

NSW Strategic Release Framework for Coal and Petroleum Exploration

1. Background

In October 2013, the Independent Commission Against Corruption (ICAC) released its recommendations on reducing opportunities and incentives for corruption in the management of NSW coal resources.

In response, the NSW Government established the Coal Exploration Steering Group (CESG) to undertake a whole-of-Government assessment and make recommendations on where, when and how coal resources are to be released for exploration to suitably qualified companies.

The CESG's *Proposed Coal Exploration Licence Allocation Framework* outlines recommendations for a streamlined process that will increase transparency and independent oversight of the allocation of coal prospecting titles¹.

The NSW Government has accepted these recommendations.

In developing its response to these recommendations, the NSW Government had regard to the commitments made in the NSW Gas Plan, which was released in November 2014 in response to the recommendations of the NSW Chief Scientist and Engineer on Coal Seam Gas (CSG) activities in NSW.

In accepting all of the recommendations of the Chief Scientist and Engineer, the NSW Gas Plan committed to harmonised regulation of the resources sector, and to the introduction of a Strategic Release Framework to ensure a preliminary assessment of environmental, social and economic factors is undertaken before the allocation of any new petroleum prospecting titles.

This policy framework creates a single and harmonised Strategic Release Framework for the improved management of both coal and petroleum resources in NSW. This brings together the recommendations of the CESG with those of the NSW Chief Scientist and Engineer.

¹ Note prospecting titles include exploration licenses and assessment leases.



Figure 1: A harmonised framework that builds on NSW Government Commitments

1.1. Context: coal and petroleum in NSW

Coal and petroleum production industries are vital to the NSW economy. The coal industry provides more than 80 per cent of NSW's electricity needs and is the State's single largest export earner. In addition, coal supports around 125,000 direct and indirect jobs, particularly in regional areas. NSW relies on gas to provide 10 per cent of its energy needs; however 95 per cent of NSW's gas supplies are sourced from interstate, with NSW facing an increasingly competitive market to access these supplies.

Exploration is a pivotal step on the path to coal and petroleum production, but is no guarantee that a project will progress to production. At exploration, companies (and sometimes the Government) undertake research activities to assess resources, providing important knowledge on the location and potential of deposits. This makes exploration a valuable information gathering exercise. This information helps companies to assess the potential viability of a mine, and informs decisions about the level of their financial investment. This framework does not replace or pre-empt any future assessment required as part of a development application.

Exploration generally starts with low impact activities, such as geological mapping and geochemical surveys, to determine whether signs of resources are evident before progressing to more intense and costly activities like drilling and bulk sampling. More information on types of exploration activities can be found on the NSW Resources and Energy website, www.resourcesandenergy.nsw.gov.au, and at Common Ground, www.commonground.nsw.gov.au.

2. The Strategic Release Framework

The Strategic Release Framework is a new process for the improved management of the State's coal and petroleum resources. It allows for the controlled, strategic release and competitive allocation of prospecting titles.

Previous processes for applying for coal and petroleum prospecting titles diverged greatly, and were a source of confusion for industry and the community alike.

The new Framework is designed to provide greater clarity and transparency in decision making relating to where exploration activities may take place, and introduces a competitive process for determining who may undertake these activities.

The Framework recognises there are competing uses for land, and seeks to balance these interests. As a result, integral aspects of the Framework include community consultation, and upfront assessments of social, environmental and economic considerations.

Overall, the new Framework resets the Government's approach to issuing prospecting titles to ensure that it is transparent, informed and consistent with the Government's broader coal and petroleum strategy.

The Strategic Release Framework is broadly comprised of three key stages:

1. A stage to assess the suitability of an area for release and the appropriate allocation process;
2. the release of an area for exploration and invitation of competitive applications for a prospecting title; and
3. the grant of a prospecting title following an assessment of applications through a competitive allocation process (e.g. auction, tender or expression of interest process).

An overview of all stages within the Framework is provided in sections 2.1 to 2.3.

2.1. Implementation of the Strategic Release Framework will be overseen by the Advisory Body for Strategic Release ('the Advisory Body')

In keeping with the Government's commitment to the harmonisation of resource regulation, an independently chaired Advisory Body is to implement the Framework.

In addition to the independent chair, this group comprises executive members from the Department of Premier and Cabinet, NSW Treasury, the Department of Planning and Environment, and the Division of Resources and Energy. All agency members will have the appropriate skills required to manage the technical implementation and oversight of the Framework.

2.2. Assessment of areas for exploration

The Advisory Body will make recommendations to the Minister for Industry, Resources and Energy on potential areas to be released for exploration. Potential areas may be identified from a range of factors including the knowledge of deposits gained from the Government's pre-competitive program, and the known level of industry interest in an area.

The recommendations of the Advisory Body will be based on a preliminary assessment of potential areas. This preliminary assessment process will include two parts:

1. A geological resource assessment that considers factors including resource quality and quantity. This is called the Resource Assessment.
2. An assessment of the environmental, social and economic factors relevant to the potential release area. This is called the Preliminary Regional Issues Assessment.

Technical geological expertise will inform the development of the Resource Assessment which will be an initial step to identify areas where there is resource potential that may warrant further consideration as a release area. This assessment will look at:

- Availability of data
- resource body characteristics;
- market characteristics; and
- other geological factors.

The Preliminary Regional Issues Assessment will provide an initial identification and consolidation of relevant environmental, economic and social information relating to the potential release area. This assessment will utilise current available information and data. As part of the assessment, a report summarising key issues, opportunities and constraints will be prepared. One part of this process will be community consultation.

