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Executive Summary


While the release of these documents is a positive step toward establishing a new coal allocation framework, there are many underlying details that still need to be established and modifications to the current proposals are required. Every effort should be made to finalise the framework as quickly as possible, as further delays will cost the State foregone economic growth in the future.

A timetable for the finalisation of the coal allocation framework must be outlined

It is well past the NSW Government’s September 2014 deadline to establish a new policy framework for coal allocation methodologies, as outlined in the NSW Government’s Plan for the Implementation of Recommendations from the Independent Commission Against Corruption’s (“ICAC”) report, Reducing The Opportunities and Incentives for Corruption in the State’s Management Of Coal Resources (“the ICAC Report”).

There have been no new Greenfield coal allocations in NSW for approximately five years, and the absence of an effective process to allocate substantial coal allocations has hampered the industry’s ability to plan effectively for the future expansion of existing mines and NSW’s next generation of Greenfield projects.

It is critical that the coal allocation framework is finalised as quickly as possible, as continued delays will harm the State’s future economic growth. Numerous supporting documents remain undrafted and components of the framework - such as Preliminary Regional Issues Assessments - will take considerable time to prepare.

It could be close to 15 years before a new coal mine becomes operational under the proposed framework. A timetable to finalise the allocation framework is needed and industry consultation on outstanding components is critical.

Clear governance arrangements, assessment processes and timeframes for each type of application are required

The assessment processes for coal Exploration Licences (“ELs”) have remained opaque, with application requirements unclear, applicants unable to monitor the progress of their application, decision-making processes unclear, extended periods of applications being stalled and the justification for decisions poorly explained. There is a need for clear processes, timeframes and governance arrangements for all types of applications received to ensure the process works efficiently and that applicants have certainty about how their applications will be assessed.

Industry input is critical throughout the process of identifying strategic release areas

Industry input is critical to identify and prioritise the areas that will be released through the strategic release framework. This is supported in the Coal Exploration Steering Group’s (“CESG”) Policy Paper, which states that “industry input will be critical for informing strategic releases and understanding the level of likely competition for a release area.” However, aside from the public consultation on the Preliminary Regional Issues Assessments, the documents do not outline what opportunities there will be for industry input.
The mechanisms for industry input should be outlined.

**Any arbitrary threshold for operational allocations must be complemented by a merits-based assessment of applications that exceed the threshold, in line with ICAC’s recommendations**

NSWMC acknowledges the desire for a simple threshold associated with operational allocations and that there are pros and cons no matter what type of threshold is used. Attempting to formulate an arbitrary threshold (be that based on tonnage, land area, or other metric) that will be suitable to apply in every situation will be unsuccessful, unless it is very large.

The limitations of arbitrary thresholds are evident when considering the practical application of the proposed land area threshold for operational allocations of a 33 per cent increase over the existing title area. If, for example, there is an adjacent resource contained within an area equivalent to 40 per cent of the existing title area, it is unclear what will happen with the additional 7 per cent. A 33 per cent threshold is also unlikely to be sufficient where an allocation is needed to ensure continued operations of an existing mine.

The land area threshold should be increased from 33 per cent to 50 per cent, which is likely to be more workable in practice. A second resource-based threshold should also be considered for circumstances where there is a higher level of confidence about resources, with resources equivalent to support seven years’ production being the threshold for extensions to mine life.

Essential to the framework is a process through which operational allocation applications that exceed any threshold can be considered on their merits. Where an application exceeds a threshold, it should be referred to an advisory body for a rigorous merit assessment of the justification of the application. NSWMC’s suggested process is outlined in Appendix A. This approach aligns with ICAC’s recommendations.

**Multiple applications for operational allocations should be permitted**

The ICAC Report acknowledged that there might be multiple operational allocations by a single mine, suggesting a process where multiple applications up to a threshold can be made before triggering a more rigorous merits based assessment.

The life of a mine can extend over decades and limiting a mining operation to one operational allocation is impractical. There is a high likelihood that multiple operational allocation applications will need to occur over the life of the mine and a clear process should be in place to deal with them.

