



Draft NSW EPA Guide for Large Emitters

NSW Minerals Council Submission – July 2024

The NSW Minerals Council (NSWMC) supports the Commonwealth and NSW targets to reach net zero greenhouse gas emissions by 2050.

Over the last two decades the NSW mining industry has trialled or implemented a wide range of greenhouse gas abatement measures, including energy efficiency initiatives, biofuels, engine upgrades, electric vehicles, behind the meter renewables and renewable power purchase agreements. The coal sector has implemented a range of fugitive emissions abatement initiatives such as power generation, flaring, ventilation air methane studies and improvements in gas drainage management and efficiency.

The industry 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. This work is being undertaken through site-specific studies and collaborative industry initiatives through bodies such as ACARP, Low Emissions Technology Australia, and the Electric Mine Consortium.

Greenhouse gas assessment requirements have changed substantially from project to project in recent years. NSWMC supports efforts to deliver greater consistency and certainty in the requirements for greenhouse gas assessments through the draft NSW EPA Guide for Large Emitters (Draft Guide).

However, NSWMC's overarching view is that the Draft Guide unnecessarily complicates an already complex regulatory framework. There are several areas that leave a high degree of uncertainty regarding the expectations of proponents and Safeguard-covered facilities are required to develop separate commitments that are inconsistent with their existing regulatory obligations.

Key issues and recommendations

- **Incomplete policy framework** - The interpretation and application of the Draft Guide relies on other aspects of the policy framework that are yet to be developed, including the licensing conditions policy, the Climate Change Mitigation and Adaptation Guide, sector emission targets, guidance on best practice and the General Greenhouse Gas Assessment Guide. Without these components of the policy framework in place it is difficult to interpret the Draft Guide and understand how it fits within the broader policy framework. At the very least, the accompanying consent and EPL conditions policy should be released for consultation and finalised before the implementation of the Draft Guide.
- **Application of the Draft Guide to projects already under assessment** - Requiring proponents and the IPC to have regard to the draft guide for projects that have already had Secretary's Environmental Assessment Requirements (SEARs) issued is unreasonable, given the complexity of the new requirements and the high potential for them to change following the public consultation process. Furthermore, the legal basis for doing so is questionable, as detailed later in this submission. The Draft Guide should only apply once it has been finalised and the relevant Climate Change Assessment Requirement (CCAR) has been incorporated as part of the SEARs at the commencement of the application process.

- **Lack of alignment with Safeguard Mechanism** – The EPA’s Climate Change Action Plan commits to avoid conflicting or duplicative approaches with the Commonwealth Government, *“especially the Safeguard Mechanism.”*¹ However, there is no alignment between the Draft Guide and the Safeguard Mechanism, which will result in duplicative and conflicting requirements. This includes:
 - **Threshold for ‘high emitter’** - The definition of ‘large emitter’ should align with the threshold for the Safeguard Mechanism. The current thresholds are low and will capture projects that could be more appropriately covered by the General Greenhouse Gas Assessment Guide. There is a clear difference in the regulatory framework between Safeguard and non-Safeguard facilities that is a suitable trigger for differing 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 that consider a combination site-specific baselines, industry-average emission intensities, and decline rates reflecting economy-wide emission reduction targets. 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](#).
 - **‘Preference’ for NSW offsets** - The significant focus on the requirement for offsets to be located in NSW in the EPA’s recent submission on the HVO North and South Open Cut Continuation Project² is concerning, given the location of offsets within Australia has no relevance to climate change impacts. NSWMC acknowledges the Government’s predicament that *“under current frameworks, offsets generated outside of NSW cannot be counted in the NSW emissions inventory”*. However, interfering in the existing national carbon market will layer additional compliance costs on NSW industry with no corresponding climate benefit. The Draft Guide should remove constraints on the location of offsets and the NSW Government should turn its attention to resolving the underlying technical carbon accounting issues.
- **Technical and economic aspects of deploying the mitigation hierarchy** – The Draft Guide provides limited acknowledgement of the techno-economic aspects proponents consider as part of determining which measures from the mitigation hierarchy are reasonable and feasible to deploy. Proponents must be able to undertake rational economical decision making to determine how to deploy the mitigation hierarchy. It is crucial for GHG policies to acknowledge this to be effective.
- **Guidance on the acceptability of emission goals and offset strategies** – The Draft Guide requires a large volume of information to be prepared but there is little detail as to what will be considered acceptable in terms of emission goals and offset strategies. This leaves proponents uncertain as to what they are aiming for and gives assessing agencies seemingly unfettered discretion to determine what is acceptable. This uncertainty could be easily addressed for Safeguard-covered facilities by aligning requirements with the Safeguard mechanism.

