Landholder compensation review

Independent Pricing and Regulatory Tribunal

PO Box K35,

Haymarket Post Shop NSW 1240

29 October 2015

RE: IPART's Draft Report CSG Landholder Benchmark Compensation Framework

Thank you for the opportunity to make a submission to the IPART's Draft Report in relation to the Landholder Benchmark Compensation Framework for CSG, following the public hearing held at Narrabri on 13 October 2015.

In addition to the comments below, I would also like to table an interview that I gave to ABC New England North West radio on 14 October 2015 which covers a number of pertinent points in relation to this Draft Report.

It is stated within the Draft Report, and was also stated at the Narrabri public hearing, that many points raised by the community were outside of the IPART's Terms of Reference. However, many of these points are very relevant to the development of the coal seam gas industry in this region, and therefore to the establishment of any so-called compensation framework. As such, I believe these points are inextricably linked to the Terms of Reference.

The talk of compensation payments by both the NSW Government and the gas companies is designed as nothing more than an attempt to alleviate large scale community opposition and to engender community acceptance of an industry that is neither wanted (96% of landholders' surveyed to date across 3 million hectares surrounding Santos' proposed Stage 1 Narrabri Gas Project have comprehensively declared their opposition to the coal seam gas industry in this region) nor needed (refer NSW Parliamentary Inquiry into the Cost and Supply of Gas and Liquid Fuels, Australian Energy Market Operator Statement of Opportunities 2015, links provided in my previous submission dated 28 May 2015).

It is also clear that matters concerning compensation are being discussed prematurely. You cannot develop a robust and meaningful compensation framework ahead of the regulatory and legislative controls that are needed to prevent the worst impacts of coal seam gas, and yet the NSW Government is continuing to push ahead with the coal seam gas industry, rolling it out across our farmland and our communities. It is simply not fair or reasonable for landholders' to be negotiating compensation for

damage with big coal seam gas companies that should have been prevented in the first instance by the NSW Government putting appropriate safeguards in place.

It has been over 12 months since the NSW Chief Scientist handed down her Final Report, and still the NSW Government is yet to fully implement all of the recommendations and ensure that they apply equally to all coal seam gas projects, currently operating, seeking approval to operate or planned for the future. Until such times as this is undertaken in full, the community can have no confidence that the NSW Government has in place the most comprehensive and transparent regulatory controls for coal seam gas in the country, and unless all licences fall under the new codes and regulations, and that these rules are applied retrospectively to existing licences and existing expired licences.

It is also abundantly clear that the IPART has been given the task of reviewing the impacts of an industry of which they appear to have a very limited understanding of, in particular, the large scale costs and risks of the CSG industry to our highly valuable and highly productive agricultural lands, our water resources and our regional communities. Co-existence of agriculture and coal seam gas is nothing more than a myth perpetrated by the industry and Government, and even the NSW Resources and Energy Minister, Mr Anthony Roberts, was unable to cite any examples of successful co-existence of large scale gasfield development and agriculture at a recent meeting.

I cannot overstate the importance to the State and the nation of our sustainable food producing lands. We have a finite amount of arable agricultural land in this country, and here at Narrabri and in the broader North West region we are blessed with good soils, good water and high productivity. Quite simply, it is madness to put all of this at risk for the short-term unsustainable coal seam gas industry. The opportunities in agriculture, particularly in terms of investment, employment and innovation, going forward in this region are enormous and critical to the long term economic and social well-being of NSW.

At the moment, nothing is off limits for agricultural land or drinking water catchments or productive aquifers. The much lauded protection measure of a 2km buffer zone for coal seam gas operations does not apply to all household dwellings and it does not provide any protection for rural farming families, who can have a coal seam gas well drilled within 200m of their home, or 50m from their garden.

Compensation should start with landholders' having the right to refuse access for any and all activities associated with coal seam gas exploration and production, including sub-surface activities, enshrined in legislation. At present, landholders' are ultimately powerless to refuse access to a gas company. Santos and AGL, together with the NSW Farmers, Cotton Australia and the NSW Irrigators Council, did sign an Agreed Principles of Land Access on 28 March 2014, however, this agreement only served to cover drilling activities, and not the extensive range of critical infrastructure such as gas and water pipelines which are essential to supply, and it has never actually been tested. Even the former Prime Minister, Tony Abbott has said that no one should be forced to have a gas well on their land (1) and the right to refuse access for all coal seam gas activity has been supported in recent days by

Federal Nationals Leader, Warren Truss, Federal Rural Health Minister, Fiona Nash, and NSW Roads Minister, Duncan Gay. The fundamental basis for landholders' entering into an agreement when they have no legal fall-back position – no right to say 'no' - completely undermines the ability to be able to reach a fair and equitable agreement and is a testament that the current system is broken.

