

Submission
No 3

**INQUIRY INTO PETROLEUM (ONSHORE) AMENDMENT
(CANCELLATION OF ZOMBIE PETROLEUM
EXPLORATION LICENCES) BILL 2021**

Organisation: Upper Hunter Shire Council

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Our Reference: OUT-3277/21



8 June 2021

The Director
Portfolio Committee No.4 - Industry
Parliament House
Macquarie Street
SYDNEY NSW 2000

Dear Director

**Submission to the Inquiry into the Petroleum (Onshore) Amendment
(cancellation of Zombie Petroleum Exploration Licences) Bill 2021**

The Upper Hunter Shire Council [Council] thanks the Portfolio Committee No. 4 - Industry [the Committee] for the opportunity to submit to the Inquiry into the Petroleum (Onshore) Amendment (cancellation of Zombie Petroleum Exploration Licences) Bill 2021.

Council has a longstanding and resolved opposition to both Coal mining and Coal Seam Gas [CSG] Exploration and Extraction within the shire.

Council is of the view that lasting damage to the aquifers and groundwater resources - which underpin the success and ongoing viability of various agricultural sectors operating within the shire - can and does occur at the exploration stage for CSG.

Council supports the intent of the proposed legislation and the cancellation of the expired PELs.

In support of our position for the cancellation of Zombie Petroleum Exploration Licences generally, the following discussion is provided on specific PELs within the Upper Hunter Shire Council local government area which are representative of PELs across NSW.

A copy of Council's *Position Statement on Coal and Coal Seam Gas* is attached as appendix 'A' to this submission.

1. Summary of PELs contained within the Upper Hunter LGA

A significant proportion of the Upper Hunter Shire is covered by Petroleum Exploration Licences [PELs] 433, 452 and 456. This area is illustrated in Figure 1 below (sourced from minview.geoscience.nsw.gov.au).

PEL 433

PEL 433 is held by Santos NSW Pty Ltd and Santos QNT Pty Ltd, was first issued on 14 February 2001 and expired on 13 February 2015.

PEL 452

PEL 452 is held by Santos QNT Pty Ltd, was first issued 10 January 2001 and expired on 9 January 2013.

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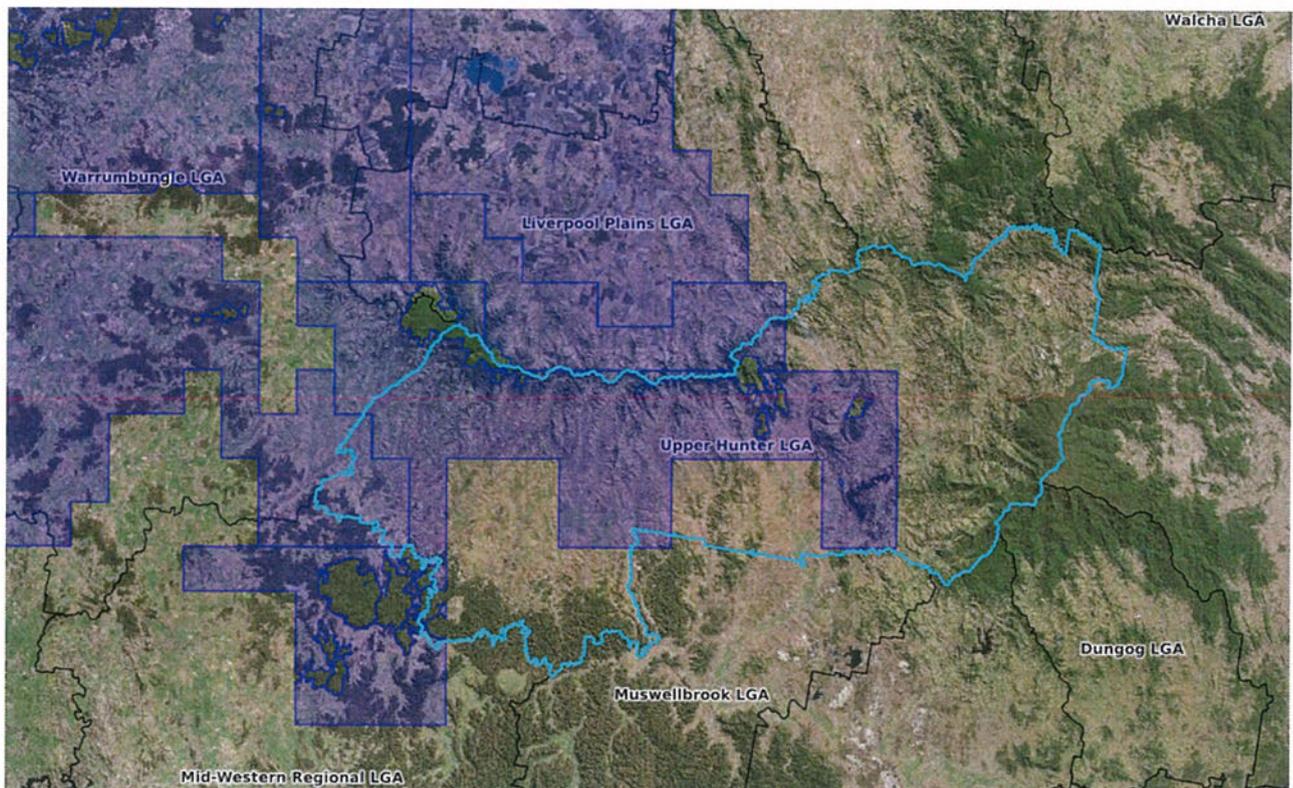
PEL 456

