



Date: Monday, 24 May 2021
Time: 1.00pm
Location: Narrabri Shire Council Chambers
46-48 Maitland Street
Narrabri

AGENDA

Supplementary Reports

Ordinary Council Meeting

24 May 2021

Stewart Todd
GENERAL MANAGER

AGENDA

13 Our Civic Leadership 3

13.5 Narrabri Gas Project - Voluntary Planning Agreement 4

13 OUR CIVIC LEADERSHIP



THEME 4: OUR CIVIC LEADERSHIP

STRATEGIC DIRECTION 4: COLLABORATIVE AND PROACTIVE LEADERSHIP

By 2027, we will proactively together to achieve our shared vision with strong strategic direction.

COMMUNITY ENGAGEMENT

Through extensive community engagement, the Narrabri Shire community identified several civic leadership priority areas to be actioned over the 2017 - 2018 financial year.

COMMUNITY SERVICES

Current services provided within the Narrabri Shire community include:

- Integrated strategic planning and reporting
- Community engagement and consultation
- Representation and governance
- Human resource management
- Customer services
- Information services
- Financial services
- Risk management
- Compliance and regulation

COMMUNITY OUTCOMES

In partnership with the community, government and non-government agencies, the Operational Plan will work towards achieving the following civic leadership strategic outcomes:

- Improved community engagement and decision-making processes
- Well established community, industry, government and non-government partnerships
- Well maintained core infrastructure and service provision that delivers public value
- Transparent and accountable planning and reporting
- Financial efficiency and sustainability

13.5 NARRABRI GAS PROJECT - VOLUNTARY PLANNING AGREEMENT

Responsible Officer: Stewart Todd, General Manager

Author: Stewart Todd, General Manager

Attachments: 1. Draft Narrabri Gas Project Voluntary Planning Agreement  

DELIVERY PROGRAM ALIGNMENT**4 Leadership**

Objective 4.4 Our strategic goals will be achieved through transparent and accountable planning and reporting

Strategy 4.4.2 Ensure effective and sound local governance practice

EXECUTIVE SUMMARY

Council at its February 2020 Ordinary Meeting agreed in principle to the terms of a Voluntary Planning Agreement with Santos NSW (Eastern) Pty Ltd in the total amount of \$14.5 million.

The draft voluntary planning agreement is the largest ever voluntary planning agreement agreed by this Council.

Not only is it the largest voluntary planning agreement, but this draft voluntary planning agreement also contains the highest community benefit percentage of any voluntary planning agreement offered to Council, at almost 90%.

This report recommends placing the draft voluntary planning agreement on public exhibition. Public exhibition of a voluntary planning agreement is required to be given prior to the entering into of a voluntary planning agreement in accordance with section 7.5 of the *Environmental Planning and Assessment Act 1979*.

The draft voluntary planning agreement has been prepared by Council's legal representatives. The draft voluntary planning agreement has been provided to Santos for which Santos have provided feedback and suggested changes. A large number of the proposed changes are amenable to Council, however a small number at this point are not agreed by Council. It is expected that minor changes will be made through further discussions/negotiations with Santos. The proposed changes are not material to the draft voluntary planning agreement and do not affect the public benefit derived from the draft voluntary planning agreement.

RECOMMENDATION

- 1. That Council endorse the draft Narrabri Gas Project Voluntary Planning Agreement for the purposes of public exhibition.**
- 2. That Council place on public exhibition the draft Narrabri Gas Project Voluntary Planning Agreement for a period of at least 28 days, during the exhibition period call for and accept submissions from the public on the draft Voluntary Planning Agreement.**

BACKGROUND

Section 7.4(1) of the *Environmental Planning and Assessment Act 1979* ("EP&A Act") provides that a planning agreement is a voluntary agreement or other arrangement between one or more

planning authorities and a developer under which the developer agrees to make development contributions towards a public purpose. The contributions can be in the form of:

- dedicate land free of cost,
- pay a monetary contribution, or
- provide any other material public benefit, or
- any combination of the above.

Public purpose is defined in s7.4(2) to include the provision of, or the recoupment of the cost of providing public amenities and public services, affordable housing, transport or other infrastructure. It also includes the funding of recurrent expenditure relating to such things as public amenities or public services, affordable housing or transport or other infrastructure, the monitoring of the planning impacts of development and the conservation or enhancement of the natural environment.

Council at its February 2020 Ordinary Meeting agreed in principle to the terms of a Voluntary Planning Agreement (“VPA”) with Santos NSW (Eastern) Pty Ltd in the total amount of \$14.5 million; the VPA comprised:

- \$13 million in contribution amounts; and
- \$1.5 million in Road Maintenance contributions.

CURRENT SITUATION

Council agreed in principle to a VPA from Santos NSW (Eastern) Pty Ltd in association with the Narrabri Gas Project; the terms of the VPA are:

- A total contribution amount of \$14.5 million.
- \$13 million: Total contributions, \$2 million paid incrementally in accordance with the applicable Work Scope and Payment Schedule; \$8 million paid after final investment decision by Santos, all other approvals and per payment schedule. Remaining \$3 million paid as per schedule.
- \$1.5 million: Road Maintenance Agreement, one off lump sum due after final investment decision by Santos and all other approvals.
- Council to draft VPA.

The draft VPA is the largest ever VPA agreed by this Council.

Not only is it the largest VPA, but this draft VPA also contains the highest community benefit percentage of any VPA offered to Council, at almost 90%.

Previous VPAs that have been entered into by Council have included large monetary amounts connected with impact offset, for example road works, which dilutes the community benefit derived from a VPA.

