NOTICE OF FILING AND HEARING

Filing and Hearing Details

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File Title:	GOMEROI PEOPLE v SANTOS NSW PTY LTD AND SANTOS NSW (NARRABRI GAS) PTY LTD
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Place:	To Be Advised

Registrar

Important Information

This Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

The date of the filing of the document is determined pursuant to the Court's Rules.

Form 75
Rules 33.12(1); 33.34; 33.40

Notice of appeal from a tribunal

No. QUD of 2025

Federal Court of Australia

District Registry: Queensland

Division: General

On appeal from the NATIONAL NATIVE TITLE TRIBUNAL

Gomeroi People (NC2011/006)

Applicant

Santos NSW Pty Ltd and Santos NSW (Narrabri Gas) Pty Ltd and others named in the schedule

Respondents

To the Respondent

The Applicant appeals from the decision as set out in this notice of appeal.

The Court will hear this appeal, or make orders for the conduct of the proceeding, at the time and place stated below. If you or your lawyer do not attend, then the Court may make orders in your absence.

You must file a notice of address for service (Form 10) in the Registry before attending Court or taking any other steps in the proceeding.

Time and date for hearing: [Registry will insert time and date]

Place: [address of Court]

The Court ordered that the time for serving this application be abridged to [Registry will insert date, if applicable].

Date:

Signed by an officer acting with the authority of the District Registrar

Filed on behalf of Gomeroi People, Applicant
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The Applicant appeals from the decision of the Honourable President Smith, Member Eaton and Member Kelly given on 19 May 2025 at Brisbane.

The Tribunal decided *Santos NSW Pty Ltd and Another v Gomeroi People and Another* [2025] NNTTA 12.

The Applicant appeals from parts of the decision as set out below.

Questions of law

1 Questions of construction

1.1 On a proper construction of the *Native Title Act 1993* (Cth) (**NTA**):

(a) should the Tribunal expressly consider whether the future act (the **Project**) should or should not be done, in accordance with s 38(1) of the NTA, rather than only turning its mind to whether it should be done subject to conditions directed to ameliorating some of the detriments arising from the Project?

(b) should consideration of the mandatory public interest criterion under s 39(1)(e) of the NTA include consideration of the effects of the Project on native title rights and interests, rather than a consideration of those effects only after the Tribunal's determination whether the Project is in the public interest?

(c) what criteria should the Tribunal apply to determine whether there are any, and if so what, conditions it should impose to mitigate the detrimental effects of the Project on:

(i) the enjoyment by Gomeroi of their registered native title rights and interests, under s 39(1)(a)(i) of the NTA?

(ii) the way of life, culture and traditions of Gomeroi, under s 39(1)(a)(ii) of the NTA?

(iii) the development of the social, cultural and economic structures of Gomeroi, under s 39(1)(a)(iii) of the NTA?

(iv) the freedom of Gomeroi to access the Project area, and their freedom to carry out rites, ceremonies and other cultural activities on the land and waters, under s 39(1)(a)(iv) of the NTA?

(v) any area or site on the land or waters concerned of particular significance to Gomeroi in accordance with their traditions under s 39(1)(a)(v) of the NTA?

2 Questions of relevance and weight

2.1 On what basis may the Tribunal reject or not receive evidence relied on by a party to a s 139(b) Inquiry?

2.2 On what basis may the Tribunal attribute weight to evidence relied on by a party to a s 139(b) Inquiry?

3 Questions of proof

3.1 What is the test for establishing whether the Pilliga as a whole is 'an area or site, on the land or waters concerned, of particular significance to the native title parties in accordance with their traditions' within the meaning of s 39(1)(a)(v) of the NTA?

3.2 What is the test for attributing the effects of climate change in relation to the land or waters in the Project area arising from the emission of greenhouse gases from the Project in relation to the Tribunal's consideration of the public interest for the purposes of s 39(1)(e) of the NTA?

4 Questions of fairness

4.1 Did the Tribunal deny the Gomeroi procedural fairness pursuant to s 109 of the NTA by:

(a) not accepting that proper cause had been shown for the adducing of further evidence; and

(b) not being satisfied that it is appropriate to permit further evidence to be adduced;

from additional lay witnesses, in order to address the terms of the remittal from the Full Court in *Gomeroi People v Santos NSW Pty Ltd and Santos NSW (Narrabri Gas) Pty Ltd* [2024] FCAFC 26 and *Gomeroi People v Santos NSW Pty Ltd and Santos NSW (Narrabri Gas) Pty Ltd (No 2)* [2024] FCAFC 49), in particular in relation to the effects of climate change on the matters to be considered by the Tribunal under s 39 of the NTA?