PEL 456 is held by Hunter Gas Pty Ltd and Santos QNT Pty Ltd, was first issued 5 March 2008 and expired on 5 March 2018.

Although Annual Exploration Reports are confidential, Council is unaware of any exploration activity undertaken within any of these PELs for several years.

The percentage interest in PEL 456 between Hunter Gas and Santos QNT is not known to Council. ASIC documents detail Hunter Gas Pty Ltd is majority owned by the Hong Kong based holding company Kerogen Investments No. 1 (HK) Limited. A copy of the ASIC document relating to Hunter Gas Pty Ltd is attached as appendix 'B' to this submission.

Figure 1 PELs (shaded dark blue) within UHSC LGA (light blue boundary line)



2. Grounds for the non-renewal of Petroleum Exploration Licences

Schedule 1B (Part 2 sections 2 to 5) of the *Petroleum (Onshore) Act 1991* [POA] details statutory matters for consideration that either 'must' or 'may be taken into account by the Minister in relation to the grant, renewal or transfer of a petroleum title'.

a) Protection of the Environment

"Part 2 Considering applications

2 Protection of the Environment must be taken into account in considering Applications

(1) The Minister must take into account the need to conserve and protect the environment in or on the land over which the petroleum title is sought (or, in the case of a variation, to which it applies) in considering an application to which this Schedule applies.

(2) *The Minister may cause such studies (including environmental impact studies) to be carried out as the Minister considers necessary to assist in making a decision on the application*".

Council notes that of the three PELs contained within its LGA, two were first issued in 2001 and the other in 2008. All three licences were granted prior to the then Chief Scientist Mary O'Kane's *Final Report of the Independent Review of Coal Seam Gas Activities in NSW* (released September 2014) and the NSW Government's subsequent *Strategic Release Framework for Coal and Petroleum Exploration* (released November 2014) which states

"The Framework implements a transparent and strengthened selection process for issuing coal and petroleum prospecting titles through the up-front consideration of geological, social, environmental and economic factors, and operator suitability and capability".

The PELs within our shire were not subject to the Government's upgraded strategic framework for petroleum exploration prior to their being issued. Nor has the Minister commissioned or caused any subsequent 'studies' to determine the suitability of those areas for petroleum exploration. These unused PELs are a legacy issue from a previous era of less informed decision making.

b) Minimum Standards for Work Programs

Part 2 continues -

"Without limiting the generality of any other provision of this Act, the Minister may take into account any one or more of the following when considering an application to which this Schedule applies:

(g) whether, in the opinion of the Minister, the work program proposed to be carried out by the applicant meets the minimum standards, made public by the Minister, required to be met with respect to work programs for a petroleum title of the kind concerned".

Further, it is a requirement for PEL holders to comply with the *Petroleum Minimum Standards and Merit Assessment Procedure* [the Procedure] (released September 2015) which states

*"To ensure the optimum discovery and development of the State's potential petroleum resources, **title areas must be actively explored . . . 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**"* [Our emphasis].

With respect to PELs 433, 452 and 456, Council is unaware of any exploration activity undertaken by the licence holders for a period of at least five years or more, nor of any work programs associated with those PELs. That comprises a threshold of evidence of "non-performance" which provides satisfactory justification for these licences to either be cancelled or not renewed.

c) Minimum Standards for Community Consultation

The Procedure states that the licence holder's *"work program must include details of the estimated expenditure and proposed activities for effective community consultation over the term of the title"* prepared in accordance with the Government's *Guideline* and to comprise:

- a community consultation forum
- an annual community update to be distributed to stakeholders (including local councils)
- a dedicated webpage
- a dedicated contact officer and their contact details
- easy to understand Technical Information

Council is unaware of any Community Consultation at all regarding the 3 PELs within the LGA. If any exploration activity has been undertaken, the licence holder would be in significant breach of the Procedure, the Community Consultation Guideline and their licence.

Further, Council recalls a Department of Trade and Industry Compliance Audit of Petroleum Exploration Licences was undertaken in 2014 which *"identified a number of non-compliances which appeared to be common across a significant number of titles"*. Those non-compliances included *"Community Consultation reports are not submitted within the required timeframe"*.

Council therefore views these community consultation issues as an ongoing and recurrent problem in a demonstrably recalcitrant sector.