NSWMC’s detailed comments and recommendations are contained in the attached table.

NSW Minerals Council

¹ EPA Climate Change Action Plan

² <https://majorprojects.planningportal.nsw.gov.au/prweb/PRRestService/mp/01/getContent?AttachRef=SSD-11826621%2120240523T223757.609%20GMT>



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Attachment – NSW Minerals Council Comments and Recommendations

#	Issue	NSWMC Comments	Recommendation
1	Incomplete policy framework	The Draft Guide refers to, and in some cases relies upon, multiple other policies and guidelines that have not yet been released for consultation. This makes it very difficult to understand key requirements in the Draft Guide, how the Draft Guide fits within the broader policy framework, and the practical implementation of the Draft Guide's requirements in consent and license conditions. The relevant components include: • Licensing conditions policy • Industry-sector emissions trajectories • Best practice guidelines • Climate Change Mitigation and Adaptation Plan Guide • General Greenhouse Gas Assessment Guide	These other aspects of the policy framework should be released for consultation before the Draft Guide is finalised. At the least, the proposed development consent and EPL conditions need to be released for consultation as soon as possible and well before the Draft Guide is finalised.
2	Application of the Draft Guide to existing assessments	The EPA intends to apply the Draft Guide and CCARs immediately to all development and modification assessments, including those already under assessment. Furthermore, recent correspondence between Ministers and the IPC has requested assessing agencies and the IPC to have regard to the Draft Guide.³⁴ This is despite the Draft Guide and CCARs undergoing public consultation until 1 July 2024 with potential refinements and changes occurring post-consultation. The EPA states that this approach is consistent with that used for draft State Environmental Planning Policies (SEPP). However, the nature of the Draft Guide and CCARs is different to SEPPs. A SEPP is a type of environmental planning	The Draft Guide should only apply to development and modification applications once it has been finalised and the relevant CCAR has been incorporated as part of the SEARs at the <u>commencement</u> of the application process.

³ <https://www.ipcn.nsw.gov.au/resources/pac/media/files/pac/general/2024-policy-documents/nsw-net-zero--letter-from-penny-sharpe-mlc.pdf>

⁴ <https://www.ipcn.nsw.gov.au/resources/pac/media/files/pac/general/2024-policy-documents/signed--min24572--letter-to-ipc-comissioner--nsw-net-zero-redacted.pdf>

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		instrument and there are specific legislative provisions requiring a consent authority to take into account proposed instruments that are, or have been, the subject of public consultation when assessing a development application (see section 4.15(1)(a)(ii) of the EP&A Act). In many circumstances, SEPPs and amending SEPPs include savings and transitional provisions that exclude the application of the new SEPP provisions to development applications or modification applications made, but not finally determined, on commencement of the SEPP provisions. The case law is clear as it applies to section 4.15(1)(a)(ii) of the EP&A Act.⁵ The general rule is that the extent to which a draft proposed instrument should be considered is related to its <u>certainty and imminence</u>. In <i>Terrace Tower</i>, the court clarified that “‘Imminence’ indicates close temporal proximity of application, but stops short of ‘presence’ or ‘arrival’” (at [51]). Even if the Draft Guide was to be treated the same as a SEPP, the consent authority should give it little weight given that the Draft Guide is still on exhibition and its finalisation is neither certain nor imminent. Requiring compliance with the Draft Guide and CCARs for project assessments that have already substantially progressed or where SEARs have already been issued is unreasonable, particularly given the complexity of the requirements and the fact they may change. Arguably, the assessing authority is at liberty to disregard the Draft Guide, particularly where the SEARs have not been amended by written notice pursuant to section 176(3) of the <i>Environmental Planning and Assessment Regulation 2021</i> (EP&A Reg).	
3	Threshold to be considered a ‘high emitter’	The Draft Guide applies to projects likely to emit a total of 25,000 tonnes or more of combined Scope 1 and 2 emissions (CO₂-e) in any financial year during the operational life of the project. These thresholds will capture projects that could be more appropriately covered by the General Greenhouse Gas Emissions Guide that the EPA is preparing.	The ‘high emitter’ trigger in the Draft Guide should be aligned to the Safeguard Mechanism threshold of 100,000 tonnes or more of Scope 1 emissions (CO ₂ -e)