At the end of the day, landholders' in North West NSW are not looking for monetary compensation but are seeking vigorous protections against the impacts of unconventional gas. There seems to be a misguided notion, including from the IPART, that money will solve all ills, when nothing could be further from the truth. No amount of money is worth the risks associated with this industry, which has proven to be highly destructive and highly invasive of agricultural land, the water resources and a risk to human health the world over. It has also created boom/bust towns, with documented large scale job losses, towns with hundreds of unsaleable houses, contractor insolvency, and so on. Money doesn't compensate for water and air pollution, degradation of agricultural land, loss of amenity and landscape, loss of control over what happens on your property, mental stress and anguish, pain and suffering or your children and family being constantly ill.

On 23 September 2015, AgForce in Queensland revealed that landholders' believe that compensation has not matched the level of disruption or loss of value to their properties (2). In addition, the Hopeland Community Sustainability Group, a group of farmers in the centre of Queensland's gas region, have also noted that the $200 million in "compensation" payments over five years to 2,200 landholders' translates to an average of $18,000 a year, and in no way has this compensated for the pain, suffering and health impacts of coal seam gas (3).

The IPART and the NSW Government are effectively wiping their hands of the large scale costs and risks associated with the coal seam gas industry – they are effectively being put in the "too hard" basket, and we are the families and communities that will be directly and negatively impacted. The Draft Report acknowledges that a broad range of impacts have not been considered, with the Draft Report routinely noting that "xxx falls outside our Terms of Reference" or "xxx is generally provided for or included in the land access agreement".

Ultimately, there is nothing binding for either the NSW Government or the gas companies in this framework, and in fact, Santos explicitly stated at the Narrabri hearing that regardless, they would not be adopting IPART's Recommendations for Landholder Benchmark Compensation. There is no base level of compensation for landholders' enshrined in legislation. At the end of the day, it essentially boils down to how successfully an individual landholder can negotiate with a highly skilled and heavily resourced multinational company, in what could hardly be described as a level playing field.

The IPART explicitly states "In the event that there is an environmental incident, there are legal processes and frameworks in place to manage compensation for loss suffered by affected landholders'. The loss suffered will depend on the individual circumstances of the case. It is outside the scope of our review to estimate compensation for such occurrences." For the IPART to assert that landholders', whose land, water, business and/or product has been negatively impacted as a result of a gas companies CSG activities, could take a case for damages or loss in common law is extremely

naïve at best, and demonstrates a complete lack of understanding of the risks landholders', their neighbours, and downstream water users, amongst others, are exposed to. It is also widely known that landholders' are unable to mitigate the risk of coal seam gas contamination to their farms, businesses or product through the normal insurance mechanism (4); effectively, they are "uninsurable", dangerously exposed and ultimately, self-insured. It is the local landholders' who will bear the burden of this industry, be that financially, emotionally, physically, and it is they who will be adversely impacted.

There seems to be a real disconnect between compensation to landholders' and ultimately the impact to our environment through coal seam gas exploration and production. The reality is that no matter what you pay a landholder, it will never cover the future risk liability related to the contamination of the aquifer or potential cancer clusters in 10/20/40 years or the investment required to somehow extract toxins out of the water before we have to use it (if such a thing were even possible).

Of course, landholders' who choose to host CSG operations should be compensated for the damage to their property, their business and their lifestyle. However, one landholder coming to a satisfactory financial compensation agreement for them, at the expense of the wider community, is not proof that the system is fair and just. Why should a handful of strategically selected landholders' condemn the rest of this region to a future that is ultimately unviable for life and for agriculture? Once our land, water and the biodiversity on which our very lives depend is destroyed, no amount of money will save us.

