

# MINIMUM STANDARDS AND MERIT ASSESSMENT PROCEDURE

(Incorporating the Use It or Lose It Policy)

*Petroleum (Onshore) Act 1991*

Implementing the  
NSW Gas Plan



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# 1. Introduction

## 1.1 Context

The [NSW Gas Plan](#)<sup>1</sup> is the Government's public statement of intent to deliver a high performing petroleum industry, with reasonable and consistent regulation that is rigorously enforced.

Through the **NSW Gas Plan**, the Government is committed to implementing and enforcing a **'Use It or Lose It'** Policy requiring title holders to commit to developing the State's resources or risk losing their prospecting title<sup>2</sup>. If a serious commitment cannot be demonstrated at application, transfer, upon renewal or during the term of a prospecting title, companies may face refusal or cancellation of their titles.

To ensure the optimum discovery and development of the State's potential petroleum resources, title areas must be actively explored. As part of the Division of Resources and Energy's (DRE) compliance processes, where there is evidence of non-performance or non-compliance with **Minimum Standards** without satisfactory justification, these will be considerations to determine if a prospecting title should be cancelled or not renewed. These matters, in addition to an applicant's corporate, compliance and environmental performance history will also be considered when assessing applications for the grant, renewal and transfer of titles. A title holder must take all lawful actions to remedy any force majeure (unforeseeable circumstance or similar) event or effect that may hinder the ability of a title holder to comply with the requirements of, and standards set out in, this policy. The onus is on a title holder to demonstrate any and all actions taken in this respect.

Consistent with the [DRE Compliance and Enforcement policy](#), any actions to refuse or cancel a prospecting title will be proportionate to the non-compliance identified and the seriousness of any non-compliance.

New prospecting title applications that include National Parks, Nature Reserves and other areas excluded by legislation will not be accepted and will be returned to the applicant.

## 1.2 Purpose

The Minimum Standards and Merit Assessment Procedure sets the NSW Government's framework for determining applications to grant, renew, transfer and assess active prospecting titles.

The Minimum Standards and Merit Assessment Procedure comprise:

- **Minimum Standards**<sup>3</sup> required to be met in relation to [section 21](#) of the *Petroleum (Onshore) Act 1991* (POA)
- **Corporate, compliance and environmental performance history** assessment of the applicant, and
- **Qualifying for Special Circumstances** criteria to determine whether a title holder may relinquish less than 25 per cent at renewal in relation to [section 30](#) of the POA.

Further assessment of a title holder's compliance with conditions and progress towards completion of the work program will be based upon the Annual Activity Reports supplied by the title holder during the term of a prospecting title, and any further information acquired, including from inspections and audits conducted by the NSW Government.

<sup>1</sup> NSW Gas Plan (November 2014) [www.resourcesandenergy.nsw.gov.au/\\_data/assets/pdf\\_file/0005/534830/NSW-Gas-Plan.pdf](http://www.resourcesandenergy.nsw.gov.au/_data/assets/pdf_file/0005/534830/NSW-Gas-Plan.pdf)

<sup>2</sup> A prospecting title refers to Petroleum Special Prospecting Authorities (PSPAs), Petroleum Exploration Licences (PELs) and Petroleum Assessment Leases (PALs).

<sup>3</sup> The Minimum Standards do not apply to petroleum production lease applications or petroleum production lease renewal applications given these projects are assessed under the State Significant Development provisions of the *Environmental Planning and Assessment Act 1979*.

This policy provides a clear benchmark for industry to meet and transparency to the public regarding the intentions of the petroleum industry, particularly in respect of the title holder's commitment to developing the State's resources. Failure to meet this policy means that title holders are at risk of not having prospecting titles granted, transferred or renewed. The exercise of discretion by the Minister for Industry Resources and Energy is not limited by the information provided in this policy, nor are the legislative requirements of the POA amended or limited.

