GLENCORE

3 November 2022

NSW Environment Protection Authority
6 Parramatta Square, 10 Darcy Street
Parramatta NSW 2150

By email: climatechange.review@epa.nsw.gov.au

EPA's draft Climate Change Policy and Climate Change Action Plan

Glencore welcomes the opportunity to provide feedback on the NSW EPA's draft Climate Change Policy (**Policy**) and Climate Change Action Plan 2022-25 (**Action Plan**) which are currently out for public consultation.

Glencore recognises the EPA's role in supporting industry and the community to meet the Commonwealth's and NSW's Net Zero Commitments. Glencore supports the Australian Government's climate change targets consistent with the Paris Agreement and Australia's nationally determined contribution (**NDC**) to reduce national emissions to 43% below 2005 levels by 2030 and achieve net zero emissions by 2050, as recently legislated in the Commonwealth Climate Change Act 2022.

Glencore considers that climate change policy reforms being considered by the NSW government should be pragmatic, informed, equitable, non-duplicative and should provide greater certainty for business investment in NSW.

Glencore has made strong global climate change commitments including an ambition to be a net zero total emissions company by 2050, with a strategy that recognises that the transition to a low emissions future is not linear or uniform across geographies and time. It therefore supports reforms which are designed to achieve least-cost emissions reductions whilst also recognising the constraints on the timing and availability of step-change abatement technology.

Glencore notes the intention of the Action Plan is to be a staged plan commencing with consultation with industry to listen and learn from stakeholders in relation to what they may already be doing in reducing emissions. Glencore supports such an approach and would add that the consultation phase should also ensure that consideration is given to existing State and Commonwealth approvals, reporting requirements and emissions accountability to prevent against duplication.

Our company is committed to working cooperatively with the EPA on the development of its Policy and Action Plan.

Sincerely,

Ian Cribb
Chief Operating Officer
Coal Assets Australia
Glencore

1. Executive Summary

Given the number of policy reforms and government agencies and departments currently involved in climate change regulation in Australia, it is critical that the initiatives being implemented by other branches of State and Commonwealth governments are recognised explicitly by the EPA in formulating its Policy and Action Plan.

This is necessary to ensure that there is no duplication or inconsistencies between policies and to avoid unnecessary administrative burden and costs for government and business. It is also critical that companies are not double-regulated for their emissions, as this would impose an oppressive and unfair regulatory burden whereby companies may be penalised or incur financial costs (including through the requirement to source offsets) several times for the same emissions.

Consistent with this, any facilities that are regulated by the Commonwealth Safeguard Mechanism (**SGM**) should be excluded from any emissions limits in NSW environment protection licences (**EPLs**). In addition, the majority of mining operations in NSW operate under development consents that include detailed conditions in relation to greenhouse gas emissions (**GHGE**), including requiring the proponent to prepare and implement a greenhouse gas management plan. There must be clear delineation between the matters that are sought to be regulated by conditions of consent and those that are sought to be regulated by EPLs.

In this submission Glencore addresses a number of issues and makes recommendations for consideration by the EPA in finalising the Policy and Action Plan, and in considering the process for ongoing stakeholder engagement and consultation in the future. Broadly they relate to the following topics:

- **A whole of government approach –** A whole-of-government approach to climate change policy and regulation is critical to prevent duplication, inconsistent application of policy and inequitable outcomes. It is important that the final Policy and Action Plan and subsequent regulatory actions be considered in the context of the existing State and Commonwealth climate change framework as well as existing State Government policies relating to the future of the mining industry. In particular, any State-based policy measures and regulation should recognise the purpose and objectives of the SGM and avoid any regulatory overlap.
- **Consultation –** Extensive and targeted consultation with licence holders is essential to ensure that future actions by the EPA in the area of climate change are fit for purpose and do not have unintended consequences. In considering emissions targets and other licensing requirements, it is also important that the EPA recognise that many companies, including Glencore, have company-wide emissions targets and therefore the emissions profile and abatement opportunities may differ across sites in the context of Glencore's broader portfolio.
- **Clarifying roles and responsibilities –** In NSW the Department of Planning and Environment (**DPE**) and the Independent Planning Commission as the consent authorities for mining developments typically include conditions relating to GHGE in development consents. Whilst Glencore acknowledges the need for the EPA to have input into the assessment of GHGE and appropriate conditions of consent, further clarity is sought as to the division of roles and responsibilities in the area of climate change regulation in NSW and what changes, if any, the EPA proposes to existing GHGE development consent conditions for mining operations. We understand that the DPE is currently undertaking a review of how mining companies are implementing existing

GHGE conditions of consent which appears to overlap with the consultation that the EPA is concurrently conducting on similar issues.