The IPART's Compensation Model is very limited and very simplistic, instead preferring broad brush stroke valuations. The model appears to bundle compensation for a broad range of impacts into a single category. The model also assumes that all facets of a landholders' life that will be impacted can be firstly, identified ahead of time, and secondly, that a monetary figure can be assigned to it. How is it possible to put a dollar figure on the following real life impacts which may include, but are not limited to, –

- Land and air contamination;
- Ground and surface water contamination and/or depressurisation;
- Health impacts;
- Damage to crops, property and buildings;
- Land rehabilitation;
- Loss of land use;
- Impact to business operations;
- Loss of all current and future production earnings potential, particularly if water resources are compromised;
- Subsurface impacts;
- Costs of future possible water purification/osmosis systems that may need to be utilised in the future for drinking water and irrigations systems;
- Degradation of improvements made to soils and pastures, normally over a period of many years, if not generations;

- Loss of organic status due to proximity to coal seam gas infrastructure;
- The school bus having to have a pilot vehicle to negotiate the high traffic roads;
- The holding of a government media event about "co-existence" on your property without your knowledge;
- The closing of the local school, sporting clubs and community groups due to the irregularity of FIFO working hours and nature of this type of workforce;
- Not allowing your children to play outside at certain times because of dust and other impacts;
- An increase in living and business costs that go along with and have been proven in other areas from the construction phase of this industry; and
- Mental health issues from living daily with this level of stress?

On multiple occasions, including through the Narrabri Gas Project Community Consultative Committee (NGPCCC), Santos has been asked how, and to what extent, they have quantified the potential adverse impacts for the purposes of insurance, including some of those listed above, and they continue to be unwilling or unable to do so. If the gas company is unable to quantify these impacts, how is the average landholder to fare? How do you fit these, and many more, into "injurious affection" as a percentage of your land value?

The Draft Report implies that compensation is limited in time, addressing only upfront negotiated compensation, and does not address the growing negative impacts as they occur over time. The full extent of potential adverse impacts may not be able to be quantified for some years to come and as we have seen in Queensland, "make good" arrangements are meaningless. The reality is that there is no make good on a damaged aquifer or having your health compromised. No amount of money thrown at the problem at that point will change the outcome.

The Compensation Model is predicated on a "best case scenario" and doesn't provide any consideration for who will cover and compensate for the risks that these developments pose to landholders', their health, their production profitability, their land and water resources. As stated above, insurance companies will not cover the risk, the EPA will only step in for an environmental breach but not for loss of production – landholders' still have to bear the full brunt of the risk of this industry not going to plan and that is unacceptable, and will not be tolerated by the broader population.

The often expressed view of the Narrabri public hearing Chair, Mr Peter Boxall, that compensation is designed so that landholders' are "no worse or no better off than before the development came" is misleading at best. It is also completely at odds with what is being touted in our local community by Santos and more broadly by the NSW Government, both of whom have actively marketed the Narrabri Gas Project as a way for landholders' to share in the supposed "benefits" of gas exploration and development, and thus presumably sees a select few "better off" than they might otherwise have been. What of those that will be "worse off"? How they will be compensated for the loss of their valuable underground water, for example, or the rejection of contaminated product at market? There

is nothing in the Draft Report for those that will be "worse off", other than that such events "fall outside of our Terms of Reference". The IPART can't have a bet both ways, either both ("better off" and "worse off" are addressed or neither are addressed.

It is highly inappropriate to tie compensation, or lack thereof, for neighbours under this Draft Report to a so-called Regional Community Benefits Fund, which is still the subject of its own ongoing Discussion Paper. Page 15 of the Draft Report states that "royalty arrangements for neighbours would be affected over time by the Community Benefits Funds because every $2 paid into CBF is a $1 reduction in royalty payments, capped at 10%". How can IPART be discussing and deciding on a compensation framework for landholders' when the Regional Community Benefits Fund process is still outstanding, and so to how the ongoing deliberations will impact landholders' and their neighbours? Any reference to a Community Benefits Fund should be excluded from the IPART Final Report as it is inconclusive how any such Community Benefits Fund will roll out and there is no evidence that neighbours will directly benefit. It is simply being used as an excuse by the IPART and the NSW Government for their ongoing failure to address neighbour impacts in any Compensation Model, which is disingenuous and highly discriminative.

The assertion by the gas companies and their representative body that impacts on neighbours are already managed and regulated through environmental and planning approval processes is not what we are seeing play out on the ground, with Santos and their predecessor, Eastern Star Gas (of which Santos was a large shareholder), having a well-documented history of failures in our region over many years, with multiple known incidents of spills, leakages and environmental incidents, including the contamination of an aquifer with uranium and other heavy metals at 20 times safe drinking water levels. In any case, it is extremely concerning that these approvals could then be actively set aside to provide for impacts to exceed reasonable levels if the gas company enters into a written agreement with the affected landholder(s).

