



IPART Submission Stage Two

27th October, 2015

People for the Plains is a group North West NSW residents, based around the town of Narrabri who are interested in transparent and factual information in regards to extractive industries in our region. We host a range of events, some of which have attracted over 1,000 people and we maintain a database of over 400 people. We hold regular meetings and events to discuss the issues surrounding CSG and coal mining in our region.

Thankyou for the opportunity to comment on the Draft Landholder Benchmark Compensation Report, following the IPART event in Narrabri on 13th October, 2015.

Firstly let us provide context for our feedback. We reassert that the CSG industry does not have social licence in the Narrabri region and we believe that any compensation agreements are simply designed to engender community acceptance where none exists and attempt to alleviate community opposition. This strategy will not work.

We also believe that there is a fundamental flaw to the discussion about compensation when landholders have no right to say no to CSG companies. No equitable agreement can be reached when the balance of power lies so strongly to one side of the parties and the other side simply has no rights. This imbalance will never allow for fair and equitable agreements to be reached.

A 2014 study by GISERA looked at farmer's perceptions of coexistence between agriculture and large scale coal seam gas developments in Queensland. We believe this working paper is highly valuable for IPART and would like to provide the reference to it (at the end of this submission) and highlight some key points¹.

"Whilst open to the idea, there was great uncertainty about the nature and likelihood of developing a joint CSG-farm enterprise that met farmers' expectations. The reader is reminded that unlike some other resource development areas, landholders in this area do not own mineral rights and work on a compensatory payment scheme. Uncertainty remains with respect to impacts on property values, long term negotiations, changes in company ownership, duration of CSG extraction and impacts on the farm business operations. The current compensation model was not seen as attractive as a partnership model. Participants currently saw CSG companies aiming to make large profits and felt that a system that allowed them to gain a reasonable share in this for their support was only fair. It was also felt that for the business model to work, it would need to allow investment into the farm asset base which would then assist any future sale price. Any development that undermined the value of the overall asset, such as through environmental harm, was a concern. Finally, there were also some reservations regarding the partnership model because unlike many other business partnerships, this was not a voluntary partnership."

We assert that IPART should halt their proceedings until the Chief Scientist's findings are fully resourced and implemented by the NSW government as promised prior to the election. Processes

are continuing that are not in a logical order. The science for the health and environmental impacts of the industry must be concluded before processes for determining compensation to landholders.

We are deeply concerned with the fundamental basis that landholders are to be “no worse or no better off than before the development came” as this is an assumption that all facets of a landholders’ life that will be impacted can be firstly identified ahead of time and secondly put a dollar figure on it. How do you put a dollar figure on the following real life examples of impacts – 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, 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 most importantly the mental health issues from the daily living with this level of stress. How do you fit these into “injurious affection” as a % of your land value?

Furthermore why has legislation and the Guideline left out the “loss of amenity including recreation and conservation values” that is critically important to the compensation issue? This is legislated for in Victoria and should also be used in NSW.

The GISERA report from 2014 also stated:

“Engagement with CSG companies impacts on wellbeing in ways that affect personal lives, families, and ultimately on health. Farmers are concerned about possible impacts of infrastructure on the environment and how this subsequently impacts the health and effectiveness of themselves and their farm. However, much of the impact on wellbeing discussed in these workshops arose from the ways that farmers and CSG companies had been interacting. This has resulted in issues of stress, conflict and disconnection.”

Toothless Tiger

We believe that the tools suggested by IPART to guide compensation for access agreements are a toothless tiger and there is nothing binding that provides any comfort to landholders. Essentially the outcome still comes down to how good an individual landholder or their advisors are at negotiating against a large multinational company. This outcome was the same prior to the IPART process.

Inability to Fully Compensate

Money doesn’t compensate for loss of your control and your peaceful way of life or for the mental health impacts created by the industrialisation of farms. What we know from Queensland is that people’s lives are turned upside down by coal seam gas and that without the right to say no, and adequate legal protections, landholders will be the ones that lose. The recent and tragic suicide of George Bender is a clear and transparent message that the present system is broken and it is farmers who are bearing the brunt of this.