- **Industry wide targets –** Whilst industry-wide emissions targets may be appropriate for some industries, given the inherent differences between mining operations and their resulting emissions profile Glencore does not consider that a sector wide target is appropriate for the mining industry for the reasons explained further in our submission.
- **EPL emissions conditions –** Facilities that are subject to the SGM should be exempt from further emissions limits at a State level. If any specific emissions reduction limits are to be included in EPLs, provision needs to be made for emissions over the limits to be offset rather than prohibiting operations from continuing. This is critical to give licence holders certainty in their operations and to be consistent with the approach taken at a Commonwealth level.
- **Certainty of conditions and approval requirements –** Any EPL conditions relating to GHGE and climate change should be consistent with the development consent for a facility to ensure certainty for business. The use of EPLs to ratchet-down GHGE limits and other requirements over time including through any market-based approaches should be discouraged, noting that mining companies are already subject to management plan requirements requiring an ongoing review of opportunities to improve GHGE over time and employ best practice management to minimise scope 1 and 2 emissions. Any existing or new technologies that may be developed to abate GHGE should be identified as types of exempt development in the State Environmental Planning Policy (Resources and Energy) 2021 (**Resources SEPP**). This would improve the ability for proponents to trial or implement these technologies sooner without having to go through a modification or development consent process to the extent that use of the technologies are not covered under their existing development consent.
- **Clarity that the Policy and Action Plan does not apply to Scope 3 emissions –** Given that Scope 3 emissions are outside the control of licence holders, it should be clarified in the Policy and Action Plan that these emissions are not covered by the policy documents.

2. Glencore in New South Wales

Glencore is one of Australia's most diversified mining companies and has been investing in Australia for more than 25 years. We operate 25 mines and are the largest producer of coal, cobalt, zinc and lead and second-largest producer of copper, nickel and silver in Australia.

We responsibly source the commodities that advance everyday life. The natural resources that Glencore produces in Australia are found in everything from mobile phones to airplanes, from solar panels and wind turbines to medical devices and kitchen appliances.

Our business makes an important socio-economic contribution to Australia in the city and the regions, whether its employing apprentices, tradespeople, engineers and environmental scientists through to supporting local businesses and community groups.

In 2021, Glencore directly contributed $14 billion to the Australian economy and had around 17,350 employees and contractors. This contribution included $9.2 billion spent on goods and services from over 8,630 suppliers, $2.9 billion taxes and royalties paid to governments and $1.9 billion in wages and salaries.

Glencore understands that climate change is a global challenge and a shared responsibility. As one of the world's largest diversified resource companies, Glencore is playing a role in supporting the transition to a low carbon future. We aim to be a net zero total emissions

company by 2050. This applies to Scope 1, 2 and 3 emissions, and Glencore's pathway comprises:

- 15% reduction in total emissions by 2026;
- 50% reduction in total emissions by 2035; and
- an ambition to achieve net zero total emission by 2050, with a supportive policy environment.

Glencore holds thirteen EPLs.

3. The State and Federal context for the Policy and Action Plan

The NSW Government's role in responding to climate change risks forms part of a broader national and international statutory and policy framework reflecting the global nature of climate change. Page 9 of the Policy refers to the United Nations Framework Convention on Climate Change and the Paris Agreement. However, it is important that in setting the context for the Policy, that the Policy also refer to Australia's national commitments which frame the State and Territory climate change framework.

In particular, reference should be made to Australia's commitment to the Paris Agreement, our nationally determined contributions (**NDC**), relevant Commonwealth legislation including the *Climate Change Act 2022* and the *National Greenhouse and Energy Reporting Act 2007* (**NGER Act**) and related policies such as the Government's *Powering Australia* policy and the current proposed reforms to the SGM. Any policy documents made at a State level should be prepared in consideration of, and consistent with, the Commonwealth position.

In terms of the NSW position, page 9 of the Policy also refers to '*Key documents- NSW framework and plan*' which includes the NSW Government's Net Zero plans, Climate Change Adaptation Strategy and Waste and Sustainable Materials Strategy. However, it is necessary that in setting the context for the Policy and Action Plan that a whole-of-government approach be taken including consideration of other important NSW Government strategies and commitments including the NSW Government's *Strategic Statement on Coal Exploration and Mining* (**Statement**), the *NSW Minerals Strategy* and *Critical Minerals and High Tech Metals Strategy* and relevant regional plans.