Projects that have been identified to receive funding from the \$10 million monetary contribution are the redevelopment of the Narrabri Airport Terminal, the Narrabri Sport and Tourism Precinct development, Narrabri CBD Masterplan upgrades and Narrabri Library relocation/CUC expansion.

The draft VPA has been prepared by Council’s legal representatives, Lindsay Taylor Lawyers. This draft was subsequently provided to Santos for which Santos have provided feedback and suggested changes. A large number of the proposed changes are amenable to Council, however a small number at this point are not agreed by Council. It is expected that minor changes will be made through

further discussions/negotiations with Santos. The proposed changes are not material and do not affect the public benefit derived from the draft VPA.

FINANCIAL IMPLICATIONS

As per the draft VPA clause 27.1, Santos is to pay to the Council's costs of preparing, negotiating, executing and stamping the VPA, and any document related to the VPA.

STATUTORY AND POLICY IMPLICATIONS

This report recommends placing the draft VPA on public exhibition. Public exhibition of a VPA is required to be given prior to the entering into of a VPA in accordance with section 7.5 of the EP&A Act.

Council is required to prepare a written statement, known as an *Explanatory Note*, Appendix to attachment 1, pages 25-28.

The Explanatory Note is to be prepared in accordance with clause 25E of the *Environmental Planning and Assessment Regulation 2000* (EP&A Regulation) which:

- summarise the objectives, nature and effect of the proposed agreement, amendment or revocation, and
- contains an assessment of the merits of the proposed agreement, amendment or revocation, including the impact (positive or negative) on the public or any relevant section of the public.

CONSULTATION

External Consultation

- Santos (Eastern) Pty Ltd.
- Lindsay Taylor Lawyers.

Internal Consultation

- Director Corporate and Community Services.
- Acting Director Planning, Strategy and People.



Deed

Narrabri Gas Project Planning Agreement

Under s7.4 of the *Environmental Planning and Assessment Act 1979*

Narrabri Shire Council
Santos NSW (Eastern) Pty Ltd

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Narrabri Shire Council
Santos NSW (Eastern) Pty Ltd



Narrabri Gas Project Planning Agreement

Table of Contents

Summary Sheet.....	4
Parties	6
Background	6
Operative provisions	6
Part 1 - Preliminary	6
1 Interpretation.....	6
2 Status of this Deed	9
3 Commencement	9
4 Termination.....	9
5 Application of this Deed.....	9
6 Warranties	9
7 Further agreements	9
8 Application of s7.11, s7.12 and s7.24 of the Act to the Development.....	9
Part 2 – Development Contributions	10
9 Notification to Council.....	10
10 Provision of Development Contributions	10
11 Payment of monetary Development Contributions.....	10
12 Acknowledgement and recognition.....	11
Part 3 – Dispute Resolution	11
13 Dispute resolution – expert determination	11
14 Dispute Resolution - mediation.....	11
Part 4 - Enforcement.....	12
15 Breach of obligations	12
16 Enforcement in a court of competent jurisdiction.....	13
Part 5 – Registration & Restriction on Dealings.....	13
17 Registration of this Deed	13
18 Restriction on dealings	13
Part 6 – Indemnities & Insurance.....	14
19 Risk	14
20 Release	14
21 Indemnity	14
Part 7 – Other Provisions.....	14

Narrabri Gas Project Planning Agreement
Narrabri Shire Council
Santos NSW (Eastern) Pty Ltd



22	Annual report by Developer	14
23	Annual report by Council	14
24	Review of Deed	15
25	Notices	15
26	Approvals and Consent	16
27	Costs	16
28	Entire Deed	16
29	Further Acts	16
30	Governing Law and Jurisdiction	16
31	Joint and Individual Liability and Benefits	17
32	No Fetter	17
33	Illegality	17
34	Severability	17
35	Amendment	17
36	Waiver	17
37	GST	18
38	Explanatory Note	19
	Schedule 1	20
	Schedule 2	22
	Execution	24
	Appendix	25

Narrabri Gas Project Planning Agreement
Narrabri Shire Council
Santos NSW (Eastern) Pty Ltd



Narrabri Gas Project Planning Agreement

Summary Sheet

Council:

Name: Narrabri Shire Council
Address: Administration Building, 46-48 Maitland Street, Narrabri NSW 2390
Telephone: 02 6799 6866
Email: council@narrabri.nsw.gov.au
Representative:

Developer:

Name: Santos NSW (Eastern) Pty Ltd
Address: Santos Place, Level 22, 32 Turbot Street Brisbane QLD 4000
Telephone:
Email:
Representative:

Land:

See definition of *Land* in clause 1.1.

Development:

See definition of *Development* in clause 1.1.

Development Contributions:

See clause 9 and Schedule 1.

Application of s7.11, s7.12 and s7.24 of the Act:

See clause 8.

Narrabri Gas Project Planning Agreement
Narrabri Shire Council
Santos NSW (Eastern) Pty Ltd



Security:

See Part 4.

Registration:

See clause 17.

Restriction on dealings:

See clause 18.

Dispute Resolution:

See Part 3.

Narrabri Gas Project Planning Agreement
Narrabri Shire Council
Santos NSW (Eastern) Pty Ltd



Narrabri Gas Project Planning Agreement

Under s7.4 of the *Environmental Planning and Assessment Act 1979*

Parties

Narrabri Shire Council ABN 95 717 801 656 of Administration Building, 46-48
Maitland Street, Narrabri NSW 2390 (**Council**)

and

Santos NSW (Eastern) Pty Ltd ACN 009 321 662 of Santos Place, Level 22,
32 Turbot Street Brisbane QLD 4000 (**Developer**)

Background

- A The Developer has made a Development Application with reference number SSD-6456 for consent under the *Environmental Planning and Assessment Act 1979 (EPA Act)* to develop natural gas in the Gunnedah Basin about 20 kilometres south-west of Narrabri (**Narrabri Gas Project**).
- B The Narrabri Gas Project is a State Significant Development under the EPA Act for which the Independent Planning Commission is the consent authority. It will be carried out on land within the Council's local government area.
- C Pursuant to s7.4 of the EPA Act the Developer and the Council have agreed to enter into this Deed in connection with the Narrabri Gas Project.
- D The purpose of this Deed is for the Developer to provide monetary contributions to the Council to be applied towards various public purposes and road maintenance.

