

**Maules Creek Community Council Inc.**

upthecreek2382@gmail.com

**Attn: Executive Director, Resource Assessments  
Department of Planning and Environment  
GPO Box 39  
Sydney NSW 2001**

**Re: Maules Creek Community Council Submission – Santos Narrabri Gas Project**

Dear Sir/Madam;

Thank you for the opportunity to respond to the Narrabri Gas Project Environmental Assessment.

The Maules Creek Community Council is alarmed by the Santos Narrabri Gas Project (NGP) Environmental Assessment and the limited data that it provides for landholders. We do not think that a project determination can be made and it must be rejected in its current form.

**Should the NGP get the tick of approval from NSW Planning and obtain funding to construct the Narrabri gasfield it is inevitable that Santos or the NGP's future owners will apply for additional wells, eventually in the vicinity of Maules Creek.**

**The precedent that this Environmental Assessment is attempting to set in NSW is of serious concern to our community and is likely a concern right across the state.**

The Maules Creek Community Council (MCCC) is a community-based organisation whose mission is to educate and inform the community and to liaise with government, resource companies and other community groups about issues relevant to the Maules Creek community. Maules Creek is located in the heart of the agricultural powerhouse of the Namoi Valley in North West NSW.

**Yours sincerely,**

**Ros Druce  
MCCC Inc.  
22/5/2017**

# Submission to the proposed Santos Narrabri Gas Project

## Executive Summary

The Maules Creek Community Council Inc (MCCC) is concerned about the lack of essential information for landholders and the community in the Environmental Assessment (EA) to manage the impacts of the Santos Narrabri Gas Project (NGP) and the precedent that it could set. The project creates a great deal of uncertainty for landholders and is not a fit for purpose planning document for the people of NSW.

**THE FUNDAMENTAL PROBLEM WITH THE NGP EA IS THAT THE PROPONENT DOES NOT INCLUDE SPECIFIC LOCATIONS OF GAS WELLS OR THE ENVIRONMENTAL BASELINES AT THOSE LOCATIONS.**

**THE “FIELD DEVELOPMENT PROTOCOL” DOES NOT PROVIDE ANY DETAILS OF THE LOCATIONS OF INFRASTRUCTURE SUCH AS PIPELINES, WATERLINES, COMPRESSOR STATIONS OR HIGHPOINT VENTS.**

**LANDHOLDERS CANNOT ASSESS THE PROJECT AS IT RELATES TO THEIR LAND AND EXPOSES THEM TO VAGUE PROMISES FROM THE PROPONENT AND WEAK GOVERNMENT APPROVAL CONDITIONS.**

**IT IS A DISASTROUS PRECEDENT FOR LANDHOLDERS IN NSW AND A PRINCIPAL REASON FOR THE LOST SOCIAL LICENCE OF CSG.**

**THE EA EFFECTIVELY SAYS, “TRUST US, WE’RE FROM THE CSG COMPANY”**

Much has been made of the 7,000 page NGP EA yet fundamental data is missing. Namely the infrastructure locations, well locations, the baseline data for soil, surface and ground water quality, and the air quality at those locations.

Crucial location information required by landholders to assess the NGP has been deliberately held back, post approval, to be revealed in the Field Development Protocol, which is of little use to landholders making decisions today.

Baseline data at those locations, critical to hold the proponent to account is also not available, further impairing affected landholders ability to make plans to manage the impacts whether they are supportive or against the NGP.

Given Santos’s sketchy track record in the Pilliga, this information is essential to protect landholders, the environment and the community.

**It is strongly recommended that infrastructure location data, well location data and environmental baselines are in place before the NGP moves to assessment.**

Landholders require baseline data and location information in order to:

1. Take out insurance cover and make successful claims,
2. Successfully enforce land access agreement indemnities in the courts,
3. Assess the effectiveness or otherwise of adaptive management procedures,
4. Avoid situations where the proponents has to “make good”

5. Understand cumulative impacts with other developments and where necessary to apportion blame

## **EA - Not Fit For Purpose**

Infrastructure and well location data is basic to landholders in the project area when determining whether to make significant on-farm investments. Practical on-ground decisions to build a house, shed, piggery, feedlot, irrigation infrastructure, fences, contour banks, permanent pasture etc would be affected if they were located in some future time near a flare, high point vent, well pad, pipeline etc.