This existing policy framework acknowledges the ongoing contribution of mining to the economy and provides an important framework for planning and regulatory decision-making in NSW. For example, in the DPE's assessment report on the Glendell Continued Operations Project, the Department assessed the Project against the Statement noting that the Statement '*identifies that coal mining for export from NSW is expected to continue to have an important role to play in the short to medium term, as coal currently remains an important energy source all over the world, and NSW produces some of the world's highest quality coal.*'

The Minister's Statement of Expectations for the Independent Planning Commission confirms that the Minister's expectation is for the Commission '*to make decisions based on the legislation and policy frameworks and informed by the Planning Secretary's assessment.*' To ensure regulatory consistency it is therefore important that the Policy and Action Plan also recognise these existing NSW Government policies.

4. Need to consult with and work with relevant regulators and agencies at both a State and Commonwealth level

Developing on section 3 above, the EPA Policy and Action Plan needs to be prepared and implemented in conjunction with both State and Commonwealth regulators and government agencies to ensure a coordinated, efficient and effective approach to climate change regulation.

There are numerous references in both the Policy and the Action Plan to the EPA working with and consulting with State regulatory partners and other government agencies, however there is very little reference to the Commonwealth regulators and agencies.[1]

Given the broader national and international GHGE and climate change statutory and policy framework as discussed above, it is important that the EPA work together with all relevant State and Commonwealth agencies and regulators who are responsible for developing, implementing and enforcing climate change related laws and policies, including for example the Clean Energy Regulator who administers and regulates the emissions reductions fund and the NGER Act (including the SGM).

This is particularly important in relation to issues regarding emissions limits, monitoring, reporting and offsets as a lack of coordination has the potential to result in perverse outcomes, inefficiencies, investment risk and business and government uncertainty.

5. The need for detailed and thorough consultation with industry

The Action Plan provides that the EPA is '*implementing their climate change actions in a staged way*' to help achieve the best environment and human health outcomes, whilst also working together with the regulated community. The first stage includes consultation with EPL holders to understand the GHGE reduction and climate change actions that they are already taking before progressively requiring the preparation and implementation of climate change mitigation and adaptation plans and setting emission reduction targets.

Glencore is supportive of a staged, progressive and iterative approach which is based on consultation with each licensee; however, it is critical that consultation is conducted in a manner that ensures that all of the relevant information is obtained from each licence holder for each licensed premises.

The current proposal is for the EPA to issue a mandatory survey to licence holders asking licensees how they are contributing to the NSW Government's climate change objectives, and how the EPA can support them to build capacity and take meaningful action. It is important that the survey questions are detailed and targeted towards the EPA understanding precisely what specific licensees are doing in respect of GHGE reduction and climate change actions rather than broad questions which may not capture all relevant information. We would also recommend that the DPE are involved in the survey process to ensure both agencies have a clear understanding of the issues and are provided with consistent information. As mentioned above, the DPE are currently undertaking a review of how mining companies are

[1] For example, page 12 of the Policy and page 7 of the Action Plan

implementing existing GHGE conditions of consent so it would seem to make sense that they be joined as part of the survey effort to ensure consistency and avoid overlap.

In addition to surveys, meetings (with both the EPA and DPE present) should be offered with individual licensees, companies (who may hold multiple EPLs) and industry associations to ensure that all relevant information is able to be discussed and captured by the EPA prior to moving to stage 2. As per the further comments below, there are a number of existing regulatory requirements in respect of GHGE as well as measures being taken by companies at a site-specific or company level that are important for the EPA to understand before any further regulation is proposed for licence holders.

6. Avoiding duplication or inconsistencies

Page 15 of the Policy sets out the 'Key pillars' of the policy, being inform and plan, mitigate and adapt. Glencore supports these pillars, however recommends that an additional pillar be included to 'recognise', meaning to avoid duplication and unnecessary regulatory burden.

