Submission into the IPART Review into CSG landholder Compensation Benchmarks.

Firstly let me thank IPART for providing an opportunity to present a submission to the first part of the Review.

My name is Tony Pickard, I have no gas wells on my property but I am an immediate neighbour to the Dewhurst 13-18 H Pilot located on private lands in the area of the Pilliga East State Forest. I also have another gas Pilot, Dewhurst North (formally Dewhurst 22-26) 4000 metres to the South.
I have been observing the CSG industry in my area since 2006.

I have a number of reservations as to whether any access agreement or compensation amounts will ever be effective in practice to be able to protect or compensate either the hosting or the neighbouring landholders.
I also have doubts concerning how compensation claims can be proven and settled fairly, due the lack of emphasis given to the type, location, spread and coverage and the general lack of openness on the part of the gas companies, (in other words, the use of commercial-in-confidence and/or privacy concerns to slow or prevent the knowledge of existing or future events from other parties such as neighbours, etc.), as well as the lack of easily accessible information on type, frequency and the results of any baseline studies in order to obtain a proper baseline for any form of compensation.
The matters presented are by no means everything that needs to be covered in any form of access agreement compensation rate and I would not presume to even submit on baseline "values or amounts". I can only submit using the information to hand from other landowners, gas companies and my personal experiences and observations which are restricted a little by action before the courts to which I am a party of.

To this end I propose that the Review look at there being two (2) types of access and compensation agreements, one that covers the hosting landholder and one that covers and protects the neighbouring landowners called:
Landholder Access and Compensation Agreement to cover the hosting landowner, and a **Neighbouring Landholder Compensation Agreement** to be used to cover neighbouring landowners, Councils, LHPA's, and any other party likely to be affected by the CSG operation.

In my opinion a one size fits all approach will never work as improvements are always made to a property, however, reasonable baseline rates must be set taking into account many factors, such as improvements and intended future plans and much more than just the Valuer General's figures or the DPI's gross margins report.

As a guide, the cost of replacement/repair plus labour, taking into account any inconvenience or loss incurred, should be the basis for any calculation. If high cost or medium to long term damage or inconvenience is experienced or expected, then the CSG Company must be, compelled under the terms of any agreement to purchase the affected property and if needs be the neighbouring ones at a rate that is fair, just and based upon property value before CSG and taking into account such things as improvements made, time taken and expenses in prosecuting the matter and moving costs.

Many of the effects of CSG activities are common to both hosting and neighbouring landowners. Affects such as stress, caused by uncertainty and other issues related to CSG, road dust, unnatural

light from flares, drill rig and extra night road traffic noise, the potential for short or long term interruption to farm or lifestyle activities, effects of any discharge of saline water onto the ground or under the grounds surface, which could potentially affect the ground water and thus the activities carried out on those properties, visual amenity, livestock and fencing concerns; **all of these, and many more, are common to both parties, the only difference being the hosting of CSG operation.**

These and many other affects especially any effect on surface and subsurface water that can be carried to a neighbouring property, must be taken into account when determining access agreements and just compensation.
There should also be some provision within any agreement that allows for compensation to either or both, an ex-hosting landowner and the neighbour, for damage from CSG operations that might occur or become evident in the time after the CSG operation has ceased utilising a property or area.

When it comes to the baseline payments for access during either exploration or production, Santos has already set the bench mark for exploration of the land in and around their project area in the PEL 238. Santos has already stated that for access during exploration they will pay an annual service fee of $30,000 per property (irrespective of size) for access, and will pay extra for the land that they utilise at a rate calculated on the land value multiplied by a percentage.
Santos has also indicated that once they go into production that the terms of the access agreement with hosting landowners will be changed to *"an annual $30,000 service fee plus a share of the Landholder Incentive Fund times Landholders Percentage of Total Private Surface Area (this is calculated as a percentage of the private landowner's land utilised by Santos as compared to the total area used for Santos' operations)*".
This fund is called the Landholder Incentive Fund and, according to the distributed material, would be set up by Santos which "*will be an annual amount equal to 5% of Santos' royalty payments associated with private land within the production licence area".* So Santos has already put plans in place to pay extra from gas production income to their hosting landowners. This in a sense answers some of the questions the Tribunal has asked, unless Santos now wishes to renege on the access and compensation package that it has much publicised in the Narrabri Gas project area.
(See Santos document-- *"Working Together in Partnership").*

In the latest Santos handout the $30,000 fee for service has now been qualified to only be available to landowners who actually signup "*and agree to assist with general monitoring and upkeep of the sites located on their land"* for Santos. This has implications regarding fairness and work place related issues (see Santos document *"Narrabri Gas Project - Working with landholders"*).