The 2014 GISERA report also stated:

“The addition of CSG infrastructure into the farm landscape has raised concerns with many landholders due to perceived risks to the environment, family and business. Many of the landholders involved in the group discussions described problems in communicating their concerns with CSG companies. Our interpretation of this issue, based upon the discussion group findings, suggests that this has been due to both the difficulty of raising place identity as an issue worth concern, and people’s ability to communicate it, especially when farmers can look at the landscape, and its changes, and interpret it in ways that some CSG company employees may not.

There was a real sense of the farm being their “country” and therefore the unrequested intrusion of CSG development was seen as an occupying force.”

We believe there are many aspects of a landholder’s life that cannot be placed on a spreadsheet with a \$ value or % value placed on it.

Pre-emptive Process

We have serious concerns about page 15 of the Guidelines that 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%”. We are well aware that the process for deciding on the make up of the CBF and who it will benefit is still under way so cannot be used as an incentive for neighbours. When questioned on the inclusion of this incomplete process at Narrabri the Chair suggested that this was simply a writing issue. However number 8 slide of the powerpoint used by IPART also stated “The CBF aims to provide benefits to neighbours and broader communities in which the gas industry operates”.

The CBF should be completely excluded from IPART’s Guidelines until the process for determining the CBF is complete. It is being used as an excuse for not properly compensating neighbours under the IPART process which is unfair and inaccurate.

The GISERA report stated:

“It was very clear from the participants’ responses that farmers believed that large multinational companies did not understand the issues of individuals, and were not concerned with the interests of individuals. They felt that, during rapid CSG development, individual farmers were seen as easy targets when companies needed quick results.

The work of the CSG companies in developing their social licence to operate was acknowledged by the participants, especially in western areas where the CSG industry is more mature and where remote communities could more easily benefit from extra support. But across all workshops, people were cynical about the “hearts and minds” programs which also included much advertising and sponsorship.”

Agreement Separate to Conditions of Approval

It is inappropriate that landholders be expected to sign compensation agreements that stand completely separately to the conditions of approval of the development. How would a landholder be expected to know what the likely impacts are that they should be pre-emptively seeking compensation for when they do not know what is acceptable or unacceptable from the regulatory

authorities' perspective? It is even more inappropriate for neighbours to have to prove that the impacts that they receive are beyond "reasonable" when they may have no knowledge to the approved conditions. These two processes need to be much closer together in order for either side to be effective.

Confidentiality Creates Division

We insist that companies are not allowed to include confidentiality clauses in their agreement and that the provision of data to the database managed by NSW Farmers is compulsory. We do not want the community-dividing and individual isolating outcomes that have happened in Queensland to happen here. Access Agreements must be open and transparent.

The GISERA report from 2014 stated:

"Farmers in the eastern parts of the study area have also started negotiating as farmer collectives rather than individuals. Whilst these changes in the approaches by farmers, and the response by CSG companies in encouraging them, are seen by farmers as a positive development, the discussion groups suggested that there is still much improvement to be made in the way that the negotiation processes take place."

Workshop participants relayed many stories of bad experiences with contractors who had allowed stock to escape, lost keys to gates, frightened livestock such that animals had injured themselves, left rubbish on a farm, or had acted inappropriately. Whilst contractors may only interact with a farmer once, and therefore could possibly not value the relationship with the farmer, they are seen as operating for the CSG company and so can heavily impact farmers' perceptions of the company. The large number of contractors and the similarly large and regularly changing number of CSG company staff was a source of frustration for farmers who were trying to maintain a suitable level of management and control over their farm."

The inclusion of confidentiality clauses will make cooperation between landholders in negotiating impossible, leaving them personally exposed and vulnerable.

Neighbours Left Out

The IPART Guidelines suggest that neighbours will only receive compensation where they can prove "reasonable impacts" have occurred. Firstly what is "reasonable" and who determines this? Secondly the onus is on the neighbours to police and prove these, costing them time and money. This is preposterous and neighbours must be adequately compensated from the outset.

Page 37 notes that neighbour impacts are also taken into account under development approval VPA's, we know that Santos has been operating Exploration holes for many years in the Pilliga and have no VPA in place. They presently deteriorate roads and community infrastructure with no formal agreement with local government to compensate this. Ultimately, once again, neighbours will suffer the negative impacts with no protections or compensation.

