

Draft NSW EPA Guide for Large Emitters

Centennial Coal Submission – July 2024

We appreciate the opportunity to make a submission on the *NSW EPA Guideline for Large Emitters - Draft for Consultation (Draft Guide)*. We value the engagement on this crucial matter. We would like to formally raise our concerns that the Draft Guide is one component of an overall incomplete framework that is difficult to interpret and apply without the context and intent of the other missing component parts. In its current form, the Draft Guide unnecessarily complicates an already complex regulatory framework where proponents (and therefore investors) are left with a high degree of uncertainty regarding the Draft Guide expectations. Contributing to the complexity is that it is apparent that the Draft Guide does not serve to compliment the existing Commonwealth's safeguard mechanism, rather in its current form, it serves to complicate requirements, reporting and Project assessment leaving proponents confused and constrained.

Centennial Coal Company Pty Limited (**Centennial**), a key player in the energy sector in New South Wales, recognises the importance of energy security and the need for sustainable reforms within the industry. Our operations in the Lithgow and Lake Macquarie local government areas play a pivotal role in ensuring a reliable supply of coal. This is vital for the stability of the energy sector in our regions and vital to support the energy transition to renewables. We are increasingly concerned about the imminent threat to these operations as a result of the escalating impacts associated with the Draft Guide.

Over the last two decades Centennial has been trialling and implementing a wide range of greenhouse gas abatement measures, including energy efficiency initiatives, engine upgrades, electric vehicles and behind the meter renewables. Centennial has trialled and implemented a wide range of fugitive emissions abatement initiatives such as power generation, flaring, ventilation air methane studies and improvements in gas drainage management and efficiency.

Centennial is actively pursuing further carbon abatement and offsetting opportunities to reduce net greenhouse gas emissions in line with both voluntary and regulated emission reduction targets through site-specific studies and collaborate industry work through bodies such as ACARP and Low Emissions Technology Australia.

It has been our experience that greenhouse gas assessment requirements have changed substantially from project to project in recent years. Centennial supports efforts to deliver greater consistency and certainty in the requirements for greenhouse gas assessments through the Draft Guide. However, Centennial believes that the current form of the Draft Guide unnecessarily complicates an already complex regulatory framework. Additionally, there are numerous areas where uncertainty remains high regarding proponents' expectations.

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Key issues and recommendations

- **Incomplete policy framework** - The interpretation and application of the Draft Guide hinge on other parts of the policy framework that are still under development. These include the licensing conditions policy, the Climate Change Mitigation and Adaptation Guide, sector emission targets, best practice guidance, and the General Greenhouse Gas Assessment Guide. The absence of these components makes it challenging to evaluate the full implications of the Draft Guide, leading to uncertainties in its implementation. At a minimum, the associated nominal “standard” development consent conditions and Environmental Protection Licence (EPL) conditions should be published for consultation and finalised before implementing the Draft Guide.
- **Application of the Draft Guide to projects already under assessment** - Requiring projects that have already received Secretary’s Environmental Assessment Requirements (SEARs) to adhere to the Draft Guide is unjustified, especially considering the complexity of these requirements. Moreover, there are doubts about the legal basis for such a mandate. The Draft Guide should only be applicable after its finalisation, and the corresponding Climate Change Assessment Requirement (CCAR) should be included as part of the SEARs at the beginning of the application process.
- **Threshold for ‘high emitter’** - The definition of ‘large emitter’ should be consistent with the threshold used in the Commonwealth’s Safeguard Mechanism, that is 100,000 tonnes CO₂e. The current thresholds are too low and may encompass projects that could be more appropriately addressed under the General Greenhouse Gas Assessment Guide. The distinction in regulatory frameworks between facilities subject to the Safeguard Mechanism and those that are not provides a suitable basis for implementing different assessment requirements at the State level.
- **Project emissions reduction goals** - The Draft Guide creates an over-complicated framework for establishing project-specific emissions reduction goals based around yet-to-be established industry-sector emission reduction targets. This creates a high degree of uncertainty regarding the expectations of proponents. Safeguard-covered facilities already have regulated emission reduction goals and to be consistent with the EPA’s commitment to avoid conflicting or duplicative approaches with the Commonwealth Government - *“especially the Safeguard Mechanism”*¹ - the Draft Guide should state that emissions goals for a Safeguard-covered facility can align with their Safeguard baseline decline rates, similar to the approach taken in the recently released Queensland Greenhouse Gas Emissions Guideline.
- **Location of offsets** - The EPA’s recent emphasis on the location of offsets in its submission regarding the HVO North and South Open Cut Continuation Project is troubling, as it is unrelated to climate change impacts. Centennial recognises the Government’s problem regarding the current inability to include offsets generated outside of NSW in the state’s emissions inventory. However, imposing restrictions on the national carbon market will only increase compliance costs for NSW industries without yielding any climate benefits. The Draft Guide should eliminate constraints on offset locations, while the NSW Government should focus on addressing the fundamental technical challenges in carbon accounting.
- **Project boundary uncertainty**– The guidance around assessment boundaries is confusing. Centennial suggests more detail is required in the Draft Guide to improve understanding of the

