

16 December 2016

Ms Jane Holden  
Director, Climate Change and Resource Efficiency Policy Branch  
NSW Office of Environment and Heritage  
PO Box A290  
Sydney South, NSW 1232

By email: [Environmental.future@environment.nsw.gov.au](mailto:Environmental.future@environment.nsw.gov.au)

Dear Ms Holden,

## **NSW Government Climate Change Fund - Draft Strategic Plan**

Thank you for the briefing and the invitation to comment on the Draft Strategic Plan. The Government's net-zero emissions target is a welcome step to reduce our carbon footprint, and transition NSW to a climate-ready society with a safe, stable climate.

We make seven comments on the Draft Plan below, and attach our July 2016 report, *Planning for Climate Change: How the NSW planning system can better tackle greenhouse gas emissions*. That report contains a further 14 recommendations (at **Attachment A**) which form part of this submission.

### **1. 'Net-zero emissions by 2050': target needs legal support & interim targets**

We welcome the Government's November 2016 announcement of a statewide target of net-zero emissions by 2050. Although it is expressed as an aspirational target, any realistic chance of achieving it requires legal and institutional support.

There is a big difference between an aspirational target and binding targets backed by comprehensive legislation and clear responsibilities for achievement. Our report (Table 1, see **Attachment B**) shows that NSW laws are lagging behind other Australian states in responding to climate change.

Recommendation 1 of our report calls for a NSW Climate Change Act to support the achievement of long-term emission reduction targets; set interim targets for all sectors and policies to work towards; and require Ministers to achieve those targets. Consistent with this, the Strategic Plan should identify development of a Climate Change Act within a set timeframe.

### **2. Embedding climate change mitigation and adaptation in decision-making**

We support the aim of the Draft Strategic Plan to embed emissions reduction and adaptation into decision-making across government (and other sectors).

In particular, we welcome the Draft Plan's recognition of the planning system's role. The decisions we make now and the frameworks we use – for regional and city planning, transport, resource extraction, building standards and vegetation management – will have long lasting effects on future generations. The other 13 recommendations in our report aim to embed emissions reduction in decisions related to land-use planning and development approval systems.

In Victoria, the *Climate Change Bill 2016* (to replace the 2010 Act) will enact long-term and interim emissions reduction targets, a climate strategy, and policy objectives and principles to embed climate change in decision-making. The 2010 Act includes a schedule of laws where decision-makers must consider climate change and greenhouse gas contributions (as will the new Act). NSW should adopt similar requirements to improve decision-making and achieve its emissions goals.

### **3. Funding for communities to plan for a sustainable zero-emissions future**

Community attitude surveys suggest that a diverse range of Australians want less reliance on fossil fuels and stronger responses to climate change, including from state governments.<sup>1</sup> To have an even chance of avoiding 2 degrees average warming, this requires rapid and fundamental changes to our energy, economic and planning systems.

The closure of Victoria's ageing Hazelwood brown coal power station exemplifies this challenge. Climate imperatives and market forces are creating rapid change. The issue is how communities are empowered to plan, respond and envision their futures. There are opportunities in this challenge for rural, regional and urban communities. A proactive example is Byron Shire's Zero Emissions by 2025 plan.<sup>2</sup> However, forums for local people to discuss, understand and plan for a zero-emissions future – and funding to support this effort – are limited. This is where the Climate Change Fund could help.

### **4. Private land conservation funding needs robust governance safeguards**

There is debate about the proposal to use \$240 million from the Climate Change Fund, rather than a new budgetary allocation, to pay for private land conservation as a centrepiece of the *Biodiversity Conservation Act 2016* and land-clearing reforms.<sup>3</sup> There was no prior indication that the \$240m package (over five years)

---

<sup>1</sup> For example, Leviston et al., *Australian attitudes to climate change 2010-2014* (2015), CSIRO, pp 15 and 64. On average, federal and state governments' responsibility for responding to climate change was rated at 3.87 and 3.73 out of 5, where 5 is highly responsible and 1 is not at all responsible. Local government averaged 3.59 out of 5 for responsibility. More recently, in a nationwide survey by Farmers for Climate Action, 88% of the 1338 farmers who responded to the survey said they wanted politicians elected to represent farming regions to do more to advocate for stronger action on climate change, such as supporting renewable energy and cuts to carbon pollution. ('Farmers call for more renewables', *Carbon Extra* 393, 2 December 2016)

<sup>2</sup> See Byron Shire Council media release at <http://www.byron.nsw.gov.au/byron-shire-aims-to-become-australias-first-zero-emissions-community>; See further: <https://zerobyron.org/energy/>.