### **1.3 Public disclosure**

Prospecting title decisions will be publicly disclosed consistent with the *Government Information (Public Access) Act 2009* and the [NSW Government Open Data Policy](#). Geological exploration and expenditure components of the reports will be kept confidential to the extent provided for under [Part 13](#) of the POA.

## 2. Minimum Standards

This section sets out the **Minimum Standards** which applications must meet in order to be eligible for the grant, transfer or renewal of prospecting titles.<sup>4</sup>

These Minimum Standards apply to:

- Work programs
- Technical capability, and
- Financial capability.

### 2.1 Work Program Minimum Standards

Prospecting title and renewal applications must be accompanied by a proposed work program.<sup>5</sup> The proposed work program must be prepared in accordance with [section 14](#) of the POA and [clauses 5 to 7](#) of the *Petroleum (Onshore) Regulation 2007* (POR). Work programs should also be prepared in accordance with the [Exploration Guideline: Work Programs for Prospecting Titles](#). The activities and expenditure detailed in the proposed work program should be proportionate with the likely risk, type, scale, phases and length of exploration activities.

For prospecting titles that are part of a wider contiguous exploration project, comprising multiple prospecting titles, the work program should include specific reference to the level of investment and work associated with the other titles of the exploration project. The expectation for contiguous exploration projects is that there is a common holder, with a majority interest in all titles of any project. It is recognised that for these contiguous exploration projects that some titles are worked more actively than others. In these circumstances at least one prospecting title within a project **must** meet the **Minimum Standards**. For the remaining prospecting titles within a project, there **must** continue to be active work undertaken.

<sup>4</sup> [Section 21](#), POA

<sup>5</sup> [Section 14](#), POA.

The **Minimum Standards** for work programs for Petroleum Exploration Licences (PELs) identified as Strategic Energy Projects (SEPs) include additional requirements due to the advanced nature of these projects. Therefore, an accelerated intensified work program is expected. If a project is classified as a SEP, a revised work program must be submitted within three months of being requested by the DRE.

#### 2.1.1 Geological data and resource definition

The work program must include activities to progress the definition and understanding of both the undiscovered and discovered petroleum accumulations in the petroleum title. The estimation of reserves and resources must be completed in accordance with the [Society of Petroleum Engineers, Petroleum Resource Management System \(PRMS\)](#).

##### A. Minimum Standard for Target Generation and Testing

1. The work program must demonstrate that target generation activities focus on the acquisition, interpretation and analysis of new data or the analysis and interpretation of existing data, such as seismic surveys, well data or geological samples.
2. Target testing activities need to build on the existing data and interpretations, and acquire new data to evaluate the targeted petroleum or potential petroleum accumulations with activities such as exploration drilling or seismic surveys or other appropriate techniques.

**Target generation activities** are activities to identify plays, fairways, leads and prospects where petroleum accumulations may be present.

**Target testing** activities are activities to discover petroleum. They may include and overlap with the early stages of appraising a petroleum accumulation.

## B. Minimum Standard for Resource Definition and Planning for Production Project Assessment and Approval

1. The work program must include activities to progress the definition of any discovered petroleum accumulation to at least a 'Contingent Resource' classification as per the PRMS.

### *Additional requirements within a Strategic Energy Project*

The work program must demonstrate via the proposed activities that the project is progressing towards the development of a project plan for production.

**Resource definition and planning for production typically involves an appraisal program to determine the size of a discovered petroleum accumulation and the commercial viability of developing it.**

## C. Minimum Standard for Petroleum Special Prospecting Authorities (PSPAs)

1. The general Minimum Standards for target generation in PEL's apply to PSPAs.

## D. Minimum Standard for Petroleum Assessment Leases (PALs)

1. The petroleum resource for which a PAL is granted must meet discovery criteria and be able to be defined as a 1C, 2C or 3C Resource under the standards of PRMS and Guidelines of the Australian Stock Exchange.
2. The work program must include activities to progress the Resource to a 1P, 2P or 3P Reserves category under the standards of PRMS.
3. The work program must provide for additional work or project planning that demonstrates the operator is continually attempting to commercialise the resource.