It is interesting to note that in the Santos handouts they mention two (2) funds, a "Regional Benefit Fund" which is co-contributed to by Santos and the NSW State Government that will be established to provide for the regional communities which host their operations and a second fund exclusively for hosting landowners called the "Landholder Incentive Fund". The information available indicates that Santos will be the sole contributor and distributor. Payments from this fund could be open to abuse and seen as an inducement of some kind to host Santos' operation.
Any benefits paid over and above the Landowner Access Compensation Agreement benefits must be carefully managed and distributed with extreme sensitivity, as the gas infrastructure will be rolled out progressively as the gas company expands its fields and the wells dry up. The unfortunate side of

the Landholder Incentive Fund is it could be seen to be used to "punish" those who do not want CSG or were forced to accept the placement of CSG infrastructure on their land.

Santos has a "Landholder Incentive Fund" of their own, so why not ensure that other companies do the same and save the NSW State Government and the taxpayer some money. The NSW State Government should not become involved in any form of payments to individuals or corporations involved in hosting, or neighbours to those hosted operations, as it could compromise their independence in investigating issues.
However, the NSW State Government should look very seriously at how this Landholder Incentive Fund is distributed as the fund distribution could be open to abuse.

Rather than the model for payment Santos has suggested, the payments should be based on Lot and Deposited Plans not the amount of land utilised for CSG operations. Maybe even a capped payment type system might work. Whatever system is used it must be fair and equitable to those who host at the start and those who host at the end.
Whatever is decided the fund must be open to public scrutiny and audits on a regular basis.

Santos has also established a benchmark for the short term leasing of a property, that being $150,000 for 3 years. (Documents can be produced upon request).

On a more disappointing note, there are landowners in PEL238 with access agreements taken out before Santos took over Eastern Star Gas and PEL238, that were paid a one-off lump sum payment equal to 40% of the land value for the land utilised and nothing else. Santos has never returned to negotiate a fairer agreement despite, continuing to gain access to these properties.
(This document can be produced but because of privacy issues the owner would have to give their permission).

All existing access agreements should be revisited and renegotiated and adjusted to remove any inequality and disadvantage that a landowner may have received in the past.
<u>It is imperative that the above matter be included as part of any recommendation that this Tribunal makes as part of the review into landholder benchmark compensation rates.</u>

There also needs to be a clear definition of what an exploration is well and what a production is well. There also needs to be a precise definition of both of these terms when both production and exploration take place in the same area or the exploration well's extracted gas is used to power any machinery and make a financial return. As an example: Exploration Pilot wells powering a power station of any kind whose electricity generated is of a benefit to the gas company in any way either by external sales or internal use.

Taxation implications on payment amounts received are never explained and this information needs to be included on any publicly available literature (hand-outs, verbal and the like) and explained as a clause within any access agreement. Currently Santos' requirement for obtaining the $30,000 service fee seems to place an accepting landowner into the "casual worker" classification. The implications of this need to be clearly spelt out in all forms of publically available material as well as in any access agreement.
<u>This should be a requirement as part of any open and honest policy</u>.

Insurance implications and responsibilities both short and long term by either or both the gas companies and the hosting landowners need also to be explained both in any publically available literature and any access agreement in ways that can be easily understood.

At this point it is prudent to raise the Neighbour Compensation Agreement. The neighbour should be entitled to some form of compensation due the affects upon them, their property and property activity by matters described earlier. In formulating any compensation for neighbouring properties the following should also be taken into account: the neighbour is partly responsible for boundary fencing, its construction, the type of material used, maintenance, security and replacement; all of which are usually shared between the hosting landowner and the neighbours.
Rural fencing can be basic at times, so if the CSG companies want to renew or up-grade fencing then an agreement should be struck with the neighbouring landowners.

As far as calculating an amount of compensation to pay annually to a neighbouring property owner, this is really area and activity specific. As a guide any compensation calculation should take into account items in the earlier listings as well as any previous reports of problems. These then should form part of a baseline calculation for compensation during the exploration phase and the production phase. The neighbour should be entitled to a share of any "Incentive Fund" based upon inconvenience and nuisance suffered due to CSG operations on neighbouring hosting lands.
The payment could be calculated as a percentage of the neighbouring hosting landowner's remuneration which is based on activity and wells and reviewed at the same time as the hosting neighbour.

There seems to be no provision for the continuation of any compensation/benefits associated with any continuation of monitoring of a hosting landowner or neighbouring property after an access agreement has expired and the CSG Company moved on. It is, therefore, presumed that once the sites on a hosting landowner's property have been plugged and abandoned and all infrastructures removed and rehabilitated to the Governments accepted standard, that any problems which arise after that time are a matter between the neighbour and the ex-hosting landowner. This point needs to be clarified.

