Low Emission Technology Australia

Submission to the draft *NSW EPA Guide for Large Emitters, May 2024* (the Draft Guide)

Key points

- Low Emission Technology Australia (LETA) is a A$700 million fund established in 2006 by the Australian black coal industry to invest in a range of technologies that significantly reduce greenhouse gas emissions and support the transition to a low emission global economy, in line with the Paris Agreement and Australia's emissions reduction targets.
- LETA is a member of the NSW EPA Climate Change Mining Advisory Group (CCMAG) and welcomes the opportunity to provide a submission to the draft *NSW EPA Guide for Large Emitters, May 2024* (the Draft Guide). Our membership of the CCMAG has informed our comments on the Draft Guide.
- At a high-level, LETA's view is that the Draft Guide as presented risks inappropriately complicating an already detailed regulatory framework and that there are sections of the Draft Guide that will need to be clarified and simplified to provide a greater degree of certainty to project proponents as to the requirements they will need to meet to carry out a *Greenhouse Gas Assessment* and prepare a *Greenhouse Gas Mitigation Plan.* This includes:
- The application of the Draft Guide appears to rely 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 available to review it is difficult to assess the overall implications of the Draft Guide, and its implementation will remain subject to uncertainty.
- Requiring projects that have already had Secretary's Environmental Assessment Requirements issued to comply with the Draft Guide is inappropriate, particularly given the complexity of the requirements. The Draft Guide should only apply once it has been finalised and the relevant Climate Change Assessment Requirement has been incorporated at the start of the application process.
- The definition of 'large emitter' under the Guide should be revised to align with the threshold for a facility to be included under the Australian Government's Safeguard Mechanism. The thresholds proposed are inappropriately low and will capture projects that could be more appropriately covered by the General Greenhouse Gas Assessment Guide.
- The Draft Guide creates a complicated framework for establishing project-specific emissions reduction goals based on yet-to-be released industry-sector emission reduction targets. This creates a high degree of uncertainty for project proponents. Facilities covered by the Safeguard Mechanism, for example, already have regulated emission reduction goals in place (in the case of coal mining, for example, baselines are reduced by 4.9 per cent each year, commencing in 2023-24). To remain consistent with the NSW EPA's commitment to avoid conflicting or duplicative approaches with the Australian Government, the Draft Guide should confirm that emissions reduction requirements for a facility covered by the Safeguard Mechanism can align with those baseline decline rates.
- The focus on the location of offsets in the Draft Guide and in other recent NSW EPA activity is inappropriate. While the Guide could express a preference for NSW located carbon offset projects, it should not seek to distort the operation of the emerging national carbon market, that exists to drive abatement projects across Australia, including in NSW, and to provide for consistent and cost-effective emissions abatement options for project proponents, including in NSW.

1. Introduction

Low Emission Technology Australia (LETA) is a A$700 million fund established in 2006 by the Australian black coal industry to invest in a range of technologies that significantly reduce greenhouse gas emissions and support the transition to a low emission global economy, in line with the Paris Agreement and Australia's emissions reduction targets. This includes the NSW Government's commitments to a 50 reduction in greenhouse gas emissions on 2005 levels by 2030, a 70 per cent reduction on 2005 levels by 2035 and net zero greenhouse gas emissions by 2050.

LETA partners with government, research institutions, universities and industry locally and internationally to develop projects that can, over time, reduce and remove greenhouse gas emissions from large scale industrial processes, including in NSW, such as power generation, steel and cement manufacturing, mining, and future energy sources such as cleaner (low carbon) hydrogen.

LETA's submission addresses specific aspects of the Draft Guide, informed by its membership of the NSW EPA Climate Change Mining Advisory Group.

At a high-level, LETA's view is that the Draft Guide as presented risks inappropriately complicating an already detailed regulatory framework. There are several parts of the Draft Guide that will need to be clarified and simplified to provide a greater degree of certainty to project proponents as to the requirements they will need to meet to carry out a *Greenhouse Gas Assessment* and prepare a *Greenhouse Gas Mitigation Plan* that satisfies the NSW EPA's expectations.

The following sections provide LETA's comments on relevant aspects of the Draft Guide and recommendations for clarification and improvement to the Draft Guide ahead of its finalisation and publication.

Many of LETA's comments are aligned with the need to ensure consistency between national and State requirements and a need to ensure that requirements in NSW complement actions required at a national level. This is consistent with the NSW EPA's own *Climate Change Action Plan 2023-26*[1], which notes on page 14:

> *In particular, we will work closely with our NSW and Commonwealth Government colleagues to 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. Licensees will not be required to report the same information twice.*

1. Other aspects of the NSW climate change policy framework should be released for consultation before the Draft Guide is finalised

The Draft Guide on pages 5-6 refers to other NSW climate change policies and guidelines[2] that have not yet been released for consultation. This means it is challenging for proponents to assess key requirements of the Draft Guide, how the requirements in Draft Guide interact with the broader NSW and national policy framework, and various aspects of the practical implementation of the Draft Guide requirements.