In addition, the failure to supply infrastructure locations and baseline information could have a chilling effect on farm investment or needlessly impact property prices harming farm succession or retirement plans.

Like it or not the NGP introduces considerable uncertainty and risk for agriculture in the region. The scant data in the EA re well locations amplifies this risk and uncertainty and reduces the likelihood of a successful legal action when damages are incurred.

From a landholders perspective the EA is simply not fit for purpose to plan for the project, to manage the impacts of the project or to mitigate the risk of the project. Further expansions of gasfields based on similar scant information are inevitable and this model of “Field Development Protocol” does not bode well for the landholders and community of Maules Creek should CSG eventuate here.

## **The Field Development Protocol**

Given the six long years that this project has been on the books, it is dumbfounding that “management plans” such as the Field Development Protocol have not been prepared and made available for exhibition. The failure raises the prospect of the proponent hiding the information or separating difficult approval processes in order to minimise potential objections.

For all intensive purposes, the planning assessment of well and infrastructure locations, the Western Slopes Gas Pipeline and the Narrabri Gas Project itself have been segmented into different determinations.

Without well location information, environmental baselines, material safety data sheets for drilling and fracking chemicals it is difficult for anyone, including the state and/or federal government to form a view or take pre-emptive action.

**To get practical information on which to base on ground decisions the project has to be approved – a very strange turn of events.**

Revealing well and infrastructure information at the time of Santos’s choosing via the Field Development Protocol is clearly inequitable for neighbouring landholders as it introduces uncertainty over current on-farm operational and future plans and makes it impossible to plan for, manage or mitigate the specific impacts or cumulative affects of the NGP on their enterprise now.

## **Management Plans**

The adoption by the NSW Department of Planning of flexible, post approval Management Plans such as the Field Development Protocol with its third party audits give all the appearance of a well regulated system with checks and balances – until one reviews the MCCC experience of such Management Plans.

A recent approval in the region that requires the creation of, and ongoing supervision of such post approval plans is illustrated by the Maules Creek coal mine third party conditions audit. Management plans are so flexible for the proponent that they become a very convenient set of new conditions, under the companies control that are unable to be modified by the community or its merits challenged in court.

## Maules Creek coal mine Case Study

The project was approved on the 23.10.2012 and the Third Party Audit published on the 22.8.2016<sup>1</sup> reveals a litany of blatant non compliance.

Chief among the local communities concerns at the time the project originally went on exhibition were water impacts, air quality and noise.

See the attached screen grabs below from the Audit show the disappointing reality - “Non Compliant”.

3	12	<p>The Proponent shall:</p> <p>(a) ensure that:</p> <ul style="list-style-type: none"> <li>• all mining trucks and water carts used on the site are commissioned as noise suppressed (or attenuated) units;</li> <li>• ensure that all equipment and noise control measures deliver sound power levels that are equal to or better than the sound power levels identified in the EA, and correspond to best practice or the application of the best available technology economically achievable;</li> <li>• where reasonable and feasible, improvements are made to existing noise suppression equipment as better technologies become available; and</li> </ul> <p>(b) monitor and report on the implementation of these requirements annually on its website.</p>	<p>A-weighted levels generally compliant with EA limits however some trucks have not met L weighted test criteria.</p> <p>Not Compliant</p>
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2015 Maules Creek Independent Environmental Audit, 22 August 2016 | The SMEC Group | 15

Schedule	Condition	Requirement	Finding
3	33	<p>The Proponent shall:</p> <p>(b) operate a comprehensive air quality management system on site that uses a combination of predictive meteorological forecasting, predictive and real time air dispersion modelling and real-time air quality monitoring data to guide the day to day planning of mining operations and implementation of both proactive and reactive air quality mitigation measures (such as relocate, modify and/or suspend operations) to ensure compliance with the relevant conditions of this approval;</p>	<p>There was no evidence to demonstrate that the site currently uses predictive and real time air dispersion modelling.</p> <p>Not Compliant</p>

