IPART NSW

LANDHOLDER BENCHMARK COMPENSATION RATES.

Gas exploration and production in NSW

Energy – Issues Paper

April, 2015.

SUBMISSION.

Hunter Valley Protection Alliance Inc.,
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Chair:
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Thank you for the opportunity to comment on the various issues raised in your Energy – Issues Paper.

We will address each of the issues raised in the paper.

Prior to addressing those issues we feel it pertinent to make the following comments:

1. **Paragraph 2.2.2 Pilot testing**. It is noted that information on stages of CSG development is based on information obtained from Santos. We believe that this is most inappropriate. There is a wealth of scientific information available and obtainable from world wide scientific sources. Any information obtained from a local CSG explorer is likely to be perceived as being tainted by self-interest.

   In addition Santos, and AGL Energy, have both been punished for committing breaches of conditions of both Environmental Protection Licences and/or of Petroleum Exploration Licences, further damaging their respective reputations as being reliable sources of information.

   Indeed we now see from a report this week from the EPA that the disposal of brine by Santos in Narrabri "presents a significant environmental risk and (the EPA) is unable to support this proposal in its current form". In addition the Department of Primary Industries has also raised concerns with the Santos Narrabri gas proposal about the "high risk of having significant adverse impacts and potential loss" of agricultural capacity from the use of treated CSG water for irrigation.

   In view of these problems it cannot be accepted that the information upon which you may rely, provided by the local CSG industry, would be unbiased or self serving.

   We recommend that, in the interests of fairness and transparency, the only information which should be relied upon in preparing your recommendations is that which is learned from independent scientific examination of the processes, which information is readily available world wide.

2. **Paragraph 2.2.3 Production.** Unfortunately the disposal of contaminated produced water is a major stumbling block for the CSG industry. AGL has had its Gloucester produced water, which is contaminated by BTEX chemicals in addition to the usual salt and heavy minerals and the like, rejected by two treatment plants to date. In addition the EPA has rejected the continuation of a trial conducted by AGL to spray the contaminated water onto pasture saying it is unsustainable. Accordingly AGL is now seeking to store produced water on site. Similar problems regarding produced water are being experienced by Santos, see paragraph 1 above.

   This adds to the risk of the landholders land, and indeed adjoining landholders land, and needs to be taken into account when assessing compensation.

3. **Paragraph 2.3.4 Decommissioning.** This is a difficult area. Compensation, or at least some type of insurance, should be available to provide for the integrity of a decommissioned well failing. Steel and concrete well plugs have failed previously in the Cooper Basin. We now find that Hydrogen Sulphide has been detected in AGL's CSG wells at Gloucester. It is known that Hydrogen Sulphide can cause the corrosion of steel which could result in the plugging of the wells failing. The result could be the release of methane into the atmosphere, as well as the contamination of waterways, aquifers, wells and bores. This needs to be fully examined in order to plan for future compensation and/or remediation, the need for which may not become apparent for many years or even decades.

4. **Figure 2.2 CSG production levels.** APPEA claims to be the peak body for CSG explorers and producers. Again, in the interests of transparency, figures should be obtained from independent sources. APPEA has been criticised in the past by both the CSIRO and The Australia Institute for misrepresenting issues, the most recent being APPEA's complete backflip from its misinformation campaign that there was a "gas supply crisis" to accepting that there is plenty of gas available from Bass Strait to provide NSW "indefinitely". Because of this APPEA appears to have little credibility in the eyes of the public and should not be relied upon for any information.

5. **Paragraph 2.4.2 Land access arrangements.** The description in the paper that "AGL and Santos publicly stated they will not enter a landholder's property to conduct drilling operations where that landholder has clearly expressed the view that operations on their property would be unwelcome" diminishes that which was agreed between AGL, Santos and landholder representatives. Although you refer to that agreement in the paragraph it was not just a "public statement", it is more than that, it is a written and signed agreement which landholders are justly entitled to expect to be binding.