Operative provisions

Part 1 - Preliminary

1 Interpretation

- 1.1 In this Deed the following definitions apply:

Act means the *Environmental Planning and Assessment Act 1979* (NSW).

Agreed Interest Rate means [insert].

Approval includes approval, consent, licence, permission or the like.

Authority means the Commonwealth or New South Wales government, a Minister of the Crown, a government department, a public authority

Narrabri Gas Project Planning Agreement
Narrabri Shire Council
Santos NSW (Eastern) Pty Ltd



established by or under any Act, a council or county council constituted under the *Local Government Act 1993*, or a person or body exercising functions under any Act including a commission, panel, court, tribunal and the like.

Claim includes a claim, demand, remedy, suit, injury, damage, loss, Cost, liability, action, proceeding or right of action.

Cost means a cost, charge, expense, outgoing, payment, fee and other expenditure of any nature.

Deed means this Deed and includes any schedules, annexures and appendices to this Deed.

Development means development for which Development Consent is granted by the Independent Planning Commission to the development described in Development Application SSD-6456.

Development Application has the same meaning as in the Act.

Development Consent has the same meaning as in the Act.

Development Contribution means a monetary contribution, the dedication of land free of cost, the carrying out of work, or the provision of any other material public benefit, or any combination of them, to be used for, or applied towards a public purpose, but does not include any Security or other benefit provided by a Party to the Council to secure the enforcement of that Party's obligations under this Deed for the purposes of s7.4(3)(g) of the Act.

Dispute means a dispute or difference between the Parties under or in relation to this Deed.

Final Investment Decision means the final investment decision by the Developer to commence the Development, following receipt of all necessary approvals to lawfully commence the Development and as formally notified to the Council in accordance with clause 9.1.1

First Instalment means the first instalment of the Development Contributions as prescribed in Schedule 1.

GST has the same meaning as in the GST Law.

GST Law has the same meaning as in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and any other Act or regulation relating to the imposition or administration of the GST.

Land means the land the subject of the Development Consent to the Development, being the area identified as the 'Project Area' in the plan in Schedule 2.

Party means a party to this Deed.

Regulation means the *Environmental Planning and Assessment Regulation 2000*.

Work Scope and Payment Schedule means a work scope and payment schedule agreed between the Developer and the Council for the public purposes identified in Schedule 1 which specifies:

- (a) the applicable public purpose;
- (b) the nature of the works to be undertaken;
- (c) project milestones; and

Narrabri Gas Project Planning Agreement
Narrabri Shire Council
Santos NSW (Eastern) Pty Ltd



- (d) amount of the monetary Development Contribution due upon completion of each project milestone, such amount to be a proportionate increment of the First Instalment.
- 1.2 In the interpretation of this Deed, the following provisions apply unless the context otherwise requires:
 - 1.2.1 Headings are inserted for convenience only and do not affect the interpretation of this Deed.
 - 1.2.2 A reference in this Deed to a business day means a day other than a Saturday or Sunday on which banks are open for business generally in Sydney.
 - 1.2.3 If the day on which any act, matter or thing is to be done under this Deed is not a business day, the act, matter or thing must be done on the next business day.
 - 1.2.4 A reference in this Deed to dollars or \$ means Australian dollars and all amounts payable under this Deed are payable in Australian dollars.
 - 1.2.5 A reference in this Deed to a \$ value relating to a Development Contribution is a reference to the value exclusive of GST.
 - 1.2.6 A reference in this Deed to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.
 - 1.2.7 A reference in this Deed to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced.
 - 1.2.8 A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Deed.
 - 1.2.9 An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.
 - 1.2.10 Where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.
 - 1.2.11 A word which denotes the singular denotes the plural, a word which denotes the plural denotes the singular, and a reference to any gender denotes the other genders.
 - 1.2.12 References to the word 'include' or 'including' are to be construed without limitation.
 - 1.2.13 A reference to this Deed includes the agreement recorded in this Deed.
 - 1.2.14 A reference to a Party to this Deed includes a reference to the employees, agents and contractors of the Party, the Party's successors and assigns.
 - 1.2.15 A reference to 'dedicate' or 'dedication' in relation to land is a reference to dedicate or dedication free of cost.
 - 1.2.16 Any schedules, appendices and attachments form part of this Deed.
 - 1.2.17 Notes appearing in this Deed are operative provisions of this Deed.

Narrabri Gas Project Planning Agreement
Narrabri Shire Council
Santos NSW (Eastern) Pty Ltd



2 Status of this Deed

- 2.1 This Deed is a planning agreement within the meaning of s7.4(1) of the Act.

3 Commencement

- 3.1 This Deed commences and has force and effect on and from the date when the Parties have:
- 3.1.1 both executed the same copy of this Deed, or
 - 3.1.2 each executed separate counterparts of this Deed and exchanged the counterparts.
- 3.2 The Parties are to insert the date when this Deed commences on the front page and on the execution page.

4 Termination

- 4.1 If the Developer decides not to proceed with the Development and provides notice to that effect to the Council, the Parties may terminate this Deed by written notice to the other Party.
- 4.2 If this Deed is terminated pursuant to clause 4.1, the Parties will be released from each of their obligations to further perform this agreement, except its obligations in respect of the First Instalment which survive termination.

