

NSW STRATEGIC RELEASE FRAMEWORK FOR COAL AND PETROLEUM

1.0 INTRODUCTION

The strategic release framework (the Framework) for coal and petroleum has been developed in response to:

- Independent Commission Against Corruption's (ICAC) recommendations on the management of coal resources;
- Recommendations of the Coal Exploration Group (CESG);
- NSW Gas Plan; and
- Recommendations of the NSW Chief Scientist and Engineer in relation to Petroleum.

The Framework aims to deliver greater transparency and control over the release of exploration areas and the granting of prospecting titles for coal and petroleum resources. It sets out a process for achieving value for the economy and adequate returns for state owned resources

The Framework recognises that there are competing uses for land, and seeks to balance these interests. The new approach includes identifying areas for release only after environmental, social and economic factors have been considered and the community has had an opportunity to identify its values and issues.

The *Mining Act 1992* and the *Petroleum (Onshore) Act 1991*, have been harmonised to enable the competitive release of new areas for exploration under the Framework

The NSW Government is committed to an improved, strengthened and transparent regulatory and planning framework to support the strategic management and realisation of NSW's resource potential. This will facilitate a safe sustainable development of resources that balances the needs of the community, the economy and the environment.

2.0 OVERVIEW OF THE FRAMEWORK

The Framework implements a transparent and strengthened selection process for issuing prospecting titles through the up-front consideration of geological, social environmental, economic and operator capability. An outline of the Framework is provided in Figure 1

Overseeing and advising on the implementation of the Framework is the Advisory Body for Strategic Release (Advisory Body). The Advisory Body is an interagency group, with an independent Chair. The Advisory Body makes recommendations to the Minister for Resources on the areas to be released for exploration.

To assist the Advisory Body form a view and make recommendations on areas for exploration, a series of studies will be undertaken

A Resource Assessment will first be undertaken by the Division of Resources and Geoscience (DRG) within in the Department of Planning and Environment (DPE) Cluster. It will review the potential for discovery of a resource, potential quality, quantity and ability to support a stand-alone operation.

Based on the Resource Assessment findings, the Advisory Body will determine what, if any areas should progress to a Preliminary Regional Issues Assessment (PRIA) i.e. step 2. The PRIA, conducted by DPE, will include an economic, environmental and social assessment plus the community engagement outcomes.

The Resource Assessment combined with the PRIA will deliver an understanding of issues that may arise for prospective mining developments. It will generate transparency for the community and will be released publicly. Based on these findings, the Advisory Body will make recommendations to the Minister for Resources as to area/s, if any, to progress to release (step 3).

