Dear Sir/Madam

Draft Environmental Impact Assessment Guidelines
Submission by AGL Energy Limited

1 Introduction

AGL Energy Limited (AGL) welcomes the opportunity to provide a submission on the Department of Planning and Environment’s (Department) draft Environmental Impact Assessment Guidelines (Draft EIA Guidelines).

AGL is one of Australia’s leading integrated energy companies, and the largest ASX-listed developer and operator of renewable generation assets in the country. Our diverse power generation portfolio includes base, peaking and intermediate generation plants, spread across traditional thermal generation as well as renewable sources including hydro, wind, landfill gas, solar and biomass. We also operate natural gas storage facilities, and a coal seam gas production facility scheduled for closure in 2023 at Camden, New South Wales. Additionally, AGL’s New Energy business unit provides rooftop solar, commercial energy, energy storage, electric vehicle and digital metering services and products.

AGL’s significant experience in developing and operating a wide range of NSW energy projects has made it very aware of the importance of ensuring a robust and streamlined environmental impact assessment (EIA) framework which can deliver a sustainable energy future for our investors, communities and customers.

This submission:

- draws on AGL’s significant experience and expertise in developing and operating energy projects in NSW and around Australia; and
- focuses on the aspects of the Draft EIS Guidelines, which, if not appropriately refined, may have unintended impacts on the ability of the energy sector, including AGL, to deliver and operate the energy projects required to support NSW’s growing energy needs.

2 Energy Projects Critical to NSW

The development of energy projects, particularly renewable energy projects, is critical to ensuring a reliable energy future for NSW and Australia.
To this end, AGL submits that all key NSW energy projects which have a generation capacity more than 100 MW should be recognised and assessed as State significant critical infrastructure projects under the Environmental Planning and Assessment Act 1979 (NSW).

3 General comments on the EIA Project

AGL recognises that the purpose of the Environmental Impact Assessment Improvement Project (EIA Improvement Project) is:

- to identify areas where EIA can be improved across the entire project cycle, including before and after approval, while working within the existing legal framework of the Environmental Planning and Assessment Act 1979 (the Act)
- set out the Department’s expectations about the form and content of the Environmental Impact Statement (EIS) and other EIA documents, recognising the primary role of EIA is to provide decision makers with the information needed to make sound planning and environmental decisions
- improve opportunities for public participation in EIA and clarify how feedback is taken into account in project development and decision-making
- strengthen planning and environmental outcomes by creating a clearer link between the identification and assessment of impacts, conditions of consent and actions to manage impacts during construction and operation
- build community and stakeholder confidence in EIA and decision-making
- provide industry with greater certainty about EIA timeframes and expectations for information to be contained in EIA documents.

AGL strongly supports these aims.

It is particularly important that the EIA Improvement Project effectively achieve its aim of providing ‘industry with greater certainty about EIA timeframes and expectations’ to ensure energy projects can be most effectively assessed and developed to secure the energy future of NSW.

The complexity, uncertainty, and lengthy time frames inherent in the NSW planning system were recognised in the NSW Government’s ‘White Paper – A New Planning System for NSW’ (White Paper). This White Paper committed to revitalise the planning culture for NSW so as:

- to ensure a "can do" and problem solving centred approach;
- to build effective relationships with industry;
- to focus on performance outcomes rather than process; and
- to ensure efficient and timely development assessment which is proportionate to the likely impacts of proposed development.

AGL is concerned that the Draft EIA Guidelines, as presently drafted, do not provide sufficient certainty to industry around the key issues acknowledged to exist in the existing environmental impact assessment process including uncertainty, lengthy and unclear time frames and assessment which is sometimes disproportionate to scientific understandings as to the likely impacts of development.
AGL submits that the Draft EIA Guidelines should be amended to:

- include clear timeframes for all Department and NSW government agency steps in the assessment process (including consultation with Governmental agencies, assessment, and determination); and
- ensure that environmental impact assessment always remains proportionate to the likely impacts of proposed development.

AGL's further submissions on specific elements of the Draft EIA Guidelines are set out below.

4 Draft Guideline 1 - Overview of the EIA Improvement Project

Draft Guideline 1 - Overview of the EIA Improvement Project (Draft Guideline 1) proposes several additional improvements, to be detailed in a subsequent stage of the EIA Improvement Project, including:

- a proposed new code of practice for EIA Consultants;
- a proposed new bulletin on cumulative impact assessment; and
- proposed amendments to the Departments' powers to reject development applications.

No detail on these important initiatives is included in Draft Guideline 1.

AGL asks that the Department provide further information on these initiatives and consult with relevant stakeholders, including AGL, before implementing them.