These other aspects of the policy framework should be released for consultation, and ideally finalised, before the Draft Guide is finalised.

[1] Available at www.epa.nsw.gov.au/-/media/epa/corporate-site/resources/climate-change/23p4265-climate-change-action-plan-2023-26.pdf.
[2] This includes the EPA's Licensing Conditions Policy, industry-sector emissions trajectories, best practice guidelines, the *Climate Change Mitigation and Adaptation Plan Guide* and the *General Greenhouse Gas Assessment Guide*.

2. The proposed application of the Draft Guide requirements to all development and modification assessments, including those already under assessment, is inappropriate

The Draft Guide notes on pages 10-12 that the NSW EPA intends to apply the Draft Guide and its climate change assessment requirements (CCARs) immediately to all development and modification assessments, including those already under assessment.

This is notwithstanding the Draft Guide and CCARs still undergoing public consultation (until 1 July 2024) with this consultation process likely to result in changes to the Guide before it is released in final form.

Immediate application of the Draft Guide and CCARs for project assessments that have already substantially progressed or where SEARs have already been issued is inappropriate.

The Draft Guide and CCARs should only apply to development and modification applications once it has been finalised and the relevant CCAR has been incorporated at the commencement of the application process.

3. The threshold for projects to which the requirements under the Draft Guide will apply should align with thresholds under the Safeguard Mechanism

The Draft Guide notes on page 10 that its requirements are proposed to apply to projects that are 'likely' to emit 25,000 tonnes or more of scope 1 and 2 emissions (CO_2-e) in any financial year during the operational life of the project (based on planned operational throughput and as designed).

These thresholds are low and will capture projects that could be more appropriately covered by the *General Greenhouse Gas Emissions Guide* the EPA is preparing.

The requirements under the Draft Guide should apply to projects that are facilities under the Australian Government's Safeguard Mechanism. There is a difference in the regulatory framework between facilities covered by the Safeguard Mechanism and facilities that are not covered. This differentiation provides an appropriate basis to also to also apply differing assessment requirements at the State level.

It is important to note similar guides developed in other Australian jurisdictions have also considered this issue and the importance of consistency with national approaches. For example, the Western Australian EPA's *Environmental Factor Guideline – Greenhouse Gas Emissions*[3] applies to facilities with greenhouse gas emissions that are reasonably likely to exceed:

- 100,000 tonnes CO_2-e of scope 1 emissions in any year; or
- 100,000 tonnes CO_2-e of scope 2 emissions in any year.

These thresholds are designed to align with the Safeguard Mechanism thresholds.

The 'large emitter' threshold 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). Consideration could be given to including a second threshold of 100,000 tonnes of scope 2 CO_2-e.

4. Further guidance is needed to clarify requirements for scope 2 emission reduction targets

LETA notes several relevant Secretary's environmental assessment requirements (SEARs)[4] released recently have noted specifying and reporting on Scope 2 and Scope 3 emission reduction targets are encouraged but not required. This appears to be inconsistent with the Draft Guide, which

[3] See www.epa.wa.gov.au/policies-guidance/environmental-factor-guideline-%e2%80%93-greenhouse-gas-emissions-0. The thresholds are outlined on page 4 of the EPA WA's Guideline.
[4] www.planningportal.nsw.gov.au/major-projects/assessment/state-significant-development/ssd-process.

states on page 15, and again on page 29, *"Proponents are also required to specify goals for scope 2 emissions".*

This inconsistency requires clarification, including to provide more context around what might be expected of project proponents in relation to scope 2 goals. It remains that case that nearly all of scope 2 emissions from NSW mining, including coal mining, activities are associated with on-site electricity use. In addition, almost every mining operation in NSW is connected to the National Electricity Market (NEM), which means that while individual mine sites may be exploring opportunities to increase their direct of renewable energy sources, it remains that case that the industry's scope 2 emissions reductions are directly linked to the emissions intensity of the NEM and the broader state and national policies driving emissions reductions in the NEM.

This means it is unclear what is expected of proponents in relation to scope 2 emissions goals.

The Guide should provide clear guidance as to the NSW EPA's expectations for scope 2 emissions reduction goals, including the relationship with broader state and national NEM emissions reduction policies, over which individual project proponents have little control.

