

Interim Guidelines for the Allocation of Coal Resources

February 2014

The NSW *Mining Act 1992* (section 368) allows for the constitution of Mineral Allocation Areas (MAA). In order to apply for an authority for an allocated mineral within a MAA, prior Ministerial consent is required. The whole of the State of NSW has been constituted as a MAA for coal. This allows for the controlled and rational allocation of potential coal development areas and the setting of special conditions for each allocation.

On 30 October 2013, the Independent Commission Against Corruption (ICAC) report on *Reducing the Opportunities and Incentives for Corruption in the State's Management of Coal Resources*, which recommended that future allocations be considered by a steering committee comprising representatives from Trade & Investment, NSW Treasury and Department of Planning & Infrastructure and that any recommendations should be directed to the NSW Government Cabinet Standing Committee on Resources and Land Use for consideration and final approval.

ICAC report stated that *"the auction method should be the preferred approach to allocating the state's coal resources"*.

The Government accepted ICAC's recommendations on 21 November 2013.

Whilst the Government is developing a process to implement these recommendations, there is a need for an interim process for the allocation of coal resources.

Categories of Coal Allocation Areas

Consistent with and as defined by the *Ministerial Guideline Allocation of Future Coal Exploration Areas*, (Version 3) potential coal allocation areas are categorised into the following four groups:

- **Major Stand-Alone Areas**

These areas contain sufficient coal resources to develop a medium to large scale new coal mine.

- **Substantial Additions to Existing Mines**

These areas are located adjacent to existing mines and contain coal resources that could be readily mined by a continuation of the existing operations.

- **Minor Additions to Existing Mines**

These are small areas adjacent to existing mines, that based on a logical assessment, would be best mined from an existing mine.

- **Small Areas Unrelated to Existing Mines**

These areas are small but may have the potential to be developed as stand-alone "boutique" mines due to particular coal characteristics or location adjacent to a market.

Criteria for Allocation

1. Coal Allocation Categories which must be referred to the Steering Committee.

Categories suitable for an Allocation by Competitive Auction are:

- Major Stand-Alone Areas
- Substantial Additions to Existing Mines
- Large areas which have limited or no exploration but have the potential to contain large and significant coal resources
- Small Areas Unrelated to Existing Mines which if released are likely to be of interest to a number of companies

2. Coal Allocation Categories suitable for Direct Allocation.

Small areas likely to contain limited coal resources may be considered for direct allocation as a Minor Addition to Existing Mines based on the following criteria:

- The area is likely to contain limited coal reserves (ie less than 20 million tonnes (Mt) insitu for an open cut operation and 50Mt insitu for an underground operation)
- The area is not amenable to the development of a separate small stand-alone mine and would normally be allocated to an existing mine on the basis of:
 - the area does not form part of a larger unallocated resource
 - the additional coal resources would extend the life of the existing mine
 - rationalises existing mine boundaries
 - avoids resource sterilisation from competing land uses
 - maximises resource recovery and
 - the proposed timeframe for development.

Process for Direct Allocation

Interim Resources Allocation Committee

Mineral Resources Branch will establish an Interim Resources Allocation Committee (IRAC), chaired by the Executive Director Mineral Resources to assess requests for the Minister's consent for a coal allocation to determine if the request is suitable for a direct allocation.

If the IRAC considers that the request is not suitable for a direct allocation, it will recommend that the Minister refuses consent.

If the IRAC considers that the request may be suitable for a direct allocation, Mineral Resources Branch will undertake a public exposure test to identify if there are other parties interested in exploring the subject area prior to providing any advice to the Minister for determination.

The IRAC will provide its recommendations to the Minister after consideration by the Resources and Land Use Standing Committee

Where a number of companies have registered an interest for an allocation for the same area¹, a competitive allocation process will be required. Where there are no registered competing interests, a direct allocation may be made after applying the Public Exposure Test, as outlined in these Guidelines.

The IRAC will be replaced once the new coal allocation processes, as recommended by ICAC and agreed by Government, are in operation.

Financial Contributions

Minor allocations to existing mines will be subject to negotiated financial contributions. The minimum contribution will be 10 cents per tonne of saleable export coal (with a minimum contribution of at least \$500,000) and 5 cents per tonne of saleable domestic coal (with a minimum contribution of at least \$250,000). The actual contribution is based on estimated saleable reserves of coal contained within the mining lease.

Unless allocated by auction or negotiation, financial contributions will be payable in instalments with 20% on the grant of development approval and the balance payable in five equal payments on the anniversary of the grant.

In addition, the Government will require the refund of the cost of government exploration, this may include exploration outside the allocation area, and tender assessment costs if applicable. This is in keeping with section 67 of the Mining Act 1992, which prescribes the refund of public monies before the allocation of a mining lease.

Public Exposure Test

Notice that consideration is being given to making a direct allocation of a coal resource area must be gazetted and published in national and relevant regional newspapers. This notice must outline the reason for considering a direct allocation and invite submissions from parties who may be interested in exploring the subject area. Parties are given two weeks to make submissions. This notice will also be published on the Department's website.

All submissions will be considered for the purpose of the making of a recommendation as to whether to grant Ministerial consent.

Change in Effective Control of Corporate Entities that are Allocated Areas

All authorities granted as a consequence of allocations made by virtue of these Guidelines will be subject to a condition that prior Ministerial consent will be required for any changes in effective control of the corporate entity/ies holding the licence. Failure to obtain the required approval will be considered as grounds for the cancellation of the licence.

Requirement to Develop Resources

Where the conditions of the allocation in relation to mine development are not met by the title holder or the allocated resources are not developed within any specified time frame, the coal title may be cancelled by the Minister without compensation.

¹ A Register of requests for Ministerial consent to apply is maintained by the Mineral Resources Branch.