
COAL EXPLORATION STEERING GROUP: STAKEHOLDER
CONSULTATION

Discussion Paper - Improving NSW's Process to Allocate Coal Exploration Licences

November 2014

The Coal Exploration Steering Group (CESG)

The CESG was established by the NSW Government in response to the Independent Commission against Corruption's (ICAC's) recommendations to reduce opportunities and incentives for corruption in the state's management of coal resources.

The Government has asked the CESG to make recommendations to help improve the quality and transparency of the processes used to allocate coal Exploration Licences. The CESG has been asked to provide independent advice to the Government on the policy framework and criteria to be used in making coal area Exploration Licence (EL) allocations.

The CESG is an interdepartmental advisory body with an independent Chair, Percy Allan AM. The group includes representatives from the Department of Premier and Cabinet, Treasury, the Department of Planning and Environment and the Department of Trade and Investment, Regional Infrastructure and Services.

Purpose of this Document

In response to the recommendations made by ICAC, the Government stated that the allocation of ELs should be based on the principles of transparency, maximising the value of the resource for the people of NSW, and ensuring highly competitive outcomes.

The CESG's charter states that it will consult interested parties before making recommendations on items in its work program.

This document seeks to explain to stakeholders, in broad terms, the key areas of work that the CESG is undertaking and provide an opportunity for stakeholders to provide input on some of these issues. The CESG is still developing its proposals and this document does not provide detail on every issue that it covers.

The purpose of the CESG seeking this feedback is to inform the approaches that it is developing for each of the key areas of work outlined below.

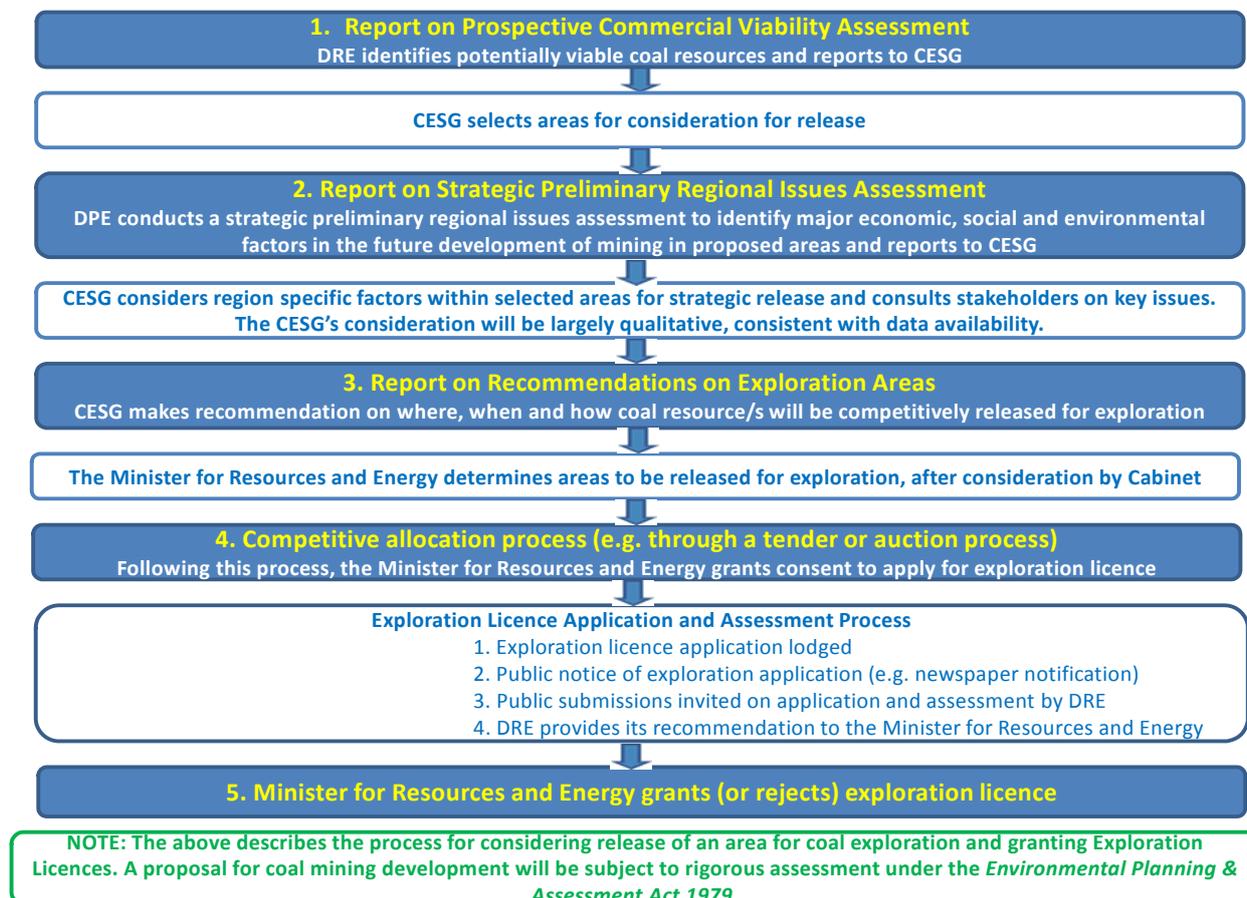
How the CESG is undertaking its task

The key role of the CESG is to conduct a whole of government assessment and make recommendations for endorsement by Cabinet on where, when and how NSW's greenfield

coal resources are to be released for exploration, and competitively allocated to suitably qualified companies. This is consistent with the Government's Strategic Statement on NSW Coal released in August 2014.