⁵ *Architects Haywood and Bakker Pty Ltd v North Sydney Council* [2000] NSWLEC 138 at [33]; *Terrace Tower Holdings Pty Ltd v Sutherland Shire Council* [2003] 129 LGRA 195 at [5]; *120 Smith Pty Ltd v Campbelltown City Council* [2021] NSWLEC 1086 at [40]; *Blackmore Design Group Pty Ltd v North Sydney Council* [2001] NSWLEC 279.

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		It would be logical for the 'high emitter' guide to apply to projects likely to be covered by the Safeguard Mechanism. There is a clear difference in the regulatory framework between Safeguard and non-Safeguard facilities that justifies differing assessment requirements at the State level. The Western Australian Environment Protection Authority's Environmental Factor Guideline on greenhouse gas emissions applies to facilities with GHG emissions that are reasonably likely to exceed: • 100,000 tonnes CO₂-e of scope 1 emissions in any year; or • 100,000 tonnes CO₂-e of scope 2 emissions in any year. These thresholds are better aligned to the Safeguard Mechanism trigger.	If the EPA considers that a scope 2 emissions trigger is required a second trigger of 100,000 tonnes of scope 2 emissions could be included.
4	Requirements for scope 2 emission reduction targets	Recent SEARs have stated that <i>"Specifying and reporting on Scope 2 and Scope 3 emission reduction targets are encouraged but not required."</i>⁶. This contradicts the Draft Guide, which states <i>"Proponents are also required to specify goals for scope 2 emissions."</i> (p29). The Draft Guide needs to provide guidance around what is expected of proponents in relation to scope 2 goals. NSWMC notes that the definition of 'meaningful contribution' under the Draft Guide only refers to scope 1 emissions. Due to the indirect nature of scope 2 emissions and the reliance on the grid's emission factor, scope 2 emissions are largely outside the control of the proponent and there is some doubt as to whether any requirement imposed on a statutory approval like a development consent or EPL that seeks to address scope 2 emissions is lawful.⁷ All of mining's scope 2 emissions are associated with electricity consumption from the grid. Virtually every mining operation in NSW is connected to the National Electricity Market and the industry's scope 2 emissions are directly linked to the emissions intensity of the electricity grid. Given the NSW and Commonwealth Governments have ambitious policies to rapidly decarbonise the electricity grid, scope 2 emissions will decrease broadly in line with the grid's decarbonisation.	Further guidance around the EPA's expectations for scope 2 goals is needed. Given scope 2 emissions are largely outside of the direct control of facilities, requirements should align with recent SEARs where scope 2 goals are encouraged but not mandatory. The Draft Guide should clearly state which assumptions regarding decarbonisation of the electricity grid should be used by proponents in their assessments, and the basis of Scope 2 emissions accounting (location or market based). The Draft Guide should clarify whether the definition of a 'meaningful contribution' to the state's emission reduction targets is intended to include scope 2 emissions reductions.