6. **2.5 Legislative provisions for landholder compensation.** In addition to legislative provisions, it is also necessary to look at the common law, particularly in relation to the escape of contaminated water from one landholder's property to another. The principles enunciated in the case of Rylands v Fletcher [1868] UKHL 1 House of Lords developed the "rule" that "the person who for his own purposes brings on his lands and collects and keeps there anything likely to do mischief if it escapes, must keep it in at his peril, and, if he does not do so, is prima facie answerable for all the damage which is the natural consequence of its escape". Any compensation for a landholder must take into account this possibility and have a fair sum built in, or preferably an insurance policy or substantial fund, accessible by a landholder to cover such an eventuality.

The following comments are submitted in response to the substantive issues:

3. Proposed Approach for this review.

1. Do you agree with our proposed principles of transparency, adaptability and practicability to guide our recommendations for this review? Are there other principles that we should apply in making our recommendations?

The fundamental underlying principle of transparency and fairness in compensation is agreed with.

'Adaptability' requires the valuation approach to be based upon land values relevant to any particular locality in question. Property values fluctuate considerably across NSW and a use of a generic 'rate per well' is unfair and not market based.

In relation to "*transparency*", please see our comments above relating to paragraphs 2.2.2 and Figure 2.2. The public has little faith in the CSG explorers or APPEA following upon the many breaches of Licence conditions and misinformation campaigns. The only way to ensure that there is transparency from the very start is to ensure that all information upon which this review is based comes from scientific sources or from Government sources. As we have said, there is a wealth of scientific information available both in Australia and overseas. Clearly the Government should be the source of any information relating to gas production, CSG reserves, royalties and the like.

We agree that stakeholders should be able to clearly understand what your recommendations are and how you arrived at them.

Landowners should be provided with sufficient, easily comprehensible information so that they can simply calculate for themselves an amount of compensation or benefit to which they may be entitled for their particular parcel of land. Landowners should be able to do this when first approached by a CSG explorer/producer without having to engage accountants or lawyers.

This leads into the *adaptability* of the recommendations arising from the Review. The end result, as said above, must be ability for the landowner to use a base formula which the landowner can adapt to his/her own specific situation. Added to "the size, location and potential uses of their land" should be, for example: "value of their land"; "potential loss of value of their land"; "geography, geology and hydrogeology of their land, both surface and subsurface"; "potential loss of business income"; "potential damage to or loss of waterways, aquifers and ground water"; "potential damage to neighbouring properties"; "potential damage to local sustainable agricultural industries as a whole".

"Practicability" is a necessary outcome. We have addressed this above. There must be a simple formula for landowners to calculate an estimated amount for compensation or benefit.

2. Do you agree with the four key steps in our proposed approach for this review (identify impacts, estimate compensation for these impacts, estimate benefit payments and make recommendations): If not, what are your concerns.

In assessing compensation, it is agreed that it is appropriate to consider the heads of compensation for compulsory land acquisitions in NSW. However, it is impossible to produce generic estimates of damages due to diverse variation of property values across NSW, and within specific districts; and the site-specific negative impact of CSG infrastructure will also vary considerably.

4. Identifying what impacts landholders should be compensated for.

3. *Do you agree with our preliminary view on the relevant heads of compensation for hosting CSG exploration and production (value of land occupied and loss due to severance, injurious affection and disturbance)? Are there other temporary impacts of CSG exploration and production on landholders that we should consider?*

The heads of compensation are well documented within the valuation profession. Section 55 of the *NSW Land Acquisition (Just Terms Compensation) Act 1991*, should be adapted and applied to the legislative provisions for CSG compensation in NSW. Independent Valuers should be consulted for individual assessments, with an expert panel being established.

In some cases, landholders should be given the option of acquisition of property in accordance with the *NSW Land Acquisition (Just Terms Compensation) Act 1991,* where appropriate.