4.2 Did the Tribunal deny the Gomeroi procedural fairness pursuant to s 109 of the NTA by limiting the opportunity of Gomeroi to be heard in relation to the matters remitted by the Full Court?

4.3 Did the Tribunal deny the Gomeroi procedural fairness pursuant to s 109 of the NTA by not allowing the evidence of the Gomeroi lay witnesses to be heard on Country, including within the Project area?

4.4 Did the Tribunal deny the Gomeroi procedural fairness pursuant to s 109 of the NTA by not giving Gomeroi the opportunity to suggest conditions on which the Project might be done?

4.5 Did the Tribunal fail to consider relevant considerations, and take into account irrelevant considerations, in particular in relation to:

(a) ignoring the effects of fugitive emissions?

(b) ignoring the effects of Scope 3 emissions?

(c) ignoring Mr Mudge's evidence about alternative energy sources?

(d) relying on the economic evidence in the environmental impact statement (**EIS**), despite it being ten years old?

(e) whether there is likely to be a gas supply shortfall in future?

(f) relying on the New South Wales Independent Planning Commission (**IPC**) decision in relation to the public interest, because the IPC had talked to the public?

4.6 Did the Tribunal attribute weight to the evidence before it in accordance with law?

Orders sought

1 An order allowing the appeal;

2 An order setting aside the Determination pursuant to s 169(7)(a) of the NTA;

3 Alternatively, an order remitting the Application for hearing by a differently constituted Tribunal pursuant to s 169(7)(b) of the NTA;

4 An order that the remitted decision be heard with further evidence from the Appellant on Country;·

5 Such further or other orders as the Court may deem appropriate.

Grounds relied on

1 Questions of construction

1. In relation to question 1.1(a), the Tribunal erred by not expressly considering whether the Project should or should not be done, rather than only turning its mind to whether it should be done subject to conditions directed to ameliorating some of the detriments arising from the Project (at [26]–[36], [64], [122], [147], [164], [166], [171], [181], [189], [190], [220], [237], [247], [380], [386], [396], [402], [403–[418]).

2. In relation to question 1.1(b), the Tribunal erred by not considering the effects of the Project on native title rights and interests as part of its consideration of the mandatory public interest criterion under s 39(1)(e) of the NTA, rather than only after its determination whether the Project is in the public interest (at [357], [361]), notwithstanding its finding that 'consideration of the "public interest" must recognise the common Australian interest in recognising and protecting native title' (at [276]).

3. In relation to question 1.1(c), the Tribunal erred by not making findings in accordance with law that given the applicable regulatory regimes, the conditions imposed by the IPC, and the conditions set out in its determination, the effect of the Project on the following is unlikely to be substantial:

   a. the development of the social, cultural and economic structures of Gomeroi, under s 39(1)(a)(iii) of the NTA (at [181]); and

   b. the freedom of Gomeroi to access the Project area, and their freedom to carry out rites, ceremonies and other cultural activities on the land and waters, under s 39(1)(a)(iv) of the NTA (at [190]).

4. In relation to question 1.1(c), the Tribunal erred in law by making findings in accordance with law that:

   a. the manner in which the Project is to be constructed and operated, together with conditions imposed in its determination will mitigate to a sufficient level the effects of the Project on the enjoyment by Gomeroi of their registered native title rights and interests, under s 39(1)(a)(i) of the NTA (at [122]);

   b. the manner in which the Project is to be constructed and operated, coupled with the conditions placed upon the Project through the approvals process, together with conditions imposed in its determination, will mitigate to a sufficient level the effects of the Project on the way of life, culture and traditions of Gomeroi, under s 39(1)(a)(ii) of the NTA (at [164]);

   c. the applicable regulatory regimes, the conditions imposed by the IPC, and the conditions set out in its determination will mitigate to a satisfactory extent the effect of the act on the development of the social, cultural and economic structures of Gomeroi, under s 39(1)(a)(iii) of the NTA (at [181]);

   d. the manner in which the Project is to be constructed and operated, the applicable regulatory regimes, the conditions imposed by the IPC, and the conditions set out in its determination will mitigate to a satisfactory extent the effect of the act on the freedom of Gomeroi to access the Project area, and their freedom to carry out rites, ceremonies and other cultural activities on the land and waters, under s 39(1)(a)(iv) of the NTA (at [188]–[190]);