The Advisory Body will consider the Preliminary Regional Issues Assessment in developing recommendations for release of areas.

Guidelines setting out how these assessments are to be undertaken will be made publicly available.

Once these preliminary assessment processes are complete, the Advisory Body will consider the findings of both assessments. Where it considers that an area warrants release for exploration, it will also assess which competitive allocation process is

most suitable for that area. Decisions will be made consistent with any relevant government procurement requirements.

The Advisory Body will then make a recommendation to the Minister regarding the release of the area. The Minister's decision will be subject to Government endorsement.

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2.3 Release of areas for exploration

Invitation to apply

Once a decision has been made regarding the release of an area, including the method of competitive allocation for that area, the Minister will invite applications to be part of the competitive process.

Assessment requirements for each release will be set out in the invitation to apply. This will include the criteria, weightings and standards required to be met by each applicant.

Applications for a prospecting title may only be submitted when an area is released by the Minister. There are two exceptions to this rule:

- an existing titleholder may submit an application for an operational allocation of an exploration licence at any time; and
- the Government may apply for a prospecting title to undertake information gathering activities (known as pre-competitive work).

Unsolicited expressions of interest for an area that has not been released by the Minister may be referred to the Advisory Body for its consideration. In such circumstances, the Advisory Body will then consider whether the area sought could be released under the competitive allocation process, as described above.

The NSW Gas Plan made a commitment to pause and reset petroleum exploration on terms that better align with community expectations. In order to deliver on this commitment, all pending applications for petroleum exploration titles were extinguished. Prior to each strategic release for petroleum, proponents who had their petroleum title applications expunged as part of the NSW Gas Plan will be given first opportunity to apply for a petroleum prospecting title in the relevant strategic release area, as required under Schedule 2 of the *Petroleum (Onshore) Act*.

2.4. Competitive allocation of licences

When the Advisory Body considers that it should recommend an area for release to the Minister, it will also recommend the most appropriate and fit-for-purpose competitive allocation process, consistent with guidance material that will set out how the Advisory Body is to make these decisions.

Pre-qualification

Regardless of the competitive allocation process chosen for a particular release, all applicants for prospecting titles must meet minimum standards which will apply in relation to:

- work programs;
- technical capability;
- financial capability;
- environmental track record;
- community consultation capability; and
- any other requirement as set out in legislation or the issued invitation.

This also covers the fit and proper person test. Applicants must meet prequalification requirements to be considered in the competitive allocation process.

Competitive allocation processes

The assessments of bids in a competitive allocation process will always have regard to the following factors:

- value of the bid;
- capability; and
- commitment to exploration, which will be demonstrated by the scope, timing and expenditure outlined in an applicant's proposed work program.

There are many ways of running a competitive process for the allocation of licences; the method chosen will depend on factors such as the level of knowledge about the geology of the resource, and the likely level of competition. For example, where there is a high level of knowledge about the resource and a high level of competition, greater weight may be placed on the dollar value of the bid.

As another example, where knowledge and competition levels are low, then greater weight may be placed on an applicant's work program, technical capability and financial capacity than on the monetary value of their bid.

It may also be appropriate to have multiple winners in a single release. This may be because multiple areas are being released or one area is split into many title areas.

The competitive allocation process will be run by a separate multi agency panel, who will make recommendations for the allocation of titles to the Minister. This

Assessment Panel will be made up of members from the Department of Premier and Cabinet, NSW Treasury and the Division of Resources and Energy.

Recommendations will be put to the Minister and the Government for decision.

Reserve prices

All prospecting titles will have a reserve price, and a title will not be released without a payment of at least this amount.

The reserve price represents the minimum value that the Government is willing to accept for the prospecting title. The methodology for determining the reserve price may take into account factors such as the costs associated with preparing an area for competitive release. Other considerations may include the potential size and quality of the resource, the cost of prospective mining operations, and market conditions. The payment of the reserve price (or a higher amount) for a prospecting title does not constitute a direct path to a mining or production licence. Proposals for mining development and petroleum production will be subject to rigorous assessment under the Environmental Planning & Assessment Act 1979.

3. A framework for exploration activities

This framework is to promote the strategic release of areas for exploration of coal and petroleum in NSW. No part of this process replaces the need for a development application if a project seeks to progress to production. Nor does it duplicate or pre-empt the more detailed assessment undertaken as part of the development assessment process.

Importantly, this process, including the Preliminary Regional Issues Assessment, the recommendations to the Government and the allocation of an exploration licence, do not pre-empt the outcome of any future development assessment of a coal or petroleum project.

3. Application for operational allocation of titles

Under the Framework, existing coal mine operators and coal exploration project operators at an advanced stage of exploration may apply for an exploration licence. The purpose of operational allocations are to extend the life of the mine or for developing a better mine design. In these circumstances, fit-for-purpose competitive allocation processes will still apply. There will replace the old direct allocation process.

As these applications must be made by existing operations, the Strategic Release process will not be undertaken.

A land size threshold will apply to these applications. The Minister will refuse any applications for areas that exceed the land size threshold. In such circumstances, the Advisory Body may then consider whether the resource area sought could be released for competitive allocation. (For further details of the criteria applying to

applications for operational allocations of exploration licences see www.resourcesandenergy.nsw.gov.au).

Diagram 2:

Flowchart of the Strategic Release Framework



Note: the above describes the process for considering the release of an area for exploration, and the granting of a prospecting title. Proposals for mining development and petroleum production will be subject to rigorous assessment under the *Environmental Planning & Assessment Act 1979*.