This then brings up the matter of insurance during and after CSG operations.
There needs to be hard and fast, fixed obligations imposed regarding this matter, including legislation .There also needs to be an explanation as to who is responsible, for how long, the type and amount of insurance required and who is actually covered, and for what.

Below I have listed some past events that highlight problems a hosting landowner and/or his neighbour could encounter, as well as questions that need to be answered prior to any decision being made regarding these issues.

1. **How do you calculate compensation for these events in the first place?**
2. **And what clauses are inserted in any access agreements to cover the effects of them?**

I have witnessed, recorded and reported the effects of discharges/spills/overflowing ponds and wells, some containing drilling chemicals but all containing coal seam waters both 'untreated' and

'treated' into the environment, as well as over the well pad areas . I have witnessed, recorded and reported on the attempts to rehabilitate these sites. From what I have seen as to the response to the rehabilitation methods currently employed, there is no way short of removing and replacing the contaminated soil with new, that any form of rehabilitation will ever have a chance of success and even then it is still a guess as to whether the area will ever be productive or even as productive as it was prior the exposure to the products and activities of the CSG industry.
One other disturbing factor that will have a bearing on any access agreement compensation with either hosting landowner or neighbour, is that the areas where untreated CSG fluid has been spilt/discharged, seem to be recovering very slowly, if at all. It has also been observed that these areas are slowly growing with the resultant detrimental effect on the previously unaffected flora. Whilst these events are on public land in the Pilliga State Forest, they can be related back to private lands and must be taken into account when preparing any form of landowner access agreement.

I would like to invite the IPART Tribunal to come to Narrabri and go on a tour with me in the presence of Santos, and view the older spill sites of Bohena 2, 4/4L, 7, 3, then go to the site adjacent to the Bibblewindi Dam complex and see the damage that a spill/discharge of unknown litres of CSG water is capable of doing.

The best recorded and most recent large discharge of CSG water into the surrounding area is at the Bibblewindi Water and Gas Gathering complex. The publically available information into the events at Bibblewindi is sparse, except from one very confusing report dated 25th June 2011. This report indicated that 10,000 litres (some people disagree with the amount and source of the CSG water released, however officially it stands as the report states) of CSG water was released into the environment over a period of 4 hours (Attachment A- Operations Report by Santos Limited on Eastern Star Gas Limited- see Items 32 to 36 inclusive. There is also a report of a spill/discharge at the same location before the June 2011 event however there is no water volume recorded -see items 29-31 inclusive). The report further indicates that part or all of the 10,000 litres caused an area of approximately two (2) hectares to a depth, in this case, up to 600 mm (depth of clay barrier to surface) to be so affected as to change the natural pH levels in some areas to ten (10) at a depth of 600 mm (5.6 is normal for the area) and a salts content that well exceeds the ability of the affected area to support shallow and some deeper rooted flora.

Simply put; one (1) litre of this coal seam water, as described above, is capable of rendering two (2) square metres of ground down to, in this case, 600mm, completely unusable for any old/new growth for an indeterminate period of time (so far at the Bibblewindi Water Treatment Facility that is almost 4 years and up to 13.5 years at the other mentioned locations).

Santos has released a report on the unreported 2011 Eastern Star Gas discharge that caused the above flora kill/dieback as well as a report undertaken by Golders Associates (Bibblewindi Water Treatment Facility Soil Investigation 350 pages in length). Please take note of the soil analysis results contained there-in, as well as the subsequent CH2MHILL Rehabilitation Reports on all the earlier mentioned well sites and their surrounding areas (source for these documents is Santos, OCSG or EPA).

The worst part about this event at the Bibblewindi Facility was that human nature and survival kicked-in and the event/events went unreported by many for almost 6 months.

1. **If this happened on private lands, what would be the short and long term effects on the farming enterprise and what effects might a neighbour suffer short or long term?**
2. **What would be the compensation consequences and costs in pursuing a claim and who would pay for all this? The cost burden on a hosting landowner or his neighbour would be in most cases prohibitive. There needs to be clauses in any Agreement that cover these matters.**

The spills are a problem but it is the non-reporting that is of the greatest concern. Imagine what could happen if a spill occurred on hosting private land, the site "covered-up" and the event not reported to the relevant authority, hosting landowner or the neighbouring property owner, and later something came to light as a result of the initial event. Where do all parties, landowner and neighbour stand should something like what occurred at the Bibblewindi complex occur on private land?