<sup>1</sup> 2015 Maules Creek Independent Environmental Audit, 22 August 2016 | The SMEC Group  
<https://www.whitehavencoal.com.au/environment/docs/2015-iea-and-response-to-recommendations.pdf>

3	63	<p>The Proponent shall ensure that construction and operational employees are predominantly transported to the site by shuttle bus, consistent with the assumptions used in the traffic study undertaken for the EA.</p> <p>Note: The EA assumed that 90% of construction employees and 90% of operational workers based on peak travel movements would be transported to the site by shuttle bus from Boggabri township. However, the shuttle bus service could also operate from Gunnedah and Narrabri.</p>	<p>“Approximately 65-85% use of the shuttle bus, but ‘substantially’ transported by shuttle Bus.”</p> <p>Shuttle buses are still in operation for the operational phase with a higher use rate.</p> <p>Not Compliant</p>
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The results of the Third Party Audit show that the company has 61 non-compliances of its conditions. Many of the breaches are substantial and, ongoing yet a pattern of behaviour is revealed even in the smaller details. e.g. Water meters fail and are unreported, important wheel dust reports are not submitted, no real time predictive air quality monitoring, Management Plans lack detailed background data.

When it was inevitably approved, the proponent, the department, the government and local MP’s made much of the number of “stringent conditions” that were imposed at the time. Yet to this day the strict conditions and Management Plans have not been implemented or failed to deliver on air quality, noise, biodiversity, social impacts, traffic etc. Key post approval Management Plans such as the predictive air quality management system are yet to be delivered.

Since the approval the community has had numerous meetings with the NSW Department of Planning and the NSW EPA re noise and dust at our country hall to try to enforce the conditions. Some of our community are at their wits end with the environmental impacts and the concerns for their family.

At each meeting the community hears unacceptable excuses from the regulators. From the communities perspective the excuses boil down to the fact that the relevant conditions or Management Plans cannot be enforced, or that the penalties for the breaches are not sufficient to induce behavioural change. Yet government ignores poor behaviour when the company seeks and is given further approvals to amend their conditions – sometimes to weaken the conditions they are breaching

One wonders what Planning Compliance or the EPA’s response would be to a chicken shed that was non-compliant with its approval conditions, or actually breached its dust or odour conditions as the Maules Creek coal mine has done on its noise and dust conditions.

The problem with the current flexible Management Plans is that the flexibility is only under the control of the proponent. The community only has the right to be consulted via the CCC and it cannot vary the plans when something clearly isn’t working for the stakeholders.

Management plans or their revisions can remain in “draft” form for years, their contents secret while distant bureaucrats negotiate the conditions with a belligerent company, conditions that will impact the daily lives of the people of Maules Creek.

All the while the company is reassuring its shareholders and the financial media of its commitment to cost cutting (and externalising cost to the community) in order to return to profitability.

From this we deduce that delaying compliance or incurring the penalties is much more attractive than the company fulfilling their conditions. For resource companies, minor fines are a tax deduction, allowing them to carry on and just a another cost of doing business. For the community, complying with conditions is the cost of doing business and the penalties must recognise this fact.

To meet the needs of the community we need compliance measures with teeth:

1. Fines and penalties must be sufficiently punitive to induce behavioural change,
2. Fines and penalties should escalate on recidivist companies
3. Licence conditions or management plans should have input from the community and where needed be varied to raise the bar and
4. Additional approvals should be blocked unless the company can show it is a fit and proper person, without a litany of non-compliance.

## **Insurance – the lack thereof**

Any activity that generates risk and uncertainty should have the various risks identified and managed. Risk can include financial risk, operational risk, regulatory risk, environmental risk and residual risk amongst others.

The NGP Secretaries Environmental Assessment Requirements (SEARs) specifically require the proponent to provide contingency plans for managing the residual risk. Residual risks, are those risks that cannot be avoided or managed through better controls. These risks are managed in some other way such as Insurance.

Residual risk applies to both the proponent and the landholder and it is interesting the difference in approach taken in its own interest by the proponent.

