

# SUBMISSION – OPPOSITION TO THE NARRABRI LATERAL PIPELINE (SSI- 53307723)

**Prepared by:**

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## PART 1 — EXECUTIVE SUMMARY

This submission provides a comprehensive, legally grounded, and technically evidenced objection to the proposed Narrabri Lateral Pipeline (NLP), classified as both **State Significant Infrastructure (SSI)** and **Critical State Significant Infrastructure (CSSI)** under the **Environmental Planning & Assessment Act 1979 (EP&A Act)**, and a **Controlled Action** under the **Environmental Protection and Biodiversity Conservation Act 1999 (EPBC Act)**.

Based on the evidence enclosed and the statutory obligations binding the Minister for Planning, the Department of Planning, the Commonwealth Minister for the Environment, and all decision-makers under both NSW and Commonwealth law, the Narrabri Lateral Pipeline **cannot be lawfully approved**.

The deficiencies identified constitute:

- **Jurisdictional error**
- **Breach of mandatory statutory considerations**
- **Failure to satisfy the NSW–Commonwealth Bilateral Agreement**
- **Procedural unfairness**
- **Inconsistency with constitutional supremacy principles**

- **Contradiction of agency advice**
- **Deficient environmental, cultural, and hazard modelling**
- **Violation of international obligations (UNDRIP, ICCPR, CRPD)**
- **Breach of the precautionary principle and ESD**
- **Risk factors consistent with ICAC-reportable conduct**

This is not a discretionary matter.

It is a matter of **legal necessity**.

No rational or lawful decision-maker could approve this proposal on the material provided.

## **PART 2 — CONSTITUTIONAL & ADMINISTRATIVE LAW INVALIDITY**

### **2.1 Constitutional Inconsistency (s 109 of the Australian Constitution)**

Where State assessment under the EP&A Act does not adequately incorporate mandatory EPBC obligations, the resulting process is **constitutionally defective**.

The project triggers EPBC controlling provisions including:

- Threatened species (ss 18, 18A)
- Ecosystems of national environmental significance
- Indigenous cultural heritage values

The current material fails to demonstrate compliance with these mandatory federal considerations.

Therefore, any approval granted under NSW legislation would be **invalid to the extent of inconsistency**.

## 2.2 Jurisdictional Error (Plaintiff S157/2002; Kirk v Industrial Court)

A decision-maker commits jurisdictional error where:

- mandatory statutory processes are not followed
- essential considerations are omitted
- irrelevant considerations dominate
- procedural fairness is denied
- decisions are based on incomplete, misleading, or contradictory evidence

The Narrabri Lateral Pipeline assessment demonstrates **all these defects**.

Specifically:

- Agency contradictions (EPA vs DPI Ag vs FRNSW vs TfNSW vs Heritage NSW)
- Missing groundwater modelling
- Incomplete Aboriginal cultural heritage assessment
- Hazard and emergency response deficiencies
- Biodiversity impact uncertainties
- Cumulative impacts unassessed
- Climate law conflicts unaddressed

This renders any approval **void and of no legal effect**.

## 2.3 Breach of Procedural Fairness

Under Australian administrative law:

"Procedural fairness is a constitutional minimum."

Stakeholders cannot provide meaningful submissions when:

- critical data is absent or incomplete
- agency warnings are unaddressed
- modelling is withheld
- heritage consultation is insufficient

- cumulative risks are unassessed

Thus the exhibition period **fails the test of procedural fairness**, rendering the process legally vulnerable.

## PART 3 — EP&A ACT BREACHES (SSI & CSSI FRAMEWORK)

Under ss 5.12–5.17 of the EP&A Act, the Minister must consider:

- environmental impacts
- ESD (including precautionary principle)
- biodiversity conservation
- cumulative effects
- Aboriginal cultural heritage
- agricultural productivity
- hazard and public safety
- climate impacts

The proponent fails in **every category**.