I ask you to examine the latest event where there was a discharge from hi-point vent, number 27, on the Dewhurst South water line. This event was recently investigated by the EPA. According to Santos press release only 2-3 litres of coal seam water and 2-3 teaspoons of salts were discharged.

I direct you look at the statements made by Santos on 2nd January 2015 and the conclusions made by the EPA as to the contributing factor regarding this event. Note that Santos made a statement on the 2nd February stating, *"There was no equipment malfunction".*

The findings from the EPA listed that a *"mechanical failure of the vent had resulted in the release of produced water from the vent".* Yet, as stated above in the original press release by Santos on February 2nd 2015, *"There was no equipment malfunction".* I mention this only because this event was seen by non-Santos personnel and the site was legally accessible by the public. The event was reported and investigated and a cause found, but imagine if finding such an event was 'restricted' to only company personnel and/or the hosting landowner and was not reported, then later down the track the event surfaced as some form of 'damage' to either the hosting landowner or to the neighbouring property or their water. So what area of damage will an event like that described above cause and imagine that occurring on an agricultural property?

If this event had occurred on private land and the true extent and cause was hidden from the landholder or neighbour at the time, but the landholder or neighbour discovered the truth after the company moved away from his property, then what measures are in place to protect the ex-hosting landholder? But more importantly: What recourse does a neighbouring landholder have should the "event" eventually affect his land?

There are many more cases like the above mentioned where spills/discharges, overflows, etc. of all sizes have occurred on the grounds surface that, like the above, were either not reported or if they were, were severely and I believe purposefully, down-graded to make the whole event seem trivial and of no consequence, thus to establish some sort of a "damage baseline" weighted in favour of the CSG industry.

Based on the best recorded example (Bibblewindi Treatment Facility Discharge/Spill as above) we now know what this water can do to the flora. Can you imagine what the outcome of an event even as small as a discharge/spill of one (1) litre could do to an agricultural property? Who is

going to calculate a fair and just value for that? And how will it be calculated for any spill/discharge? Certainly not the gas companies and surely not the Government agencies, who with all respect, have had a very poor record in the past when it comes to investigating these types of matters.

The Tribunal should as part of its review into compensation look into and define words like, minimal, minor, significant, insignificant and how many small or minor events must occur before they, in combination, can be classed as "accumulating". There are so many confusing levels describing degrees of events, these descriptions and many more need to be clarified. Also needing clarification is the phrase "industry best practice" as found in the Premier's letter date stamped 9 Feb 2015 along with "world's best practice" as mentioned below.

I like to suggest that the Tribunal as part of the review also look at emerging reports of events related to CSG/Natural Gas/Conventional and Shale Gas Industries overseas and interstate for their effects upon agricultural land and underground water. Examples are from fracked wells but can be related back to non-fracked wells.
I have placed one such address below.

http://files.dep.state.pa.us/OilGas/BOGM/BOGMPortalFiles/OilGasReports/Determination_Letters/Regional_Determination_Letters.pdf

Given the above examples of surface discharges how then can IPART assess a just compensation value for both hosting landowner and neighbour for every every event and for every property with so many varying soil types and property uses, which range from intensive irrigated agriculture on good quality soils, to grazing and agricultural enterprises on poorer quality soils?

The Tribunal must look at lifestyle properties and what just compensation a lifestyle owner will receive; there are many different types of "lifestyle" ranging from the house only lifestyle to the environmental lifestyle.

The Tribunal must take into account, not just the soils, but the possibility of groundwater or aquifer contamination, along with any effects the CSG industry may have on ground water levels, that could require the deepening of existing stock and domestic or agricultural bores.

"World's Best Practice" really needs to be defined.
Personnel I have talked to in the NSW State Government Departments cannot really define "world's best practice", instead they refer to it as being the "best practice in the world at the time", but time and knowledge move on and so should any benchmark compensation rates for landowners, their neighbours and others.
The CSG industry likes to quote how good their practices are compared to those of the Cotton Industry and Irrigators in general, but it was not all that long ago that James Hardie was saying how good their product was compared to other building materials and look what is now known about that industry.

For its part IPART must ensure that all possible eventualities are covered when reviewing the landholder benchmark compensation rates and the neighbouring landowner agreements and ensure that there are clauses in every agreement to cover all eventualities.

Conclusion

There is so much to be covered in any agreement and each location and property is different, that a fixed “one size fits all” access agreement compensation rate just would not work, and to be fair and honest to everyone and to be honest my suggestions may not be a complete solution, but given all the information and differing opinions that the submissions to this Review will bring, that some sort of fair, just and equitable framework will emerge.

Mr A J Pickard
27th May 2015.