AGL considers that:

- it is important to ensure the proposed new code of practice for EIA Consultants does not have the unintended consequence of preventing industry from utilising appropriate 'in house' expertise in preparing environmental assessment documentation; and
- any amendments to the power to reject development applications should be very carefully considered to ensure that:
  1. procedural fairness is maintained;
  2. the new powers do not cut across the legislative provisions in the Act – for example, landholder consent is only required prior to determination of a development application and not on lodgement of a development application; and
  3. unintended consequences, such as damage to community engagement and stakeholder relations, and delays and impacts to appeal rights, are avoided.
  4. Requirement to seek additional information and clarification from proponent where appropriate rather than an outright rejection of development application.
Draft Guideline 3 - Scoping an Environmental Impact Statement

Draft Guideline 3 - Scoping an Environmental Impact Statement (Draft Guideline 3) introduces a ‘Scoping Process’, as a new preliminary phase in the EIA of State significant development (SSD) applications to inform the development of Secretary’s Environmental Assessment Requirements (SEARs).

AGL recognises the importance of providing greater clarity around matters and impacts that are likely to be relevant to determining the SEARs which will guide the development of an EIS.

However, AGL is concerned about the level of detail and assessment which Draft Guideline 3 proposes will be included in the proposed Scoping Report. For example:

- Appendix A to Draft Guideline 3 requires that a scoping worksheet be completed. This worksheet requires that identified impacts be rated against specified criteria and the level of mitigation required be identified. There are real practical difficulties in providing an accurate rating of impacts against the criteria contemplated by Appendix A or an accurate identification of the level of mitigation at such an early stage of project development, before relevant specialist studies have been prepared. Further, it is unclear as how providing any such pre-judgment as to the level of impact or mitigation measures assists in the development of SEARs which are intended to specify the manner in which impacts are to be assessed and mitigation measures determined.

- Appendix B to Draft Guideline 3 requires that a Scoping Report include a detailed description of the development proposed, including:
  o project planning and design
  o construction requirements including methods, equipment, techniques, staging, infrastructure, hours and workforce
  o operational requirements including sequencing, hours or operation, infrastructure, workforce, and parking
  o decommissioning requirements including rehabilitation, revegetation, and future land use

Again, this level of information is simply not available at such an early stage of project development and before relevant specialist studies have been prepared.

AGL submits that Draft Guideline 3 should be amended to limit the level of information required to be included in a Scoping Report to that which:

- is practicable at the early stages of project development; and
- avoids any pre-judgment as to the level of impact or mitigation measures (acknowledging that these cannot be accurately determined until SEARs have been issued and relevant technical assessment have been completed).

Draft Guideline 3 also proposes that:

For some projects with a high level of public interest and a high level of potential impacts (including critical SSI projects, coal seam gas, applications for new mines and extensions to existing mines) the Scoping Report will be placed on public exhibition by the Department once it is received with a request for SEARs. The Department may also place the Scoping Report for other projects on
exhibition. Where the Scoping Report is placed on exhibition, public feedback will be sought via online questions relating to the scope of the EIS, prior to issuing SEARs.

AGL submits that Draft Guideline 3 should be amended:

- to provide clear and transparent criteria which will guide the type of projects for which the Scoping Report will be placed on public exhibition;
- to confirm that the proposed 14 day public exhibition of the scoping report forms part of the 28 day period for the preparation of SEARs; and
- to make clear how the Department will consider any public submissions received in determining the final SEARs. In particular, AGL suggests that in preparing SEARs it would appropriate for the Department to give most weight to governmental agency submissions and established assessment methodologies.
- Provide proponent opportunity to review and comment on draft SEARs

6 Draft Guideline 4 - Preparing an Environmental Impact Statement

AGL generally supports the additional guidance provided on preparing an EIS contained in Draft Guideline 4 - Preparing an Environmental Impact Statement (Draft Guideline 4).

However, AGL has some concerns about the proposal set out in Draft Guideline 4 to replace the standard consent condition requiring development to be carried out 'generally in accordance with the EIS' with a new condition requiring development to be carried out 'as described in the project description chapter' of the EIS.

As the Department is aware, energy projects are typically very large in scale and developed as an iterative process, with detailed design being carried out post approval and during construction. Imposing a condition requiring all development to be carried out 'as described in the project description chapter' of the EIS, rather than 'generally in accordance with' the project description chapter, is likely to have the unintended consequence of requiring a much larger number of modification applications. This will potentially delay the delivery of energy projects which are critical for ensuring the security of NSW's energy supply and impose an administrative burden on the Department and the community, including community consultative committees. Furthermore, a level of uncertainty will be introduced, thereby creating risk and reducing investor confidence as well as potential difficulty in obtaining debt funding.

AGL submits that Draft Guideline 4 should be amended to make it clear that standard 'generally in accordance with' condition wording will be retained when imposing new conditions requiring development to be carried out as generally 'described in the project description chapter'.

Further, Draft Guideline 4 includes detailed guidance in relation to the manner in which mitigation measures should be considered in preparing an EIS. AGL questions whether the requirement to assess the
residual impacts which remain post mitigation is practicable in all instances. For example, the outcomes of screen planting to mitigation visual impacts cannot be determined until agreement has been reached with relevant landholders as to the type and location of the screening plantings which they prefer.

AGL submits that Draft Guideline 4 should be amended to clarify the level of assessment required to determine post mitigation impacts.

6.1 Draft Guideline 5 - Responding to External Submissions

Draft Guideline 5 - Responding to External Submissions (Draft Guideline 5) states that where changes are proposed to a State significant development (SDD) project as part of a response to submissions report, this must be done through an amended development application. This appears to be a change to the standard approach for assessing SSD Projects which has the potential to cause delays, create uncertainty for the community and other stakeholders and have implications for statutory appeal periods.