⁶ For example, Rix's Creek North Continuation Project

⁷ *Hunter Environment Lobby Inc v Minister for Planning* [2011] NSWLEC 221

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		Furthermore, mines have a commercial incentive to deliver energy efficiency measures that will in turn minimise electricity consumption and, in turn, scope 2 emissions. The ability to deliver additional scope 2 emissions abatement through measures such as behind the meter renewables or renewable PPAs will vary for a wide range of reasons, including existing contractual arrangements, availability, commercial payback periods and planning approval requirements. There are several examples of mines already pursuing these measures where they make commercial and technical sense. Several mines are currently having renewable energy certificates (large generation certificates, LGCs) surrendered for part of their electricity use to achieve compliance with the Renewable Energy Target obligations. We note that there are two methods of Scope 2 emissions accounting, the location and the market-based approach, and only the market-based approach allows recognition of renewable PPAs.	The Draft Guide should acknowledge that scope 2 emissions may increase through electrification initiatives.
5	Clarification of the Draft Guide's application to Scope 3 emissions	The Draft Guide's requirements around scope 3 emissions require clarification. While the Draft Guide states that setting goals for scope 3 emissions is encouraged but not mandatory, some aspects are silent on whether they apply to scope 3 emissions (e.g. Step 3 - Select Measures to Avoid and Reduce Emissions, and Step 6 -Offsets strategy). Scope 3 emissions are outside the operational control of facilities. NSW mining operations have virtually no degree of control over the end users of resources that could justify the imposition of scope 3 related conditions. Scope 3 emissions should not be subject to any mandatory requirements for abatement or emissions targets under the Draft Guide. While NSWMC understands this is the intent, it should be clearer throughout the document.	The Draft Guide should clearly state that scope 3 emissions are only required to be identified and estimated over the project life, but no avoidance, mitigation or offset measures are required under the Draft Guide. Proponents will still have the option to make voluntary commitments regarding scope 3 emissions.
6	Discretion over the application of the Draft Guide	The Draft Guide states that the EPA can vary the CCARs if required or apply the CCARs for large emitters to any proposal, regardless of the information provided by the proponent as to whether the project will trigger facility thresholds. (p10) This is at odds with the intent of the Draft Guide to provide greater certainty and consistency around the expectations for GHG emissions assessments.	The Draft Guide should clarify that variations to the requirements in the Draft Guide will only be applied in exceptional circumstances rather than as standard practice, and provide examples of the types of circumstances where variations may be considered.

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7	Interaction with CCMAPs and implementation through consent and licence conditions	The Draft Guide states that it outlines how proponents are to develop a GHG Mitigation Plan, which <i>“will become one component of their Climate Change Mitigation and Adaptation Plan, if/when consent is granted...”</i> (p8) The Draft Guide later states that a <i>“GHG Mitigation Plan for a project proposal can be used as the basis for the first iteration of a licensee’s CCMAP.”</i> (p14) NSWMC understands that the GHG Mitigation Plan is intended to outline the initial approach to GHG mitigation at the time the project commences and will be conditioned in the development consent. NSWMC understands that CCMAPs are intended to evolve over time so they can be updated to reflect changes in best practice, abatement technology, climate change adaptation requirements etc. There is a risk this approach could become duplicative and result in inconsistencies between the two regulatory approvals over time. Practices committed to in a GHG Mitigation Plan and conditioned in approval may be able to be improved at a later date through subsequent reviews of CCMAPs. The EPA should also be cognisant of the significant timeframes between the lodgement of an EIS, the time of development consent, and then the time of the project commencement. These timeframes can extend over multiple years and locking operational management requirements into rigid development consent conditions could be problematic. Another scenario for the EPA to consider is where the application relates to a modification, and there may be a considerable length of time between the approval of the modification and the commencement of work associated with the modification, while existing operations continue.	The EPA should release the draft condition policy before the finalisation and implementation of the Draft Guide and carefully consider the interaction between consent conditions and license conditions. The Draft Guide needs to clarify the distinct purposes and interaction between the GHG Mitigation Plan and CCMAP over the life of a project.
8	Application of the Draft Guide to modifications of existing activities (Step 1)	The sections of the Draft Guide relating to its application to modifications are unclear and difficult to comment on. The term ‘modification’ is used to describe both physical changes to an existing project and the legal process of modifying consents under the EP&A Act. Consideration should be given to reviewing the terminology used in these sections. The guidance around assessment boundaries is confusing. NSWMC suggests a series of case studies are included in the Draft Guide to improve understanding of the intent.	The EPA should review the sections on modifications to improve clarity and include case studies to demonstrate the intent. 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. The Draft Guide should not