<sup>3</sup> The funding announcement was generally welcomed, even if opinion on the reforms was strongly divided. However, in recent years Catchment Management Authorities (now Local Land Services) lost

would divert money from another environmental program. Indeed, the Government rejected amendments to recognise carbon storage in the new Act's objectives.<sup>4</sup>

The proposed funding model creates a large opportunity cost. It means \$240m of private land conservation funding comes at the expense of \$240m on climate action that might otherwise have occurred. This is larger than any of the Draft Plan's proposed budget for Advanced Energy (up to \$200m), Energy Efficiency (up to \$200m) or Adaptation (up to \$100m).

We recommend funding the \$240m private land conservation commitment separately and additional to Climate Fund programs.

## 5. Clear and separate carbon accounting needed in the land sector

Adopting a 'net'-zero emissions target suggests the Government may partly rely on 'carbon offsets' to achieve its 2050 target. We sound a note of caution here. At a minimum, this requires a commitment to transparent and robust accounting rules.

Aside from the points above, the proposed use of the Climate Change Fund for private land conservation (to maintain and improve 'land carbon' storage in forests, soil, wetlands and other vegetation) raises important questions around:

- governance and additionality,<sup>5</sup>
- carbon and biodiversity co-benefits, and
- robust carbon accounting.

### Governance and Additionality

If the Climate Change Fund is used to invest in land carbon projects, it must not subsidise or create incentives for clearing mature vegetation (an existing carbon sink), as distinct from truly additional works that increase the stock of land carbon.

Without clear safeguards, there is a risk of this under future rural land-clearing codes, or biodiversity offset agreements for urban clearing. For example, it would be inappropriate to use Climate Change Fund money to pay a landholder to revegetate land they have recently cleared; or to pay a rural landholder to establish a biodiversity 'offset' site to compensate for urban land-clearing elsewhere.

The expert review of the EPBC Act raised the need to safeguard against perverse incentives in relation to federal land carbon programs. The review report called for:<sup>6</sup>

*...additional protection for non-forest vegetation through the eligibility requirements for reforestation projects ... for example, by not issuing credits for activities that are occurring on land that has been cleared of remnant native vegetation within a specified timeframe.*

---

40% of their funding for Property Vegetation Planning and extension services. 'New' funding for private land conservation and LLS staff is in a sense still restoring funding that was previously lost.

<sup>4</sup> Bill and amendments at: <https://www.parliament.nsw.gov.au/bills/Pages/bill-details.aspx?pk=3357>.

<sup>5</sup> 'Additionality': ensuring emissions avoidance wouldn't have occurred anyway, without the incentive.

<sup>6</sup> Dr A. Hawke et al., *An Australian Environment Act: Report of the Independent Review of the Environment Protection and Biodiversity Conservation Act 1999* (2009), recommendation 11.

NSW needs similar safeguards, including for the Climate Change Fund.

Promoting co-benefits for carbon and biodiversity

Rigorous safeguards should also attach to funding for 'land carbon' storage to promote co-benefits for carbon and biodiversity, and avoid funding projects that have adverse effects on biodiversity.

In the same way that poor scheme design could create incentives to clear mature vegetation (resulting in carbon loss), similar risks apply to biodiversity loss. For example, while biofuels may have a net benefit if they avoid carbon emissions, they create a loss if they involve clearing native habitat to plant fuel crops.<sup>7</sup> Also, diverse plantings of local species provide greater co-benefits than monocultural plantations.