Neighbours will be taken into account by being relocated when major works are occurring; we have recently seen media about John Jenkyn's family receiving a text two days before they were to be moved out, when their son has high care needs and can't simply be upped and moved within two days – companies are operating to the benefit of their shareholders meaning they always take the

barely minimum legal requirement they have to fulfil which leaves families and communities to suffer.

The 2014 GISERA report also stated:

“Whilst much discussion in the media has revolved around the impact of CSG infrastructure on the environment, traffic was clearly shown as the cause of many issues and that these issues impact on nearly all aspects of the farmers’ lives. In a study of the Barnett Shale region of Texas (Theodori, 2009), “Increased truck traffic” scored highest amongst 16 Farmer’s perceptions of coexistence between agriculture and large scale coal seam gas development respondents as an issue that was getting worse and six of the top twelve negative issues could be directly related to traffic. These concerns were echoed in surveys of local leaders in the same region in Texas (Andersen and Theodori, 2009) which showed large concerns for the volumes of traffic, largely due to water transportation for the well-fracturing process, which they felt posed a threat to other drivers. Those surveyed in that study felt that truck drivers failed to adhere to legal and customary precautions and that this resulted in increased accidents, including fatalities. This traffic was also described as impacting on the local way of life and led to roads being damaged faster than they could be repaired. Light and noise pollution from round-the-clock drilling processes was also raised as a major concern in surveys in the Burnett Shale development of Texas (Andersen and Theodori, 2009) with road damage also a major issue for rural people (Brasier et al., 2011). It is clear that increased traffic during the rapid growth in CSG development is having similar impacts in the Surat Basin. Current efforts by farmers and companies to address these include the use of guidelines for acceptable traffic movements with vehicle monitoring systems to police on-farm traffic and vehicle wash down procedures to minimise the risk of weed seed spread.”

Traffic will heavily impact neighbours and must be compensated for.

Tax Implications

It is not clearly spelt out the tax implications of receiving these compensation payments as this would be income that isn’t able to have deductions against it which could be significant for primary producers. This should be incorporated in the discussions so landholders can take this into account when considering the overall impact of the developments and compensation.

The 2014 GISERA report also stated:

“The taxation implications of such a change from compensation to partnership were a concern for some.”

Best Case Scenario

IPART’s Guidelines all still operate 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 landholder’s, their health, their production profitability, their land and water resources, or ultimately when the best case scenario doesn’t pan out.

Our research indicates that insurance companies won’t cover the risk associated with CSG. The risks to the environment are encapsulated in EPA regulations and monitoring and should be dealt with under this situation. The risks to agri-businesses are not covered by anyone. Should contamination

occur on a farm business the loss of production in the short term and in the long term becomes the responsibility of landholders.

Water Value Not Considered

The Namoi region has undergone significant water reforms in the last ten years. These reforms have caused significant impact to peoples' businesses, causing some to go broke, others to completely readjust to the way they run their operation. These reforms have resulted in an extremely rigorous, highly scrutinised and now agreed-upon system. Therefore the value of the water that is now held is more valuable even than the dollar figure it can be sold for on the open market. This Guideline and suggested process goes nowhere near close to recognising the true value of water to landholders and their communities.

Landholder Workshops

Landholder workshops should incorporate a section on considering the impacts of the access agreement on your neighbours, your community and the planet. Workshops should have the latest news and information on hand to help farmers understand the true risks of the industry.

Capped Fees

What is the capped amount of refund for professional fees, legal fees and time to prepare and enforce access agreements? The Guidelines need to be sure that time for enforcement is counted for over the lifespan of the infrastructure. There also needs to be compensation for legal fees and time spent in ensuring ongoing maintenance beyond the lifespan of the industry such as gas wells that have been capped and abandoned.

Retrospection

We recommend that compensation should be renegotiated and paid retrospectively to those who already have agreements.

Thankyou for your consideration of these key points.

Regards

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ⁱ Farmer's perceptions of coexistence between agriculture and large scale coal seam gas development Working paper Neil I. Huth, Brett Cocks, Neal Dalgliesh, Perry L. Poulton, Oswald Marinoni, Javier Navarro Garcia June 2014
http://www.gisera.org.au/publications/tech_reports_papers/ag-proj-2-farmer-perception-workingpaper.pdf