In particular, where licensed sites are already subject to GHGE requirements at a Commonwealth and/or State level, the EPA should not seek to duplicate those requirements. In the majority of cases and as explained in detail below, Glencore facilities are subject to both the SGM at a federal level (applying to scope 1 covered emissions including fugitive emissions), and conditions of a development consent requiring a detailed greenhouse gas management plan. Many recent development consents issued for mining operations have required compliance with identified scope 1 and scope 2 emission limits, with a requirement to offset emissions over those limits (subject to existing offsetting requirements under the SGM).[2]

On page 19 of the Action Plan, the EPA recognises that some licence holders already have similar types of plans in place to the proposed climate change mitigation and adaptation plans (**CCMAP**), such as greenhouse gas management plans and TCFD statements, and that the guideline will '*recognise these types of plans and statements to avoid duplication and help our licensees to identify any gaps.*' Further it is stated in the Policy that '*we acknowledge that many of our licensees are already disclosing and addressing their exposure to climate-related risks and investing resources to reduce greenhouse gas emissions, as this makes good business sense.*'

Building on these acknowledgments, the EPA should ensure that it works with licensees to use existing climate disclosure documents to meet the objectives of this policy without creating the need for more documentation that does the same thing. It should also be recognised that in many cases documents relating to decarbonisation commitments and sustainability measures apply to a company's operations as a whole (including for example, accelerating abatement opportunities at some sites whilst others may take longer based on technological availability) and accordingly a site-based approach may not be appropriate given these broader commitments.

---

[2] See for example, the State significant development consents for the Tahmoor South project (SSD-8445) and the Mount Pleasant Optimisation Project (SSD-10418). These conditions also demonstrate the staged and incremental approach to GHGE reduction taken by the IPC for these projects whereby the proponent must review their Air Quality and Greenhouse Gas Management Plan after 12 months and then every 3 years during mining operations including reviewing all reasonable and feasible GHGE abatement measures and economic consideration for the development and a 3 year action plan to investigate and implement abatement measures.

Given the existing State and Commonwealth statutory and policy framework applying to the mining industry in the area of GHGE and climate change, it is Glencore's position that it is unlikely that there are any regulatory "gaps" for the EPA to fill by way of EPL conditions or CCMAPs. Rather, the EPA should recognise and accept existing climate disclosure documents and management plans required under Commonwealth and State legislation for the purposes of achieving its policy objectives, whilst acknowledging that the EPA will influence State planning processes as necessary to achieve its objectives.

Glencore would appreciate the opportunity to discuss this further with the EPA during the stage 1 consultation process.

Specific issues and recommendations relating to the theme of avoiding duplication are addressed below.

a. Sites that are subject to the Safeguard Mechanism should be excluded from emissions targets and conditions in an EPL

New action 9 on page 36 of the Action Plan provides that the EPA will progressively place feasible evidence-based GHGE limits and other requirements on EPLs for key industry sectors that it regulates. The Action Plan states the requirements may include monitoring conditions, performance requirements and reporting conditions. It is stated that the requirements will be informed by any sector emissions reduction targets that have been develop for the industries that the EPA licence.

As the EPA is aware, coal mining operations in NSW that emit 100,000t CO_2e are covered by the SGM and are required to offset emissions if above specific baselines. The SGM is currently the subject of proposed reforms as one of the policy measures to achieve the Commonwealth's recently legislated emissions reduction target.

It is Glencore's strong view that to avoid regulatory duplication and any risks of inconsistencies (including in monitoring and reporting methodologies), the Policy and Action Plan should provide that any facilities that are covered by the federal SGM should be exempt from additional state based emissions limits. By way of example, the EPL annual return is based on the licence anniversary, whereas the Clean Energy Regulator's SGM reporting is on a financial year basis. Given the differing reporting dates any publically reported GHGE data in an Annual Return would not be the same as the reported SGM data. This clearly has the potential to create significant confusion and uncertainty and supports the position that facilities already reporting under the SGM should be excluded from the state based emissions requirements.

For the remaining EPA licensed premises which could be subject to EPA target-setting, there must be mechanisms that replicate the current SGM reforms so as not to unfairly disadvantage these premises when compared to SGM facilities. Figure 2 on page 11 of the Action Plan identifies that as part of the 'Enable and require' stage, existing licensees will be required to benchmark emissions against guidance and develop CCMAPs, and new licensees will be required to ensure best practice, develop CCMAPs and be subject to limits and requirements.

However, the Action Plan is silent as to how any emissions benchmarks or best practice measures will be assessed and the data set(s) that will be used to inform the EPA's guidance in this respect. The information and data set that informs any benchmark

emissions standards or best practice guidance is critical in ensuring that the EPA scheme is equitable compared to the SGM. For example, if only NSW data is used to establish benchmarks and best-practice, this could be materially different to the data set that informs the SGM at a national level (noting that the SGM reforms may result in industry benchmarking at a national level). Again, this could result in perverse outcomes so needs to be considered and assessed carefully by the EPA following extensive industry and government consultation.

b. Consideration of company-wide emissions targets and portfolio abatement commitments

As recognised by the EPA in the Policy and Action Plan, *'many in our regulated community are already taking action to reduce their greenhouse gas emissions and adapt to climate change.'* Often these actions and adaptation programs are occurring at a company-wide or a 'portfolio' level at a national or international level rather than at an individual site level. It is important that any emissions limits or other requirements take into consideration and recognise any corporate or portfolio wide commitments.

