

Guideline

The Competitive Allocation of Coal

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Purpose of the guideline

The purpose of this Guideline for the Competitive Allocation of Coal (Guideline) is to outline the pathway for releasing unallocated coal resources for allocation by Competitive Allocation.

Part 1 of this Guideline provides information on when Competitive Allocation applies and how a coal resource will be referred to the Competitive Allocation pathway, including its relationship with other pathways for allocating coal exploration licences, including the Strategic Release Framework for Coal and Petroleum Exploration (the Strategic Release Framework) and coal exploration licence applications for operational allocation purposes (Operational Allocation).

Part 2 of this Guideline provides guidance on what the Competitive Allocation process might look like. This information is indicative only. When a coal resource is released for Competitive Allocation, the decision-maker will publish an invitation setting out the detailed process that applies to that particular resource and the requirements for interested parties who want to participate in the Competitive Allocation process. Different processes can apply for different areas of land.

All timeframes in this Guideline are indicative.

Objectives

The NSW Government is taking a responsible, balanced approach to the effects of the global transition to a low carbon future on the coal mining sector.

The government has set a clear and consistent policy framework for coal exploration and mining in NSW that supports investment certainty as the coal mining sector responds to global demand, while helping regional communities to manage the effects of an expected decline in thermal coal mining in the state over the longer term.

The Strategic Statement on Coal Exploration and Mining in NSW sets out the NSW Government's approach and a four-point action plan built around:

1. improving certainty about where coal mining should not occur
2. supporting responsible coal production
3. reducing the impact of coal mining
4. supporting diversification of coal-reliant regional economies to assist with the phase-out of thermal coal mining.

The Competitive Allocation pathway and this Guideline support these actions and offer a faster process (relative to the Strategic Release Framework) for allocating coal exploration licences by public tender in specific circumstances only. This is based on the principle that available coal resource information shows there are no obvious geological or land-use barriers to exclude the area from exploration or future mining. It also encourages the timely development of NSW's coal resources.

This pathway is not intended to pre-determine the planning framework's assessment of proposed development applications that are required for mining activities.

Guiding principles

The guiding principles for allocating coal exploration licences through the Competitive Allocation pathway are:

- ensuring applicants are suitably qualified
- ensuring there is fair and open competition through a public tender process
- achieving value for money and a beneficial financial return to the people of NSW from coal resources by a public tender process

- facilitating timely exploration and responsible use of the state's accessible coal resources, having regard for the need to encourage ecologically sustainable development
- delivering timely outcomes.

Part 1 Scope and context

Part 1 of this Guideline provides information on when Competitive Allocation applies and how a coal resource will be referred to the Competitive Allocation pathway.

The Government's framework for releasing and allocating coal resources

As the whole of NSW is a controlled release area for coal, new coal exploration licences can only be sought by industry via one of three release pathways:

1. **Operational Allocation:** this pathway is where an existing coal exploration licence, assessment lease or mining lease holder applies to access coal resources beside, above or beneath their existing licence/lease for a designated operational allocation purpose. This is subject to meeting certain size requirements. The decision-maker may refuse an application under section 13C(3)(b) of the *Mining Act 1992* (Mining Act) if they are satisfied that there is sufficient interest to justify a competitive selection process.
2. **The Strategic Release Framework:** this pathway is where the government identifies an area for potential release. It undertakes a Resource Assessment and Preliminary Regional Issues Assessment that informs the decision-maker on whether to release an area for competitive selection (public tender) under Schedule 1A of the Mining Act. The Strategic Release Framework is mainly aimed at areas with coal resources that would be economically viable as new stand-alone mining operations.
3. **Competitive Allocation:** this pathway is where the government may allocate a coal resource in certain circumstances where the other two pathways are not appropriate. This process involves a Resource Assessment and an Initial Suitability Assessment of the area and public tender under Schedule 1A of the Mining Act. It is a faster process than the Strategic Release Framework. Further details on when this pathway applies are provided below.

When competitive allocation applies

The Competitive Allocation pathway only applies when:

1. an operational allocation application is refused on the ground that the decision-maker is satisfied that there is sufficient interest to justify a competitive selection under section 13C(3)(b) of the Mining Act; or
2. a holder relinquishes their coal exploration licence or assessment lease; or
3. a holder has their coal exploration licence or assessment lease cancelled; or
4. a transitional arrangement applies.

