

**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 Gas Project Planning Agreement**

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## **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:** Stewart Todd – General Manager

#### **Developer:**

**Name:** Santos NSW (Eastern) Pty Ltd  
**Address:** Santos Place, Level 22, 32 Turbot Street Brisbane QLD 4000  
**Telephone:** 0438 720 766  
**Email:** todd.dunn@santos.com  
**Representative:** Todd Dunn – Project Manager Narrabri

#### **Land:**

See definition of *Land* in clause 1.1.

#### **Development:**

See definition of *Development* in clause 1.1.

#### **Development Contributions:**

See Part 2 and Schedule 1.

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

See clause 9.

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**Security:**

See Part 4.

**Registration:**

See clause 19.

**Restriction on dealings:**

See clause 20.

**Dispute Resolution:**

See Part 3.

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## **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 the official cash rate determined by the Reserve Bank of Australia plus 2%.

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

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

**Bank Guarantee** means an irrevocable and unconditional undertaking without any expiry or end date in favour of the Council to pay an amount or amounts of money to the Council on demand issued by:

- (a) one of the following trading banks:
  - (i) Australia and New Zealand Banking Group Limited,
  - (ii) Commonwealth Bank of Australia,
  - (iii) Macquarie Bank Limited,
  - (iv) National Australia Bank Limited,
  - (iv) St George Bank Limited,
  - (v) Westpac Banking Corporation, or
- (b) any other financial institution approved by the Council in its absolute discretion.

**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 10.1.1.

**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.

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**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 2021*.

**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
- (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.

**Security** means a Bank Guarantee to the satisfaction of the Council indexed in accordance with the *Consumer Price Index (All Groups – Sydney)* published by the Australian Bureau of Statistics from the date of this Deed.

- 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.



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- 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.

## **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
  - 4.1.1 the Developer decides not to proceed with the Development and provides notice to that effect to the Council, and
  - 4.1.2 either the Development Consent is surrendered or has lapsed and is no longer in force,then the Parties may terminate this Deed by written notice to the other Party.

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- 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 Surrender of right of appeal, etc.**

- 8.1 The Developer is not to commence or maintain, or to cause or procure the commencement or maintenance, of any proceedings in any court or tribunal or similar body appealing against, or questioning the validity of this Deed. For the avoidance of doubt, nothing in this clause prevents a Party exercising its rights under clause 18 or otherwise at law or in equity in relation to an actual, threatened or apprehended breach of this Deed by the other Party or in relation to anything which a Party does or fails to do in connection with any matter to which this Deed relates.

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

- 9.1 This Deed does not exclude the application of s7.11, s7.12 or s7.24 of the Act to the Development.
- 9.2 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**

### **10 Notification to Council**

- 10.1 The Developer is to notify the Council in writing of:
  - 10.1.1 the Final Investment Decision promptly and no later than 5 business days after the making of that decision, and
  - 10.1.2 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.
- 10.2 Nothing in this clause 10 impacts, detracts from, or otherwise affects the Developer's obligation to make Development Contributions to the Council under this Deed.

### **11 Provision of Development Contributions**

- 11.1 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.
- 11.2 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.
- 11.3 Despite clause 11.2, 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.

### **12 Payment of monetary Development Contributions**

- 12.1 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.
- 12.2 The time for payment of a monetary Development Contribution specified in Column 4 of Schedule 1 is subject to the Developer having received a Tax Invoice from the Council for the payment at least 30 days prior to the time so specified, otherwise the time for payment is not later than 30 days after the Developer has received a Tax Invoice for the payment from the Council.

### **13 Acknowledgement and recognition**

- 13.1 The Council is to place a small plinth or plaque in a prominent position in or visible from a public place in recognition and acknowledgement of the public

purposes to which the Development Contributions made by the Developer under this Deed will be or have been applied.

## **Part 3 – Dispute Resolution**

### **14 Dispute resolution – expert determination**

- 14.1 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:
  - 14.1.1 the Parties to the Dispute agree that it can be so determined, or
  - 14.1.2 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.
- 14.2 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.
- 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 Dispute is to be referred to the President of the NSW Law Society to appoint an expert for expert determination.
- 14.5 The expert determination is binding on the Parties except in the case of fraud or misfeasance by the expert.
- 14.6 Each Party is to bear its own costs arising from or in connection with the appointment of the expert and the expert determination.
- 14.7 The Parties are to share equally the costs of the President, the expert, and the expert determination.