## 2.1.2 Environmental management and rehabilitation

1. The work program must identify the activities and estimated expenditure in relation to environmental management (including groundwater monitoring and modelling<sup>6</sup>, where appropriate), produced water management and rehabilitation activities over the term of the title.

*Note:* For assessable prospecting operations, an environmental assessment (under Part 5 of the *Environmental Planning and Assessment Act 1979*) must be conducted prior to commencing the activities in the approved work program. The work program must include additional monitoring data collection necessary to allow accurate modelling of all relevant environmental parameters for the development or revision of Groundwater Monitoring and Modelling Plans and Produced Water Management Plans where appropriate, as well as modelling of other environmental parameters

## 2.1.3 Community consultation

1. The work program must include details of the estimated expenditure and proposed activities for effective community consultation over the term of the title with specific regard to:
  - a. the development (or revision) and implementation of a community consultation plan prepared in accordance with the current [Guideline for Community Consultation Requirements for Exploration](#)
  - b. the establishment, prior to the commencement of exploration activities, of community consultative forums which meet as required given the scope and scale of the activity and level of local community concerns

<sup>6</sup> Any groundwater monitoring and modelling must be consistent with the NSW Office of Water's (2014) [Groundwater Monitoring and Modelling Plans - Information for prospective mining and petroleum exploration activities](#).

- c. an annual community update, published and distributed to relevant landowners, local council(s) and relevant community organisations
- d. a dedicated webpage with relevant and accurate information
- e. a dedicated contact officer, phone number, email address and postal address for receiving and responding to community enquiries, and
- f. clear and easy to understand information about well integrity, fracture stimulation activities (if this technology is being used), potential groundwater impacts and monitoring and modelling initiatives and produced water management strategies.

*Additional requirement for Strategic Energy Projects*

The work program must include estimated expenditure and proposed activities for regular community updates, published and distributed to relevant landowners, local council(s) and relevant community organisations quarterly, or more frequently depending on the scope and scale of the activity and level of local community concerns.

*Note:* Expenditure associated with compensation payments under land access agreements is not required to be included in the proposed work program as these are private arrangements.

**Effective consultation** is demonstrated through a proper process that includes the following attributes:

- Detailed identification of all stakeholders.
- Acknowledgement of the interests of the stakeholders where activities are proposed.
- Tailoring a consultation process to suit expressed stakeholder concerns that are ongoing for the entire term and area of the prospecting title.
- Continual and proactive consultation, disclosure and notification of honest and factual information regarding proposed activities.
- All stakeholders are informed of the proposed program of work for the prospecting title and are notified prior to the commencement of any authorised activities in a timely and transparent manner. All stakeholders are aware of any real or potential impacts.
- The purpose of consultation is made clear — this includes what is being consulted on and what is negotiable.
- Planned levels of participation and commitments are clearly expressed to the community.
- Establishing channels of communications that allow good community feedback and identification of potential issues.
- Providing feedback to the community on how their input has influenced decisions.
- Maintaining a register of complaints and feedback, with details of action to be taken in response.

The level and type of community consultation to be undertaken should be proportionate with the likely risk, type, scale, phases and length of exploration activities. As such, holders of large prospecting titles, or prospecting titles involving extensive operations, may be required to consult with numerous communities or community groups who may be affected by their activities.

## 2.2 Technical Capability Minimum Standards

Applicants must demonstrate with evidence:

1. access to the appropriate and relevant technical experts<sup>7</sup>. These experts must possess appropriate qualifications and experience to undertake the proposed work program (for example, petroleum geoscientist, engineer, etc.).

*Note:* Copies of relevant curriculum vitae are to be supplied pursuant to relevant legislation (e.g. the POA or work health and safety legislation) upon request once a prospecting title decision has been made

2. the financial capacity to engage any expertise required
3. the ability to comply with the regulatory requirements which are imposed on operators in NSW.