Indeed the NSW Chief Scientist said that a robust system of environmental insurance, bonds and levies is required for the CSG industry to be “managed”.

Santos has not undertaken to insure landholders for environmental impacts as the EA contains no insurance commitments to cover its own residual risk nor the landholders residual risk.

This appeared to be confirmed by the Santos Chairmans response at the 2017 AGM to a direct question **“does Santos have adequate insurance for remediation or to provide compensation to landholders for negative impacts on their business?”**

***Santos Chairman:** “Look, err, let me just make a statement. We’ve been, we’ve been at this business now for 60 years and ah, we have never to the best of my knowledge, err damaged an aquifer or caused a problem or a major problem with a water course. I’d like to just refer you to Alan Finkel’s comments, the Chief Scientist, I think its worth looking at that. That just sums up this whole debate with, with there is such emotion about watercourse and I understand the emotion on watercourse, its something that’s very dear, and very important to Australians. Quality of water. But umm, this, this is about fracking and err, not totally in response to err, what David’s question, but I just think it puts this thing in context. The Chief Scientist says that fracking is being widely used in the coal seam gasfields, particularly in Queensland. Now we don’t use fracking in NSW, but its been used particularly in Queensland. Its been widely used across America, the evidence is not there that it is dangerous, in fact the evidence is that if properly regulated it’s completely safe. Now I, the reason I raise that point is that we, we all have an emotional attachment to water, we all want, we the last thing any of us want to do is damage a watercourse. Santos has been in this business for 60 years and has not damaged, not caused any damage to an aquifer that I’m aware of, nor caused any serious damage to a water course. So, ah, you know, I think our record speaks for itself on this. Thank you.”*

Leaving aside the fact that Santos have damaged an aquifer<sup>2</sup>, the Santos chairman is effectively saying that Santos is managing it's own residual risk by externalising it to landholders and the environment.

The principle of equity should dictate that the proponent manage the residual risk by insuring the landholder for environmental harm and noting the landholder on the insurance policy.

The inadequate response from the Santos Board Chairman shows the attitude the company has for risk to other parties, namely shareholders and landholders. This cavalier attitude extends to the domestic economy.

Its construction of the \$18 Bn Gladstone LNG (GLNG) plant without sufficient gas reserves to fill the gas supply contracts indicates its appetite for risk is beyond its capability to manage. When its strategy based on rising oil prices and overly optimistic CSG production estimates in Queensland failed, the entire east coast gas market has been exposed to significant disruption and damage.

Santos lied in its EIS for GLNG when it said that it would have no direct implications for domestic gas prices:-

*“The project may initially supply domestic gas markets, but it is not diverting gas from local markets to export markets. The project’s supply of gas to the domestic market is uncertain at this stage. Options to manage ramp up gas and any gas that is surplus to the requirements of the LNG facility include a range of commercial and technical possibilities. Therefore the project has no direct implications for domestic gas prices. The gas to supply the LNG facility will come from newly developed CSG fields. The amount of gas is very small relative to the identified conventional and CSG fields reserves available to supply the Australian east gas fields. It is therefore unlikely to contribute to a future shortage of gas in the domestic market.”<sup>3</sup>*

The truth is Santos had no idea and it's subsequent actions to drain third party gas required for the domestic economy despite its earlier assurances makes any claims that it makes anywhere suspect.

The fact Santos won't insure itself or others for environmental risk is very telling in the confidence that they hold. Their flexibility with the truth and willingness to do whatever it takes, even at the expense of the domestic economy is a cautionary tale for landholders.

Anyone relying on the NGP EA would do well to insure themselves against the companies failed strategies and future claims.

The fact that the company won't insure landholders is a “low act” and a key indicator of the lost social licence of the CSG industry. Even pig shooters have insurance that is fit for purpose to cover the landholder, but not the CSG industry.

Further, by not providing baselines and well locations the proponent has made it virtually impossible for a landholder to get their own environmental insurance or to make a successful claim should a claim be warranted.