**Further amendments to the framework required**

NSWMC has identified a number of other aspects of the draft framework that we believe require amendment to improve its clarity and workability. To that end, we urge the NSW Government to adopt the recommendations made throughout this submission.
About the NSW Minerals Council

The NSW Minerals Council is the peak industry association representing the State’s $21 billion minerals industry.

NSWMC provides a single, united voice on behalf of our 85 members, ranging from junior exploration companies to international mining companies, as well as associated service providers.

Mining has and will continue to be a key economic driver for NSW. NSWMC works closely with government, industry groups, stakeholders and the community to foster a strong and sustainable minerals industry in NSW.
Introduction

The exploration process is by its very nature a commercially uncertain investment given the low level of knowledge about mineral deposits and the comprehensive approval process that must be navigated should viable deposits be found. This risk must be balanced with certain and efficient regulatory regimes to attract exploration investment.

The latest statistics from the Australian Bureau of Statistics are highly concerning, with NSW coal exploration expenditure having fallen 72% since December 2011, reaching the lowest quarter expenditure levels since March 2005\(^1\). This declining trend has serious long-term consequences for the NSW economy. As the October 2014 *Draft Industry Action Plan for NSW Minerals* states:

> “Without further investment in the expansion or development of new coal mines, NSW coal production is expected to peak within two to three years, before declining by approximately 5 per cent per annum. This will put at risk the ability of the NSW Government to achieve the NSW 2021 State Plan targets for the NSW economy and the mining industry in particular, including its targets to: increase the value of primary industries by 30 per cent by 2020; and grow exports for NSW.”

It is in this context that the Strategic Release Framework must be assessed. It is vital to ensure that the revised allocation process encourages exploration that is otherwise waning, partly due to the perception of sovereign risk and the absence of a process to allocate new coal exploration licences.

A timetable of the delivery of the complete allocation framework should be published

A fully functioning coal allocation framework has been absent in NSW for a prolonged period, despite the NSW Government’s Plan for the Implementation of Recommendations from the ICAC stating that the policy framework for allocation methodologies would be approved by September 2014.

There have been no new major coal allocations in NSW for more than five years, and the absence of an effective process to allocate substantial coal allocations has hampered the industry’s ability to plan effectively for the future expansion of existing mines and NSW’s next generation of Greenfield projects.

The Draft Framework and Draft Guidelines are a step in the right direction in endeavouring to address the various recommendations made by ICAC. Nevertheless, they indicate that little progress has been made toward the establishment of a fully functioning coal allocation framework since the CESG released its discussion paper in December 2014.

Numerous components of the framework are yet to be prepared, such as:

- Practice Guidelines on the methodology to set the reserve price;
- Practice Guidelines on competitive allocation models;
- Practice Guidelines on how bids will be assessed; and
- Market interest testing methodology.

Furthermore, components of the strategic release framework, such as the Resource Assessment, Preliminary Regional Issues Assessments, the selection of competitive release areas and the allocation process itself, will take considerable time to complete.

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\(^1\) Australian Bureau of Statistics, 8412.0 - Mineral and Petroleum Exploration, Australia, Jun 2015
It is critical that the coal allocation framework is finalised as quickly as possible. The allocation of coal exploration titles is critical for the long-term economic performance of NSW. Continued delays will harm the State’s future economic growth.

It could be close to 15 years before a new coal mine becomes operational under the proposed framework. The finalisation of the framework will occur in 2016 at the earliest; the resource and environmental assessments to guide decisions on release areas may take until 2017; the competitive allocation finalised in 2018; and then it could be a further 10 years to explore, design and gain required approvals.

It is imperative that a timetable to finalise outstanding material and begin competitive allocations be developed.

**Recommendations**

- The NSW Government should publish a timetable for the delivery of the complete strategic release framework and a target date for the first strategic releases to be finalised.
- The reserve price practice guidelines and the market testing methodology should be prioritised, since these are central to the Operational Allocation process.
- The NSW Government should commit to a proper consultation process with industry on the outstanding components of the strategic release framework.

**Clear governance arrangements, assessment processes and timeframes for each type of application are required**

The assessment processes for coal ELs remain opaque, with application requirements unclear, applicants unable to monitor the progress of their application, decision-making processes unclear, extended periods of applications being stalled and the justification for decisions poorly explained. Some have reported that where another interest has been registered over an application area, the process has completely stopped.