### **15 Dispute Resolution - mediation**

- 15.1 This clause applies to any Dispute arising in connection with this Deed other than a Dispute to which clause 14 applies.
- 15.2 Such a Dispute is taken to arise if one Party gives another Party a notice in writing specifying particulars of the Dispute.
- 15.3 If a notice is given under clause 15.2, the Parties are to meet within 14 days of the notice in an attempt to resolve the Dispute.
- 15.4 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.
- 15.5 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

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- rights in relation to the Dispute, including by the commencement of legal proceedings in a court of competent jurisdiction in New South Wales.
- 15.6 Each Party is to bear its own costs arising from or in connection with the appointment of a mediator and the mediation.
- 15.7 The Parties are to share equally the costs of the President, the mediator, and the mediation.

## **Part 4 - Enforcement**

### **16 Security for performance of obligations**

- 16.1 The Developer is to provide Security to the Council in the amount of:
- 16.1.1 \$200,000 to secure the payment of monetary Development Contributions under this Deed, and
- 16.1.2 \$100,000 to secure the Council's costs of enforcement of this Deed.
- 16.2 The Developer is to provide the Security to the Council within 5 business days of the granting of the Development Consent to the Development.
- 16.3 The Council may call-up and apply the Security in accordance with clause 17 to remedy any breach of this Deed notwithstanding any other remedy it may have under this Deed, under any Act or otherwise at law or in equity.
- 16.4 The Council is to release and return the Security or any unused part of it to the Developer within 14 days of completion of the obligation to which the Security relates.
- 16.5 The Developer may at any time provide the Council with a replacement Security.
- 16.6 On receipt of a replacement Security, the Council is to release and return the Security that has been replaced to the Developer.
- 16.7 If the Council calls-up the Security or any portion of it, it may, by written notice to the Developer, require the Developer to provide a further or replacement Security to ensure that the amount of Security held by the Council equals the amount it is entitled to hold under this Deed.
- 16.8 The Developer is to ensure that the Security provided to the Council is at all times maintained to the full current indexed value.

### **17 Breach of obligations**

- 17.1 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:
- 17.1.1 specifying the nature and extent of the breach,
- 17.1.2 requiring the Developer to:
- (a) rectify the breach if it reasonably considers it is capable of rectification, or

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- (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,
- 17.1.3 specifying the period within which the breach is to be rectified or compensation paid, being a period that is reasonable in the circumstances.
- 17.2 If the Developer fails to fully comply with a notice referred to in clause 17.1, the Council may, without further notice to the Developer, call-up the Security provided by the Developer under this Deed and apply it to remedy the Developer's breach.
- 17.3 Any costs incurred by the Council in remedying a breach in accordance with clause 17.2 may be recovered by the Council by either or a combination of the following means:
  - 17.3.1 by calling-up and applying the Security provided by the Developer under this Deed, or
  - 17.3.2 as a debt due in a court of competent jurisdiction.
- 17.4 For the purpose of clause 17.3, the Council's costs of remedying a breach the subject of a notice given under clause 17.1 include, but are not limited to:
  - 17.4.1 the costs of the Council's employees, agents and contractors reasonably incurred for that purpose,
  - 17.4.2 all fees and charges necessarily or reasonably incurred by the Council in remedying the breach, and
  - 17.4.3 all legal costs and expenses reasonably incurred by the Council, by reason of the breach.
- 17.5 Nothing in this clause 17 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.

## **18 Enforcement in a court of competent jurisdiction**

- 18.1 Without limiting any other provision of this Deed, the Parties may enforce this Deed in any court of competent jurisdiction.
- 18.2 For the avoidance of doubt, nothing in this Deed prevents:
  - 18.2.1 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
  - 18.2.2 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**

### **19 Registration of this Deed**

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

### **20 Restriction on dealings**

- 20.1 The Developer is not to assign the Developer's rights or obligations under this Deed, or novate this Deed, to any person unless:
- 20.1.1 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
  - 20.1.2 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
  - 20.1.3 the Developer is not in breach of this Deed, and
  - 20.1.4 the Council otherwise consents to the transfer, assignment or novation, such consent not to be unreasonably withheld.
- 20.2 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 20.1.

## **Part 6 – Indemnities & Insurance**

### **21 Risk**

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

### **22 Release**

- 22.1 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.

### **23 Indemnity**

- 23.1 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**

### **24 Annual report by Developer**

- 24.1 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.
- 24.2 The report referred is to be in such a form and to address such matters as required by the Council from time to time.

### **25 Annual report by Council**

- 25.1 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.
- 25.2 The report referred 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.

### **26 Review of Deed**

- 26.1 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.
- 26.2 For the purposes of clause 26.1, 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.
- 26.3 For the purposes of addressing any matter arising from a review of this Deed referred to in clause 26.1, the Parties are to use all reasonable endeavours to agree on and implement appropriate amendments to this Deed.
- 26.4 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.
- 26.5 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 26.1 (but not 26.4) is not a Dispute for the purposes of this Deed and is not a breach of this Deed.