Further, it may be that the business entity's emission reduction targets are less aggressive for their NSW assets (e.g. if these are hard to abate) when compared to reductions across their broader operating portfolio. In considering any emissions targets or other licensing requirements, it is not appropriate to assume that commitments made by parent entities across their portfolio should apply uniformly to each individual premises.

c. Climate change mitigation and adaptation plans – consideration of existing GHG emissions mitigation strategies and management plans, corporate commitments and Commonwealth reporting

The Action Plan indicates that all licence holders will be required to prepare a CCMAP which will be required to be published on the company website along with any updates. It is stated at page 18 of the Action Plan that '*this approach ensures transparency and provides an incentive for licensees to remain accountable to their public commitments, while reducing duplicative data capture and reporting obligations.*'

Glencore is concerned that the Action Plan does not appear to recognise in the actions relating to the preparation of a CCMAP that many licence holders, including mining companies, will already have detailed GHGE plans and commitments. These include greenhouse gas management plans, corporate GHGE and climate change commitments (potentially at a national or international level) and associated decarbonisation plans and existing reporting under the NGER Act that are already publicly available and provide the community with detailed GHGE data. It is critical that any requirements for CCMAP recognise these existing obligations and reports and not seek to duplicate data and reporting obligations.

Any development application for a mining project in NSW requires a comprehensive assessment of GHG emissions and mitigation strategies. The majority of development consents granted for mining projects in NSW require the preparation of an Air Quality and Greenhouse Gas Management Plan (**Management Plan**) which must describe the

management measures that are being undertaken to minimise Scope 1 and 2 GHG emissions, including:

- Implementing a program to monitor GHG emissions and energy use generated by the project;
- Implementing an air quality monitoring program to monitor performance against air quality criteria, e.g. particulate matter, diesel combustion emissions baseline;
- Implementing an air quality management program that uses meteorological forecasts, air quality monitoring and modelling to plan mining operations; and
- Taking "reasonable and feasible steps" to reduce emissions.

In developing Management Plans pursuant to the conditions of a development consent, companies are required to consider the principal source of emissions (e.g. for fugitive emissions versus diesel emissions) and prepare a fit for purpose plan that seeks to reduce those emissions as far as reasonably practicable.

In addition, a number of mining companies are implementing a range of emission reduction and energy efficiency initiatives as part of their operations. These measures are frequently referred to in environmental impact assessment (**EIA**) documents for mining projects and form part of the post-approval management plan.

Proposed new action 2(b) in the Action Plan is to 'Progressively require and support our licensees to prepare, implement and report on climate change mitigation and adaptation plans.' The objective of the CCMAP approach is stated to be to demonstrate that licence-holders have considered how they can minimise their GHGE and exposure to climate risk. It is also noted in the Action Plan that the EPA will consider using licence conditions to require practical mitigation and adaptation actions identified in CCMAPs to be implemented. The EPA intends to develop a guideline for preparing CCMAPs in consultation with relevant agencies with the intention that it does not duplicate existing requirements.

As stated above, SSD mining projects are already required to have detailed greenhouse gas management plans and more recent approvals have also required compliance with GHG performance criteria which reflect the estimate of scope 1 and 2 emissions included in the development application. In these circumstances it is not considered appropriate for a separate CCMAP to be required and instead a proponent should be able to rely on their greenhouse gas management plan prepared in accordance with the conditions of their development consent.

The EPA states on page 19 of the Action Plan that the guideline will recognise these types of plans and statement to avoid duplication and help our licenses to identify any gaps. It is recommended that the EPA consult closely with Glencore and other mining companies to understand the scope of these current requirements and ensure there is no duplication in the regulatory requirements imposed by NSW government agencies.

d. Interaction with the NSW planning system and division of responsibilities

Currently GHGEs associated with Glencore's mining activities are regulated via conditions of a development consent under the *Environmental Planning and Assessment Act 1979* (NSW) (**EP&A Act**), including – as discussed above – the

development and implementation of a Management Plan. Relevantly, this Management Plan must be developed **in consultation with the EPA**.

The Policy and Action Plan include multiple references to the EPA supporting their regulatory partners to understand and consider GHGE as they make planning decisions. New action 2(c) states that the EPA will partner with the DPE to seek to ensure climate change is being adequately addressed by proponents, and that approvals contain appropriate conditions. However, proposed new action 9 then states that the EPA will also progressively place GHGE limits and other requirements on licenses for key industry sectors.