## 2.3 Financial Capability Assessment Minimum Standards

1. Applicants must demonstrate to the satisfaction of the Minister for Industry Resources and Energy that the applicant possesses, or has the ability to secure the required finances to meet the anticipated expenditure for the term of the work program, in addition to commitments and liabilities on all other titles held or pending in NSW.
2. Applicants must provide a [statement of financial capability](#) with the application for a grant/transfer/renewal.
3. Guidance and sample statements can be located on [the DRE website](#).

*Note:* The assessment of a statement of financial capability includes looking at details of:

- All NSW titles held by the applicant and any related body corporate. This includes the financial commitments on the work programs for each title overlapping the term of the grant/transfer/renewal being applied for.
- Statement of financial history
- Statement of financial capability provided by the applicant according to specific criteria set out in the guidance.

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<sup>7</sup> Pending reform to work health and safety legislation in the petroleum sector regarding mandatory competencies, the Department has published the Exploration and Production Guideline: Petroleum Drilling and Well Servicing – Competencies (Guideline). Title holders and applicants should check the status of the Guideline and any legislative reform on the Department’s website ([www.resourcesandenergy.nsw.gov.au](http://www.resourcesandenergy.nsw.gov.au)).



## 3. Statement of corporate, compliance and environmental performance history

In assessing an application for the grant, renewal or transfer of a prospecting title, the Government will consider whether or not, if the application is granted, the applicant or transferee is likely to comply with its obligations as a titleholder.

The corporate history, compliance history and environmental performance of an applicant or transferee will enable the assessment of whether or not:

- the applicant is a suitable entity that will comply with its obligations, and
- the applicant has demonstrated satisfactory compliance with the conditions of any title held in NSW and the applicant has demonstrated satisfactory compliance with other regulatory obligations associated with any title held.

[Published guidelines](#) set out the information applicants must submit to enable corporate, compliance and environmental performance history assessments to be made.

The persons that are required to provide this information by way of a statement to support an application for the grant/transfer/renewal are:

- the applicant/transferee in the case of a natural person or
- the company secretary or Director in the case of a company.

### 3.1 Corporate History requirements

1. A corporate history is required for the grant/transfer/renewal application by an applicant. The corporate history is not required where the applicant is a natural person.
2. The statement about the corporate history must include the identification of all current officers of the applicant body corporate/the transferee body corporate/the body corporate seeking renewal (whichever is applicable) and the name and ACN of any

Body Corporate that any person identified has been or is currently an officer of for the 3 years immediately prior to the application.

3. The statement must include signed certification that the information is true and correct.

### 3.2 Compliance and Environmental History requirements

1. A compliance and environmental performance history is required for grants and transfer applications.
2. A [check sheet](#) is provided as part of the guidance and is required to be completed and submitted with the application for grant or transfer by the applicant/transferee.
3. Additional statements may be required where an applicant/transferee has answered yes to any of the questions regarding compliance and environmental history in the check sheet. This statement should set out the specific circumstances about the history and the reasons why those circumstances should not prevent the applicant/transferee from holding a licence.
  - If any of the following have occurred, a statement will be required; suspension, cancellation or revocation of an approval authorising exploration or production of coal, mineral or petroleum resources in any Australian jurisdiction in the last 5 years
  - Been subject to prosecution under the Work Health and Safety legislation in any Australian jurisdiction in the last 5 years

4. If the applicant/transferee has been convicted of an offence under a provision of any environmental protection legislation or other relevant legislation in any Australian jurisdiction in the last 5 years
5. Had a licence or other authority suspended or revoked under the *Protection of the Environment Operations Act 1997* (NSW) (POEO Act) in the last 5 years
6. Whether the applicant has paid a penalty under a penalty notice for an offence under the POEO Act in the last 2 years

*Note:* Consistent with the [DRE Compliance and Enforcement policy](#), any actions to refuse prospecting title applications will be proportionate to the non-compliance identified and the seriousness of any non-compliance.