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### **27 Notices**

- 27.1 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:
- 27.1.1 delivered or posted to that Party at its address set out in the Summary Sheet, or
  - 27.1.2 emailed to that Party at its email address set out in the Summary Sheet.
- 27.2 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.
- 27.3 Any notice, consent, information, application or request is to be treated as given or made if it is:
- 27.3.1 delivered, when it is left at the relevant address,
  - 27.3.2 sent by post, 2 business days after it is posted, or
  - 27.3.3 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.
- 27.4 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.

### **28 Approvals and Consent**

- 28.1 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.
- 28.2 A Party is not obliged to give its reasons for giving or withholding consent or for giving consent subject to conditions.

### **29 Costs**

- 29.1 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.
- 29.2 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.

### **30 Entire Deed**

- 30.1 This Deed contains everything to which the Parties have agreed in relation to the matters it deals with.
- 30.2 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.

### **31 Further Acts**

- 31.1 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.

### **32 Governing Law and Jurisdiction**

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

### **33 Joint and Individual Liability and Benefits**

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

### **34 No Fetter**

- 34.1 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.

### **35 Illegality**

- 35.1 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.

### **36 Severability**

- 36.1 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.
- 36.2 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.

### **37 Amendment**

- 37.1 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 section 203(5) of the Regulation.

### **38 Waiver**

- 38.1 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.
- 38.2 A waiver by a Party is only effective if it:
- 38.2.1 is in writing,
  - 38.2.2 is addressed to the Party whose obligation or breach of obligation is the subject of the waiver,
  - 38.2.3 specifies the obligation or breach of obligation the subject of the waiver and the conditions, if any, of the waiver,
  - 38.2.4 is signed and dated by the Party giving the waiver.
- 38.3 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.
- 38.4 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.
- 38.5 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.

### **39 GST**

- 39.1 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.

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**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.

- 39.2 Subject to clause 39.4, 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.
- 39.3 Clause 39.2 does not apply to the extent that the Consideration for the Taxable Supply is expressly stated in this Deed to be GST inclusive.
- 39.4 No additional amount shall be payable by the Council under clause 39.2 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.
- 39.5 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 are not subject to Division 82 of the *A New Tax System (Goods and Services Tax) Act 1999*, the Parties agree:
- 39.5.1 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;
- 39.5.2 that any amounts payable by the Parties in accordance with clause 39.2 (as limited by clause 39.4) to each other in respect of those Supplies will be set off against each other to the extent that they are equivalent in amount.
- 39.6 No payment of any amount pursuant to this clause 39, 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.
- 39.7 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.
- 39.8 This clause continues to apply after expiration or termination of this Deed.

#### **40 Explanatory Note**

- 40.1 The Appendix contains the Explanatory Note relating to this Deed required by section 205 of the Regulation.
- 40.2 Pursuant to section 205(5) of the Regulation, the Parties agree that the Explanatory Note is not to be used to assist in construing this Planning Deed.

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**Schedule 1**  
 (Clause 11)

**Development Contributions**

<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>	<b>Column 4</b>
<b>Item/ Contribution</b>	<b>Public Purpose</b>	<b>Manner &amp; Extent</b>	<b>Timing</b>
1. \$10,000,000	<p>Monetary contributions to be applied towards the following public purposes:</p> <ul style="list-style-type: none"> <li>Narrabri Airport Terminal, Narrabri Airport Landside development,</li> <li>Narrabri Sports Precinct, and</li> <li>Narrabri Tourism Precinct</li> </ul> <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 12.</p>	<p>Amount to be paid in instalments as follows:</p> <ul style="list-style-type: none"> <li><b>First instalment</b> - \$2,000,000 payable upon the execution of this Deed subject to clause 12.2.</li> <li><b>Second Instalment</b> - \$3,000,000 to be paid within 6 months after all the following having occurred subject to clause 12.2:               <ul style="list-style-type: none"> <li>Development Consent being granted to the Development,</li> <li>the Developer receiving all Approvals required to commence the Development, and</li> <li>the making of the Final Investment Decision.</li> </ul> </li> </ul>