In addition, while the reference on page 30 to the Corporate Emission Reduction Transparency guidance (published by the Clean Energy Regulator) and the role it can play in provide guidance to project proponents in setting emissions reduction targets is appropriate, any reference to a non-government organisation like the Climate Council is inappropriate and should be removed from the final Guide.

5. Further guidance is also needed to clarify requirements for scope 3 emission reduction targets

In addition to further clarity around scope 2 emissions reductions goals and requirements, the Guide should also provide further clarify as to the EPA's requirements for any scope 3 emissions reduction targets.

The Draft Guide states on page 15, and again on page 29, that *"specifying Scope 3 emission goals are encouraged but not required"*. It is not clear whether aspects of the draft Guide apply to scope 3 emissions (for example, it is not clear in the guide as draft whether Step 3 – Select Measures to Avoid and Reduce Emissions, and Step 6 – Offsets strategy is intended to apply to scope 3 emissions).

Australian industry's scope 3 emissions are the scope 1 emissions of Australia's trading partners. Australia's trading partners have their own net zero emissions targets (generally by 2050) and their own interim targets under the Paris Agreement (and requirements to update those emissions over time). This means that they are acting, aligned with their Paris Agreement commitments, to monitor, report, and take action to reduce their scope 1 (and scope 2) greenhouse gas emissions.

The Guide should clearly state that action to reduce or offset scope 3 emissions are matters for the project proponents and not a requirement under the Guide.

6. Application of the Draft Guide to modifications of existing activities should be clarified

The Guide should only apply where the changes proposed trigger the 'large emitter' criteria. For example, minor modifications to an existing 'large emitter' project should not trigger the application of the Guide.

This means proposed 'project only' scenario, outlined on page 16 of the Draft Guide, is the scenario that should be subject to assessment. The requirements 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) under the legislative and regulatory requirements that existed and the time. It would be inappropriate and inconsistent with regulatory good practice for that assessment to be revisited in the context of the new Guide.

Mining operations are sequential and ongoing as new reserves as accessed by existing plant and equipment. In this circumstance, accessing new reserves should not be considered an expansion or modification to existing activities.

In addition, the sections on modifications would benefit from the inclusion of a series of case studies/examples to better explain the intent of these sections (for example, the term 'modification' is used to describe both physical changes to an existing project and the legal process of modifying consents under the *Environmental Planning and Assessment Act 1979* (NSW)) and to provide greater clarity to project proponents.

7. The Guide should not include a requirement to address all relevant guiding principles in section 8 of the *Climate Change (Net Zero Future) Act 2023*

The Draft Guide on page 16 proposes to require proponents *"… to address all relevant guiding principles in section 8 of the Climate Change (Net Zero Future) Act 2023. The proponent must document how the principles (where relevant) have been met, and if they have not been met, why not"* and Appendix D on page 52 includes a GHG Mitigation Plan outline that requires this information to be included.

That said, the guiding principles set out in section 8 of the *Climate Change (Net Zero Future) Act 2023* appear to have been developed to guide decision making, policy and legislative development at a government level. For example, the Net Zero Commission to be established under the Act will consider the guiding principles when exercising its functions and to provide advice and make recommendations to the relevant Minister about the guiding principles.

This means it is not appropriate for the same guiding principles – developed to guide policy and legislative developments – be considered by a project proponent in relation to individual projects. While the guiding principles provide some relevant context for the application of the Guide, the Guide itself should remove references to project proponents being required to address the guiding principles.

8. The Guide should take a principles and objectives-based approach to the implementation of 'best practice'

The Draft Guide on pages 21-22 notes the EPA will consider whether the project includes appropriate best-practice design, technology and abatement measures to avoid and reduce and will require proponents to demonstrate that best-practice measures are to be implemented or provide evidence-based justification for why alternative measures are proposed.

Best-practice (which may be better considered as good practice) measures or technologies can vary substantially across the mining industry, including the coal mining industry, because of differences in mining methods (for example, open-cut or underground), geology, equipment type and use and mine life.

With that in mind, the Guide should avoid prescribing abatement measures and instead take an objectives-based approach by focussing on the principles for identifying best-practice approaches that can then be considered in the context of a facility's often unique characteristics. LETA recommends that this part of the Guide be the subject of further consultation with industry before the Guide is finalised.

Facilities already have significant commercial drivers to adopt best-practice project design and mitigation technologies that are approach in the context of their facilities. These drivers have been reinforced by the recent reform of the Safeguard Mechanism and the significant emissions reduction

obligations it now places on covered facilities, particularly coal mining facilities. This should be recognised in the Guide.

In addition, the Guide should provide greater clarity as to the level of detail that will be required to demonstrate 'best-practice'. LETA notes examples exist in other jurisdictions, such as WA, and that these could inform the approach taken in NSW.