Whilst Glencore acknowledges the EPA's role of commenting on and influencing a development application as a relevant government agency in the development application process, including in respect of GHGE and climate change, it is currently unclear from the current Policy and Action Plan as to the role that the DPE and the EPA will play in requiring emissions reductions and the role of conditions of consent as compared to EPL conditions.

It is also unclear as to the types of conditions that are envisaged by the EPA in referring to 'climate change conditions'. As set out above and as recognised on page 20 of the Action Plan, pursuant to requirements under the *State Environmental Planning Policy (Resources and Energy) 2021* proponents for development applications for mining projects are required to consider their potential GHGE as part of the environmental impact assessment process, which typically results in consent conditions that require the proponent to develop detailed greenhouse gas management plans.

In this context the EPA should provide further clarity as to the types of 'climate change conditions' that it is referring to in the Action Plan so business can further understand the rationale for such conditions given the existing regulatory framework. We suggest that a one-size-fits-all approach may not be appropriate given the specific statutory requirements that apply to the planning process for some developments (including mining) that may not apply to other industries.

Proponents are required to lodge annual returns in respect to compliance with their development consent conditions and must carry out regular independent environmental audits. Given the detailed nature and enforceability of development consent conditions and the extensive compliance measures included in consents, any additional EPA regulation and enforcement of GHGE would simply duplicate existing measures.

For State significant developments that are required to implement a greenhouse gas management plan under the consent, it is unclear what benefit a separate requirement to prepare and implement a CCMAP will achieve. Page 18 of the Action Plan states that the EPA will '*consider using licence conditions to explicitly require practical mitigation and adaptation actions identified in CCMAPs to be implemented*' however this is already required for mining development under their development consent conditions in respect of their greenhouse gas management plans.

Given the wide range of licence holders in NSW who are subject to differing development consent requirements and Commonwealth requirements relating to

GHGE and climate change, it is clear that a one-size-fits-all approach to licensing and CCMAPs is not appropriate. The mining industry is one of the most regulated industries in the country and therefore it is necessary that those existing regulations are considered by the EPA to ensure that any additional regulatory requirements are reasonable and do not simply duplicate existing effort.

7. CCMAPs

Page 20 of the Action Plan refers to the proposal for a new requirement that proponents be required to develop and commit to implementing CCMAPs for their proposed operations. It refers to CCMAPs at two stages of a project – one during the planning process to consider how the development proposal can be modified to achieve the best outcomes, and one for the licence which will focus on the operational stage of the project and ongoing performance of an activity.

In terms of the planning process, the requirement for a CCMAP as part of a development application appears to duplicate what is already required for State significant development mining projects whereby the proponent must assess the GHGEs of the development and propose mitigation and management measures. The proponent is also required to consider any alternatives to the project as part of the assessment. Whilst we acknowledge and support the EPA having a role in providing comment in relation to the proponent's assessment of these matters, any additional requirement for a CCMAP would appear to be simply duplicating existing requirements.

For the reasons given above, a CCMAP at the operational stage would also appear to be duplicative in the case of the mining industry as mining companies are already required under planning approval conditions (and specifically their GHG management plans) to minimise emissions throughout the life of a project and monitor ongoing performance.

8. Industry emissions standards not appropriate for mining industry

The Action Plan provides that following the survey and consultation stage, the EPA will set emissions reductions targets for key industry sectors. Whilst the Action Plan states that these industry emissions reductions targets will not be enforceable (and will not be conditions of an EPL), they are intended to inform planning decisions.

An industry emissions target for the mining sector is impracticable and unreasonable given the wide variables between mining operations that may lead to significantly different outcomes in abatement opportunities and trajectories in emissions reduction. This may include whether a mining operation is open cut or underground, the mine's gas resource characteristics, the quality and depth of coal, expected mine life and the proximity of the mine to power sources. Any attempt to formulate industry wide emissions targets is likely to produce perverse outcomes. Instead, emissions reduction measures should be considered on an individual site (or potentially company group) basis to reflect the inherent differences between operations.

Further given that Glencore's mining operations are subject to the SGM and existing NSW development consent requirements relating to GHGE, a sector target is not considered appropriate noting that the EPA state that it will likely '*start with high-emitting sectors where there is no other significant NSW or Commonwealth Government emissions reduction strategy already in place*' (see page 35 of the Action Plan).