It is essential that every part of the allocation framework is clearly documented so that applicants have certainty about what requirements they must meet and when decisions will be made.

For example, the Draft Framework refers to ‘minimum standards’ for pre-qualification, a ‘fit and proper person test’, ‘the value of the bid’, and assessment of ‘capability’. These terms have not been defined and have the potential to be interpreted subjectively unless clear guidance is provided.

Further, it is proposed that the Minister is to invite applications to a competitive selection process once an area is released, yet no information has been provided on the invitation process and what methods will be used (e.g. by way of Gazettal).

Additionally, the framework provides that “there are many ways of running a competitive process for the allocation of licences.” Although some indicative examples are provided, it remains unclear what is referred to by ‘many ways’. Industry should be consulted on the various options for competitive allocations, and NSWMC would appreciate further clarification.
The following improvements to the process must be implemented to help ensure certainty, transparency and procedural fairness:

- Developing a standard template for applications to ensure all relevant and required data is submitted in the application. The format should be approved by all committees involved in the assessment process.

- Providing an opportunity for the applicant to briefly present to the assessment panel before the application is assessed.

- Providing an opportunity for the applicant to respond to any questions that may arise during the assessment process.

- Specifying a timeframe for completion of each stage of the assessment process.

- Providing the ability for applicants to track the progress of an application.

- Providing the applicant with a full copy of all assessment reports and a mechanism to appeal or call for a review of a disputed decision.

Providing certainty to applicants regarding these administrative arrangements is essential to provide the industry with the confidence to commit to coal exploration in NSW, which has severely deteriorated in recent years.

**Recommendations**

- The governance arrangements, application requirements, assessment processes and timeframes for operational allocations, unsolicited applications and strategic releases must be clearly articulated for all stages of the process.
Strategic Release Framework for Coal and Petroleum Exploration

The proposed Strategic Release Framework essentially involves an assessment of potential coal resources; a social, economic and environmental issues assessment where coal resources are identified; the recommendation of areas to be released by the Advisory Body based on these assessments; and then the release of areas by the Minister through a competitive allocation process.

There is the potential for this to be a long, drawn-out process, which may limit the ability of the allocation process to be responsive to industry demand and market conditions. As recommended previously in this submission, there is a need for clear processes, timeframes and governance arrangements for all types of applications received to ensure the process works efficiently and is strongly tied to industry feedback regarding the prioritisation of release areas.

Industry input should guide the prioritisation of strategic release areas

As highlighted in NSWMC’s previous submissions, industry input is critical throughout all stages of the strategic release framework. There is a vast amount of technical and commercial expertise within the industry that should be harnessed, potentially by way of an industry reference group, from the beginning of the process and at every stage in the identification and prioritisation of allocations.

This is supported in the CESG Policy Paper, which states that “industry input will be critical for informing strategic releases and understanding the level of likely competition for a release area.” However, aside from the public consultation on the Preliminary Regional Issues Assessments, the documents do not outline what opportunities there will be for industry input.

Ultimately, it is the industry that will be taking on the commercial risk to apply for coal tenure and explore the selected areas and it is essential that the selected areas meet the industry’s requirements.

Recommendations

- The Strategic Release Framework should outline mechanisms for industry input throughout all stages of the process, including the Government’s pre-competitive exploration program and the Resource Assessment stage. The industry’s input should guide the prioritisation of strategic release areas.

A clear framework for the timely consideration of unsolicited proposals is required

In relation to unsolicited expressions of interest, Page 5 of the Draft Framework document states:

“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.”
Unsolicited expressions of interest are a clear indicator of industry interest in an area and there should be a clear process through which the Government considers them. It is not appropriate for the process to be that it ‘may’ be referred to the Advisory Body for consideration.

Unsolicited expressions of interest could be assessed when each expression of interest is made, or on a regular (e.g. six monthly) basis to assess whether the areas nominated can be part of the next strategic release.

Further, the term ‘unsolicited’ may give the impression that these types of applications are not part of the formal coal allocation framework, which they should be. NSWMC suggests that the term ‘Industry Application for Strategic Release’ is more appropriate and should be adopted.