5 Application of this Deed

- 5.1 This Deed applies to the Land and to the Development.

6 Warranties

- 6.1 The Parties warrant to each other that they:
- 6.1.1 have full capacity to enter into this Deed, and
 - 6.1.2 are able to fully comply with their obligations under this Deed.

7 Further agreements

- 7.1 The Parties may, at any time and from time to time, enter into agreements relating to the subject-matter of this Deed that are not inconsistent with this Deed for the purpose of implementing this Deed.

8 Application of s7.11, s7.12 and s7.24 of the Act to the Development

- 8.1 This Deed does not exclude the application of s7.11, s7.12 or s7.24 of the Act to the Development.

Narrabri Gas Project Planning Agreement
Narrabri Shire Council
Santos NSW (Eastern) Pty Ltd



- 8.2 The benefits under this Deed are not to be taken into consideration when determining a development contribution under s7.11 of the Act in relation to the Development except to the extent that the subject development contribution relates to road maintenance or associated infrastructure.

Part 2 – Development Contributions

9 Notification to Council

- 9.1 The Developer is to notify the Council in writing of:
- 9.1.1 the Final Investment Decision promptly and no later than 5 business days after the making of that decision, and
 - 9.1.2 the Developer's receipt of all Approvals required to commence the Development promptly and no later than 5 business days after receipt of all such approvals.
- 9.2 Nothing in this clause 9 impacts, detracts from or otherwise affects the Developer's obligation to make Development Contributions to the Council under this Deed.

10 Provision of Development Contributions

- 10.1 The Developer is to make Development Contributions to the Council in accordance with Schedule 1, any other provision of this Deed relating to the making of Development Contributions and otherwise to the satisfaction of the Council.
- 10.2 The Council is to apply each Development Contribution made by the Developer under this Deed towards the public purpose for which it is made and otherwise in accordance with this Deed.
- 10.3 Despite clause 10.2, the Council may apply a Development Contribution made under this Deed towards a public purpose other than the public purpose specified in this Deed if the Council reasonably considers that the public interest would be better served by applying the Development Contribution towards that other purpose rather than the purpose so specified, subject to agreement with the Developer.

11 Payment of monetary Development Contributions

- 11.1 A monetary Development Contribution is made for the purposes of this Deed when the Council receives the full amount of the contribution payable under this Deed in cash or by unendorsed bank cheque or by the deposit by means of electronic funds transfer of cleared funds into a bank account nominated by the Council.
- 11.2 The due date for payment of a monetary Development Contribution is immediately upon, or otherwise within 14 days of, receipt of a Tax Invoice from Council, such Tax Invoices to be issued in accordance with Schedule 1.

Narrabri Gas Project Planning Agreement
Narrabri Shire Council
Santos NSW (Eastern) Pty Ltd



12 Acknowledgement and recognition

- 12.1 In exchange for provision of the Development Contributions in accordance with this Deed, Council agrees to afford the Developer appropriate acknowledgement and recognition, in the form of naming rights or other agreed initiatives with the Developer, in respect of the public purpose the Development Contribution is applied to.
- 12.2 The extent of the acknowledgement and recognition provided in accordance with clause 12.2 must be commensurate with the proportion of total funding the Development Contributions form for each applicable public purpose.

Part 3 – Dispute Resolution

13 Dispute resolution – expert determination

- 13.1 This clause applies to a Dispute between any of the Parties to this Deed concerning a matter arising in connection with this Deed that can be determined by an appropriately qualified expert if:
 - 13.1.1 the Parties to the Dispute agree that it can be so determined, or
 - 13.1.2 the Chief Executive Officer of the professional body that represents persons who appear to have the relevant expertise to determine the Dispute gives a written opinion that the Dispute can be determined by a member of that body.
- 13.2 A Dispute to which this clause applies is taken to arise if one Party gives another Party a notice in writing specifying particulars of the Dispute.
- 13.3 If a notice is given under clause 13.2, the Parties are to meet within 14 days of the notice in an attempt to resolve the Dispute.
- 13.4 If the Dispute is not resolved within a further 28 days, the Dispute is to be referred to the President of the NSW Law Society to appoint an expert for expert determination.
- 13.5 The expert determination is binding on the Parties except in the case of fraud or misfeasance by the expert.
- 13.6 Each Party is to bear its own costs arising from or in connection with the appointment of the expert and the expert determination.
- 13.7 The Parties are to share equally the costs of the President, the expert, and the expert determination.

14 Dispute Resolution - mediation

- 14.1 This clause applies to any Dispute arising in connection with this Deed other than a Dispute to which clause 13 applies.
- 14.2 Such a Dispute is taken to arise if one Party gives another Party a notice in writing specifying particulars of the Dispute.

Narrabri Gas Project Planning Agreement
Narrabri Shire Council
Santos NSW (Eastern) Pty Ltd



- 14.3 If a notice is given under clause 14.2, the Parties are to meet within 14 days of the notice in an attempt to resolve the Dispute.
- 14.4 If the Dispute is not resolved within a further 28 days, the Parties are to mediate the Dispute in accordance with the Mediation Rules of the Law Society of New South Wales published from time to time and are to request the President of the Law Society to select a mediator.
- 14.5 If the Dispute is not resolved by mediation within a further 28 days, or such longer period as may be necessary to allow any mediation process which has been commenced to be completed, then the Parties may exercise their legal rights in relation to the Dispute, including by the commencement of legal proceedings in a court of competent jurisdiction in New South Wales.
- 14.6 Each Party is to bear its own costs arising from or in connection with the appointment of a mediator and the mediation.
- 14.7 The Parties are to share equally the costs of the President, the mediator, and the mediation.