If consideration is to be given to any industry specific emissions targets it is critical that the EPA recognises the challenges that the mining and resources sector faces in respect of abatement and the current lack of technologically mature and commercially viable solutions to achieve material emissions reductions. Detailed consultation should be undertaken with the mining industry during stage 1 to understand these challenges further.

Finally, the Action Plan states that it is the EPA's intention that sector targets will not be enforceable but instead will *guide and inform* planning and licensing decisions. It is not clear what is meant by this and how any sector targets would be used or considered by a consent authority and/or the EPA in their regulatory functions. It is Glencore's view that any sector target for the mining industry would only lead to more uncertainty and confusion particularly in the planning process as to how any such targets were to be applied during that process in the context of a specific project.

In particular we note that clause 2.20(2) of the *State Environmental Planning Policy (Resources and Energy) 2021* requires that in determining a development application for mining the consent authority must consider an assessment of the GHGE of the development and must do so '*having regard to any applicable State or national policies, programs or guidelines concerning greenhouse gas emissions*.' Any sector emissions limits may be considered to fall within this clause which may create approval risk and uncertainty for both proponents and the consent authority in the application of any such limits.

9. The basis for emissions limits

Box 2 on page 37 of the Action Plan relates to what GHGE limits could look like and provides that limits may be emission intensity limits and/or load limits. As discussed in section 1.4 above, 'limits' on scope 1 and 2 emissions are already being imposed in a number of State significant development consents for mining projects which are based on the environmental impact assessment prepared by the proponent as part of the planning process.

Any emissions limits and associated guidance documents relating to this issue need to be considered in recognition that some sectors have a clearer path than others to reducing emissions intensity. It is widely acknowledged that the mining and resources sector faces some of the greatest challenges when it comes to abatement given the lack of technologically mature and commercially viable solutions to achieve material reductions in emissions from many of the key GHGE sources in mining operations. For this reason, the emissions trajectory will not be linear and it is more likely that as technologies develop GHGE reductions will be occur through a series of step downs.

10. Enforcement of performance measures through PRPs

The Action Plan proposes that licensees may be subject to PRPs requiring performance of emissions performance standards, and/or other conditions containing emissions limits. Given the risk of climate change regulatory overlap explained above, we again reiterate the importance of the EPA consulting with all relevant State and Commonwealth government agencies and regulators to ensure that facilities that are already regulated (including facilities under the SGM and/or licensees subject to existing GHGE development consent conditions) are not subject to EPL conditions that duplicate or are inconsistent with those existing requirements.

If any limits or performance measures are included in EPLs (which should only occur where the GHGE of the facility are not already regulated), they should provide for any emissions over

the limit or 'baseline' to be able to be offset in a manner that is consistent with the options available under the SGM.

11. Certainty of conditions

As discussed above, currently GHGE are regulated in NSW through the planning process and by way of conditions of a development consent. Conditions of a development consent are certain in that they can only be modified by way of application of the proponent. For State significant development, an EPL is to be substantially consistent with a development consent (section 4.4.2 of the *Environmental Planning & Assessment Act 1979 (NSW)*), however this does not apply in respect of any period after the first review of the licence under section 78 of the *Protection of the Environment Operations Act 1997* (NSW) (**POEO Act**). Under section 78 of the POEO Act, EPLs are to be reviewed at intervals not exceeding 5 years after the issue of the licence. The EPA may unilaterally vary EPLs provided they first give notice to the licence-holder and an opportunity for the licence-holder to comment on the proposed variation.

The result of this is that EPLs may include conditions that are inconsistent with, or more onerous or stringent than, development consent conditions after the first review of the EPL. This creates significant uncertainty for EPL holders as the EPA may use this regulatory lever to 'ratchet down' GHGE limits over time and potentially require far more onerous requirements than the development consent. This would create significant investment uncertainty and risk for licensees.

To avoid this uncertainty for industry the EPA should clarify in its policy document the interaction between development consent conditions and EPL conditions and commit not to impose requirements on industry that are inconsistent with those contained in the development consent.

12. Works required under a CCMAP should not require development consent

In the event that technologies or other measures are required to be implemented for the purpose of a CCMAP required under an EPL and where those measures are not included in a development consent, the Resources SEPP should provide that such works are exempt development and therefore do not require development consent. This would be similar to the current provision in the Resources SEPP relating to environmental protection works required under an EPL.

13. Longer term market-based measures

Page 50 of the Action Plan provides that the EPA may consider whether market-based approaches may be needed in the medium to long term to encourage faster decarbonisation. Market-based approaches may include using a load-based licensing scheme and charging a fee for GHGE. Another option cited is to investigate a targeted cap, offsets and trading scheme for GHGE.