**By not providing baselines and well locations the proponent has made it virtually impossible for a landholder to get their own environmental insurance or to make a successful claim should a claim be warranted.**

<sup>2</sup> <http://www.smh.com.au/environment/santos-coal-seam-gas-project-contaminates-aquifer-20140307-34csb.html>

<sup>3</sup> GLNG Project - Environmental Impact Statement Chapter 6 Page 6.15.11

**It is strongly recommended that should the NGP be approved, the approval conditions contain the requirement that the proponent insure landholders and the community with Environmental Insurance.**

## **Enforcement of Gas Company Indemnities**

Baseline data at a specific location is essential to legally enforce an indemnity clause where a gas company indemnifies a landholder in a land access agreement. Without this data, legal action under the indemnity is likely to be unsuccessful due to a lack of evidence.

Neither the existing NSW government nor the NGP EA propose a detailed, legal land access framework or template land access agreement. This, combined with the lack of location data puts the landholder at a significant disadvantage to assess the impacts of the NGP or prepare for negotiations should the project be approved and the proponent seek land access.

Typical landholder access agreement indemnity clauses such as the one contained in the Queensland Standard Conduct and Compensation Agreement (CCA) narrowly define the gas companies indemnity.

The CCA clause (shown in Attachment 1) restricts the indemnity from the CSG activities to losses to the landholders property, other than the impacts that are otherwise compensated for. This means that the indemnity may not cover

1. Losses to neighbours properties (and the landholder could be liable to the neighbour)
2. Contamination of the environment e.g. contamination of groundwater and surface water quality
3. Loss of industry accreditation such as the Livestock Production Scheme, Organics etc<sup>4</sup>

### **LANDHOLDERS COULD BE LIABLE TO THEIR NEIGHBOURS FOR THE CSG COMPANIES ACTIVITIES ON THEIR LAND**

To get redress via the indemnity the landholder will then likely have to bring the matter to court to prove that the impact was not already “compensated” for and that the loss was as a result of the activity.

Without baseline studies, resource companies often argue that a impact to soil moisture or the collapse of an aquifer was the result of drought.<sup>5</sup> It is quite possible a CSG company would use this defence rather than admit to impacts caused by the pumping out of a coal seam or the construction of a network of roads and pipelines that diverts overland flows.

**It is strongly recommended that environmental insurance be required so that protection from CSG activities is widened to include neighbours and slow onset, creeping contamination events.**

## **Effectiveness of Adaptive Management.**

Subject to rigorous enforcement, Adaptive Management is one way of managing the environmental risk that arises from CSG to ensure environmental impacts do not significantly vary from baselines.

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<sup>4</sup>A Guide for Landholders, Managing the risks of shale and other gas developments on your property, WRA, 2016

<sup>5</sup> Whitehaven explains mine water discharge and says suggestions it has impacted the aquifer at Werris Creek are fanciful. ABC News, Sept 2105



This approach means that gasfield development must cease or modify its activities in order to maintain environmental indicators at or near baseline measures.

Adaptive Management requires three key conditions:

1. Good baseline data for environmental indicators, recorded at each well location
2. Rigorous environmental monitoring is undertaken at those locations
3. Thresholds are set to trigger management actions for impacts that breach set levels. e.g. Management measures can be triggered at pre-determined levels such as 2 standard deviations from baselines.

Baseline data needs to be gathered before the project is approved and definitely before activities begin.

Without good baseline data, Planning Conditions that incorporate Adaptive Management is simply not credible. Planning Conditions that require the proponent to engage in Adaptive Management without baseline data are likely to be unenforceable either by the landholder or the government. To approve the NGP without baselines in place would be negligent.

**TO APPROVE THE NGP WITHOUT BASELINES IN PLACE WOULD BE NEGLIGENT.**

**It is strongly recommended that environmental baselines for well locations be required before the NGP moves to assessment.**

### **“Make Good” is unacceptable**

One of the truly sickening constructs of the resources industry is the concept of “making good”. The idea that it is acceptable for long term environmental damage to be done on the basis that the proponent can replace a water supply or make good by providing cash is a huge psychological shock for any land manager.