Part 4 - Enforcement

15 Breach of obligations

- 15.1 If the Council reasonably considers that the Developer is in breach of any obligation under this Deed, it may give a written notice to the Developer:
 - 15.1.1 specifying the nature and extent of the breach,
 - 15.1.2 requiring the Developer to:
 - (a) rectify the breach if it reasonably considers it is capable of rectification, or
 - (b) pay compensation to the reasonable satisfaction of the Council in lieu of rectifying the breach if it reasonably considers the breach is not capable of rectification,
 - 15.1.3 specifying the period within which the breach is to be rectified or compensation paid, being a period that is reasonable in the circumstances.
- 15.2 If the breach by the Developer is failure to make a monetary Development Contribution in full or in part by the day on which such payment is due, then the Developer will be liable to pay interest at the Agreed Interest Rate on the amount remaining unpaid from and including the due date until payment is made in full.
- 15.3 Any costs incurred by the Council in remedying a breach in accordance with clause 15.2 may be recovered by the Council as a debt due in a court of competent jurisdiction.
- 15.4 For the purpose of clause 15.3, the Council's costs of remedying a breach the subject of a notice given under clause 15.1 include, but are not limited to:
 - 15.4.1 the costs of the Council's employees, agents and contractors reasonably incurred for that purpose,

Narrabri Gas Project Planning Agreement
Narrabri Shire Council
Santos NSW (Eastern) Pty Ltd



- 15.4.2 all fees and charges necessarily or reasonably incurred by the Council in remedying the breach, and
- 15.4.3 all legal costs and expenses reasonably incurred by the Council, by reason of the breach.
- 15.5 Nothing in this clause 15 prevents the Council from exercising any rights it may have at law or in equity in relation to a breach of this Deed by the Developer, including but not limited to seeking relief in an appropriate court.

16 Enforcement in a court of competent jurisdiction

- 16.1 Without limiting any other provision of this Deed, the Parties may enforce this Deed in any court of competent jurisdiction.
- 16.2 For the avoidance of doubt, nothing in this Deed prevents:
 - 16.2.1 a Party from bringing proceedings in the Land and Environment Court to enforce any aspect of this Deed or any matter to which this Deed relates, or
 - 16.2.2 the Council from exercising any function under the Act or any other Act or law relating to the enforcement of any aspect of this Deed or any matter to which this Deed relates.

Part 5 – Registration & Restriction on Dealings

17 Registration of this Deed

- 17.1 The Parties agree not to register this Deed for the purposes of s7.6(1) of the Act.

18 Restriction on dealings

- 18.1 The Developer is not to assign the Developer's rights or obligations under this Deed, or novate this Deed, to any person unless:
 - 18.1.1 the Developer has, at no cost to the Council, first procured the execution by the person to whom the Developer's rights or obligations under this Deed are to be assigned or novated, of a deed in favour of the Council on terms reasonably satisfactory to the Council, and
 - 18.1.2 the Council has given written notice to the Developer stating that it reasonably considers that the purchaser, transferee, assignee or novatee, is reasonably capable of performing its obligations under this Deed, and
 - 18.1.3 the Developer is not in breach of this Deed, and
 - 18.1.4 the Council otherwise consents to the transfer, assignment or novation, such consent not to be unreasonably withheld.

Narrabri Gas Project Planning Agreement
Narrabri Shire Council
Santos NSW (Eastern) Pty Ltd



- 18.2 The Developer acknowledges and agrees that it remains liable to fully perform its obligations under this Deed unless and until it has complied with its obligations under clause 18.1.

Part 6 – Indemnities & Insurance

19 Risk

- 19.1 The Developer performs this Deed at its own risk and its own cost.

20 Release

- 20.1 The Developer releases the Council from any Claim it may have against the Council arising in connection with the performance of the Developer's obligations under this Deed except if, and to the extent that, the Claim arises because of the Council's negligence or default.

21 Indemnity

- 21.1 The Developer indemnifies the Council from and against all Claims that may be sustained, suffered, recovered or made against the Council arising in connection with the performance of the Developer's obligations under this Deed except if, and to the extent that, the Claim arises because of the Council's negligence or default and specifically excluding any Claim that arises in connection with the Council's application or use of a monetary Development Contribution.

Part 7 – Other Provisions

22 Annual report by Developer

- 22.1 The Developer is to provide to the Council by not later than each anniversary of the date on which this Deed is entered into a report detailing the performance of its obligations under this Deed.
- 22.2 The report referred is to be in such a form and to address such matters as required by the Council from time to time.

23 Annual report by Council

- 23.1 The Council is to provide the Developer by not later than each anniversary of the date on which this Deed is entered into a report detailing the performance of its obligations under this Deed.

Narrabri Gas Project Planning Agreement
Narrabri Shire Council
Santos NSW (Eastern) Pty Ltd



- 23.2 The report referred to is to detail the application by Council of each Development Contribution towards the public purpose for which it is made, including the particular public purpose and the amount or proportion of the Development Contribution so applied, and address such other matters as required by the Developer from time to time.

24 Review of Deed

- 24.1 The Parties agree to review this Deed every 5 years, and otherwise if either party is of the opinion that any change of circumstance has occurred, or is imminent, that materially affects the operation of this Deed.
- 24.2 For the purposes of clause 24.1, the relevant changes include (but are not limited to) any change to a law that restricts or prohibits or enables the Council or any other planning authority to restrict or prohibit any aspect of the Development.
- 24.3 For the purposes of addressing any matter arising from a review of this Deed referred to in clause 24.1, the Parties are to use all reasonable endeavours to agree on and implement appropriate amendments to this Deed.
- 24.4 If this Deed becomes illegal, unenforceable or invalid as a result of any change to a law, the Parties agree to do all things necessary to ensure that an enforceable agreement of the same or similar effect to this Deed is entered into.
- 24.5 A failure by a Party to agree to take action requested by the other Party as a consequence of a review referred to in clause 24.1 (but not 24.4) is not a Dispute for the purposes of this Deed and is not a breach of this Deed.