Equally concerning is that neighbours will only potentially receive compensation where they can prove the companies' have breached their EPA approval conditions; thus the onus is on them to monitor and prove these breaches, costing them time and money, together with mental stress and anguish. It is unreasonable to rely on neighbours to act as the policing body for impacts. Compensation should be paid to neighbours from the outset and a "relocation allowance" is sub-standard. For neighbouring landholders' to be offered compensation to move for a period in the event that CSG operations exceed reasonable levels is tantamount to an acknowledgment and recognition of the unacceptable impacts of CSG extraction, and is itself unacceptable. Earlier this month, Queensland landholders' were given just two days' notice via text message of the need to relocate from their property due to the impacts of CSG drilling exceeding reasonable levels.

The IPART Draft Report also notes on page 37 that neighbour impacts are taken into account under Voluntary Planning Agreements (VPA's). Santos has been the lead operator in PEL238 since 2011 and, to date, there is no VPA in place with the Narrabri Shire Council in relation to Santos' gas exploration and development activities that are currently taking place within the Shire.

Furthermore, terminology that is open to interpretation must be specifically defined in each instance. For example, the Draft Report refers to "landholders' reasonable costs being paid" and "that compensation should be paid to neighbours when impacts on them exceed reasonable levels". What constitutes "reasonable" in each of these instances? Who determines what is reasonable? The gas companies? The landholder? The neighbouring landholder? What constituents a neighbouring landholder?

A mandatory, not voluntary, public register of compensation payments must be developed that allows landholders' to anonymously provide information about their compensation. It should be expressly mandated that there are to be no confidentiality clauses in any Access Agreements.

The IPART Draft Report refers to conduct as being just as important as compensation. Unfortunately, stories abound in the Queensland gasfields of inappropriate conduct from gas companies and their contractors. A prime example of this is the devastating news from Queensland earlier this month, which saw highly respected cotton farmer, George Bender, take his own life after years of bullying, intimidation and harassment at the hands of coal seam gas companies and the subsequent loss of his two water bores as a result of nearby coal seam gas operations. Not content with destroying his water, the gas company wanted to put 18 wells on George's farm, a farm which had been in his family for 5 generations. Sadly, this is not the first suicide able to be attributed directly to the intense stress and mental anguish people are forced to confront at the hands of the coal seam gas industry, an industry that is really still only in its infancy. Other landholders' also aired their concerns on ABC's AM Program on 29 October 2015 (5).

This behaviour is not only confined to coal seam gas companies operating in Queensland, or to Origin Energy. On more than one occasion, I have, along with my young children, personally been subjected to bullying, intimidation and harassment at the hands of Santos right here in the Narrabri Shire. Santos has been unapologetic of their behaviour, which I believe speaks volumes.

In conclusion, it is clear that no amount of compensation will ever be worth the risks – to our land, to our water, and to our ability to grow clean, healthy food. The very notion of compensation is divisive and serves to facture formerly close-knit rural communities. It implies an acceptance of the coal seam gas industry where none exists. Let's be clear – Santos, and the coal seam gas industry in general, has no social licence to operate in our region, and the establishment of a compensation framework for landholders will do nothing to change that.

Thank you for your consideration of my submission.

Yours sincerely

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(1) http://www.smh.com.au/federal-politics/abbott-honours-a-promise-with-meeting-on-gas-fears-20131102-2wtt9.html

(2) http://www.couriermail.com.au/subscribe/news/1/index.html?sourceCode=CMWEB_WRE170_a&mode=premium&dest=http://www.couriermail.com.au/business/csg-wells-give-queensland-farmers-a-200m-funding-boost/story-fnihsps3-1227539254631?sv=fb1b9a94b0dedfecebc9cb20414e732&csp=bc3e0de70e49f264deee22d4c2c34df8&memtype=anonymous

(3) http://www.lockthegate.org.au/community_says_the_gasfields_commission_is_hopeless_hopeland

(4) http://www.theland.com.au/news/agriculture/general/news/csg-too-risky-for-insurers/2743615.aspx

(5) http://www.abc.net.au/am/content/2015/s4341168.htm