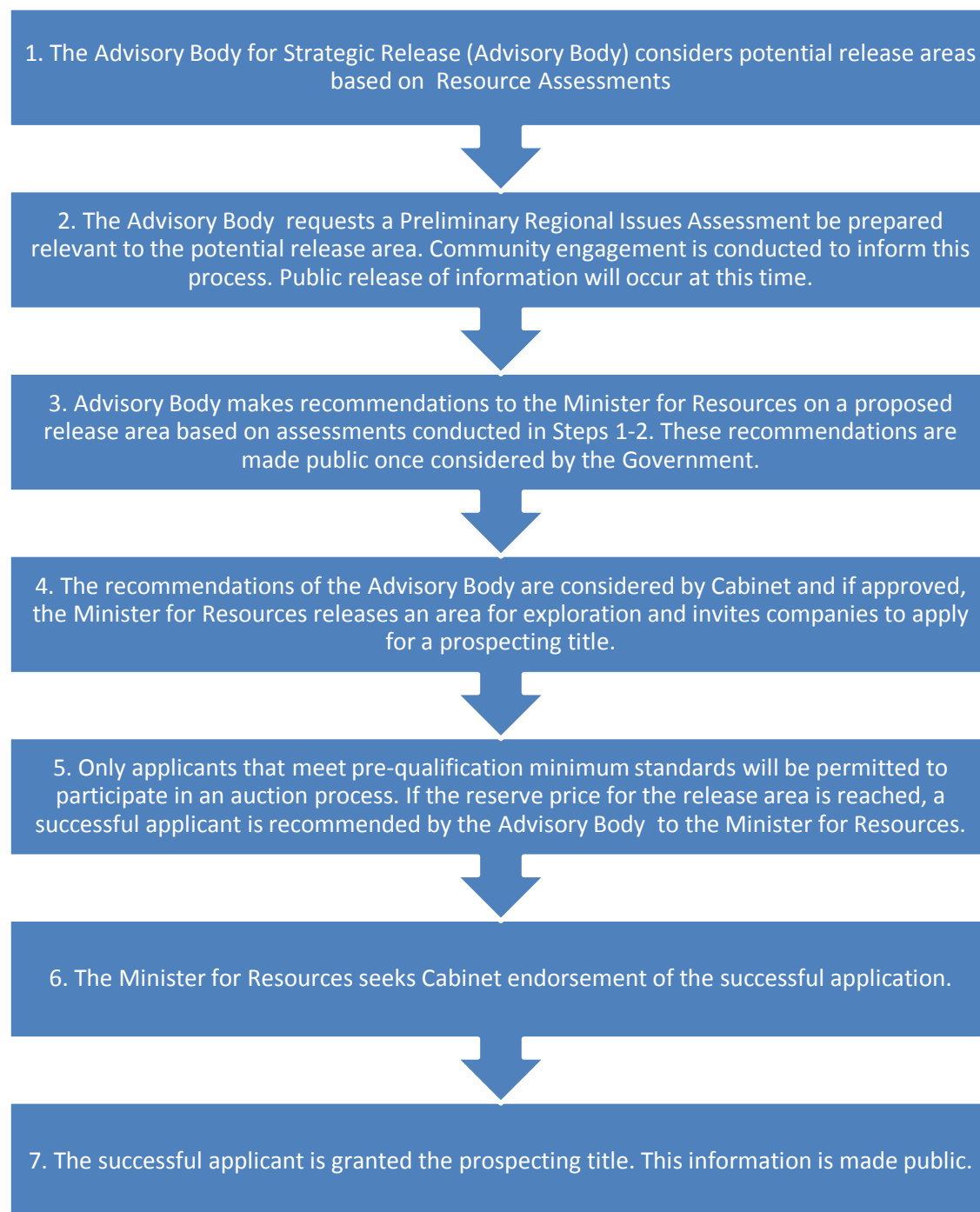
Cabinet endorsement will be sought prior to any Ministerial decision to release an area for exploration (step 4). In deciding to release an area/s a notice (the invitation) will be published in the Government Gazette (legislated requirement) and a wider communication strategy. Titles will only then be awarded through a two part auction process. In the auction prequalification stage, applicants will be required to demonstrate their capability to operate a prospective title. The Division of Resources and Mining will undertake this assessment

Applicants that meet the prequalification criteria will progress into the auction and be required to submit a work program and a bid price. The reserve price will not be disclosed at this point.

If the reserve price is met, the applicant with the highest bid will be considered for the granting of the prospecting title. If the reserve price is not met, a second auction will take place where the reserve price will be disclosed to all pre-qualified bidders. Cabinet's endorsement will be sought before the Minister awards the prospecting title.

The expunged petroleum title applications provisions under the *Petroleum (Onshore) Act 1991*, if triggered, still necessitate compliance this two part auction process.

Figure 1 Flowchart of the Strategic Release Framework



Note: in considering the outcomes of each assessment, the Advisory Body may elect not to proceed to the next stage.

3.0 ADVISORY BODY

The Advisory Body for Strategic Release (Advisory Body) is the body charged with overseeing the whole of Government assessments, required by the Framework, and making recommendations to the Minister for Resources. Under the Terms of Reference, the Advisory Body constitutes an independent Chair and representatives from the Department of Premier and Cabinet (DPC), DPE, DRG, NSW Treasury and Department of Industry (DoI).

The Advisory Body will provide recommendations to the Minister for Resources on:

- a. Areas to be released for exploration. This will be based on a preliminary assessment of potential areas including community engagement.
- b. Community engagement process for each PRIA
- c. Auction price. The Advisory Body will recommend the most appropriate competitive auction price for each release area.
- d. Frequency of operation of the framework, based on a range of matters noting these will differ between coal and petroleum.

The Advisory Body will consider areas for release based on advice from member agencies or at the Minister's request. The Advisory Body will not deal with applications for licences for Operational Allocations.