3. Specific Concerns regarding Hunter Gas Pty Ltd, joint holder of PEL 456

The Procedure details Minimum Standards for both Technical and Financial Capability for PEL holders. Applicants must demonstrate with evidence:

1. Access to the appropriate and relevant technical experts
2. The financial capacity to engage any expertise required
3. The ability to comply with the regulatory requirements

Applicants must also demonstrate they possess or can secure the required finances to meet their work program expenditure, in addition to commitments and liabilities on all titles held in NSW. They must provide a *'statement of financial capability'* including a *'statement of financial history'*.

The initial gas rush of the early 2000s saw regional NSW inundated by a plethora of grifters and speculators posing as reputable gas companies. The reputational damage inflicted on the gas industry by the poor work practices of those companies persists strongly to this day.

The Procedure's Minimum Technical and Financial Standards are a considered response by the Government to ensure industry participants are indeed suitably qualified and resourced to undertake exploration activity. However, if the provisions of the Procedure are not followed but are instead ignored by the Regulator, Minister and Licensees they effectively become meaningless.

Has either Hunter Gas Pty Ltd or Kerogen Investments No. 1 (HK) Ltd, the Foreign shelf company that majority owns it, demonstrated to the satisfaction of the Minister that the companies do indeed meet the Minimum Technical and Financial Standards required to hold a PEL in NSW?

Section 4 of Schedule 1B of the POA expressly gives the Minister discretion to seek further *"information as to the extent to which the controlling power in the body corporate's affairs is held by a foreign company"* as in the case of Hunter Gas. Has the Minister sought further information?

Further, it is unclear to Council whether condition 45 of PEL 456 - which required prior written Ministerial approval of the acquisition of the licence - was satisfied on this occasion?

4. Other Matters for Consideration by the Committee

a) The "Use it or Lose it" Provisions of the Petroleum (Onshore) Act 1991

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% of the size of the licence area originally granted or the area over which its previous renewal was granted.

This is known as the 'Use it or lose it' provision. Title holders can apply to the Minister for a variation to this relinquishment by writing to the Minister detailing why *'Special Circumstances'* exist in respect of their application. The Procedure goes into detail as to what does and what does not constitute a *'special circumstance'*. Apathy and inactivity are not considered legitimate special circumstances.

Council is not aware of a single instance of a PEL being reduced in size upon its renewal. Not once. Not ever. It would be interesting for the Department to provide a detailed analysis of the land areas of PELs when issued and after renewal.

This issue of the 'Use it or Lose it' provision not being applied (or being routinely avoided via circumstances that are anything but 'special') is not confined to the CSG sector. Coal Exploration Licences [ELs] are subject to a similar provision. However, as with gas, Council is unaware of a single example of when an EL has been reduced in size as part of the renewal process.

Council has two projects with expired coal licences within the shire. Bickham Coal's ELs 5306 and 5888 both expired in May 2017 with renewals applied for and pending and Idemitsu Australia Resources's Assessment Lease (AL19) for the West Muswellbrook Project expired in September 2019 with a renewal applied for and pending.

While Idemitsu has conducted limited exploration activity within the AL, the Bickham ELs have not been explored or worked on for many years and should both be cancelled rather than renewed. If those ELs are renewed the area should certainly not exceed 75% of the original licence.

b) Climate Change and a credible path to Net Zero Emissions by 2050

In 2019 Council resolved to recognise that we are in a state of Climate Emergency which requires urgent action by all levels of government. The NSW Government has a target of net zero emissions by 2050.

CSG is a fossil fuel which generates CO₂ emissions when burned. To continue to explore, develop, extract and burn CSG is fundamentally incompatible with a net zero emissions by 2050 target and a carbon constrained future. The International Energy Agency's recent *Net Zero by 2050* report noted "there will not be a need for new investments in oil and gas fields" and urged Governments to rule them out, stating "Net zero means huge declines in the use of coal, oil and gas".

Further CH₄ is a Greenhouse Gas some 19 times more potent than CO₂. In Australia, fugitive emissions from oil and gas production are estimated to account for about 6.0% of greenhouse gas emissions (source CSIRO).

The NSW Energy and Environment Minister, Matt Kean, has previously stated that "*The business case for gas is on the clock*". In recent comments regarding the proposed \$600M Kurri Kurri gas peaker generator he commented -

"Let's get the facts on the table. Using gas to create electricity is a really expensive way to do it. If you're interested in driving down electricity prices, then you'd be mad to use gas. Those people defending old technologies are the equivalent of defending Blockbuster in a Netflix world"

Council agrees with the Minister's comments and fully supports the plan to rapidly develop Renewable sources for NSW's energy needs. Council is pleased that the Upper Hunter has been included as one of five Renewable Energy Zones in the state's \$32B Net Zero Plan.

In conclusion, the Upper Hunter Shire Council supports the cancellation of the 'zombie' PELs, the cancellation of 'zombie' coal ELs and the development of renewable energy sources in NSW.

Council thanks the Committee for considering this submission.

For any further information, or if the Committee has any questions, please do not hesitate to contact Council.

Yours sincerely

Greg McDonald
GENERAL MANAGER