In the case of (1) and (4), the Advisory Body for Strategic Release (ABSR), which oversees the Competitive Allocation pathway, will automatically consider the coal resource. The Department of Regional NSW (DRNSW) will provide a public notice that the pathway has been triggered and an area is under consideration.

In the case of (2) and (3), the ABSR will provide advice to the Minister with responsibility for the Mining Act as to whether the area should be considered under this pathway. Pathway (2) does not apply where an exploration licence or assessment lease has been relinquished due to a government buyback of the licence or lease or where the government has relinquished a government-held exploration licence.

This Guideline outlines the process for the competitive allocation of a coal exploration licence only.

The ABSR will make recommendations to the Minister on whether to allocate the area for coal exploration, oversee the tender process and determine the reserve price. Agencies' roles in this process are:

- the Department of Planning and Environment (DPE) will conduct a desktop-based Initial Suitability Assessment of the area
- Mining, Exploration and Geoscience (MEG) in DRNSW will conduct a Resource Assessment, and administer the application and tender process, including assessing exploration licence applications, appointing an independent tender manager, commissioning an independent valuation of the resource, and providing advice to the ABSR to inform a decision on the reserve price
- Treasury will provide technical advice on, and quality assurance of, the tender.

Examples A, B, C and D below explain circumstances when the government may consider competitively allocating a coal resource under this Guideline, or whether the Operational Allocation or the Strategic Release Framework would be used.

Example A – Coal resource with market interest

A Coal Mining Company (ACMC) has lodged an operational allocation application over an unallocated coal resource adjacent to their existing coal exploration activities or mine. If developed, this coal resource would extend the life of their mine. The resource is part of a wider, unallocated coal resource that could potentially support a stand-alone mining operation. A market interest test held over the wider unallocated coal resource by DRNSW receives a valid expression of interest (EOI) from another coal company. The operational allocation application is refused under section 13C(3)(b) of the Mining Act and the area concerned is referred to the Competitive Allocation pathway for assessment and potential tender.

Example B – Coal resource with a relinquished licence/lease

ACMC has relinquished their coal exploration licence over a coal resource. The coal resource is of a quality and quantity that may support exploration activities. ABSR will review and advise the Minister responsible for the Mining Act as to whether the licence area should be considered under the Competitive Allocation pathway. If the Minister approves any recommendation from ABSR to enact competitive allocation, the licence area is considered under the Competitive Allocation pathway for assessment and potential tender.

Example C – Coal resource without market interest test

ACMC has lodged an operational allocation application adjacent to their existing mine. The application is over part of a larger unallocated coal resource, where the residual part of the coal resource falls outside the application area. If the larger coal resource were developed, it could potentially support a stand-alone mine or multiple operational allocations to other parties. DRNSW receives no valid expressions of interest from a market interest test over the larger unallocated coal resource. If it meets other legislative requirements, then an exploration licence may be granted. The company may then apply for another part of the larger unallocated coal resource via an operational allocation application, at which time the Department would again seek expressions of interest from the market.

Example D – Coal resource with market interest but insufficient information

ACMC has lodged an operational allocation application over an unallocated coal resource adjacent to their existing mine. This unallocated coal resource would extend the life of their mine. DRNSW receives a valid expression of interest from another coal company. The decision-maker is satisfied that there is enough interest to justify a competitive selection and decides to refuse the application on that basis. It is then referred to the Competitive Allocation pathway for assessment. If during the Competitive Allocation pathway's Initial Suitability Assessment and Resource Assessment, it is found that there could be significant geological or land use barriers to mining in the area but there is not enough information to determine whether these are sufficient to prevent release, the ABSR will further consider the area under the Strategic Release Framework. This scenario is expected to be rare.

What Competitive Allocation involves – an overview

The Competitive Allocation pathway comprises:

- interagency governance with probity controls
- a Resource Assessment and Initial Suitability Assessment prior to Cabinet’s endorsement of a potential decision on whether to release the area for competitive tender
- a public tender process comprising the qualification and tender stages
- assessment of all applications against the Minimum Standards and Mining Act requirements for exploration licence applications
- seeking the Minister’s decision on whether to grant a coal exploration licence to the highest bidder.

Governance

The role of the ABSR, the Minister and Cabinet

The ABSR administers both the Competitive Allocation and the Operational Allocation pathways. ABSR’s administration of Operational Allocation includes administering the sub-committee, the Coal Resource Operational Allocation Committee. Further information on the function of ABSR can be found in its Terms of Reference.