In making recommendations, the Advisory Body will consider advice from DRG through the Resource Assessment, from DPE, through the Preliminary Regional Issues Assessment, and DRG and Treasury through the auction process. This will ensure that social, environmental, economic and applicant capability issues are considered. It ensures that the Government's priorities, policies, legislation and desired outcomes in relation to the allocation and development of New South Wales' coal and petroleum resources are addressed.

The Advisory Body will operate in a transparent manner and recommendations that it provides to the Minister for Resources will be made public after consideration by Cabinet.

The Advisory Body will determine how often the framework operates. Its decision will be informed by a range of matters including, market forecasts, progression of current leases, timeframes to reach production, and other government considerations. Given current market conditions and issues, it is anticipated that a rolling program will be instituted such that one process, either coal or petroleum, would be operating annually

Cabinet may decide to add additional matters to the Advisory Body's scope.

4.0 RESOURCE ASSESSMENT

Resource Assessment is the first step of the analysis process. Its purpose is to develop an understanding of the potential for discovery of a resource, resource quality, quantity and ability to support a stand-alone operation. It will comprise a written report and an assessment on the geological potential of the resource in a form for use by the Advisory Body in its recommendation making process.

The Resource Assessment is a technical and complex geological data analysis based on a series of assessment templates. It will utilise:

- Available data – pre competitive data;
- Resource body characteristics;
- Market characteristics;
- Other geological factors; and
- Known legislation and policy that may prohibit or restrict exploration and production.

By its very nature it will have limitations. It is a preliminary process that may lead into exploration. Exploration is the process to locate areas where coal and petroleum resources may be present, to establish the quality and quantity of those resources, and to investigate the viability of extracting the resource

Based on the findings of the Resource Assessment report, the Advisory Body will determine resource prospectivity and potential for a future release area. If potential exists, the Advisory Body will request the undertaking of a Preliminary Regional Issues Assessment (PRIA) and a community engagement process.

5.0 PRELIMINARY REGIONAL ISSUES ASSESSMENT (PRIA)

The Framework recognises there are competing uses for land, and seeks to balance these interests. As a result, integral aspects of the PRIA include community engagement and an upfront assessment of social, environmental and economic matters relating to a potential release area.

A PRIA will only be undertaken at the direction of the Advisory Body following a Resource Assessment. It is an overarching assessment, undertaken by DPE, of a region or subregion. It will provide a snap shot of potential risks and opportunities relating to coal and petroleum exploration in the area identified. As a strategic-level assessment, the assessment area may not necessarily reflect the shape, location and size of any future exploration licence or lease area that may be issued.

A PRIA will include:

- a report summarising the key issues at a regional or sub-regional scale, identifying any limitations to the data used for the identification of impacts;
- a map, or series of maps, identifying the proposed exploration release area with overlays of relevant and key information; and
- a summary of relevant data
- a summary of community engagement outcomes

It will focus on:

- identifying the high level, environmental, economic and social considerations readily evident at the regional or sub-regional level;
- utilising data contained in existing data sets or accessible from other information sources identified as relevant;
- examining potential risks associated with exploration and development at the point in time at which the PRIA is conducted (e.g. significant environmental concerns and land use conflicts; potential burdens on existing and future developments and infrastructure, risks to Government): and
- Identifying community matters and concerns through a community engagement process

Early understanding of community values will aid long term land use planning. Processes for engagement of community and stakeholders will reflect the area the subject of the PRIA and the associated communities. As a minimum, notification of the intention to undertake a PRIA will be made in relevant newspapers including time frames for input. The Advisory Body will review the community engagement process.

The PRIA does not negate nor predetermine future applications as may be required by relevant NSW legislation.

6.0 EVALUATION and RECOMMENDATIONS

Based on the findings of the Resource Assessment report and PRIA, the Advisory Body will evaluate, on merit, whether exploration should be undertaken. This evaluation will be made in the context of government legislation and policy settings. The Advisory Body will then provide recommendations to the Minister for Resources about whether an area should be released for exploration and if so the reserve price.

In considering the Advisory Body's recommendation, the Minister for Resources will seek Cabinet endorsement. The decision of the Minister will be made public, at the relevant time, noting the reserve price is to remain undisclosed for purposes of auction.