The process for coal allocation assessment and granting of ELs for greenfield sites is outlined below (Diagram 1). Information about how the CESG is approaching each of the tasks listed on Diagram 1 is provided in this discussion paper.

Diagram 1



In diagram 1:

DRE is the Division of Resources and Energy, Trade and Investment

DPE is the Department of Planning and Environment

Establishing resource potential – A Prospective Commercial Viability Assessment

The CESG is developing an approach to producing evidence-based assessments of whether a certain location may have prospective commercial viability for coal mining.

A process and criteria based on best practice is being developed, taking into account the types of issues that industry considers in assessing whether to invest in an area. This will cover issues such as:

- coal resource body characteristics (e.g. quality of resource and size);
- ease of access to the location;
- market characteristics; and

- other specific strategic matters where relevant (e.g. access arrangements for existing mines in the area).

To improve the transparency of this process, the CESC proposes that the criteria used to make this assessment will be made publicly available.

It is noted that assessments about the resource potential and potential commercial viability of areas at this stage will be 'point in time' assessments that are highly tentative, particularly for areas where there is limited geological data available. Even once areas are released, it can take years for commercial exploration to establish the exact nature of the resource and most appropriate way that resource could be developed.

Key issue for comment:

- Are there any specific issues additional to those listed above (e.g. resource characteristics) that warrant consideration in relation to the potential commercial viability of a resource area at this stage of the process?

Strategic Preliminary Issues Assessment

A preliminary geological assessment of an area may suggest that there would be potential commercial viability for the area to be developed as a mine site. However, there may be environmental or social impacts that would result from mining that may affect any future development in that area and should be identified early in the process.

A Strategic Preliminary Issues Assessment will be undertaken to identify the potential risks and constraints related to potential future mining in a certain location. This will be a 'triple bottom line' assessment that will take into account relevant elements of the Prospective Commercial Viability Assessment.

The Strategic Preliminary Issues Assessment will be undertaken at a high level and will not form the basis of any future assessment in the instance that industry seeks to develop that site for mining.

The assessment will be location-specific and it is proposed that it will cover issues such as:

- potential land use conflicts (e.g. proximity to existing urban areas and future growth areas; rural land uses; drinking water storage areas; water supply constraints);
- biophysical, environmental and heritage constraints (e.g. matters of national environmental significance; protected areas or those of high sensitivity); and
- industry and infrastructure issues (taking into consideration any issues identified at the initial resource assessment stage).

The assessment will also consider: the significance of various impacts; cumulative impacts; and 'strategic fit' such as whether a land use is appropriate in that sub-region with regard to all the factors identified. The assessment will not consider non-local issues such as the management of greenhouse gas emissions.

It is envisaged that this assessment will interact with NSW's Strategic Regional Land Use Policy by utilising the information contained in the Strategic Regional Land Use Plans for those regions for which it is available. The Gateway Process will still apply to those projects that progress to development application stage.

The Government has committed to making the details of the CESG's recommendations on areas to be released for coal exploration public.

Key issue for comment:

- Are there any issues additional to those listed above (e.g. potential land use conflicts) that warrant consideration at the Strategic Preliminary Issues Assessment stage?

Competitive allocation of Exploration Licences

The CESG will make recommendations to Government on areas that should be competitively released for exploration. These recommendations will be based on the Assessment of Prospective Commercial Viability of an area for coal mining, and the Strategic Preliminary Regional Issues Assessment.

Following Government consideration and support of the CESG proposal, the Minister for Resources and Energy will formally release the area. ELs will then be allocated.

The Government has requested that the CESG recommend a process to allocate ELs that is transparent, will maximise competition, and ensure the best economic return possible for NSW.

To assist the CESG with defining and developing such an allocation process, the Centre for Market Design at the University of Melbourne was engaged to consider these issues. The CESG's proposed approach is informed by the advice of the Centre for Market Design.

A preliminary diagram of the CESG's high level approach to designing a process for the competitive allocation of ELs is provided at [Attachment A](#).

Key elements of the allocation process being developed by the CESG include:

- that auctions will be the default method of EL allocations (as recommended by ICAC);
- a reserve price will be set for all ELs;
- applicants will be provided with all non-commercial-in-confidence information that may be relevant to an applicant's assessment of the price they are willing to pay for an EL; and
- auction participation will be contingent on applicants satisfying a prequalification process.