**Recommendations**

- A clear pathway for the timely assessment of unsolicited proposals must be part of the framework.
- The term ‘unsolicited’ should be changed to ‘Industry Application for Strategic Release’.

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**The Government’s plans for the future strategic release of areas should be communicated to industry**

Potential applicants will require adequate notice to give them time to assess potential allocation opportunities and where they would like to focus their effort. A schedule of release areas should be provided so that potential applicants can assess the opportunities and determine which areas best suit their company’s objectives.

Areas identified by the industry for release (either by way of an unsolicited proposal or via consultation) should be prioritised for technical assessment and consideration for release by the Advisory Body.

It is unclear how frequently the Government will consider new areas for release; for example, whether a new round of Resource Assessments and PRIA will be undertaken ad-hoc or on a regular (e.g. yearly) basis using the results of the Government’s precompetitive exploration program, and considering any industry feedback that has been received. NSWMC would appreciate further consultation on this matter.

**Recommendations**

- The NSW Government should release a timetable of future strategic release areas so that potential applicants can assess what opportunities there will be and prepare accordingly.
- The prioritisation of strategic release areas should be guided by industry feedback.
- The Strategic Release timetable should be updated on a regular basis in response to new industry feedback and pre-competitive exploration results.

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**The Preliminary Regional Issues Assessment (PRIA) should not be used to rule out areas from exploration**
NSWMC supports the PRIA being a high level review of existing data that is not intended to replace future detailed environmental studies or pre-empt the outcome of any future development application.

The PRIA should not be used to identify areas that are supposedly unsuitable for exploration or mining. The coal allocation process takes place when there is a limited amount of information about coal resources, environmental constraints and commercial viability, let alone the design of any potential mine that could be proposed in the future or what technology will be available.

Exploration and mining are separate processes that are each subject to risk-based environmental assessments. There are many examples where mining has successfully taken place within and around environmentally sensitive areas and other land uses while keeping impacts within acceptable levels. The PRIA or the Advisory Body should not assume that mining is incompatible with the existing environment.

In particular, we are concerned by the reference on page 3 of the draft PRIA document that refers to the Advisory Body recommending “the form of mining or licence conditions” that are required to address issues identified in the PRIA. It is premature for the Advisory Body to specify conditions relating to mining during in what is the pre-exploration phase. At most, the PRIA could identify strategic environmental, social or economic issues or information gaps that would likely need to be addressed in a future Environmental Impact Statement should an economically viable resource be discovered.

**Recommendations**

- The PRIA document should remove the reference to the Advisory Body recommending the form of mining conditions, since it is far too early in the process to know what, if any, mining may occur in the future, let alone the types of conditions it should be subject to.

**Upfront costs should be minimised, and reserve price payments staged**

Upfront costs should be minimised to allow both larger and smaller operators to participate in any competitive allocation process and mitigate the community perception that large payments for an EL equate to permission to mine.

The Draft Framework contains little detail on how reserve prices are to be set, with the CESG deferring the issue to yet-to-be drafted Practice Guidelines. NSWMC recommends that the industry be consulted on the methodology for determining reserve prices.

The reserve price should take into account recent market transactions of coal resources, factoring in the limited information on the resource that is generally available when coal allocations are made. The perceived riskiness of the allocation area should also be used to inform the reserve price. NSWMC supports the CESG’s concept that there may be circumstances where the reserve price could a nominal amount or zero, for example, when very little is known about a potential resource.

The reserve price should be reasonable and reflective of the highly speculative nature of exploration. Further, it should be composed of two components:

1. A base fee payable as a pre-condition to the grant of the exploration title; and
2. The remaining amount payable if and when the tenement is progressed to a mining lease and production commences, payable in stages.

This will help explorers with less capital to take part in the auction, who may be more nimble and able to advance an exploration project quicker and with lower overhead costs.

The timing of payments should in some way be tied to the commencement of production. While an initial payment could be made upon granting of a lease, following payments should be staggered. This ensures market conditions are taken into account and aligns with royalty payments and the mine’s revenue.

**Recommendations**

- Upfront costs should be minimised, and the reserve price should reflect the highly speculative nature of exploration.

- The reserve price should be split into components, with a base fee payable upon grant of the tenement and the remaining amount payable in stages, with the timing of payments being linked to the commencement of production.