### 3.1 DPI Agriculture: Agricultural Impacts Are Unacceptable

DPI Agriculture states:

- soil disturbance
- compaction
- loss of Class 1 and 2 agricultural land
- biosecurity threats
- long-term production decline
- conflict with Right to Farm principles

This breaches:

- **NSW Right to Farm Act 2019**
- **Agricultural Land Protection Framework**
- **EP&A Act s 5.5 (public interest)**

No CSSI classification overrides agricultural protections.

## 3.2 EPA: Environmental Safeguards Missing

EPA identifies:

- insufficient GHG analysis
- no cumulative emissions modelling
- inadequate dust and air quality assessment
- incomplete groundwater contamination safeguards

An EIS cannot be accepted as “capable of assessment” with missing environmental foundations.

## 3.3 Fire & Rescue NSW: Hazard Assessment Deficient

FRNSW explicitly notes:

“Insufficient information is available regarding fire safety and emergency response.”

CSSI cannot be approved without a validated hazard model.

This violates:

- WHS Act 2011
- National Gas Code
- Risk management standards

The Minister cannot lawfully approve a high-pressure gas pipeline without established hazard parameters.

### 3.4 Heritage NSW: Aboriginal Cultural Heritage Assessment Missing

Heritage NSW requires:

- cultural values mapping
- archaeological test excavation
- engagement with RAPs
- avoidance and mitigation strategies
- cultural and spiritual connection assessment

Their advice confirms the proponent has **not complied**.

Under UNDRIP:

- Article 18: participatory rights
- Article 25: spiritual relationship with land
- Article 26: land, territories, and resources
- Article 32: free, prior, and informed consent

NSW has an affirmative duty to uphold these rights.

This duty has not been met.

## PART 4 — EPBC ACT FAILURES (COMMONWEALTH LAW)

The pipeline is a Controlled Action because it affects:

- threatened species
- ecosystems
- Indigenous cultural heritage
- hydrological systems

Under s 136 of the EPBC Act, the Minister must refuse approval where:

- impacts are uncertain
- unacceptable
- unmitigated
- unassessed

The EIS lacks data to meet this test.

## PART 5 — CLIMATE LAW & POLICY FAILURES

The pipeline facilitates methane extraction and transport.

Methane has **84× the warming potential of CO<sub>2</sub> over 20 years.**

The project contradicts:

- NSW Net Zero Plan
- Commonwealth Safeguard Mechanism
- Finkel Review transition policies
- IPCC methane reduction pathways

Case law:

- **Gloucester Resources v Minister for Planning (2019)**
- **Sharma v Minister for Environment (2021)**
- **Bushfire Survivors for Climate Action v EPA (2021)**

This precedent prohibits approval of fossil fuel projects without rigorous climate justification.

No such justification exists.

## PART 6 — PUBLIC SAFETY & EMERGENCY MANAGEMENT FAILURE

A high-pressure gas pipeline requires:

- validated hazard modelling
- explosion impact zones
- bushfire ignition modelling
- emergency evacuation mapping

None are supplied at acceptable standards.

Ministerial approval under such conditions would be **irrational in the legal sense**, and therefore unlawful.

## PART 7 — SOCIAL & ECONOMIC DEFICIENCIES

Narrabri Shire Council itself highlights:

- housing pressure
- workforce displacement
- community service strain
- inadequate cost–benefit analysis
- inconsistent route mapping

These undermine the public interest test (EP&A Act s 5.5).

## PART 8 — ICAC & GOVERNANCE RISK ANALYSIS

ICAC recognises markers of integrity failure:

- contradictory agency advice ignored
- incomplete evidence relied upon
- unexplained preferential treatment
- inadequate consultation
- failure to disclose risks

These conditions exist here.

The assessment process shows indicators of **maladministration requiring oversight**.

A referral is recommended.

## PART 9 — CONCLUSION & FORMAL RECOMMENDATIONS

On legal, environmental, cultural, safety, economic, administrative, and constitutional grounds:

# **The Narrabri Lateral Pipeline must be refused.**

The Minister must:

1. **Refuse approval under ss 5.15–5.17 EP&A Act**
2. **Notify the Commonwealth Minister of assessment failures**
3. **Refer procedural irregularities to ICAC and the Ombudsman**
4. **Require a new EIS if the project is ever resubmitted**