Provision for ongoing or permanent impacts, and the future risk of impacts which may arise after decommissioning/remediation. CSG Companies should be accountable and contribute to a fund/insurance policy.

AGL has purchased some thousands of hectares of land in the Hunter Valley upon which it is conducting exploration activities. It may be that CSG explorers should be required to purchase land, as are coal mining companies.

4. Should we consider any 'special value' of land and 'loss of opportunity to make planned improvements on the land' in recommending compensation for CSG exploration and production?

Special value is recognised under Section 55 of the *NSW Land Acquisition (Just Terms Compensation) Act 1991*, and well documented within the valuation profession. There should be legislative support so that the item may be considered where special value applies

In localities where CSG activity is either current, or under consideration, a stigma attached to the locality is created within a locality which manifests in a negative impact on the property market, and translates to extreme difficulty in selling property with protracted selling periods and reduced values. Depending on specific circumstances, the impact could be long lasting, and have severe financial and social consequences. 'Loss of opportunity to make planned improvements on the land' is a far broader issue than simply compensating individual property owners where CSG production is proposed.

For example, the land may be a commercial vineyard or orchard or have any agricultural pursuit or business operating on it. That land may be on the edge of a Critical Industry Cluster exclusion zone. If CSG exploration commences on a neighbouring parcel of land which is not within an exclusion zone, the value of the neighbouring land within the Cluster could well be reduced.

We do note in the issues paper that the NSW Valuer General found that "no impact on land values was evident, this was based on a small number of property sales transactions and the report noted that this limits the conclusions from the study." However in Queensland the Valuer General for that State reduced the value of CSG affected land by 12%. Anecdotally, in Queensland it has become impossible to sell affected farms thus rendering them worthless as a nest egg for the future of the farmers.

Landowners on land directly or indirectly affected by CSG activity would be loath to invest in the improvement of their land or in the future of their business without being certain that the investment would not give them a return.

There is a significant 'loss of opportunity' to grow the land or grow the business on and from the land.

The HVPA undertook its own survey amongst members in the Singleton region, and in summary, taking the NSW Valuer General's own assessments within the Shire and comparing such to land with CSG Exploration areas it was found property within the Shire had increased by an average of 12% with property subject to CSG exploration activity had declined an average of 6% i.e. an effective decline of 18% for the same given period for CSG impacted properties.

5. Are there any permanent impacts on the market value of land arising from hosting gas exploration and production that we should consider?

Yes, as addressed in previous question; and are not restricted to the hosting land, but extensively to neighbouring land. The valuation theory for compensating compulsory acquired land recognises potential loss in value due to 'stigma' as part of 'injurious affection'. Adoption of the compensation provisions of the *NSW Land Acquisition (Just Terms Compensation) Act 1991* ensures inclusion of this item.

The permanent impacts could include: scars on the land after the removal of infrastructure; salination of the land, or neighbouring land, from the spillage of produced water (many examples of this have occurred); loss of or contamination of groundwater, aquifers, fresh water tables and waterways; buried pipes; loss of well integrity.

6. Do you agree with our preliminary view that NSW legislative provisions for landholder compensation for gas exploration and production should be broadened? If so, how? If not, why?

It is agreed that NSW legislative provisions for landholder compensation for gas exploration and production should be broadened so that **all landholders impacted** (directly or indirectly) by CSG activity will be no worse off as a result of that activity.

The NSW Mining and NSW Petroleum Acts provide limited rights for compensation.

The 'Halfpenny Investments' case highlights the inadequacy of the current legislation and the method adopted by the court (making no allowance for loss in value to the balance land). Ref: *Halfpenny Investments Pty. Ltd v Sydney Gas Operations 2003/44 (NSW Mining Warden)*
http://www.lec.justice.nsw.gov.au/Documents/mining_halfpenny_investments_v_sydney_gas_20jan2004(1).pdf

NB: *'Compensation for coal seam gas occupation: assessing the harms'* presented to the 20th Pacific Rim Real Estate Society Conference, January 2014 at Lincoln University, Christchurch, New Zealand.