**Preventing anti-competitive behaviour and ‘double-dipping’**

An open and ascending bid process should be used via a website or similar to provide live reports and ensure the auction process is transparent. Mechanisms should be put in place to avoid any anti-competitive behaviour between bidders.

A clear linkage also needs to be made to ensure that the exploration costs that can be recovered from the applicant are directly related to the resources that are the subject of the application. For example, there should be limits on the costs that can be recovered for exploration outside the boundaries of the allocation area.

There must also be no ‘double dipping’ on the recovery of exploration costs, such as when the land the subject of an operational allocation is within the boundaries of a previous tenement.

**Recommendations**

- Mechanisms should be put in place to avoid any anti-competitive behaviour between bidders.

- Applicant costs should be directly related to the resources that are the subject of the application.

**Inclusion of petroleum in mining leases**

Section 78 of the *Mining Act 1992* allows the holder of a mining lease for coal to apply for the inclusion of petroleum in the lease. There are a number of legitimate reasons why this is required, in particular from a Workplace Health and Safety perspective, as methane gas must be removed from coal seams
before mining can begin. Although this matter is not canvassed in the documents, it is imperative that no aspect of the Draft Framework interfere with or impede an operator from carrying out this function.
Guidelines for Applying for a Coal Exploration Licence for Operational Purposes: key issues

The proposed Guidelines for Applying for a Coal Exploration Licence for Operational are an improvement on the existing Interim Guidelines for the Allocation of Coal Resources in that they have expanded from operational allocations only being available to ‘existing mines’ to expressly provide for operational allocations to ‘advanced exploration projects’; and that operational allocations can be made in areas that form part of a larger unallocated resource, provided the remaining unallocated resource can support a standalone mine.

Nevertheless there are a number of areas of concern with the current draft, particularly the proposed 33 per cent land size area threshold, which will limit the utility of operational allocations, and the lack of a clear process through which applications can be considered if they exceed the threshold.

As NSWMC has outlined in previous submissions, arbitrary thresholds of estimated resource or land size areas should not limit the size of operational allocations, and there should be a mechanism for a transparent, merits-based assessment of applications that exceed any thresholds.

ICAC recommendations on operational allocations

It is important to refer to ICAC’s recommendations that are guiding the new allocation framework. ICAC specifically discussed operational allocations. Importantly, the ICAC Report:

- Acknowledges the need for operational allocations - the ICAC Report acknowledges there may be “overriding reasons to directly allocate a resource to an adjacent mining company.”

- Suggests a ‘trigger’ is established, below which operational allocations can be made by the Mineral Resources Branch and above which an application is subject to merits based assessment by an assessment panel - “that the transfer of an application for direct allocation of an EL be referred to the assessment panel in circumstances where an application meets a specified threshold determined by the steering group” and that “the assessment panel would then consider the application on its merits and assess the triple bottom line impact.”

- Does not rule out repeated operational allocations - The ICAC Report states that the transfer in decision making could be “triggered by either a single allocation or the cumulative effect of multiple, small allocations.”

- Outlines a range of potential options for a ‘trigger’ - “The trigger could be related to the area being applied for in terms of tonnage or a percentage of tonnage in relation to an existing development approval. Alternatively, it could be related to the size and acreage relative to the initial development approval.”

These recommendations have not fully found their way through to the Draft Guidelines.

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2 Independent Commission Against Corruption, October 2013, Report: Reducing the opportunities and incentives for corruption in the state’s management of coal resources, pg. 38
3 Ibid, pg. 38
4 Ibid, pg. 38
5 Ibid, pg. 38
6 Ibid, pg. 38
The NSW Government should revisit ICAC’s report on coal allocations, which acknowledges the need for merits based assessment of any individual or cumulative operational allocation applications that exceed any specified trigger.

Issues with the 33 per cent land area threshold

NSWMC acknowledges the desire for a simple threshold associated with operational allocations. However, there are limitations to any type of arbitrary threshold (be that based on tonnage, land area, or other metric) and attempting to apply such a threshold as a rigid criterion in determining whether an operational allocation is suitable will be unsuccessful, and serves to limit the Government’s ability to determine the best allocation method.