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		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.	require a reassessment of emissions that have already been approved. NSWMC supports the statement that the scope 1 emission projections comparisons requirements are limited to the 'project only' scenario (Step 5, section 4.5.3). However, the same principle should be included in relation to: - the setting of long term and interim GHG emissions goals which is also required in Step 5 (section 4.5) - the development of an offsets strategy in Step 6 (section 4.6).
9	Implementation of 'best practice' (Step 3)	Step 3 (Section 4.3) of the Draft Guide requires the application of best-practice design, technology and abatement measures to avoid and reduce GHG emissions. Box 4 on page 22 sets out parameters on how 'best practice' might be interpreted. However, the definition and guidance in the Draft Guide is vague. Specific 'best practice' measures or technologies will vary substantially across the mining industry due to a wide range of variables including mining methods, geology, remaining mine life, payback periods, equipment types and equipment replacement cycles. The EPA should avoid prescribing certain abatement measures and instead focus on the principles for identifying best practice based on an individual facility's characteristics. The Draft Guide provides limited acknowledgement of the techno-economic aspects proponents consider as part of determining which measures from the mitigation hierarchy are reasonable and feasible to deploy. Proponents must be able to undertake rational economical decision making to determine how to deploy the mitigation hierarchy. Safeguard-covered facilities have commercial incentives to identify and adopt financially and technically viable best practice mitigation measures that take into account the specific circumstances at an individual facility. Companies	The Draft Guide should outline the level of detail it expects proponents to provide on their assessments of best practice mitigation options. The Draft Guide should acknowledge that the application of the mitigation hierarchy should be centred on a rational technical and economic assessment of mitigation options. The EPA should consult further with the industry around the definition of best practice, which should be based on principles rather than prescribing specific technologies.

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		undertake detailed internal analysis of abatement options, which is regularly reviewed and updated. The EPA should be clear about the level of detail that it expects proponents to provide on their internal analysis, while being conscious of the potential confidentiality of some information.	
10	Requirement to address Net Zero Act Guiding Principles (Steps 2-6 and 8)	The Draft Guide requires proponents to address all relevant guiding principles in section 8 of the Net Zero Act and document how the principles have been met and if they have not been met, why not. Further, Appendix D of the Draft Guide provides a GHG Mitigation Plan template requiring the above information to be included. However, the guiding principles are intended to guide decision making, policy and legislative development at a NSW Government level. The Net Zero Commission established under the Net Zero Act must consider the guiding principles when exercising its functions and may provide advice and make recommendations to the Minister in relation to the guiding principles. It is not appropriate for those same guiding principles to be considered by a proponent in respect of a specific project. An example of a guiding principle is set out in section 8(4)(a) – (b) of the Net Zero Act as follows: (4) <i>Action to address climate change should be taken in a way that—</i> (a) <i>is fiscally responsible, and</i> (b) <i>promotes sustainable economic growth, and</i> (c) <i>considers the economic risks of delaying action to address climate change, and</i> (d) <i>considers the impact on rural, regional, and remote communities in New South Wales.</i>	The requirement for a proponent to address and document compliance with the guiding principles of the Net Zero Act should be removed from the Draft Guide.
11	Emissions goals for the project (Step 5)	The Draft Guide requires the proponent to demonstrate that it has made a meaningful contribution to the emissions reduction goals of NSW. A meaningful contribution is defined as: <i>...an expectation that the project's scope 1 emissions would reduce at a comparable rate to the relevant industry-sector emissions trajectory, or if this does not exist, to the overall NSW net zero emissions trajectory</i>	For Safeguard-covered facilities, the Draft Guide should use Safeguard baseline decline rates as the basis for setting project emissions reduction goals rather than establishing an entirely separate methodology.