2 Questions of relevance and weight

5. In relation to question 2.1, the Tribunal erred in making each of the following findings, specifically that evidence of each of the following was irrelevant to its consideration of the criteria under s 39(1) of the NTA:

   a. the consequences of fugitive emissions, whether or not there was evidence that fugitive emissions are approximately ten times the amount estimated in the EIS (at [319]);

   b. the consequences of Scope 3 emissions (at [363]–[365]);

   c. evidence that there is not likely to be a gas supply shortfall in future (at [295]–[299], [324]–[328];

   d. that the use of non-fossil fuel alternatives, including biogas and greater energy storage capacity through the use of batteries or pumped hydro, will meet unmet demand for energy if the Project does not proceed (at [291]–[294]); and

e. the economic cost of the Project is some $30 billion, based on the interim value of emissions reduction (IVER) formula (at [259(h)], [318]–[321]); and

f. any and all evidence of Mr Mudge, apart from that in relation to fugitive emissions, non-fossil-fuel alternatives and the economic cost of the project, which it rejects.

and therefore failed, or constructively failed, to consider a relevant consideration.

6. In relation to question 2.1, the Tribunal erred in making the finding that the following was relevant to its consideration of the criterion under s 39(1)(c):

a. the economic evidence in the environmental impact statement going to the matters to be considered under s 39(1)(c) of the NTA, despite:

i. it being ten years old by the time it needed to be considered during the remittal hearing (at [49], [249]–[252]);

ii. evidence of economic detriment from the Project (at [259]); and

iii. there having been transformational change in the Australian energy market since 2020 (at [259];

and therefore considered, or constructively considered, an irrelevant consideration.

7. In relation to question 2.1, the Tribunal erred in making each of the following findings, specifically that each of the following was relevant to its consideration of the criterion under s 39(1)(e):

a. the evidence adduced in the original inquiry, specifically the EIS and the IPC decision upheld on appeal (at [362]);

b. the official gas supply forecasts of the Australian Energy Market Operator, as a basis for a conclusion that energy security and reliability is an important benefit of the Project for the wider community (at [367]–[369], [373]), despite finding that those forecasts are uncertain and contingent (at [296]–[297]);

c. the findings of the inquiry of the Independent Planning Commission of NSW in relation to the public interest, because the IPC had had direct access to the views of the public through its way of operating (at [382]); and

d. any conditions that the EPA might impose on Santos' proposed revisions or variations to its current Environmental Protection Licences, which conditions are at this stage unknown and uncertain (at [350]–[351]).

and therefore considered, or constructively considered, an irrelevant consideration.

8. In relation to question 2.2, the Tribunal erred in making each of the following findings, directly or indirectly, in its consideration of the public interest under s 39(1)(e) of the NTA:

   a. attributing insufficient weight to evidence of the contribution of the Project to the effects of climate change (at [384], [386]);

   b. specifically attributing significant weight to the Project adding a separate energy source providing energy reliability (at [324], [385], [400]); and

   c. attributing no weight to the effects of the Project on native title rights and interests (at [357]).

3 Questions of proof

9. In relation to question 3.1(a), the Tribunal:

   a. erred in law by applying the wrong test in finding that the Pilliga as a whole is a rich cultural landscape, but not an '**area or site**, on the land or waters concerned, **of particular significance** to the native title parties in accordance with their traditions' within the meaning of s 39(1)(a)(v) of the NTA (at [195]–[202], [203]);

   b. erred in law by reaching a factual finding regarding whether the Pilliga as a whole is an area or site of particular significance within the meaning of s 39(1)(a)(v) of the NTA, which is illogical or clearly unsupported by the evidence, such that that factual finding is an error of law; and

   c. should have found that:

      i. the Pilliga as a whole is an 'area or site, on the land or waters concerned, of particular significance to the native title parties in accordance with their traditions' within the meaning of s 39(1)(a)(v) of the NTA;

      ii. the following factors are irrelevant to its determination whether the Pilliga as a whole is an area or site of particular significance within the meaning of s 39(1)(a)(v) of the NTA:

         1. important places and things reside within the Pilliga, which is a cultural landscape (at [201]); and

         2. the size of the Pilliga (at [202]); and

10. In relation to question 3.2, the Tribunal erred by not applying the appropriate test for attributing the effects, in relation to the land or waters in the Project area, of climate change arising from the emission of greenhouse gases from the Project, in its

consideration of the public interest for the purposes of s 39(1)(e) of the NTA (at [300]–[306]).