Comprehensive greenhouse accounting – including for the land sector

A 'net'-zero target and the potential use of land carbon programs make it all the more important for NSW to adopt transparent and rigorous carbon accounting methods. This would include estimates of carbon loss from land-clearing of different vegetation and soil types, reporting of carbon loss in annual native vegetation report cards, and considering these real environmental costs in decision-making.

It is often assumed, particularly in Australia, that 'carbon offsets' such as reforestation are a direct swap to compensate for atmospheric fossil-fuel emissions. However, as Professor Brendan Mackey notes:

*'Land carbon mitigation activities do not offset fossil fuel emissions. Rather, they result in either avoided emissions or restoration of previously depleted stocks.'*<sup>8</sup>

Increasing atmospheric emissions released from deep fossil fuel reserves will take thousands of years for earth systems to re-absorb.

Similarly, the Climate Council notes that while land carbon serves important functions, it may result in perverse outcomes if reliance on tree-planting subverts action to reduce atmospheric emissions from burning fossil fuels.<sup>9</sup>

To avoid the risks of seeing the two systems as interchangeable, Professor Mackey argues that, separate to fossil fuel emissions accounting and reduction targets: 'Land carbon should have its own mitigation accounting, targets, policies and incentives'. We would support such an approach being adopted in NSW.

---

<sup>7</sup> The Climate Council, *Land Carbon: No substitute for action on fossil fuels* (2016), Australia, p 26.

<sup>8</sup> B. Mackey, " *Pathways to a Sustainable Economy* conference, Griffith University, 28 November 2016. See further Mackey B., Prentice I.C., Steffen W., House J.I., Lindenmayer D., Keith H. and Berry, S. (2013) 'Untangling the confusion around land carbon science and climate change mitigation policy', *Nature Climate Change* 3, 552–557; doi:10.1038/nclimate1804

<sup>9</sup> The Climate Council, *Land Carbon: No substitute for action on fossil fuels* (2016), Australia.

Recommendation 14 of our planning report calls for a NSW greenhouse emissions register to track and report on approved emissions and major project compliance. The register could include a separate land carbon component as suggested above.

## **6. How should NSW address the damage from exported ‘scope 3’ emissions?**

One of the biggest challenges for NSW’s contribution to global warming is ‘scope 3’ emissions, such as downstream emissions from the export of thermal coal. Carbon accounting rules tend to ‘externalise’ scope 3 emissions to the end-use country. However, like other economies reliant on emissions-intensive exports, we cannot escape the fact that we share one atmosphere, that coal is the most carbon-polluting energy source, and our exported emissions contribute to a major problem.

To have a realistic change of avoiding 2 degrees warming, we need to reduce domestic emissions and, at the same time, transition our industries and work to reduce the emissions we export. The Climate Change Fund can help communities plan for the future while maintaining a safe and stable climate (see 3 above). In addition, as the fund considers business and industry assistance via the Climate Change Fund, it is also important to examine other parallel incentives, subsidies and concessions that entrench carbon-intensive industry and act as barriers to a cleaner economy.

## **7. Accreditation for adaptation services**

It is important to remember that action to reduce emissions now (mitigation) also means lower levels of damage and costs of unavoidable adaptation later. Nevertheless, the Draft Climate Change Strategy identifies opportunities in relation to adaptation services. The Government should consider the role of professional accreditation could play in this field, to ensure NSW adaptation services, policies and training are leading-practice, ethical and complement mitigation action.

We hope this submission assists the Government to develop its Climate Change Fund Strategic Plan and achieve its broader target of net-zero emissions by 2050. To discuss this submission in further detail, please contact me or Rachel Walmsley, Policy and Law Reform Director, by email or phone on (02) 9262 6989.

Yours sincerely,  
**EDO NSW**



Mr Nari Sahukar  
Senior Policy & Law Reform Solicitor

**Attachment A – EDO NSW, *Planning for Climate Change: How the NSW planning system can better tackle greenhouse gas emissions* (July 2016)**

Recommendations below. Full report available at:  
[http://www.edonsw.org.au/planning\\_for\\_climate\\_change](http://www.edonsw.org.au/planning_for_climate_change).