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		(Box 9). Proponents should compare the average annual percentage change in project emissions to 2030 and 2035 relevant to the average annual percentage change in the relevant industry-sector or overall NSW net zero emissions trajectory over these time frames, and note any project related emissions projected for 2050. NSWMC is unaware of industry sector emissions trajectories having been developed and it is unclear when this will occur. However, the Draft Guide notes that <i>“While the NSW Government has set overarching emission reduction objectives for the State, it is neither intended nor feasible for all sectors of the NSW economy to reduce their emissions at the same rate.”</i> (Box 9, p29) This statement recognises that some sectors are ‘hard to abate’, such as mining⁸. It could be reasonably assumed that these sectors’ emissions reduction trajectories will initially lag that of the overall economy. It is therefore unclear how close to the overall NSW net zero emissions trajectory a project should be in the absence of an industry-sector emissions trajectory. As a result, the Draft Guide creates an over-complicated framework for project-specific emissions goals that creates a high degree of uncertainty, has questionable benefits and leads to potential inequities between projects assessed before and after the setting of the industry sector targets. NSWMC notes that the EPA Climate Change Action Plan states (our emphasis): <i>In particular, we will work closely with our NSW and Commonwealth Government colleagues to <u>ensure our climate change approaches complement (and do not conflict with or duplicate) actions already taking place under the NSW Net Zero Plan, and any actions being taken by the Commonwealth Government, especially the Safeguard Mechanism.</u></i> The EPA should look to use the Safeguard Mechanism as the basis for setting project-specific emissions reduction goals rather than developing an entirely new methodology.	This aligns with Queensland’s Greenhouse Gas Emissions Guideline⁹, which states that <i>“For projects captured by the Commonwealth Safeguard Mechanism, the emission reduction targets may be determined by the Safeguard Mechanism.”</i> (p25) The definition of ‘meaningful contribution’ should be clarified to specify it relates to <u>net</u> emissions given NSW’s emission reduction targets are net targets. The Draft Guide should clarify the varying use of the terms ‘meaningful’ and ‘fair and reasonable’. For consistency, NSWMC recommends the use of a single term and that ‘fair and reasonable’ is a more appropriate term.

⁸ <https://www.cefc.com.au/insights/market-reports/mining-in-a-low-emissions-economy/>

⁹ https://www.desi.qld.gov.au/policies?a=272936:policy_registry/era-ql-greenhouse-gas-emissions.pdf

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		Furthermore, the definition of ‘meaningful contribution’ should specify that it relates to <u>net</u> emissions. Comparing a project’s gross emissions to a net emissions target is not a like for like comparison. NSWMC notes that the Draft Guide states that “<i>under EPA’s Licensing Conditions Policy (currently being drafted by the EPA) licensees are expected to make <u>fair and reasonable</u> contributions to NSW achieving its economy-wide greenhouse gas emission reduction targets.</i>” This is different terminology to ‘meaningful’.	
12	Access to NSW Government’s Net Zero Forecast assumptions (Step 5)	The Draft Guide requires proponents to compare projects against the NSW emissions reductions projections and relevant IPCC sectors and subsectors (p28). In addition to this, NSWMC notes that DCCEEW’s Net Zero Modelling Team is providing information on emissions forecasts in submissions during project assessments. These forecasts are based on a range of assumptions about industry developments, often including assumptions about the project itself. It is important that there is transparency regarding these assumptions for proponents, over and above the methods papers. We also note that the Net Zero forecast may not fairly reflect the net emissions position of NSW Safeguard facilities, due to carbon accounting technicalities which are discussed further below.	Provide a mechanism for proponents to engage with the Net Zero Modelling Team and understand the assumptions underlying the Net Zero Emissions forecasts. Provide a mechanism for the Net Zero Modelling team to reflect the net emissions position of NSW Safeguard facilities and the contribution this makes to NSW targets.
13	Location of carbon offsets (Step 6)	The Draft Guide “<i>requires proponents to prioritise the use of carbon offsets from NSW-based offset projects</i>” but goes on to state that “<i>If required, offset projects in other Australian locations may be used.</i>” (p6) Subsequent to the release of the draft guide, the EPA lodged a submission on the HVO North and South Open Cut Coal Continuation Project.¹⁰ A substantial part of the EPA’s submission is devoted to the EPA’s concern that “<i>under current frameworks, offsets generated outside of NSW cannot be counted in the NSW emissions inventory</i>” and relying on them may require “<i>other parts of the NSW economy to compensate by making deeper emissions cuts for the state to</i>	The NSW Government should work to resolve the limitations in carbon accounting frameworks to ensure interstate offsets can count towards NSW emission reduction targets. The requirement to prioritise NSW offsets should be removed from the