7.0 ALLOCATION OF EXPLORATION LICENSES - AUCTION PROCESS

The Framework ensures the allocation of exploration licences (ELs) is based on the principles of transparency, maximising the value of the resource for the people of NSW and enabling highly competitive outcomes. It acknowledges that royalties are considered the primary mechanism for financial return to the State.

The Framework introduces a two part auction process to minimise the scope for corruption whilst ensuring environmental standards. It pre-specifies obligations and rights. It is a simple auction format that invites bids and is settled by the highest bid providing it meets the undisclosed reserve price.

A reserve price will be based on a cost recovery model and will be recommended to the Minister by the Advisory Body.

The auction process for coal and petroleum exploration licenses comprises:

- Prequalification for bidders – Minimum Standards to be met; and
- Invitation to enter auction process – undisclosed reserve price.

The Minister will invite interested companies to apply. This invitation will be a notice in the Government Gazette (legislated requirement) and a wider communication strategy including, but not limited to, press releases, advertising and notices through other media/communications platforms. Interested parties must first enter the prequalification stage by submitting details with respect to the Minimum Standards.

Prequalification Minimum Standards, which may be amended from time to time, are:

- Technical capability –demonstrate access to the appropriate and relevant technical experts including financial capacity to engage any expertise.
- Financial capability –ability to secure the required finances to meet the anticipated expenditure for the term of the work program;
- Corporate history –identification of all current officers of the applicant;
- Environmental track record –compliance and environmental performance history
- Community consultation capability – demonstrated ability to undertake effective community consultation over the term of the title.

Those applicants that meet the Minimum Standards, as assessed by DRG, will be invited to participate in an auction for the exploration licence (EL).

The auction will be undertaken on an electronic platform, the reserve price will not be disclosed and the pre-qualified parties will be given 60 working days to place a bid. The bid will comprise the proposed work program and bid price.

A work program is to be prepared in accordance with the Exploration Guidelines: Work Program for Prospecting Titles. The work program is to describe the nature and extent of operations and the estimated expenditure for those operations. Work programs will be used to assess applications and if the title is granted, ensure that the titleholder carries out effective exploration during the term of the title.

If the reserve price is met, the applicant with the highest bid will be considered, subject to an appropriate work program. The Cabinet's endorsement will be sought by the Minister prior to awarding an exploration licence

If the reserve price is not met, the EL will not be allocated. A second auction will take place where the reserve price will be disclosed to all pre-qualified bidders. If the reserve price in the second auction is met, the highest bidder will be allocated the EL subject to an appropriate work program and the Cabinet's endorsement.

The successful applicant will be notified in writing by DRG. If the reserve price is not met in the second auction, the release area will not be offered for auction for a minimum of two years, unless justified on strategic merit.

An exception to this process is prescribed under the *Petroleum (Onshore) Act 1991*, Schedule 2, Expunged petroleum title applications. Expunged petroleum title applicants are required to be given first opportunity to make new applications, where the proposed new release area was the subject of an expunged application. To trigger this provision, the expunged title applicant must be the same entity. The two part auction process still applies. An expunged title applicant must satisfy the minimum standards, work program and reserve price requirements. There is no automatic granting of a prospecting title. An expunged title applicant may choose not to apply

8.0 PROBITY PLAN

A competitive allocation process for licences will safeguard against the risk of corruption and ensure better outcomes for both industry and the people of NSW. A Probity Plan has been developed to put in place governance arrangements to manage any potential for misconduct.

Given the Framework process the Probity Plan describes the probity framework and controls to be applied in managing the various processes undertaken to deliver the Framework. The probity plan covers probity arrangements of:

- Advisory Body;
- NSW public servants, including contractors and advisers, involved in undertaking analysis or assessment work related to the framework (working group);
- NSW public servants, including contractors and advisers, involved in supporting the advisory body (Secretariat).

The probity plan risk matrix (Table 1) will ensure probity requirements are reflective of risk at the relevant steps within the Framework. It reinforces the responsibility of each individual with a role in the Framework to follow the probity plan, applicable to their role.

The probity plan sets in place a start-up form (Form 1), conflict of interest declarations and confidentiality agreements to be applied to each person involved in the process.

Current NSW Government Departmental governance charters are recognised and reinforced through the Probity Plan.