For example, the granting of an exploration title equivalent to 33 per cent of the existing title area could result in the following types of practical difficulties:

- There may be circumstances where there is an adjacent resource contained within an area equivalent to 40 per cent of the existing title area that will be sterilised if it is not mined by the titleholder. If the titleholder is limited to an area equivalent 33 per cent, it is unclear what happens to the remaining 7 per cent.

- The 33 per cent threshold is unlikely to be suitable where an allocation is needed to ensure continued operations of an existing mine. Given that exploration titles are generally significantly larger than resulting mining leases, the area mined might only be equivalent to 10-20 per cent of the existing title area, which might only be 2-3 years production. Such a short potential mine life extension may not be financially viable and would not provide an operation with sufficient certainty.

- An increase in land area does not necessarily result in a corresponding increase in economically recoverable coal resources. If an additional allocation is required to develop a viable mine plan and exploration identifies very little recoverable coal resources, then a company may ‘use up’ its operational allocation allowance with no beneficial outcome.

There may also be circumstances where no threshold is required, for instance where the application is for an area of land that contains very little or no coal reserves but tenure over the area may reasonably be required in order to plan future surface infrastructure.

The land area threshold should be increased from 33 per cent to 50 per cent, which is likely to be more workable in practice. A second resource-based threshold should also be considered for circumstances where there is a higher level of confidence about resources, with resources equivalent to support seven years’ production being the threshold for extensions to mine life.

Recommendations
• The land area threshold should be increased from 33 per cent to 50 per cent, which is likely to be more workable in practice.

• A second resource-based threshold should be considered for circumstances where there is a higher level of confidence about resources, with resources equivalent to support 7 years’ production being the threshold for extensions to mine life.

Merit-based assessments above the threshold

Because an arbitrary threshold may lead to perverse outcomes in some situations, decision makers should have the ability to assess the individual merits of an application for an operational allocation if it exceeds any thresholds under the Guidelines. This approach aligns with ICAC’s recommendations.

The additional oversight and transparency in the operational allocation process currently in place is sufficient to ensure that any operational allocations in these circumstances are justified and will ultimately deliver better outcomes.

NSWMC recommends that the proposed operational allocation process be amended to include a merits assessment, as outlined in Appendix A. Where an application by an existing titleholder for an area adjacent to their existing title exceeds the any thresholds, it should be referred to the Advisory Body for a merit assessment of the specific circumstances.

If insufficient merit is found to warrant an operational allocation then the application should be referred to the Advisory Body for consideration in the next round of competitive allocations. If there is sufficient merit then the application should be the subject of a market interest test and subsequently be determined by the Interim Resources Assessment Committee (“IRAC”) (if there is not sufficient market interest) or through competitive allocation (if there is sufficient market interest).

Recommendations

• A merits-based assessment of operational allocation applications that exceed any thresholds aligns with ICAC’s recommendations, and NSWMC strongly recommends that this aspect be incorporated in the operational allocation process in line with our suggested process in Appendix A.

Multiple operational works applications

As cited above, the ICAC Report acknowledged that there may be multiple operational allocations. The Operational Allocation Guideline has no provisions regarding multiple applications for operational allocations by a mining or exploration project. The life of a mining operation can extend over decades and limiting a mining operation to one operational allocation is impractical. There is a high likelihood that multiple applications will need to occur over the life of a mine and a clear process should be in place to deal with them.

There are several circumstances where multiple applications may be required. For example:
• When an operational allocation has been made to extend mine life, but subsequent exploration has not identified sufficient resources to warrant an application and a further allocation is required to conduct further exploration.

• When multiple operational allocations are required for different purposes; e.g. to gain title above an underground tenement and another title to plan infrastructure areas.

• When multiple operational allocations are required to gain title to avoid sterilisation of separate isolated resources around the tenement.

Multiple applications should be automatically assessed provided their cumulative size does not exceed any threshold in the operational guideline. For example, if an existing operator makes an application for an adjacent area equivalent to 15 per cent of their existing title, and at a later date wishes to make application for an additional 10 per cent, this should be deemed as being within the land area threshold triggered.

Where the cumulative size of multiple applications exceeds any threshold, they should be referred to the Advisory Body for additional scrutiny of the merits of the application.