If an operational allocation application is over a larger, unallocated coal resource, the ABSR will consider the potential release of all or part of the larger unallocated coal resource, which could be released in multiple blocks.

Before the tender, the Minister considers ABSR’s recommendation to allocate or not allocate the coal resource by Competitive Allocation. The Minister will seek Cabinet endorsement before making a decision on whether or not to release the area.

Probity controls of the process

Decision-making under the Competitive Allocation pathway must meet high probity and accountability standards to ensure fairness and openness of the process. ABSR’s recommendations on whether to release a coal resource for public tender are subject to both Ministerial and Cabinet oversight.

Management of the monies received and expended in the Competitive Allocation process must meet high probity standards and will be outlined in DRNSW’s annual financial report.

The elements of the competitive allocation process

ABSR will request that DRNSW and DPE conduct a Resource Assessment and Initial Suitability Assessment of the area where the coal resource is located. The assessments, conducted in accordance with the requirements in this Guideline and any other relevant legislation and policy, consider if there are potential significant geological or land-use barriers to mining in the area.

Resource assessment

Assessment scope

The Resource Assessment will provide a high-level summary of the quantity and quality of coal resources within the proposed release area, based on currently available information.

The Resource Assessment will focus on:

- quantifying and identifying the quality of coal within the proposed release area

- considering whether the proposed release area could form part of a larger coal resource that could potentially support a stand-alone mining operation
- identifying any other relevant geological constraints on coal extraction that may inhibit release of the area
- analysing current and forecast coal market conditions, including conditions over the long term.

Lack of geological data is not a barrier to ABSR recommending release of a coal resource unless that lack of information inhibits the ABSR's ability to provide a recommendation on the suitability of the area for mining.

The Resource Assessment will be made public if the Minister decides to release the area to the competitive allocation process.

Initial suitability assessment

Assessment scope

The Initial Suitability Assessment will provide a high-level summary of risks and opportunities for coal exploration and mining in the area. Its purpose is to identify any significant barriers to mining in the area that mean that exploration should not proceed. It is not a substitute for the detailed assessment of a specific mining proposal under the planning framework.

The Initial Suitability Assessment will focus on:

- identifying potential environmental, economic and social issues associated with release of the area
- using relevant information contained in existing datasets or accessible from other information sources
- examining significant existing risks or barriers to exploration and/or mining
- identifying issues by consulting with state and local government stakeholders.

The Initial Suitability Assessment may identify that all, part or none of the coal resource is suitable for release for exploration.

The Initial Suitability Assessment will be made public if the Minister decides to release the area to the competitive allocation process.

Timeframes

DRNSW and DPE will provide a completed Resource Assessment and Initial Suitability Assessment within four months of the request from ABSR. DRNSW will provide a high-level Resource Assessment report as soon as practicable to DPE so they may complete the Initial Suitability Assessment.

DPE and DRNSW may each request an extension of time of an additional one month only from ABSR to complete the assessments.

Outcomes

ABSR will consider the Resource Assessment and Initial Suitability Assessment and make recommendations to the Minister responsible for the Mining Act. The Minister will take ABSR's recommendations to Cabinet for endorsement.

ABSR may recommend to the Minister that:

- the coal resource is suitable to proceed to the public tender stage under the Competitive Allocation pathway
- the coal resource should not be released for exploration as the area is unsuitable for release

- the coal resource is unsuitable to proceed to public tender under the Competitive Allocation pathway but should be considered under the Strategic Release Framework, which allows the collection of additional information.

Cabinet will consider ABSR's recommendations following completion of the Resource Assessment and Initial Suitability Assessment. After obtaining Cabinet's endorsement, the Minister will decide whether or not to release the coal resource, and will issue a public statement of reasons for this decision.

Part 2

Part 2 provides guidance on what the Competitive Allocation process might look like. This information is indicative only.

Application and tender process

When a coal resource is released for Competitive Allocation, the decision-maker will publish an invitation setting out the detailed process that applies to that particular resource and the requirements for interested parties who want to participate in the Competitive Allocation process.

If Cabinet endorses the Minister's decision to allocate a coal resource under this pathway, DRNSW is responsible for administering the application and tender process under Schedule 1A of the Mining Act, including commissioning an independent tender manager. Treasury will review DRNSW's tender design and provide DRNSW with quality assurance advice during the tender process. DRNSW will consider the formation of the coal resource and the best tender design to promote the responsible use of the state's accessible coal.