By following the probity plan, potential issues with respect to accountability and transparency; conflicts of interest and confidentiality, will be alleviated. A probity registered will be maintained.

This plan may be reviewed and updated over time.

Table 1 Probity Plan Risk Matrix

Strategic Release Flow Chart - Risk Assessment

	Public Release of Information	Minister	Cabinet	Independent Chair	Advisory Body Member	Secretary / Deputy Secretary	Working Group Member	Participants - Other Govt Employees, Contractors, Advisors
1. DRG conducts Resource Assessment Report							DRG	DRG
2a. AB: <ul style="list-style-type: none"> reviews Resource Assessment Report; endorses area/s for Preliminary Regional Impact Assessment (PRIA) analysis –or not; endorses a package 								
2b. AB: <ul style="list-style-type: none"> requests, preparation of a PRIA; Advises in writing Ministers of its decision 							DPE	

<p>3. PRIA prepared :</p> <ul style="list-style-type: none"> existing relevant data; consults relevant agencies community engagement final report 	<p>Public release of data including information re resource assessment</p>	Green	Green	Green	Green	Green	Green	Green
<p>4. AB: reviews PRIA - makes recommendation to Minister on Strategic Release and reserve price</p>	White	Yellow	Green	Red	Red	Green	Green	Green
<p>5a. Minister considers AB's recommendation and seeks Cabinet endorsement</p>	White	Green	Yellow	Green	Green	Green	Green	Green
<p>5b. Cabinet endorses or otherwise – If NO – Process STOPPED</p> <ul style="list-style-type: none"> release area/s identified ; 	<p>Public release of Decision</p>	Green	Green	Green	Green	Green	Green	Green
<p>6. Minister publishes Gazette notice inviting applications</p>	<p>Media release Data publicly available</p>	Green	Green	Green	Green	Green	Green	Green
<p>7a. Treasury manages auction process. DRG for capability assessment;</p>	Light Purple	Green	Green	Green	Green	Yellow	Red	<p>Treasury & DRG</p>

7b. Prequalified applicants offered entry into bid process								Treasury & DRG
8. AB recommendation to Minister to grant or refuse								
9. Minister considers recommendation and seeks Cabinet endorsement of proposed decision								
10. Cabinet considers (and endorses, if appropriate) the Minister's proposed decision								
11. Minister determines the application(s) and published in gazette as relevant	Media release information publicly available							
12 DRG Titles manages process forward.								

		Likelihood				
		E - Rare	D - Unlikely	C - Possible	B - Likely	A - Almost Certain
Consequences	5 - Extreme	Medium	High	High	Very High	Very High
	4 - Major	Low	Medium	High	High	Very High
	3 - Moderate	Low	Medium	Medium	High	High
	2 - Minor	Low	Low	Medium	Medium	Medium
	1 - Insignificant	Low	Low	Low	Low	Medium

General Risk Tolerance & Review Guide			
Risk Rating	Basic Tolerance	Basic Management, escalation and reporting	Review Frequency
Very High	Generally Intolerable	<p>Independent Chair, Advisory Body, Working Group members – All to complete the Start- Up Form</p> <p>Ministers / Cabinet to abide by Ministerial / Cabinet-in-confidence procedures</p> <p>All participants to treat data as commercial -in-confidence and abide by NSW Government’s Departmental governance charters such codes of conduct, confidentiality deeds or conflict of interest declarations</p>	As per each release
High	Undesirable	<p>All participants to treat data as commercial-in-confidence and abide by NSW Government’s Departmental governance charters such codes of conduct, confidentiality deeds or conflict of interest declarations</p> <p>Deputy Secretary (or delegate) to provide reminder to all participants of their department’s code of conduct, confidentiality and conflict of interest policies.</p>	As per each release
Medium	Tolerable	<p>Secretary / Deputy Secretary abide by Senior Executive Confidentiality Deeds, Conflict of Interest Declarations.</p> <p>All participants to treat data as commercial-in-confidence and abide by NSW Government’s Departmental governance charters such codes of conduct, confidentiality deeds or conflict of interest declarations</p>	As per each release
low	Broadly Acceptable	Publicly available data / information	

START-UP FORM

This form is to be completed by Advisory Body members, Working Group members and participants as identified through the risk matrix when they first become involved in the strategic release and before they have access to confidential information. This form confirms that you will maintain confidential information. As such, it seeks confirmation that you have no conflicts of interests or associations that compromise the strategic release process and outlines the standards of behaviour (conduct guidelines) expected of you.