**Narrabri Gas Project Planning Agreement**

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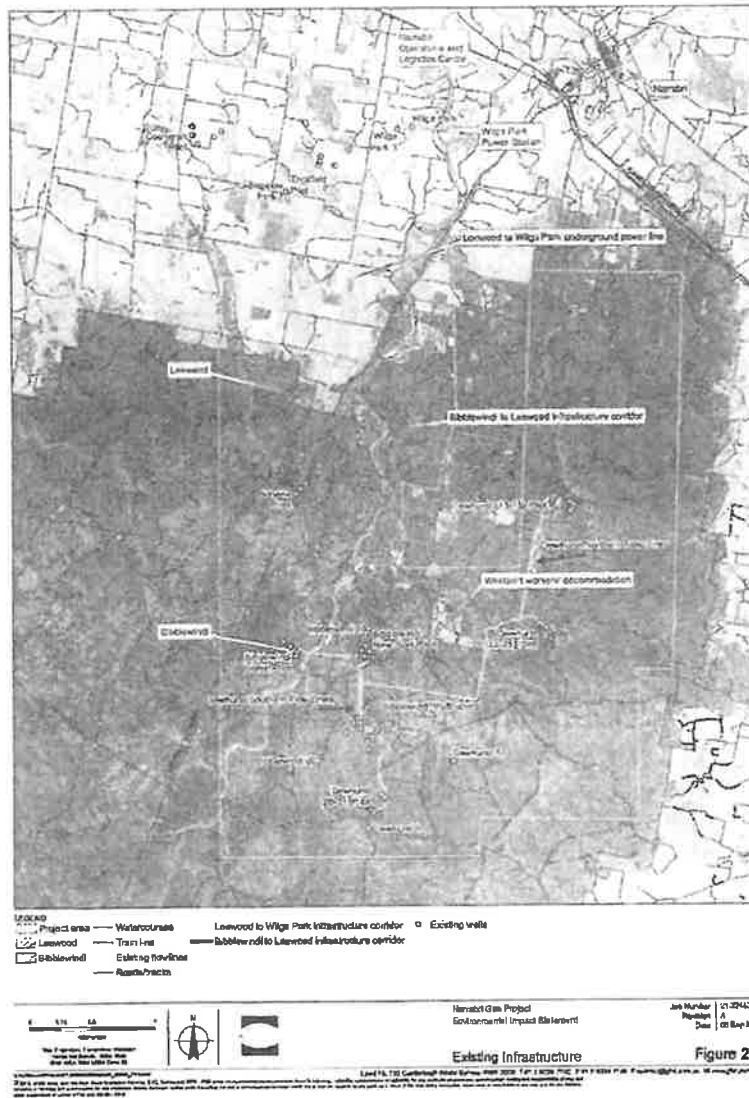
<ul style="list-style-type: none"> <li>• Narrabri CBD Masterplan Upgrades,</li> <li>• Narrabri Library Relocation allowing for CUC expansion,</li> <li>• any other projects agreed to between the Council and the Developer.</li> </ul>	<ul style="list-style-type: none"> <li>• <b>Third instalment - \$1,000,000 to be paid 12 months after the second instalment is due to be paid subject to clause 12.2.</b></li> <li>• <b>Fourth instalment - \$1,000,000 to be paid 24 months after the second instalment is due to be paid subject to clause 12.2.</b></li> <li>• <b>Fifth instalment - \$1,000,000 to be paid 36 months after the second instalment is due to be paid subject to clause 12.2.</b></li> <li>• <b>Sixth instalment - \$1,000,000 to be paid 48 months after the second instalment is due to be paid subject to clause 12.2.</b></li> <li>• <b>Seventh instalment - \$1,000,000 to be paid 60 months after the second instalment is due to be paid subject to clause 12.2.</b></li> </ul>
<p>2. Annual payment up to a total of \$3,000,000</p>	<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 subject to clause 12.2.</p> <p>Each annual payment to be the greater of 0.025% of the annual royalties payable in respect of the Development under the <i>Petroleum (Onshore) Act 1991</i>, or \$200,000, up to a total of \$3,000,000. Each amount to be paid in accordance with clause 12.</p>
<p>3. \$1,500,000</p>	<p>Monetary contributions to be applied towards road maintenance for the life of the Narrabri Gas Project.</p> <p>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 subject to clause 12.2.</p>

**Schedule 2**

(Clause 1.1)

**Land**

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**Santos NSW (Eastern) Pty Ltd**





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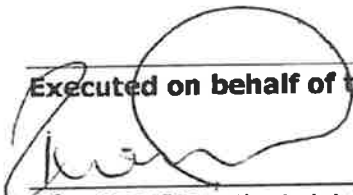
**Execution**

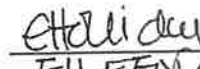
**Executed as a Deed**

**Dated:** 21/12/2022

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**Executed on behalf of the Council**

  
**ROBERT WILLIAMS**  
General Manager

  
**EILEEN HOLIDAY**  
Witness

  
**Mayor**

  
**MICHELLE HENRY**  
Witness

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

GLENN WATT, VP UPSTREAM QLD/NSW 

**Name/Position of Attorney**

ANDREW SQUIRE   
**Name of Witness**

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**Appendix**

(Clause 40)

*Environmental Planning and Assessment Regulation 2021*

(Section 205)

**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**

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## **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 infrastructure 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 dispute resolution methods 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  
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**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 infrastructure 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.

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***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.