AGL submits that Draft Guideline 5 should be amended to:

- clarify that minor changes made to SDD projects at the response to submissions stage, which respond to issues raised during submissions or otherwise do not increase environmental impacts, do not require the submission of an amended development application; and
- specify a maximum 1 week period for any re-exhibition of a response to submissions report for energy projects so as to avoid delays which may jeopardise the timely development of critical energy infrastructure.

Draft Guideline 5 contemplates that response to submissions reports should group submissions based on location of the submitter. AGL notes that many submissions are made on an anonymous basis or otherwise do not contain sufficient information to enable the principal place of residence of the submitter to be determined.

AGL submits that Draft Guideline 5 should be amended to clarify that response to submissions reports are only required to group submissions by location where the location of submitters is evident from the submission.

6.2 Draft Guideline 6 - Community and Stakeholder Engagement

AGL is strongly committed to working with the community and stakeholders. AGL has adopted a Community Engagement Policy which applies to all our projects - please refer to the attached Link for details. Our Community Engagement Policy makes it clear that our aim is to:

Leave a positive legacy: AGL will strive to make a net positive social, economic and environmental contribution to the communities in which we operate.

To achieve this aim, AGL has committed to:
- Be proactive: we will engage with communities early and often, so that we understand and respond to their interests and concerns.
- Be flexible and inclusive: we will offer a range of engagement opportunities that are tailored to the variety of needs and preferences of the communities in which we operate.
- Be transparent: we will act honestly and ethically in all our dealings with the communities in which we operate.
- Support our employees and contractors to engage well: we will provide tools, peer support and training to enable our staff to deliver on our commitment.
- Continuously improve our engagement: we will evaluate the effectiveness of our engagement and modify it as needed to ensure that our activities address community needs and expectations.

We strongly support Department's commitment, as embodied in the Draft Guideline 6 - Community and Stakeholder Engagement (Draft Guideline 6), to the participation of all stakeholders, and particularly the community, in EIA in NSW.

AGL considers that it would be beneficial to amend Draft Guideline 6, particularly around the requirements for Community & Stakeholder Engagement Plans (CSEP), to provide greater clarity to stakeholders around the key timeframes and processes for consultation.

AGL submits that Draft Guideline 6 should be amended to clarify that:
- consultation at the pre-scoping report stage is to be directed at key stakeholder groups – and not individual community members who will need to be consulted with once assessment commences; and
- the requirement to provide publicly available details of key engagement activities within 28 days of SEARs being issued is intended to ensure that a broad overview is provided as to the key objectives, relevant stakeholders and phases of engagement proposed, with further information to be provided as assessment progresses.

6.3 Draft Guideline 8 - Modifying an Approved Project

Draft Guideline 8 - Modifying an Approved Project (Draft Guideline 8) states that:

The proponent must determine whether or not consent is required for any proposed project change. If there is any doubt:

- proponents of SSD are to seek advice from the Department about whether or not the change is considered within the existing project approval.
- proponents of SSI projects should document their position on whether or not the change is considered to be within the terms of approval in a Consistency Report to be published on the proponent's website.

Whether a modification is required to an existing project approval is a mixed question of fact and law. Further, AGL’s experience has been that the Department is neither equipped or prepared to advise proponents as to whether a modification is required.
Additional, AGL notes that there is no legal requirement to publish consistency reviews for SSI projects, which are likely to contain commercially sensitive information.

AGL submits that Draft Guideline 8 should be amended to make it clear that:

- whether or not a modification is required to a SSD consent is ultimately a question of mixed fact and law on which proponents will need to satisfy themselves; and
- there is no legal requirement to publish consistency reviews for SSI projects.

6.4 Draft Guideline 9 - Peer Review

AGL is supportive of a peer review process to ensure the veracity of EIA undertaken in NSW.

Draft Guideline 8 – Peer Review (Draft Guideline 9) states that peer reviews will remain wholly discretionary and does not give any guidance as to the timing, scope or content of any peer review.

AGL submits that Draft Guideline 9 should be amended to ensure greater transparency by requiring all peer review reports commissioned by the Department clearly set out:

- the relevant expertise of the peer reviewer;
- the methodology adopted by the peer reviewer in conducting the peer review, including any relevant limitations or assumptions made;
- the reasons for the findings made by the peer reviewer, including a justification as to why they have departed from any findings made by the relevant technical assessment the subject of the peer review.

In addition, AGL considers that it would be beneficial for the Department to ensure that its peer reviewer:

- meets with the proponent and / or the relevant technical expert prior to finalising their peer review so as to ensure that all areas of agreement or disagreement are clarified and considered in the peer review process; and
- is given a set timeframe to complete the peer review so as to avoid delays to the EIA process.
7 Conclusion
AGL would be happy to meet with the Department to discuss any of the issues raised in this submission. Please feel free to contact me on ahussein@agl.com.au or (02) 9921 2143.

Yours sincerely,

Amer Hussein
Manager Government & Community Relations