Confidentiality deed

made on (date)

by: ("recipient")

in favour of the NSW Government ("beneficiary")

Background

As a result of the recipient's role in the Strategic Release Framework (strategic release), the recipient will become acquainted with confidential information provided by the NSW Government and its employees, consultants, contractors, advisers or agents.

Confidential information

1. For the purposes of this deed "confidential information" is any information relating to the strategic release which has come to the knowledge of the recipient by any means and which is given to the recipient either directly or indirectly by the beneficiary or by a person on behalf of the beneficiary, but does not include:
 - (a) information which, at the time of disclosure, was in the public domain; or
 - (b) information which, subsequent to disclosure, enters the public domain except through breach of this deed or any other obligation of confidence.

Acknowledgements, warranties and covenants

2. The recipient acknowledges and agrees that:
 - (a) the confidential information is of a secret and confidential nature;
 - (b) it is a requirement of the recipient's role in relation to the strategic release process that strict confidentiality as described below is maintained at all times; and
 - (c) improper use or disclosure of any confidential information may be detrimental to the beneficiary in connection with the performance of its functions, and may cause harm to the beneficiary.

3. The recipient undertakes to treat and keep the confidential information in the strictest of secrecy and confidentiality and not disclose the confidential information except as expressly authorised and permitted to do so under paragraph 5 below.
4. Further, the recipient undertakes not to disclose to any person that the confidential information has been made available to the recipient and undertakes:
 - (a) to protect and safeguard confidential information against unauthorised publication or disclosure; and
 - (b) not to use, copy or reproduce confidential information for any reason or purpose except as directed by the beneficiary or in the discharge of the recipient's duties in connection with the role in the strategic release; and
 - (c) safeguard the physical security and storage of confidential information and comply with any specific security and storage measures in connection with confidential information that may be required by the beneficiary.

Authorised disclosure

5. The recipient may disclose confidential information:
 - (a) if a duly authorised representative of the beneficiary approves in writing the disclosure of confidential information in accordance with the terms of that approval;
 - (b) if required under a binding order of a government agency or any legal proceedings;
 - (c) if required under any law or any administrative guideline, directive, request or policy having the force of law; and
 - (d) to employees, consultants and other advisers of the beneficiary who have executed undertakings in favour of the department substantially the same as this one.

Return of confidential information

6. If the department requests it, the recipient must:
 - (a) promptly return to the beneficiary all documents and other physical records of confidential information in the recipient's possession, custody, power or control except where the recipient is required by law to retain them or such documents or records are required to be retained in accordance with any administrative guideline, directive, request or policy by which the recipient is bound; and
 - (b) provide a statutory declaration to the department confirming that all those records have been returned.

Conflict covenant

7. The recipient confirms that:
 - (a) by indicating a "NIL" response on the conflict of interest and associations declaration form (declaration), the recipient does not have a conflict of interest in relation to his/her role in the scheme;

- (b) any interest of the recipient that may create, or may be perceived to create, a conflict of interest as at the date of this deed is documented in the declaration; and
- (c) he/she will promptly notify the appropriate representative of the department of any interest of the recipient arising after the date of this deed that may create, or may be perceived to create, a conflict of interest in relation to his/her role in the strategic release.

Non-waiver

- 8. The failure of the beneficiary to enforce any of the provisions of this deed or the granting at any time of any other indulgence is not to be construed as a waiver of that provision or of the right of the beneficiary to enforce that or any other provision at a later date.

Continuing obligations

- 9. Each obligation of the recipient under this deed is a continuing, perpetual obligation and survives any expiry, performance or termination of this deed unless the information is publicly released as provided for by the Mining Act 1992 or the Petroleum (Onshore) Act 1991 or released in accordance with the Advisory Body decisions, e.g. public engagement on the preliminary regional issues assessment.

Governing law

- 10. This deed is governed by and subject to the laws of New South Wales.

Signed, sealed and delivered by the recipient:

.....
Signature (recipient)

in the presence of:

.....
Name of witness (printed)

.....
Signature