**Attachment B – EDO NSW, *Planning for Climate Change* report (2016),  
'Table 1: Summary of Australian state and federal climate change mitigation  
laws and targets'**

## **Attachment A – EDO NSW, *Planning for Climate Change: How the NSW planning system can better tackle greenhouse gas emissions* (July 2016)**

Recommendations from the *Planning for Climate Change* Report are set out below.



### **01. Setting the Framework**

#### **Recommendation 1 (New climate change Act)**

Enact new climate change laws that include provisions that:

- set a clear overarching objective to reduce greenhouse gas emissions;
- impose duties on Government ministers to set periodic and long-term emissions reduction targets and carbon budgets, based on expert advice;
- set a legislative renewable energy target for NSW electricity use; and
- require the new Act's implementation and goal-setting to be consistent with internationally agreed climate goals, best available science, and ecologically sustainable development principles.

#### **Recommendation 2 (Planning Act objects)**

Insert an object in NSW planning law to reduce greenhouse gas emissions in accordance with those duties, targets, carbon budgets, global goals and best available science.

### **02. Strategic Planning**

#### **Recommendation 3 (Emissions reduction in strategic plans and SEPPs)**

Amend NSW planning law to require that strategic plans contribute to reducing, monitoring and improving greenhouse gas emissions across sectors, in accordance with relevant targets and best available science. Update all state environmental planning policies (SEPPs) accordingly.

#### **Recommendation 4 (Resource extraction areas)**

Before releasing a new resource area, require the relevant Minister to consider:

- likely emissions from resultant projects in the context of drawing down a state or national carbon budget;
- the scale, cost and timing of lifecycle greenhouse gas emissions of a project; and
- potential cumulative impacts with other past, present and approved or proposed future projects.

### **03. Environmental Impact Assessment**

#### **Recommendation 5 (Climate Impact Statements)**

Require consistent and independent assessment of the likely greenhouse gas emissions of all major projects. This must include a Climate Impact Statement that states:

- how the project proposal contributes to relevant goals and targets to reduce greenhouse gas emissions;
- specific measures to avoid, minimise and offset emissions from the project;
- the measures in place to ensure downstream emissions are avoided, minimised and offset;
- the full cost of the project's emissions; and
- full and proper consideration of alternative options.

#### **Recommendation 6 (Emissions assessment guidelines)**

Publish greenhouse gas assessment and decision-making guidelines to ensure consistent, robust assessment and decisions based on best available science. Guidelines should apply an 'avoid, mitigate and offset' hierarchy for reducing emissions.

#### **Recommendation 7 (Independent assessment)**

Require mandatory accreditation of environmental consultants who prepare Environmental Impact Assessment reports and independent appointment of accredited assessors.

### **04. Development Decisions**

#### **Recommendation 8 (Decision making guidelines and duties)**

Strengthen decision-making requirements for development approvals and conditions in the EP&A Act, with the aim of achieving emissions reduction targets. In particular, establish new duties to:

- have regard to state and national emissions trajectories and act in accordance with short and long-term reduction targets;
- consider the level of greenhouse gas emissions as grounds for refusal (or a duty to refuse unacceptable impacts);
- impose specific conditions on development consents and mining titles to minimise emissions, meet certain standards if the project is approved, and to offset emissions that cannot be minimised or avoided; and
- apply clear guidelines, rules and standards to minimise and offset emissions.

#### **Recommendation 9 (Continuous improvement)**

Amend NSW planning laws to clarify that development consent conditions can be updated to require continuously improved standards, whether or not a modification has been requested.

#### **Recommendation 10 (Building standards)**

Expand the Building Sustainability Index for energy and water efficiency standards, including

- significantly higher residential standards;
- expand efficiency standards to commercial and industrial buildings;
- built-in review periods that require standards to continuously improve; and
- lead and develop national standards for other sustainability measures such as lifecycle emissions and waste levels.