A notice inviting applications for the grant of an exploration licence by competitive selection (public tender process) will be published in the NSW Government Gazette. Any notification requirements will be in accordance with Schedule 1A of the Mining Act in addition to wide (Australian and state-based publications) and targeted advertising to potential applicants.

Any party may lodge a competitive selection application (i.e. a coal exploration licence application), in response to an invitation; it is not limited to only those parties who expressed interest during a Market Interest Test for Operational Allocation. Parties will need to pay a mandatory participation charge and meet the qualification requirements (see explanation below).

Mandatory participation charge

Interested parties must pay a mandatory and non-refundable participation charge of \$50,000 to participate in the competitive selection process. The purpose of the participation charge is cost recovery and to ensure that only genuine applications for a coal exploration licence are lodged.

Qualification requirements

Interested parties will have two months (from the date the invitation is published) to lodge a standard coal exploration licence application. Applications will need to demonstrate:

- technical capability that meets the minimum standards to hold a coal exploration licence
- financial capability that meets the minimum standards to hold a coal exploration licence
- a credible proposed work program that meets the minimum standards for a coal exploration licence
- a satisfactory corporate compliance history – individual's and company's compliance history
- a satisfactory environmental performance record – compliance and environmental performance history
- an undertaking to pay consideration – they will pay their bid amount if they're the successful bidder for the coal exploration licence

- applications lodged will be dealt with and determined in accordance with the Mining Act requirements for coal exploration licence applications.

Applicants will also need to pay the usual application and area fee for a coal exploration licence under Schedule 9 of the Mining Regulation 2016. This is separate to the mandatory participation charge.

Applicants must apply for a licence term of six years (excluding any renewals).

DRNSW will assess applicants to determine if they meet the qualification requirements.

Applications that fail to meet these requirements will be refused under clause 6(2) of Schedule 1A of the Mining Act.

Invite qualified applicants to bid in public tender

Applicants that meet the qualification requirements will be notified they are eligible to participate in the tender process for a coal exploration licence. If there is only a single qualified applicant, the Minister may choose to extend the application period or to terminate this process and consider other options for allocating the area.

If, in either round, two bidders put in the exact same dollar amount, the first bid in time received by the tender manager will take precedence.

1. First tender round

In the first tender round, the reserve price will not be disclosed, and the bidders will need to place their bids within the period indicated by the Tender Manager, which is expected to be up to 30 days.

ABSR must make its recommendation to the Minister based on the highest bidder meeting the reserve price.

If the reserve price is met or exceeded, the ABSR will notify the Minister of the highest bidding Applicant. The Minister will then consider that Applicant's application.

If the reserve price is not met, the coal exploration licence will remain unallocated and the Minister may consider progressing to a second tender round (see below) or other options for allocating the area.

2. Second tender round

In the second tender round for the coal resource, the reserve price will be disclosed to all the bidders. Bidders will be given a further one month to place a bid in the second tender.

If the reserve price is not met in either tender round, the Minister may refuse the applications for an exploration licence and publicly commit the area will not be released in the future. Alternatively, the Minister may choose to enter into an ascending auction where the applicants' bids are disclosed, or to seek Cabinet approval to enter into direct negotiation with the highest bidder.

Recommendation of successful bidder and determination of applications

The ABSR will notify the Minister the highest bidder who:

- meets the qualification requirements (listed under the qualification requirements section of this Guideline)
- meets or exceeds the reserve price and is the highest bidder in the public tender.

The Minister, as the relevant decision-maker, will consider the ABSR's recommendations and determine the highest bidder's exploration licence application. The Minister will aim to determine the application within two months of the tender close. If the Minister decides to grant the exploration licence, DRNSW will notify the Applicant of the Minister's proposed decision.

The exploration licence will not be granted unless the bid, the annual administrative levy, annual rental fee and security deposit are paid. If the highest bidder does not pay the bid amount within one

month of being notified that they are successful, the area will be offered to the next highest bidder that meets the reserve price.

Can an exploration licence application still be refused?

Yes, even if the highest bidder makes the successful bid, the decision-maker still has discretion under the Mining Act to refuse an exploration licence application under the Mining Act.

Being the highest bidder under the Competitive Allocation pathway does not guarantee that an exploration licence will be granted.

Once the Minister has determined the successful applicant, all bidders will be notified of the outcome. Any exploration licence granted will be subject to the standard coal exploration licence conditions and any other conditions imposed by the decision-maker. All remaining applications will be refused, and applicants will be notified of refusal.