The overarching model will include a simple and transparent auction process. The approach will allow for different auction formats (sealed bid or open ascending bid processes) according to specific scenarios in order to support highly competitive outcomes.

A significant consideration is the setting of a reserve price. This will represent the minimum payment that the Government is prepared to accept for the allocation of an EL.

In setting this price the Government will need to consider the potential size of the resource, the cost of prospective mining operations, future possible market conditions, the consequences of setting a reserve price too high or too low to balance the potential impacts on smaller explorers, the returns to the taxpayer, risks around creating expectations about the future grant of a mining lease, and the Government's strategic objectives for the coal industry.

The CESG is undertaking further work on how a reserve price could be made operational.

It is also envisaged that auction participants would be required to successfully pass a mandatory prequalification process covering a range of issues such as technical, financial and other capabilities. This is to ensure that only applicants who have the required capabilities are eligible to participate in the competitive allocation process.

Along with the prequalification requirements, the Government is considering a range of broader reforms relating to EL Annual Progress Reports and Work Programs. The Government intends to undertake a separate consultation process on these proposals in late November 2014.

Key issues for comment:

- How should an auction of ELs be conducted?
- On what basis could an appropriate reserve price be set? How could the risks associated with setting the price too high or too low be managed or mitigated?
- Do you wish to draw the CESG's attention to any key issues that should be taken into account in undertaking detailed design of the approach being developed for competitive allocations?

Direct allocation of Exploration Licences

ICAC recognised that there may be circumstances in which it is appropriate to make a direct allocation of an EL. In circumstances where a mine operator seeks the direct allocation of an EL adjacent to that operator's existing mine, NSW currently follows an approach outlined in the 'Interim Guidelines for the Allocation of Coal Resources' (the Interim Guidelines).

Among other things, the Interim Guidelines set out that:

- minor additions to an existing mine may be considered for direct allocation;
- proposed direct allocations are subject to a public exposure test of any third party interest in the title; and
- the area being considered for a direct allocation is required to meet certain criteria, including that it contains no more than a ceiling level of in situ coal resource and would not be amendable to the development of a separate small stand-alone mine.

To inform the CESG's advice, the Interim Guidelines were displayed for consultation from August to September 2014. The CESG is now considering submissions received through that process.

In developing its recommendations on direct allocations, the CESG wants to ensure:

- the default process for allocating ELs is a competitive process;
- where direct allocations are sought, a test for third party interest continues to be undertaken;
- any process for direct allocations is consistent with the process for competitive allocations; and
- consistency with the Government's strategic objectives for the coal industry.

A significant issue on which views were mixed in the submissions on the Interim Guidelines was the role of upper limits for the level of coal resource that would be considered for direct allocations. There was some support for fixed tonnage criteria supported by a robust evidence base on how this criterion was arrived at. Alternatively, there was also support for increased flexibility to directly allocate areas of different sizes taking into account the different sizes and production rates of existing mines.

Decisions in relation to this threshold will be critical in determining which applications may be subject to the competitive allocation process.

It is important that the CESG develops an approach that deals efficiently with proposals that seek direct allocations where no third party interest in the EL has been indicated.

Key issue for comment:

- What issues should the CESG take into account in developing any thresholds for direct allocations?

Encouraging the efficient use of exploration rights

The Government asked that the CESG consider how to better align incentive structures with timely progression to mining and maximising returns to the State.

Within the existing legislative framework, a range of improvements to EL conditions and renewal processes are being progressed that will both improve transparency and timely progression to mining. This is the focus of the CESG's work to encourage timely progression to mining, as recommended by ICAC.

Work to increase the transparency of renewal processes includes actions such as publishing EL renewal decisions, EL Work Plans and Annual Reports online.

Revised guidelines are also being developed for EL Work Programs. The Guidelines will bring in changes including:

- applicants will be required to identify outcomes to be achieved and estimated expenditure for environmental management, rehabilitation, community consultation along with geological exploration; and
- applicants will be required to identify 'activity-based performance' activities (e.g. drill x number of holes to x meters in years 2- 3) that they will undertake in each year of the program.

Annual activity reporting guidelines are also being revised. Key proposed changes include:

- titleholders will be required to report on the compliance with Exploration Licence conditions;
- titleholders will be required to report annually on the progress of their Work Program and any variations will be required to be reported and justified;
- evidence required to demonstrate achievement against Work Program will be provided in the Guidelines; and

- evidence of non-performance of significant components of a Work Program, and Non-compliance with Licence conditions, will be grounds to determine if a Licence should be cancelled within the term of a title or not renewed.

The Government will undertake a separate consultation process on these proposals for Annual Reports and Work Programs in late November 2014.

Key issue for comment:

- Are there any other specific opportunities, within existing legislative settings, that the CESG could consider to further drive timely progression from exploration to mining?

The CESG's high level approach to designing a process for competitive allocation of ELs