Ref:
http://www.prres.net/papers/Fibbens_Compensation_CSG_Occupation.pdf

The Queensland *Petroleum and Gas (Production and Safety) Act 2004* replaced the Queensland *Petroleum Act 1923* (which had similar compensation provisions to the NSW Petroleum (Onshore) Act 1991). The legislation now provides at 532 (4) for (*a), (ii) diminution of its value; (iii) diminution of the use made or that may be made of the land or any improvement on it.* This terminology includes loss in value to the balance lands.

The available options appear to be either adopt legislation to mirror the compensation provisions of the Queensland *Petroleum and Gas (Production and Safety) Act 2004; or* amend the Petroleum (Onshore) Act 1991 to provide compensation under the provisions of the *NSW Land Acquisition (Just Terms Compensation) Act 1991.*

7. Do you agree with our preliminary view that our recommendations on compensation should be limited to landholders

who host CSG activities and their neighbours who are directly affected? If not, why?

It is agreed that to landholders who host CSG activities and their neighbours who are directly affected should be compensated. The interpretation of the extent and degree of affectation is the question, as the amenity of localities and the property market is affected by the CSG activity. The stigma, and subsequent impact on the property market, as indicated previously in Question 4. The issues of exclusion zones, Critical Industry Clusters, buffer zones, and broader acquisition policies need to be addressed.

The reference to "neighbours" must be widely interpreted. It should not be restricted to those landholders whose land is physically adjacent to the land upon which CSG activity is being hosted, but must include all "neighbours" who may be affected by the CSG activity.

A "neighbour" would include: those whose land abuts the hosting land; those whose land is impacted by scenic amenity; those whose land shares underground water and fresh water aquifers; those whose land shares above ground water; those who share similar business enterprises on their land, for example those whose businesses make up a Critical Industry Cluster; those whose land is impacted by pipelines running through or adjacent to their land.

"Directly affected" should also be subject of definition so that any affectation to the neighbouring property, no matter how far away and whether above or below ground, would be compensable.

The above implies some level of co-existence which is not accepted by the HVPA or the Though-Bred Horse Breeding Industry in the Hunter Valley.

There is a need to define and implement exclusion zones for activities that are critical. This must include the Mining Industry along with the likes of Wine Tourism. The exclusion zones require a minimum 10km buffer line to adequately provide the necessary protection.

By undertaking the above the issue of financial compensation can be more structured defined and minimized.

5. Estimating compensation payments

In paragraph 5.2 it is enunciated that, according to Santos, an area of around 10,000 square metres (1 hectare) is required during the construction stage of a well, reducing to an area of 50 square metres once the well reaches production stage.

The dangers of relying on CSG explorers for your base information are again shown here.

APPEA has estimated that an area of 15m x 15m (225 square metres) is required for a production well.

The Mining Warden in Halfpenny's case held that 1,673 square metres were required for each production well, including road infrastructure.

Again, in the interests of transparency, you must rely on scientific information for your base line information rather than relying upon CSG explorers whose self-interest must cloud your eventual recommendations in the minds of any reader.

8. *Are gross margin and market rental approaches appropriate for estimating compensation for the value of land occupied? Are there other approaches that we should consider?*

Due to the overall impact of mining activities both above and below the ground we believe the only equitable method of establishing the correct grounds for compensation should be based on the recognised value of land prior to the mining of such land. This has been recognised as against the market value of land that has been subject to mining activity. Compensation must be a ''market based''.

Gross Margins are inappropriate for estimating compensation for the value of land occupied.