DRNSW will also release a public statement of reasons following the Minister's decision.

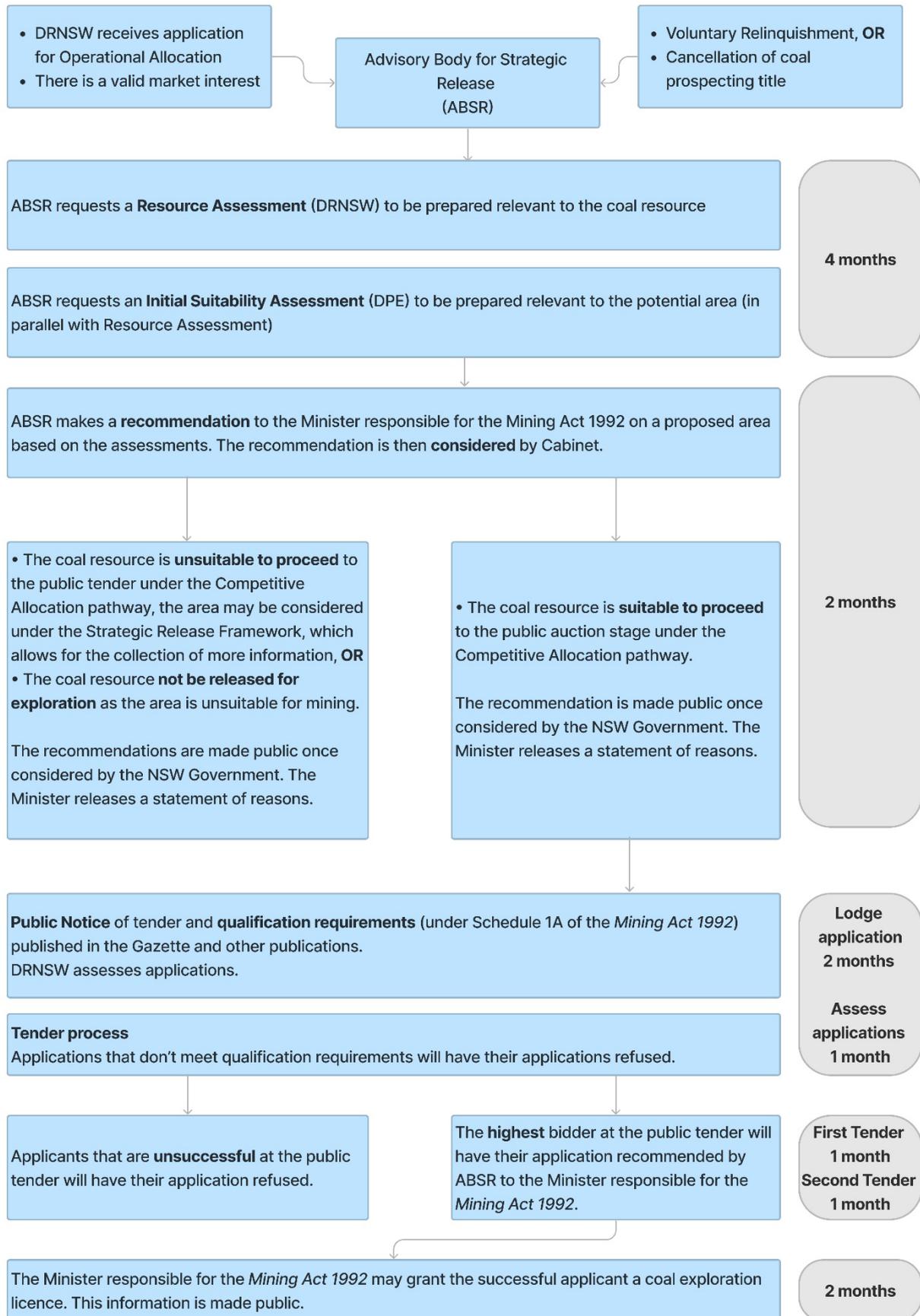
Interpretation

Exploration licence has the same meaning as under the *Mining Act 1992*.

Competitive Allocation pathway is the method of allocating coal exploration licences set out in this Guideline.

Process for Competitive Allocation

This flowchart is indicative only and may vary depending on the requirements for the individual area that is released. Note the whole process is expected to take around 12 months.



Caption: Process for Competitive Allocation

Guideline for the competitive allocation of coal

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