¹⁰ <https://majorprojects.planningportal.nsw.gov.au/prweb/PRRestService/mp/01/getContent?AttachRef=SSD-11826621%2120240523T223757.609%20GMT>

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		<i>remain on track with the NSW Government's target of net zero emissions by 2050."</i> While NSWMC acknowledges the Government's predicament, it is concerning that this carbon accounting technicality is driving increasing complexity in NSW climate policy and potentially imposing higher compliance costs on NSW industry. Restricting the supply of offsets to those generated in NSW has the potential to: • distort the national carbon credit markets, driving ACCUs to be generated in locations that may not be the most efficient; • disadvantage NSW proponents in that they will have limited access to the wider national market, which may restrict future liquidity in the market; • require companies with multiple facilities across Australia to redesign their greenhouse gas mitigation strategies, since it hampers their ability to use a portfolio approach whereby offsets and Safeguard Mechanism Credits are managed at the corporate level; • create risks for proponents in their ability to source the required number of carbon credits, noting that the Clean Energy Regulator has warned in a recent letter to Safeguard facilities <i>'As baselines tighten, it is expected that demand for both ACCUs and SMCs will increase and, consequently, it is possible that the market will tighten'</i>; • potentially limit the ability for proponents to utilise the Cost Containment Measure under the Safeguard legislation (where proponents may purchase carbon credits from the Commonwealth government at a set purchase price) in the event there are not sufficient carbon credits available through that scheme that have been generated in NSW; and • undermine the proponent's and independent expert reviewer's ability to predict if offsets will be available at the relevant points in time during the project's life, as required under the Draft Guide. While NSWMC appreciates the NSW Government's desire to obtain the secondary benefits from offsets that <i>"conserve, preserve, protect enhance and manage the NSW environment"</i>, this should be a secondary consideration to the ability to deliver net emissions reductions at least cost. There is a seemingly unfettered discretion for the EPA to determine whether an offsets strategy is acceptable. By way of example, the test or relevant matters to	Draft Guide. If not, at the very least the Draft Guide should reflect the language in the Western Australian Guide such as: <i>Consideration should be given to whether carbon offsets conserve, preserve, protect, enhance and manage the NSW environment.</i> The EPA should present its analysis of offsets supply and market impacts of any proposed additional restrictions on offsets.

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		be taken into account is unclear, making it difficult to industry to understand the appropriate volume of NSW offset units or the extent of efforts required to obtain NSW offset units. Similarly, the consequences for failing to meet these obligations are uncertain. Resolving the limitation in the national carbon accounting framework would ensure that any eligible offsets from any part of Australia could be counted in the NSW emissions inventory and remove the need to consider this issue in individual project assessments.	
14	Form and content of offsets strategy (Step 6)	The Draft Guide states that proponents <i>“must develop an offsets strategy that specifies the eligibility and projected timing of offsets to be acquired and cancelled.”</i> (p30). Furthermore, the expert reviewer <i>“must consider whether suitable offsets are likely to be available at the time of the proposed acquisition and cancellation of such offsets.”</i> (p31) Mining project approvals often extend over several decades. It is unreasonable to expect that offset strategies can be prepared with a high level of confidence over the entire project life. Additionally, decisions to avoid, reduce, substitute or offset emissions are iteratively made and reviewed over a project life depending on which measures are reasonable and feasible. As such it is not possible to develop an accurate offset strategy as abatement/reduction measures may be deployed instead.	The Draft Guide should provide additional guidance in respect of the form and content of the required offsets strategy. The guidance should: • outline a realistic length of time that offset projections must be provided for; • require proponents to outline the processes they intend to implement to ensure compliance obligations are met; • confirm that Safeguard Mechanism Credits can be generated and used as part of an offsets strategy, in line with the Queensland Greenhouse Gas Emissions Guideline. While NSWMC believes restrictions on the location of offsets should be removed from the Draft Guide, if they were to be retained in any way, the Draft Guide should provide parameters around the type of offset units that conserve, preserve, protect, enhance, and manage the NSW environment, as well as the circumstances in which offsets from other Australian locations