9. The Draft Guide should recognise the role of the Safeguard Mechanism in setting emissions goals for the project and mining as a 'hard-to-abate' sector of the NSW economy

The Draft Guide on page 29 requires the proponent to set an overarching long-term scope 1 emission goal for the project that represents a "meaningful contribution" to the emissions reduction objectives of the State. The Draft Guide goes on to define a meaningful contribution as 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 (Box 9). Proponents should compare the average annual percentage change in project emissions to 2030 and 2035 relative 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.*

LETA notes that industry-sector emissions trajectories have not been developed and that any that are developed will need to be the subject of detailed consultation with relevant industries. LETA would welcome further information on when these trajectories are expected to be developed and the consultation process to be followed.

In addition, Box 9 on page 29 notes (a point reinforced in Figure 6 on page 30) that:

> *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. Sector decarbonisation pathways are being investigated under NSW Government initiatives.*

This statement appropriate recognises that it will be neither efficient or effective for individual industries, or indeed projects, to reduce their emissions at the same rate. For example, for some industries, particularly capital-intensive industries such as mining that have long investment lead times and will be following a safety-driven and technology-led approach to emissions reductions, emissions reductions may be relatively modest in the period to 2030 or 2035 and accelerate towards a net zero outcome by 2050.

This should be clarified in the Guide to better recognise that in the absence of an industry-specific trajectory, it may not be appropriate to assess the emissions reduction trajectory of 'hard-to-abate' sectors against an overall NSW net zero emissions trajectory.

In addition, and consistent with the point above that the Guide should be consistent with the NSW EPA's *Climate Change Action Plan 2023-26* and should complement (and 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, the Draft Guide should state that emissions goals for a facility covered by the Safeguard Mechanism can align with their Safeguard Mechanism baseline decline rates.

This would be consistent with the Queensland Government's *Guideline: Greenhouse gas emissions Environmental Protection Act 1994*[5] that states on page 25:

[5] Available at www.desi.qld.gov.au/policies?a=272936:policy_registry/era-gl-greenhouse-gas-emissions.pdf.

> *For projects captured by the Commonwealth Safeguard Mechanism, the emission reduction targets may be determined by the Safeguard Mechanism.*

It is important to note the Queensland Government has taken this approach – recognising the role of the Safeguard Mechanism – in the context of Queensland's State emissions reduction targets, which differ from those that exist at a national level (noting that, notwithstanding the hotch potch of emissions reduction targets that exist at the sub-national level, it is the Australian Government that is the signatory to emissions reduction commitments under the Paris Agreement).

10. The Guide should take a national approach to the location of carbon offsets

The Draft Guide on page 30 notes

> *The EPA requires proponents to prioritise the use of carbon offsets from NSW-based offset projects, with consideration given to whether carbon offsets conserve, preserve, protect, enhance, and manage the NSW environment. If required, offset projects in other Australian locations may be used. International carbon offsets will not be accepted.*

The requirement to preference locally based offsets is inconsistent with the approach taken under the Safeguard Mechanism, where projects that generate Australian Carbon Credit Units (ACCUs) or Safeguard Mechanism Credits (SMCs) for use to meet Safeguard Mechanism compliance obligations can be located anywhere in Australia.

Restrictions on the location of offsets risk denying NSW-based project proponents' access to cost-effective emissions reduction opportunities. They could also potentially limit the ability for NSW-based project proponents to utilise the cost containment measure[6] under the Safeguard Mechanism if there are not sufficient carbon credits available through that scheme that have been generated in NSW, given that measure does not have a locational requirement.

While the Guide could express a preference for NSW located carbon offset projects, it should not seek to distort the operation of the emerging national carbon market, that exists to drive abatement projects across Australia, including in NSW, and to provide for consistent and cost-effective emissions abatement options for project proponents, including in NSW.

[6] See, for example, cer.gov.au/markets/reports-and-data/quarterly-carbon-market-reports/quarterly-carbon-market-report-june-quarter-2023/australian-carbon-credit-units-accus where the Clean Energy Regulator noted that, since 12 January 2023, "… *ACCUs delivered to the Commonwealth under carbon abatement contracts are held in the Commonwealth Emissions Reduction Fund Delivery (CERFD) account in the ANREU. These ACCUs will be made available to Safeguard Mechanism facilities that exceed their baseline through the cost containment measure. These Safeguard Mechanism facilities may apply to the CER to purchase the required number of ACCUs at a fixed price. In 2023-24, the price of these ACCUs is set at $75. Thereafter, the price will be indexed by the Consumer Price Index (CPI) plus an additional 2% per annum".*