¹ EPA Climate Change Action Plan

intent. The application of the Draft Guide in terms of assessing modification applications is premature given that the definition of the “GHG assessment boundary” is unclear, and there has been no consultation to improve clarity. This may mean that assessments may be inconsistently considered as there is currently no coherent definition or instruction on how to define exactly what the “boundary” is.

In principle, where changes to an existing project are proposed, the Draft Guide should only apply where the changes alone trigger the ‘high emitter’ criteria. For example, minor modifications to an existing ‘high emitter’ project should not trigger the application of the Draft Guide. The proposed ‘project only’ scenario is the only scenario that should be subject to assessment - the process should not be used to revisit an already approved project. An assessment of the existing project was carried out at the time it was originally approved (or in subsequent modifications) and it is inappropriate for that assessment (GHG emissions or otherwise) to be revisited in the context of the new Draft Guide.

- **Best Practice v’s Economically Feasible abatement** - The Draft Guide mandates the application of best-practice design, technology, and abatement measures to mitigate GHG emissions. Box 4 on page 22 outlines parameters for interpreting ‘best practice’. However, the Draft Guide’s definition and guidance on this matter are ambiguous.

Specific best-practice measures and technologies vary widely across the mining industry due to diverse factors such as mining methods, geological conditions, remaining mine life, economic feasibility, equipment types, and replacement cycles. The EPA should refrain from prescribing specific abatement measures and instead emphasize principles for determining best practices tailored to each facility’s unique characteristics. This approach should be grounded in techno-economic assessments.

The EPA needs to clarify the level of detail expected from proponents regarding their internal analyses. This includes whether confidential commercial information should be included and, if so, how it will be handled.

- **Development of Management Plans v’s Strategic Positioning in the Pre-Approval phase of Environmental Impact Assessment** - The Draft Guide mandates the preparation of a GHG Mitigation Plan which should “*cover how low – or zero – emission considerations have been designed into the development proposal to achieve the best outcomes*” and “*these extra measures might be needed, if monitoring shows that a licenced premises is producing more GHG emissions than predicted or allowed for in its consent and licence*”. From the outset, the Draft Guideline provides no detail around what the licence or consent conditions may look like, so if a proponent is required to develop a Management Plan that will need to deal with a matter that is not clearly understood, it makes it very hard to choose the appropriate wording and intent to deal with such a circumstance.

As the EPA is aware, the preparation of EISs can take years to prepare and assess. Mitigation Plans prepared as a component of an EIS may be three or even four years old before the project is approved. Emission reduction technologies are constantly changing and being trialled and what was considered promising three years ago, may now be considered not feasible or simply unsafe. In the context of this ever changing landscape, commitments made in GHG Mitigation Plans may be very unreliable when it comes to implementation given the passage of time. This makes the preparation of a GHG Mitigation Plan fraught with danger and requires some “crystal balling” which may be open to stakeholder scrutiny, and in some cases, issues around “greenwashing” may eventuate.

Furthermore, it is unclear whether the GHG Mitigation Plan will be subject to compliance action. For the same reasons given above, stipulated detail around the application of emissions

reduction designs considered years prior to actual implementation could be dangerous and compliance against commitments could be problematic. As is typical practice for an EIS process, it would be better to require strategic positioning at the Project's assessment phase and leave the development of Management Plans, subject to compliance, to the post approval / conditioning phase of the Project assessment process.

Thank you for your attention to this matter. We sincerely hope that you will give due consideration to our concerns and request. Centennial believes that the current version of the Draft Guide needlessly complicates an already intricate regulatory framework. If implemented in its current form, it would provide further uncertainty for the already stretched energy sector in NSW.

We appreciate your continued support for the energy sector and the efforts being made to achieve a sustainable future.