Recommendations

• Multiple applications for operational works allocations should be permitted.

• Multiple applications up to any threshold should be considered by the IRAC (or its successor) and once any threshold is exceeded the Advisory Group should consider the merits of the application.
Guidelines for Applying for a Coal Exploration Licence for Operational Purposes: general comments

In addition to the aforementioned key issues, NSWMC submits that that further amendment of the Draft Guidelines is required in other areas, as outlined below.

Clause 1 - Application of the Guidelines

Clause 1 of the Guidelines states that they will apply to titleholders applying for a coal EL over an area of land adjacent to either an existing coal mine or an “advanced coal exploration project where a conceptual mine plan has been presented...”. It is unclear what the definition of an “advanced coal exploration project” is and NSWMC recommends the term ‘advanced’ is removed.

Further, the term ‘adjacent’ should also be clarified. NSWMC submits that the term ‘adjacent’ refers to ‘close to’ and ‘near to’ as well as ‘adjoining’, ‘neighbouring’, ‘contiguous with’, ‘attached to’, ‘touching’, and ‘joining’.

Clause 3 - Definition of Operational Works

The reference to ‘existing operator’ in clause 3(d) should be amended to refer instead to ‘existing title holder’, to capture exploration projects that could avoid resource sterilisation by obtaining an additional coal allocation.

Clause 7.1(c) - Qualitative criterion – larger unallocated resource

Where the proposed allocation area is part of a larger unallocated coal resource, it is proposed that the unallocated resources that remains (should the allocation area be approved) must be able to support at least one standalone operation.

There will be some circumstances where this criterion will not work in practice. If an adjacent resource is contained within an area equal to 40% of the existing title area but cannot support a standalone mine, any allocation of that area up to 33% will leave unallocated resources that cannot support a standalone mine.

This highlights the need for a merits based assessment process where operational allocation applications do not meet any proposed thresholds. This criterion should be reconsidered.

Clause 7.2 - Additional criteria

The additional criteria outlined in clause 7.2 are more appropriately described as ‘factors’. NSWMC recommends that this term be amended.

Not all the factors listed in clause 7.2 will be relevant to each application. For example, the first four only relate to existing mines rather than ‘advanced exploration projects’. Clause 7.2 should state that only those factors that are relevant will be considered.

With regard to clause 7.2(c), the justification for considering whether “the applicant is taking reasonable steps to maximise production from the existing mine and any other titles the applicant holds in NSW” is highly subjective and of questionable relevance. Different mines produce different coal products, which are subject to different market conditions. It may be completely impractical for a mine to maximise production at another mine.
The justification for this measure has not been provided; we question whether it is a relevant consideration; and it will be extremely difficult to assess. NSWMC recommends that it is removed from the Draft Guidelines.

Further, Clause 7.2(e) states that the applicant's regulatory compliance record in NSW will be considered. NSWMC questions whether this is necessary given that Clause 13 of the Draft Guidelines also requires applicants to comply with all other requirements of the Mining Act relating to ELs.

NSWMC also recommends that, as a transitional consideration, an additional factor be inserted into the clause to consider the likely time at which a competitive allocation of a larger adjacent resource will be undertaken.

**Clause 7.3(a) - Application of land size area threshold**

The Guidelines are to apply to existing titleholders applying for a coal EL over an area of land adjacent to either an existing coal mine or an advanced coal exploration project, yet the term ‘threshold’ as defined in Clause 7.3(a) is inappropriate for exploration projects, since it refers to ‘existing mining leases’ associated with a ‘mine’.

NSWMC recommends that any definition should instead refer to ‘the applicant's existing titles associated with the mine or exploration project’. An amendment of this nature will more accurately reflect the Guideline’s intentions.

**Clause 7.3(b) - Sub-strata titles**

Clause 3(e) of the Guidelines state that it is to apply to titles over or below existing coal authorities, yet Clause 7.3(b) only specifies extending sub-strata titles to the surface, not titles ‘below existing coal authorities’ as permitted under Clause 3(e).

To ensure consistency, NSWMC recommends that Clause 7.3(b) be redrafted as follows:

“For requests under Clause 3.e, the threshold may mirror those portions of the strata title that do not reach the surface [or those portions of the strata directly below a surface title]. i.e. up to 100% of sub strata title may be extended to the surface [or 100% of a surface title may extend from its depth restriction to 900m].”