The Make Good agreements that function in Queensland are about managing the landholder while still continuing gasfield operations. Make Good is the opposite of Adaptive Management and is unacceptable at a farm or landscape scale.

It is the expectation of the community that when a resource company damages the environment they are held to account by a system of penalties and enforced license modifications not given a “Get Out of Jail Free” card after the fact via Make Good.

Make Good agreements are the ultimate residual risk management/transfer system for gas companies and are not a Contingency Plan for the rest of the community or the environment as required by the SEAR’s.

A Make Good agreement is prima facie evidence that the proponent is not a “Fit and Proper Person” to hold a petroleum licence. In a world where environmental insurance was mandatory for CSG, Make Good Agreements would not exist.

**A MAKE GOOD AGREEMENT IS PRIMA FACIE EVIDENCE THAT THE PROPONENT IS NOT A FIT AND PROPER TO HOLD A PETROLEUM LICENCE**

**It is strongly recommended that should the project be approved conditions should reflect the philosophy of adaptive management and not “Make Good”.**

**It is strongly recommended that should environmental damage occur, the proponent face heavy fines, licence variations and additional regulation of environmental conditions when future licences are sought in order to discourage environmental damage rather than provide a Get Out of Jail Free Card.**

### **Cumulative Impacts – the need for publicly available data**

The experience at Maules Creek as it relates to other “state significant” projects is that each company tends to blame the other or the pre-existing farming community on questions of environmental impacts such as dust and noise.

Because the data is controlled by the companies and their commitments to regional air and noise monitoring has gone unfulfilled and unpunished by the Department of Planning, any large scale or cumulative impacts tend to result in a round of finger pointing.

The incentive for companies is to be very secretive in order to avoid blame and accountability.

The “strict conditions” mean little when baseline and monitoring data is not available on a timely basis. The commitments made by government mean even less when conditions are not complied with or even implemented.

**It is strongly recommended that all baseline data be provided before the project moves to assessment and that on-line monitoring data be provided in real time. This allows the community to manage the risk.**

## Attachment 1 – Queensland Conduct and Compensation Agreement Template

**Compensation** means compensation to be provided to the Landholder under this Agreement.

**Property** includes any crops, livestock, buildings, structures, plant, equipment, works, pipes, bores or other improvements on or under the Land which belong to the Landholder.

**Loss** means any cost, damage or loss suffered or incurred by the Landholder arising from the carrying out of Activities under the Tenement on the Land.

### 14. Indemnity

The Tenement Holder indemnifies and will keep indemnified the Landholder from and against any Claim on the terms of this clause 14, except to the extent the Claim:

- a) is settled by Compensation or other payments contemplated in this Agreement; or
- b) is caused or contributed to by the negligence or act or omission of the Landholder or its Associates.

14.1 If, as a result of Activities described in section 1 in schedule 1 the Landholder considers, acting reasonably, that it has suffered Loss over and above that for which the parties have already agreed Compensation or other payments elsewhere in this Agreement, the Landholder may give the Tenement Holder notice of a Claim specifying:

- (a) the extent of the Loss over and above that for which the parties have already agreed Compensation or other payments elsewhere in this Agreement;
- (b) how that Loss resulted from Activities described in section 1 in schedule 1; and
- (c) whether the Loss involves damage to Property that is capable of repair and, if so, the manner in which and the time by which the Landholder acting reasonably requests the repair be made.

14.2 The Landholder must take reasonable steps to mitigate its Loss.

14.3 The Tenement Holder must take reasonable steps to minimise any impact and Loss to the Landholder in relation to any Claim.

14.4 Where clause 14.1(c) applies, the Tenement Holder must at the election of the Landholder acting reasonably do all or any of these things:

- (a) repair the damage to the Property to the reasonable satisfaction of the Landholder;
- (b) replace the Property;
- (c) reimburse the Landholder for the Loss.

14.5 If the Tenement Holder does not repair the damage to the Property within the time reasonably required by the Landholder:

- (a) the Landholder may carry out the repairs; and
- (b) the Tenement Holder will reimburse the Landholder for the reasonable and necessary cost of repairs to the Property and the Landholder's time.