25 Notices

- 25.1 Any notice, consent, information, application or request that is to or may be given or made to a Party under this Deed is only given or made if it is in writing and sent in one of the following ways:
- 25.1.1 delivered or posted to that Party at its address set out in the Summary Sheet, or
- 25.1.2 emailed to that Party at its email address set out in the Summary Sheet.
- 25.2 If a Party gives the other Party 3 business days' notice of a change of its address or email, any notice, consent, information, application or request is only given or made by that other Party if it is delivered, posted or emailed to the latest address.
- 25.3 Any notice, consent, information, application or request is to be treated as given or made if it is:
- 25.3.1 delivered, when it is left at the relevant address,
- 25.3.2 sent by post, 2 business days after it is posted, or
- 25.3.3 sent by email and the sender does not receive a delivery failure message from the sender's internet service provider within a period of 24 hours of the email being sent.

Narrabri Gas Project Planning Agreement
Narrabri Shire Council
Santos NSW (Eastern) Pty Ltd



- 25.4 If any notice, consent, information, application or request is delivered, or an error free transmission report in relation to it is received, on a day that is not a business day, or if on a business day, after 5pm on that day in the place of the Party to whom it is sent, it is to be treated as having been given or made at the beginning of the next business day.

26 Approvals and Consent

- 26.1 Except as otherwise set out in this Deed, and subject to any statutory obligations, a Party may give or withhold an approval or consent to be given under this Deed in that Party's absolute discretion and subject to any conditions determined by the Party.
- 26.2 A Party is not obliged to give its reasons for giving or withholding consent or for giving consent subject to conditions.

27 Costs

- 27.1 The Developer is to pay to the Council the Council's costs of preparing, negotiating, executing and stamping this Deed, and any document related to this Deed within 7 days of a written demand by the Council for such payment.
- 27.2 The Developer is also to pay to the Council the Council's reasonable costs of enforcing this Deed within 7 days of a written demand by the Council for such payment.

28 Entire Deed

- 28.1 This Deed contains everything to which the Parties have agreed in relation to the matters it deals with.
- 28.2 No Party can rely on an earlier document, or anything said or done by another Party, or by a director, officer, agent or employee of that Party, before this Deed was executed, except as permitted by law.

29 Further Acts

- 29.1 Each Party must promptly execute all documents and do all things that another Party from time to time reasonably requests to effect, perfect or complete this Deed and all transactions incidental to it.

30 Governing Law and Jurisdiction

- 30.1 This Deed is governed by the law of New South Wales.
- 30.2 The Parties submit to the non-exclusive jurisdiction of its courts and courts of appeal from them.
- 30.3 The Parties are not to object to the exercise of jurisdiction by those courts on any basis.

Narrabri Gas Project Planning Agreement
Narrabri Shire Council
Santos NSW (Eastern) Pty Ltd



31 Joint and Individual Liability and Benefits

- 31.1 Except as otherwise set out in this Deed:
- 31.1.1 any agreement, covenant, representation or warranty under this Deed by 2 or more persons binds them jointly and each of them individually, and
 - 31.1.2 any benefit in favour of 2 or more persons is for the benefit of them jointly and each of them individually.

32 No Fetter

- 32.1 Nothing in this Deed shall be construed as requiring Council to do anything that would cause it to be in breach of any of its obligations at law, and without limitation, nothing shall be construed as limiting or fettering in any way the exercise of any statutory discretion or duty.

33 Illegality

- 33.1 If this Deed or any part of it becomes illegal, unenforceable or invalid as a result of any change to a law, the Parties are to co-operate and do all things necessary to ensure that an enforceable agreement of the same or similar effect to this Deed is entered into.

34 Severability

- 34.1 If a clause or part of a clause of this Deed can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way.
- 34.2 If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this Deed, but the rest of this Deed is not affected.

35 Amendment

- 35.1 No amendment of this Deed will be of any force or effect unless it is in writing and signed by the Parties to this Deed in accordance with clause 25C of the Regulation.

36 Waiver

- 36.1 The fact that a Party fails to do, or delays in doing, something the Party is entitled to do under this Deed, does not amount to a waiver of any obligation of, or breach of obligation by, another Party.
- 36.2 A waiver by a Party is only effective if it:
- 36.2.1 is in writing,

Narrabri Gas Project Planning Agreement
Narrabri Shire Council
Santos NSW (Eastern) Pty Ltd



- 36.2.2 is addressed to the Party whose obligation or breach of obligation is the subject of the waiver,
- 36.2.3 specifies the obligation or breach of obligation the subject of the waiver and the conditions, if any, of the waiver,
- 36.2.4 is signed and dated by the Party giving the waiver.
- 36.3 Without limitation, a waiver may be expressed to be conditional on the happening of an event, including the doing of a thing by the Party to whom the waiver is given.
- 36.4 A waiver by a Party is only effective in relation to the particular obligation or breach in respect of which it is given, and is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.
- 36.5 For the purposes of this Deed, an obligation or breach of obligation the subject of a waiver is taken not to have been imposed on, or required to be complied with by, the Party to whom the waiver is given.