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			may be used. The relative costs of NSW and interstate offsets must be a consideration.
15	Confidentiality and disclosure of information on offset strategy (Step 6)	Development application documents are made publicly available. Therefore, unless appropriate confidentiality and disclosure of information protections are put in place (which are not contemplated in the Draft Guide), market sensitive information relating to offset strategies could be made publicly available. This could have unintended consequences for competitiveness and could also have negative implications for the integrity of the ACCU market by impacting upon supply and cost.	The Draft Guide should outline how it proposes to address confidentiality issues.
16	Independent review requirements (Step 7)	Any project that is expected to exceed 100,000 tonnes of CO₂-e per year at any time over the operational life of the project requires the mitigation assessment to be verified by an independent expert reviewer. Further, if offsets are proposed to be used, then the independent expert reviewer must consider whether suitable offsets are likely to be available at the time of the proposed acquisition and cancellation of such offsets. There are likely to be limited experts available with the relevant qualifications and satisfying the <i>“actual or perceived conflict requirement.”</i> The Draft Guide indicates that <i>“an independent expert is a person who is independent from the proponent and does not have (or intend to have) any material or significant dealings with the proponent (or an associated entity) that could interfere with the exercise of independent judgment.”</i> This definition may prevent an expert who has previously dealt with the proponent, or is dealing with the proponent on a separate project from acting as an independent expert reviewer. It could also exclude professional service firms such as large accounting firms who may perform audit services for a proponent or their related bodies corporate. It is common in project approvals for independent audits to be undertaken in respect of environmental performance within one year of commencement of the project and on a regular basis thereafter, for example, every three years. Given that the GHG Mitigation Plan will include requirements for monitoring, reporting	The Draft Guide should provide more detail regarding the “qualifications and experience relevant to best-practice emissions mitigation” and the “qualifications and experience relevant to offset evaluation and procurement and carbon offset markets”¹¹ to guide industry in identifying appropriately skilled experts. The Draft Guide should clarify that the independent expert reviewers must maintain independence in relation to the subject project, rather than the proponent in general. The Draft Guide should state that where an independent expert review is carried out in accordance with the Draft Guide’s requirements, no further independent or peer reviews will be carried out by the

¹¹ EPA Guide for Large Emitters 31.

#	Issue	NSWMC Comments	Recommendation
		and regular reviews during the project lifespan, the GHG emissions aspects of any approval should be excluded from the independent audit requirements.	EPA or DPHI during the assessment process. The EPA and DPHI should ensure that there is no duplication between general independent audit conditions and additional requirements for GHG Mitigation Plans or CCMAPs.
17	Performance monitoring and reporting (p33)	The Draft Guide requires annual reporting against the requirements of the GHG Mitigation Plan. There is a range of existing reporting obligations for mining operations through NGERs and Annual Reviews. NSWMC notes the approach in the Queensland Greenhouse Gas Emissions Guidelines: <i>"There is no intent to duplicate reporting requirements. Where companies are already reporting GHG emissions under another framework, this section can refer to that reporting."</i>	The Draft Guide should specify that reporting can be integrated into existing reporting undertaken by proponents.
18	'Anticipated' regulatory obligations	There are multiple references to proponents having to account for 'anticipated' regulatory obligations (p17, 27 and 52)	The Draft Guide should clarify that this requirement relates to the current regulatory framework, not what is anticipated to emerge at some point in the future.