Glencore does not support the addition of a load-based licensing scheme for GHGE and/or any cap and offsets scheme, especially in circumstances where a facility is already subject to the SGM. If these schemes were to be implemented it would not only have very significant cost implications for the mining industry, including Glencore, but would be double-penalising companies for emissions and clearly duplicating the reforms currently being implemented as part of the Commonwealth SGM. It would also encourage carbon leakage to jurisdictions outside NSW.

14. Consideration of NSW 2030 targets

Page 32 of the Action Plan states '*It is currently Government policy that the NSW 2030 target is not to be considered in the assessment or determination of development and infrastructure under the Environmental Planning and Assessment Act 1979 (DPIE 2021a).*'

However, this statement appears to be contradictory to what is happening in practice. By way of example, on 20 October 2021 Glendell Tenements Pty Ltd received a letter from the DPE in relation to the development application for the Glendell Continued Operations Project (SSD-9349) requesting Glendell to '*please provide further consideration of the Project's greenhouse gas emissions against the latest NetZero Plan Stage 1 2030, which includes a revised target of 50% emissions reduction by 2030 compared to 2005 levels.*'

In developing its policy guidance for the assessment of GHGE in development and modification applications, the EPA should ensure that the guidance is consistent with NSW Government Policy (including in relation to the NSW 2030 target) so it is clear that this is not required to be considered by proponents or decision makers in assessing mining developments.

15. Scope 3 emissions

The Policy and Action Plan are silent on whether there is any intention for the EPA to regulate scope 3 emissions. Current NSW Government policy is that it is outside the jurisdiction of consent authorities in NSW to include conditions of consent relating to scope 3 emissions given they are accepted as not being within the control of the proponent.

However, the EPA should clarify this in the policy documentation. This is particularly the case given that the WA EPA in its updated draft GHG guidelines (that were recently on exhibition) has included a requirement for proponents to give consideration to reducing scope 3 emissions where practicable. Such an approach would be inconsistent with current NSW policy. The EPA should clearly articulate its position on scope 3 emissions in the Policy and Action Plan to avoid any uncertainty in this regard.

16. Tier 4 emissions standards for non-road diesel machinery

Page 38 of the Action Plan refers to an EPA requirement for all new large non-road diesel machinery at NSW coal mines to meet EPA Tier 4 emission standards (or better) by 2023. Glencore are of the view that the EPA's proposal is overly prescriptive (and not consistent with outcomes-based regulation) and is concerned that the requirement may not in fact achieve the EPA's stated objectives to reduce climate pollutants.

In particular Glencore has the following concerns with this proposal:

- There is no clear link between Tier 4 machinery and a reduction in GHGE and consequently there is no certainty about climate benefits of Tier 4 engines. Therefore the proposal appears to be regulatory overreach given the proposed requirement may not in fact achieving the EPA's stated benefits in respect to climate change.
- The Action Plan proposes that the all new large non-road diesel machinery meet the EPA Tier 4 emission standards (or better) by 2023. However the limited availability of US EPA Tier 4 equipment may prevent operations meeting the 2023 adoption deadline. The US Federal Register (USFR, 2014) outlines a range of technological and supply chain issues that have arisen out of the adoption of Tier 4 equipment in the USA. Since 2014 Tier 4 technologies continue to lag other smaller equipment. Based on the US experience

Glencore has significant concerns regarding the availability of equipment that will meet these standards within the required timeframe.

- A prescriptive requirement to adopt Tier 4 emissions standards is inappropriate when the costs may outweigh the benefits. It is unclear which technologies may provide suitable reduction opportunities and the costs associated with their implementation. If it is found that the costs to implement suitable technologies does not result in a positive cost-benefit analysis, an exemption should be permitted.
- Glencore understands that there may be a decrease in fuel efficiency associated with the use of Tier 4 technology which would clearly contradict the objectives of the policy.
- The Commonwealth is working on the development of nationally consistent emissions standards for equipment manufacturers, as referred to on page 38 of the Action Plan. Consequently it is premature for the NSW EPA to release a specific standard only for coal mines until such time as the national approach has been confirmed.

Therefore Glencore recommends that the current proposal not proceed at this time and instead the NSW EPA and industry continue to engage with the Commonwealth on a national emissions standard. The EPA should also continue to consult with the mining industry to further understand the issues involved with implementation of the Tier 4 technology, as well as discussing other potentially more effective options that may be available to achieve the EPA's objectives.