4 Questions of fairness

11. In relation to question 4.1, the Tribunal erred by limiting the evidence Gomeroi was able to adduce at the remittal hearing:

    a. to that of the three lay witnesses who gave evidence at the original hearing, notwithstanding that the scope of the matters to be addressed at the remittal hearing was different from those to be addressed at the original hearing, in particular in relation to the effects of climate change on the matters to be considered by the Tribunal under s 39 of the NTA (directions issued 19 August 2024; [12]); and

    b. by not allowing the parties any opportunity to provide any further responsive expert evidence after the conclave of experts (at [15]);

12. In relation to question 4.2, the Tribunal erred by:

    a. limiting the parties' opportunities to be heard, as follows:

        i. no legal representation was permitted at the conclave of experts held on 17 January 2025 (at [14]); and

        ii. limited time was given at the remittal hearing on 14 February 2025 for oral submissions (at [15]).

13. In relation to question 4.3, the Tribunal erred by not allowing the evidence of the Gomeroi lay witnesses to be heard on Country (at [12], [13]; reasons for decision dated 19 December 2024 [1]–[5]).

14. In relation to question 4.4, the Tribunal erred by not giving the parties any opportunity to suggest conditions on which the Project might be done, rather requesting them to make comments regarding the categories of conditions proposed by the Tribunal (at [20]).

15. In relation to question 4.5, the Tribunal erred by:

    a. alternatively to question 2.1 and related grounds, failing to consider relevant considerations, namely:

        i. the consequences of fugitive emissions, whether or not there was evidence that fugitive emissions are approximately ten times the amount estimated in the EIS (at [319]);

        ii. the consequences of Scope 3 emissions (at [363]–[365]); and

iii. evidence that there is not likely to be a gas supply shortfall in future (at [295]–[299], [324]–[328];

iv. evidence that the use of non-fossil fuel alternatives, including biogas and greater energy storage capacity through the use of batteries or pumped hydro, will meet unmet demand for energy if the Project does not proceed (at [291]–[294]); and

b. alternatively to questions 2.1 and related grounds, considering irrelevant considerations, namely:

i. the economic evidence in the environmental impact statement going to the matters to be considered under s 39(1)(c) of the NTA, despite:

1. it being ten years old by the time it needed to be considered during the remittal hearing (at [249]–[252]);

2. evidence of economic detriment from the Project (at [259]); and

3. there having been transformational change in the Australian energy market since 2020 (at [259];

ii. the official gas supply forecasts of the Australian Energy Market Operator, as a basis for a conclusion that energy security and reliability is an important benefit of the Project for the wider community (at [367]–[369], [373]), despite finding that those forecasts are uncertain and contingent (at [296]–[297]);

iii. the findings of the inquiry of the Independent Planning Commission of NSW in relation to the public interest, because the IPC had had direct access to the views of the public through its way of operating (at [382]); and

iv. any conditions that the EPA might impose on Santos' proposed revisions or variations to its current Environmental Protection Licences, which conditions are at this stage unknown and uncertain (at [350]–[351]).

16. In relation to question 4.6, the Tribunal erred by, alternatively to questions 2.2 and related grounds, making each of the following findings, directly or indirectly, in its consideration of the public interest under s 39(1)(e) of the NTA:

a. attributing insufficient weight to evidence of the contribution of the Project to the effects of climate change (at [384], [386]);

b. specifically attributing significant weight to the Project adding a separate energy source providing energy reliability (at [324], [385], [400]); and

c. attributing no weight to the effects of the Project on native title rights and interests (at [357]).

Applicant's address

The Applicant's address for service is:

Place: Unit 1a, Suite 2.02, 44-70 Rosehill Street, Redfern, NSW 2016

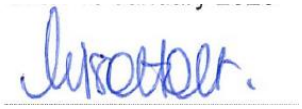
Email: mholt@ntscorp.com.au

The Applicant's address is NTSCORP Limited, Unit 1a, Suite 2.02, 44-70 Rosehill Street, Redfern, NSW 2016.

Service on the Respondent

It is intended to serve this application on all Respondents.

Date: 16 June 2025



Signed by Mishka Holt
Solicitor for the Applicant

Note

Rule 33.12(4) provides that the Applicant must serve a copy of the notice of appeal on each other party to the proceeding and the Registrar of the Tribunal.

Schedule

No. QUD of 2025

Federal Court of Australia

District Registry: QUEENSLAND

Division: General

Respondents

First Respondent: **Santos NSW Pty Ltd and Santos NSW (Narrabri Gas) Pty Ltd and others named in the schedule**

Second Respondent: **State of New South Wales**

Date: 16 June 2025