The 'possible approach' involves identifying the highest-value potential agricultural use for the land occupied by CSG infrastructure, and relating this information to the DPI's gross margin estimates (or a similar proxy for gross margins). The five class system used by NSW Agriculture classifies land in terms of its suitability for general agricultural use. This system was developed specifically to meet the objectives of the Environmental Planning and Assessment Act 1979, in particular 5(a) (i) *'to encourage the proper management, development and conservation of natural and man-made resources, including agricultural land...for the purpose of promoting social and economic welfare of the community and a better environment'.*

The classifications are a planning tool, and land values within the individual classifications will vary significantly across zones.

Gross margin analysis and comparison has historically been used as a farm management tool and has no application in property valuation.

Application of this method would present significant problems in the valuation of compensation for partial occupation, as it does not account for the residential amenity of property; is irrelevant to 'lifestyle' property; and inherently provides a variable range of results.

Whist useful to determine rental affordability, the only acceptable approach is the application of rates per hectare for both /capital value and rental assessment, based on market evidence, applying the 'piecemeal' (summation) and 'before and after' valuation approaches

The approach taken in the *Halfpenny* case was a summation (piecemeal) approach which assigned a value to the land occupied and converted to a rent.

9. Do you agree with our preliminary view that because severance is site-specific and highly variable, providing benchmark compensation would be of limited use to landholders? If not, how should we estimate and structure compensation for severance?

Yes, the value of the 'land occupied' can be highly variable and site specific, with farm management factors a consideration. Where CSG activity is likely to have an impact on the value of the residual land through severance, the landholder should seek specialist legal and valuation advice on appropriate compensation payments for this impact.

10. Do you agree with non-market valuation and relocation cost approaches for estimating compensation for injurious affection? Are there other approaches that we should consider?

No. Non-market and relocation cost methods are approaches applicable to situations where there is no market evidence. The IPART paper statement at 5.4.1 "*There are generally no market values attached to impacts such as nuisance from noise and dust and loss of visual amenity*" disregards valuation theory relating to the derivation of values for diminution in value. Whilst there is no direct market for the impacts, the value attributed to the impacts can be determined by multivariate techniques and 'paired sales analyses'. The theory relating to these approaches is well established and adopted in valuation practice, and standards, as supported by court cases. It is noted as accepted by NSW Land and Property Information.

The IPART proposal of 'relocation cost approaches' does not necessarily compensate for the intrusion. Removal costs might be claimed as a disturbance item.

11. Do you agree with our proposed approaches for estimating compensation, or passing through costs, for disturbance? Are there other approaches that we should consider?

Proposed approaches are agreed with, including all professional costs, provision for damages, and remediation, in accordance with contractual arrangements. Insurance and/or Special fund for the latter contingencies may be appropriate.

6. Estimating benefit payments

12. Do you agree with our preliminary view that benefit payments should apply during the production phase for those landholders hosting gas development on their land? If not, why?

No, it is not agreed, as it is assumed that the compensation claim would be fair and reasonable. Note that we support neighbours who do not directly host gas exploration and production but are affected by the ongoing nuisance such as noise, loss of visual amenity etc. from these activities to receive some compensation. During this phase, the property would be virtually unsaleable.

13. Do you agree that the costs of benefit payments should be shared between the gas company and the NSW Government? If so how? If not, why?

Yes. The Crown owns the resource and the CSG explorers are investing in mining the resource for profit.

14. Should funds for benefit payments be pooled and divided among a group of landholders that have signed access agreements? If so, how?

No. The benefit payments should be made not for payment to individual or pooled landholders, but should be for the benefit of the whole of the community in which the impacts are being felt. Whole communities are affected by not only the initial CSG construction work, but ongoing trucking, flaring, methane gas well leakage (well documented that the majority of CSG wells leak methane), risk to fresh water tables, etc.

Benefit payments could be paid to Local Councils for the specific purpose of constructing infrastructure in the particular areas of their Local Government Areas which are impacted. Infrastructure such as community halls, medical centres, parks and gardens, and the like.

The coal mining industry appears to be following this course.

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