheap prices. There is no condition that Santos agrees not to extend the project beyond the Pilliga.

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A review of NSW Department of Planning, Industry and Environment draft Compensatory Water Supply conditions at B30-B33 fails to recognise the possibility of very significant water disputes being run through the Secretary and the Department⁶ until and after 2045⁷ at significant and unreimbursed cost to landholders.

As a general observation, we see compensatory water conditions to be problematic in the least, and should not be used to enable project consent.

Narrabri Gas Project draft conditions are worse than Ulan and Wallarah 2 conditions

It is noted that draft Conditions B30-33 are in worse terms than its equivalent in the Wallarah 2 and the Ulan Project⁸. In the Wallarah 2 and Ulan Compensatory Water condition, interim water is to be provided within 24 hours of the loss. Provision of water may be required immediately for the landholder to save stock or to irrigate. The Santos draft condition to provide water “as soon as practicable” does not require Santos to take every possible step that could be taken⁹. A loose and vague obligation open to abuse upon landholders. Further, it will be in Santos’ interests to ensure these disputes are not resolved quickly causing additional ongoing burden to landholders.

The draft condition requires that the impact on the landholder’s water supply has to be proved to be “*adversely and directly caused by the Project*”. The equivalent Ulan condition does not require the cause to be “*direct*”, meaning the cause can be both direct and indirect. This significant limitation will likely result in much dispute. We recommend the deletion of the words “and directly”.

The clause also places a very significant costs burden on landholders. Any loss will require evidence, likely expert evidence to convince Santos and the Secretary, and argument. This costs burden, so long as reasonable, should be covered by Santos, as and when it is incurred.

General comments and recommendations on draft conditions B30-33

- Insert a condition that Santos must have sufficient water licenses available to supply water for all adversely impacted landholders before commencing Phase 1. It is unclear to me whether Recommended Conditions ensure water licensing includes water for make good to impacted landholders.
- Insert a condition of the Development Consent that Santos must have the capability, throughout the term of the impact, to carry out all the potential Compensatory Water Measures for impacted landholders.
- The cause of the adverse impact should cover both direct and indirect adverse impact, as in Ulan mod 3. The parameters of what evidence covers “caused by the Project” need to be clearly set out.
- Interim Water Supply must be provided within 24 hours of identification of the loss not as “*soon as practicable*” as this puts a landholder at the mercy of Santos’ discretion of what is practicable.
- Insert a condition that the “*landholder and the environment should be no worse off as a consequence of the Project*”.

⁶ Experience to date in dealing with the Department in relation to water loss allegedly caused by mining, has resulted in an unresolved 18 month dispute, where the landholder now has only 25% of their former water supply and the Department has failed to consider the landholders’ peer review which provides a perfectly reasonable explanation of the loss caused by the mine.

⁷ We note the failure of 122 water bores in SE QLD and the likely failure of a further 571 water bores in QLD

⁸ MOD 3 Determination The Proponent shall provide a compensatory water supply to any owner of privately-owned land whose supply is adversely impacted (other than an impact that is negligible) as a result of the project, in consultation with DPI Water, and to the satisfaction of the Secretary.

⁹ Baiada Poultry Pty Ltd v R [2012] HCA 14 the meaning of “reasonably practicable”

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- Amend the compensation condition to ensure it is the landholder's choice, not the proponent's, to choose compensation, and the interim supply is to be provided until the compensation is agreed. This is ripe for dispute, particularly given the discrepancy on what each party considers to be sufficient "make good".
- The costs burden on the landholder will be considerable. All related reasonable costs: legal, landholder, experts, for proof of causation, adverse impact, baseline assessment, monitoring, determination of measures, disputes, compensation must be borne, on presentation of invoice, by Santos. Any dispute as to costs goes to Costs Assessment at the Supreme Court as though it was an order of the court. Otherwise there is an unacceptable costs burden on landholders.
- Access to the security for landholders adversely impacts, should be made, via the Secretary, for purchase of compensatory water, as a minimum, if Santos surrenders the development consent, goes into voluntary liquidation or fails to provide interim water supply within 24 hours of loss, or, discontinues interim water supply without compensatory water measures in place or discontinues or fails to provide adequate compensatory water measures.
- The "make good" obligation should be a condition of the Petroleum Production Lease. The security deposit should be sufficient to cover the risk of the need to supply the equivalent quality and volume of water to adversely impacted landholders on a per annum basis and held until the adverse impact has been resolved. Alternatively, the Secretary be given the power to demand access to Santos' water licence water to provide make good water to landholders. We recommend the security be in place before commencement of Project Phase 1 and be available immediately upon breach by Santos of Condition B30-33 or a water supply term of a compensatory water agreement, that is available by showing loss to the Secretary.
- There is a clear discrepancy in what is interpreted as "make good" between the proponent and the landholder. The proponent considers "make good" to be satisfied if the bore is deepened, the pump increased, a new dam or a new bore constructed. The landholder considers make good to mean the supply of the equivalent quality and quantity of water. Deepening a bore or sinking a new bore will not necessarily supply equivalent quality and quantity of water and in perpetuity.

Narrabri Gas Project

Environmental Planning and Assessment Act 4.15 Determination of development application

(1) In determining the development application a consent authority must take into consideration such of the following matters as are of relevance to the development