## 4. Qualifying for Special Circumstances

[Section 30\(2\)](#) of the POA requires that the size of the area over which the renewal of a PEL is granted must not exceed 75 per cent of the size of:

- the area over which the licence was originally granted, in the case of a first renewal of the licence, or
- the area over which its last previous renewal was granted, in any other case, unless the Minister for Industry Resources and Energy, being satisfied that Special Circumstances exist, otherwise determines.

For the purpose of relinquishment, the PEL area is calculated in square kilometres, not graticular sections or 'blocks'.

Any area affected by exploration activities should be rehabilitated prior to relinquishment. However, even if rehabilitation is not completed before an area of land is relinquished, the titleholder will remain liable for completing rehabilitation, and any security held in connection with those obligations will not be refunded until rehabilitation has been completed to the satisfaction of the Minister for Industry Resources and Energy.

This section sets out the information requirements for determining Special Circumstances.

### 4.1 Special Circumstances

Title holders may seek a reduction in the requirement for a 25 per cent relinquishment in the area of a PEL at renewal by writing to the Minister for Industry Resources and Energy with reasons why '**Special Circumstances**' exist in respect of their application. These are circumstances beyond the control of the title holder and where a reasonable person in the position of the title holder could not have prevented these circumstances from occurring.

**Special Circumstances** will be considered to exist if, following a technical assessment of the application, the Minister for Industry Resources and Energy determines that the goal of developing the State's petroleum resources will be better served by the title holder retaining the larger exploration area (having regard to the investment the title holder has within the State), than by releasing the area to other explorers to enable competition.

The technical assessment will take into account the:

- proposed level of technical and financial investment for the next term of the title
- past exploration work conducted by the applicant in the title area
- current investment and work being carried out by the applicant in connection with a wider contiguous exploration project, and
- current level of investment and work being carried out by the applicant associated with a SEP.

### Special Circumstances criteria

A title holder must take all lawful actions to remedy any event or effect that may hinder the ability of a title holder to comply with the requirements of, and standards set out in, this policy. The onus is on a title holder to demonstrate any and all actions taken in this respect.

1. The following circumstances would be considered to qualify as **Special Circumstances**:
  - a. delays due to Native Title procedural requirements
  - b. an inability to obtain a land access agreement to the licence area
  - c. an occurrence of a *force majeure* (unforeseeable circumstance) event, being an event or effect that could not reasonably be anticipated or controlled

- d. voluntary relinquishment of an area of a PEL before renewal (see below).

*Note:* It is the responsibility of the title holder to show evidence of reasons for the Minister for Industry Resources and Energy to form the view that special circumstances exist. There is no presumption to an entitlement of a lower relinquishment rate in any circumstances.

### **Factors that do not constitute ‘Special Circumstances’**

1. The following matters would not constitute special circumstances for a reduction in the requirement for a 25 per cent relinquishment in the area of a PEL at renewal:
  - a. the proposed or actual transfer of ownership of the licence to another party
  - b. delays in raising capital or insolvency
  - c. poor exploration results
  - d. inappropriate management of resources (e.g. contractors)
  - e. competing land uses, and/or
  - f. adverse weather conditions (unless they are significant, widespread, long-term weather events such as consecutive floods impacting access and poor survey conditions for more than six months).

## **4.2 Voluntary relinquishment**

Voluntary relinquishment of part of a prospecting title prior to renewal may occur in one of two ways:

1. the title holder may voluntarily cancel part of its title area during the current term by writing to the Minister for Industry Resources and Energy under [section 22](#) of the POA, or
2. the title holder may seek renewal over less than 75 per cent of a current title area, and this may be considered when assessing any later application for renewal period.

These matters may be used to credit relinquishment requirements at renewal, provided that the **Minimum Standards** and the **Corporate, Compliance and Environmental Performance History assessments** are satisfied.