**Clause 8 – Market interest test**

NSWMC recommends that criteria be developed to determine whether expressions of interest received under a market interest test are bona-fide and from genuine stakeholders. As a general rule, expressions of interest from non-mining stakeholders should be disregarded outright.

**Clause 10 - Reserve prices**

NSWMC is not opposed to financial contributions for operational allocations, however the justification for a reserve price is questionable - particularly for small resource allocations or areas that contain no marketable coal reserves.

Further, when an operational allocation is based on land area (rather than resources), the metric for determining a reserve price is unclear.
NSWMC has previously recommended that financial contributions for operational allocations should take market conditions into account, and be calculated against the reserve base that is the subject of a subsequent mining lease/development consent to ensure an accurate reflection of the value of the allocation.

Clause 11 - Identified market interest

It is proposed that a fit-for-purpose competitive process be conducted should market interest be identified. It is unclear whether this process will be similar to the process outlined in the draft Strategic Release Framework document. NSWMC recommends that this be clarified.

Further, all parties will be required to address ‘set criteria’, yet no additional information as to what this constitutes has been provided. NSWMC recommends that this also be clarified.

If the area is opened for competitive allocation, the threshold for the allocation should be removed.

Clause 14 - Governance arrangements

The draft Strategic Release Framework document includes a flow-chart that describes the process for considering the release of an area for exploration and the granting of a prospecting title.

NSWMC recommends that a similar flow-chart be developed for the Draft Guidelines that outlines all stages of the operational allocation process and governance arrangements, so that applicants have a clear understanding of how their applications will be processed. Indicative timeframes for each step in the process should also be provided.

Recommendations

Clause 1 - Application of the Guidelines

- Remove the word ‘advanced’ from ‘advanced exploration project’.
- Clarify the term ‘adjacent’ so that it refers to ‘close to’ and ‘near to’ as well as ‘adjoining’, ‘neighbouring’, ‘contiguous with’, ‘attached to’, ‘touching’, and ‘joining’.

Clause 3 - Definition of Operational Works

- The term ‘existing operator’ in clause 3(d) should be amended to refer instead to ‘existing title holder’

Clause 7.1(c) - Qualitative criteria

- Reconsider the criterion relating to ‘larger unallocated resource’.

Clause 7.2 - Additional criteria

- The term ‘criteria’ should be amended to ‘factors’.
- Clause 7.2 should state that not all factors will be relevant to each application.
- Remove the requirement to consider other titles the applicant holds in NSW from clause 7.2(c).
- Remove clause 7.2(e).
- Insert an additional clause to consider the likely time at which a competitive allocation of a larger adjacent resource will be undertaken.

Clause 7.3(a) - Application of land size area threshold
- The reference to ‘existing mining leases’ associated with a ‘mine’ should instead refer to “the applicant’s existing titles associated with the mine or exploration project”.

Clause 7.3(b) - Sub-strata title
- Amend the Clause to address inconsistencies with Clause 3(e) regarding sub-strata titles.

Clause 8 - Expression of Interest process
- Criteria should be developed to determine how EOIls are to be assessed.

Clause 10 - Reserve prices
- Reserve prices for operational allocations are not appropriate and should be removed.

Clause 11 - Identified market interest
- Clarify how the ‘fit-for-purpose’ competitive process will be conducted; and provide further information on what is meant by ‘set criteria’.

Clause 14 - Governance arrangements
- A flow chart should be developed outlining all stages of the operational allocation process and governance arrangements, including indicative timeframes.
Appendix A: Proposed Operational Allocation process

NSWMC recommends that the proposed operational allocation process be amended to include a merits assessment, as outlined in the flowchart below.

Where an application by an existing titleholder for an area adjacent to their existing title exceeds the any thresholds, it should be referred to the Advisory Body for a merit assessment of the specific circumstances.

If insufficient merit is found to warrant an operational allocation then the application should be referred to the Advisory Body for Strategic Release for consideration and competitive allocation. If there is sufficient merit then the application should be the subject of a market interest test and subsequently be determined by way of competitive selection or the IRAC (or its successor).