37 GST

- 37.1 In this clause:
Adjustment Note, Consideration, GST, GST Group, Margin Scheme, Money, Supply and Tax Invoice have the meaning given by the GST Law.
GST Amount means in relation to a Taxable Supply the amount of GST payable in respect of the Taxable Supply.
GST Law has the meaning given by the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
Input Tax Credit has the meaning given by the GST Law and a reference to an Input Tax Credit entitlement of a party includes an Input Tax Credit for an acquisition made by that party but to which another member of the same GST Group is entitled under the GST Law.
Taxable Supply has the meaning given by the GST Law excluding (except where expressly agreed otherwise) a supply in respect of which the supplier chooses to apply the Margin Scheme in working out the amount of GST on that supply.
- 37.2 Subject to clause 37.4, if GST is payable on a Taxable Supply made under, by reference to or in connection with this Deed, the Party providing the Consideration for that Taxable Supply must also pay the GST Amount as additional Consideration.
- 37.3 Clause 37.2 does not apply to the extent that the Consideration for the Taxable Supply is expressly stated in this Deed to be GST inclusive.
- 37.4 No additional amount shall be payable by the Council under clause 37.2 unless, and only to the extent that, the Council (acting reasonably and in accordance with the GST Law) determines that it is entitled to an Input Tax Credit for its acquisition of the Taxable Supply giving rise to the liability to pay GST.
- 37.5 If there are Supplies for Consideration which is not Consideration expressed as an amount of Money under this Deed by one Party to the other Party that

Narrabri Gas Project Planning Agreement
Narrabri Shire Council
Santos NSW (Eastern) Pty Ltd



are not subject to Division 82 of the *A New Tax System (Goods and Services Tax) Act 1999*, the Parties agree:

- 37.5.1 to negotiate in good faith to agree the GST inclusive market value of those Supplies prior to issuing Tax Invoices in respect of those Supplies;
- 37.5.2 that any amounts payable by the Parties in accordance with clause 37.2 (as limited by clause 37.4) to each other in respect of those Supplies will be set off against each other to the extent that they are equivalent in amount.
- 37.6 No payment of any amount pursuant to this clause 37, and no payment of the GST Amount where the Consideration for the Taxable Supply is expressly agreed to be GST inclusive, is required until the supplier has provided a Tax Invoice or Adjustment Note as the case may be to the recipient.
- 37.7 Any reference in the calculation of Consideration or of any indemnity, reimbursement or similar amount to a cost, expense or other liability incurred by a party, must exclude the amount of any Input Tax Credit entitlement of that party in relation to the relevant cost, expense or other liability.
- 37.8 This clause continues to apply after expiration or termination of this Deed.

38 Explanatory Note

- 38.1 The Appendix contains the Explanatory Note relating to this Deed required by clause 25E of the Regulation.
- 38.2 Pursuant to clause 25E(7) of the Regulation, the Parties agree that the Explanatory Note is not to be used to assist in construing this Planning Deed.

Narrabri Gas Project Planning Agreement
 Narrabri Shire Council
 Santos NSW (Eastern) Pty Ltd



Schedule 1

(Clause 9)

Development Contributions

Column 1	Column 2	Column 3	Column 4
Item/ Contribution	Public Purpose	Manner & Extent	Timing
1. \$10,000,000	<p>Monetary contributions to be applied towards the following public purposes:</p> <ul style="list-style-type: none"> Narrabri Airport Terminal, Narrabri Airport Landside development, and Narrabri Sport and Tourism Precinct. <p>with any remaining monetary contributions to be applied towards one or more of the following public purposes (in no particular order):</p>	<p>\$10,000,000 to be paid in accordance with clause 11.</p>	<p>Amount to be paid in instalments as follows:</p> <ul style="list-style-type: none"> First Instalment - \$2,000,000 to be paid incrementally in accordance with the applicable Work Scope and Payment Schedule. Second instalment - \$3,000,000 to be paid within 6 months after all the following having occurred: <ul style="list-style-type: none"> Development Consent being granted to the Development, the Developer receiving all Approvals required to commence the Development, and the making of the Final Investment Decision.

Narrabri Gas Project Planning Agreement
Narrabri Shire Council
Santos NSW (Eastern) Pty Ltd



	<ul style="list-style-type: none"> Narrabri CBD Masterplan Upgrades, Narrabri Library Relocation allowing for CUC expansion, any other projects agreed to between the Council and the Developer. 		<ul style="list-style-type: none"> Third instalment - \$1,000,000 to be paid 12 months after the second instalment is due to be paid. Fourth instalment - \$1,000,000 to be paid 24 months after the second instalment is due to be paid. Fifth instalment - \$1,000,000 to be paid 36 months after the second instalment is due to be paid. Sixth instalment - \$1,000,000 to be paid 48 months after the second instalment is due to be paid. Seventh instalment - \$1,000,000 to be paid 60 months after the second instalment is due to be paid.
2. Annual payment up to a total of \$3,000,000	Monetary contributions to be applied towards community initiatives and infrastructure projects as agreed to between the Council and the Developer.	<p><i>Each annual payment to be the greater of 0.025% of the annual royalties payable in respect of the Development under the Petroleum (Onshore) Act 1991, or \$200,000, up to a total of \$3,000,000. Each amount to be paid in accordance with clause 11.</i></p>	Monetary contributions to be paid annually with the first payment to be made 6 years after the second instalment of Item 1 is due to be paid and then on each anniversary of that date for the next 14 years.
3. \$1,500,000	Monetary contributions to be applied towards road maintenance for the life of the Narrabri Gas Project.	\$1,500,000 to be paid in accordance with clause 11.	Monetary contribution be paid as a one-off payment within 6 months after Development Consent is granted to the Development and the making of the Final Investment Decision.

Narrabri Gas Project Planning Agreement
Narrabri Shire Council
Santos NSW (Eastern) Pty Ltd

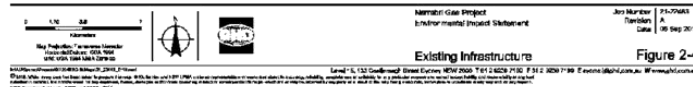


Schedule 2

(Clause 1.1)

Land

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Narrabri Gas Project Planning Agreement
Narrabri Shire Council
Santos NSW (Eastern) Pty Ltd



Execution

Executed as a Deed

Dated:

Executed on behalf of the Council

General Manager

Witness

Mayor

Witness

Executed on behalf of the Developer by its duly authorised attorney in the presence of:

Name/Position of Attorney

Name of Witness

Narrabri Gas Project Planning Agreement
Narrabri Shire Council
Santos NSW (Eastern) Pty Ltd



Appendix

(Clause 38)

Environmental Planning and Assessment Regulation 2000

(Clause 25E)

Explanatory Note

Draft Planning Agreement

Under s7.4 of the *Environmental Planning and Assessment Act 1979*

Parties

Narrabri Shire Council ABN 95 717 801 656 of Administration Building, 46-48 Maitland Street, Narrabri NSW 2390 (**Council**)

and

Santos NSW (Eastern) Pty Ltd ACN 009 321 662 of Santos Place, Level 22, 32 Turbot Street Brisbane QLD 4000 (**Developer**)

Description of the Land to which the Draft Planning Agreement Applies

The Draft Planning Agreement applies to the land the subject of Development Consent to Development Application SSD-6456, being the land identified as 'Project Area' in Schedule 2.

Description of Proposed Development

The Draft Planning Agreement applies to development for which Development Consent is granted by the Independent Planning Commission to the development described in Development Application SSD-6456 to develop natural gas in the Gunnedah Basin about 20 kilometres south-west of Narrabri.

Narrabri Gas Project Planning Agreement
Narrabri Shire Council
Santos NSW (Eastern) Pty Ltd



Summary of Objectives, Nature and Effect of the Draft Planning Agreement

Objectives of Draft Planning Agreement

The objective of the Draft Planning Agreement is to secure the provision of monetary development contributions which are to be applied by the Council towards various community initiatives and projects in the Council area and for road maintenance.

Nature of Draft Planning Agreement

The Draft Planning Agreement is a voluntary planning agreement pursuant to section 7.4 of the EPA Act under which monetary development contributions are made by the Developer to the Council, and are to be applied by the Council towards various public purposes including road maintenance.

Effect of the Draft Planning Agreement

The Draft Planning Agreement:

- relates to the carrying out of the Narrabri Gas Project by the Developer,
- imposes obligations on the Developer to make monetary development contributions only if a development consent is granted for the Narrabri Gas Project,
- does not exclude the application of sections 7.11, 7.12 and 7.24 of the EPA Act to the Narrabri Gas Project,
- is not to be registered on the title of the Land,
- requires the Developer to provide bank guarantees to secure its obligations under the agreement and Council's enforcement costs,
- provides a dispute resolution method for any dispute under the agreement.

Assessment of the Merits of the Draft Planning Agreement

The Planning Purposes Served by the Draft Planning Agreement

The Draft Planning Agreement:

- encourages the proper management, development and conservation of natural and artificial resources, including water, for the purpose of promoting the social and economic welfare of the community and a better environment,
- promotes and co-ordinates the orderly and economic use and development of the Land to which the agreement applies,
- encourages the provision and co-ordination of community services and facilities, and
- provides increased opportunity for public involvement and participation in the environmental planning and assessment of the Narrabri Gas Project.

Narrabri Gas Project Planning Agreement
Narrabri Shire Council
Santos NSW (Eastern) Pty Ltd



How the Draft Planning Agreement Promotes the Public Interest

The draft Planning Agreement promotes the public interest by promoting the objects of the EPA Act as set out in section 1.3(a), (c) and (i) of the EPA Act.

The payment of monetary contributions towards funding community initiatives and projects, and for road maintenance, promotes:

- the economic welfare of the community, a better environment and the proper management and development of the State's resources, and
- the orderly and economic use and development of land.

This planning agreement also increases opportunity for community participation in environmental planning and assessment.

For Planning Authorities:

Development Corporations - How the Draft Planning Agreement Promotes its Statutory Responsibilities

N/A

Other Public Authorities – How the Draft Planning Agreement Promotes the Objects (if any) of the Act under which it is Constituted

N/A

Councils – How the Draft Planning Agreement Promotes the guiding principles for councils in section 8A of the Local Government Act 1993 (previously the Elements of the Council's Charter)

The Draft Planning Agreement promotes the guiding principles for councils by:

- enabling the Council to plan strategically, using the integrated planning and reporting framework, for the provision of effective and efficient services to meet the needs of the local community, and fund those services,
- enabling the Council to apply the integrated planning and reporting framework by obtaining funding to apply towards achieving the outcomes of that framework,
- enabling the Council to secure appropriate services for local community needs, and
- enabling the Council to actively engage with the local community through the public notification of this agreement.

All Planning Authorities – Whether the Draft Planning Agreement Conforms with the Authority's Capital Works Program

Yes, the Draft Planning Agreement conforms with the Council's capital works program.

Narrabri Gas Project Planning Agreement
Narrabri Shire Council
Santos NSW (Eastern) Pty Ltd



All Planning Authorities – Whether the Draft Planning Agreement specifies that certain requirements must be complied with before a construction certificate, occupation certificate or subdivision certificate is issued

No. The Draft Planning Agreement does not specify requirements that must be complied with before a construction certificate, occupation certificate or subdivision certificate is issued.