## **05. Other Approvals and Licences**

### **Recommendation 11 (Resource titles)**

Mandate climate change and emissions as a consideration for assessing exploration or production title applications under mining laws. Before issuing a mining title, the relevant Minister should be required to consider:

- likely emissions in the context of drawing down a state or national carbon budget;
- the scale, cost and timing of lifecycle greenhouse gas emissions of a project; and
- cumulative impacts with other past, present and approved projects.

### **Recommendation 12 (Environment protection licences)**

Add greenhouse gases as pollutants in NSW pollution control laws, to recognise their contribution to environmental degradation and encourage behavioural change. In the absence of a carbon price, this should include load-based licencing fees for greenhouse gas emissions, consistent with the polluter pays principle.

### **Recommendation 13 (Emissions standards for power stations)**

Establish emissions standards and continuous improvement requirements for NSW power stations, where appropriate based on nationally consistent standards. Standards and requirements would be enforceable conditions on environment protection licences.

## **06. Compliance and Enforcement**

### **Recommendation 14 (NSW greenhouse monitoring register)**

Establish a comprehensive greenhouse gas monitoring and auditing register to report on individual facilities with significant carbon footprints in NSW. This would draw on existing and new data, to track and report on approved and actual emissions.

## Attachment B – EDO NSW, *Planning for Climate Change* report (2016), Table 1

Summary of Australian state and federal climate mitigation laws and targets

State	Climate Mitigation Law	Legislative Targets
SA	<i>Climate Change and Greenhouse Emissions Reduction Act 2007</i>	<ul style="list-style-type: none"> <li>60% reduction in emissions by 2050 (1990 baseline).</li> <li>20% electricity <i>generated and consumed</i> from renewables by end 2014.</li> <li>50% of electricity <i>generated</i> from renewables by 2025 (policy target).</li> <li><i>Net zero emissions</i> by 2050 (policy target).</li> </ul>
TAS	<i>Climate Change (State Action) Act 2008</i>	<ul style="list-style-type: none"> <li>60% reduction in emissions by 2050 (1990 baseline).</li> </ul>
ACT	<i>Climate Change and Greenhouse Gas Reduction Act 2010</i>	<ul style="list-style-type: none"> <li>Zero net greenhouse gas emissions by 2050 (principal target – including by avoidance, mitigation and offsets).</li> <li>40% reduction in emissions by 2020 (1990 baseline).</li> <li><i>Peaking</i> per capita emissions by 2013.</li> <li>100% of electricity generated from renewables by 2020.</li> </ul>
VIC	<i>Climate Change Act 2010</i>	<ul style="list-style-type: none"> <li>No current legislated target. Previously a 20% reduction in emissions by 2020 (2000 baseline).</li> <li>In 2015 an independent review recommended Victoria reinstate legislative emissions reduction targets.</li> <li>The Victorian Government proposes to legislate a target of net zero emissions by 2050.</li> </ul>
CTH	(No legislated emissions reduction target) <i>Renewable Energy (Electricity) Act 2010</i> <i>Carbon Credits (Carbon Farming Initiative) Act 2011</i>	<ul style="list-style-type: none"> <li>5% reduction in emissions by 2020 (2000 baseline) (Kyoto Protocol, policy target).</li> <li>26-28% reduction in emissions by 2030 (2005 baseline) (Paris Agreement, policy target).</li> <li>Revised Renewable Energy Target of 33,000 GWh by 2020.</li> <li><i>Note:</i> The Climate Change Authority (2015) recommended a 30% reduction in emissions by 2025 (2000 baseline), with a further target range of 40-60% reduction by 2030.</li> </ul>
NSW	No climate mitigation law	<ul style="list-style-type: none"> <li>None.</li> </ul>
NT	No climate mitigation law	<ul style="list-style-type: none"> <li>None</li> </ul>
QLD	No climate mitigation law	<ul style="list-style-type: none"> <li>None.</li> </ul>
WA	No climate mitigation law	<ul style="list-style-type: none"> <li>None.</li> </ul>

Source: Planning for climate change: how the NSW planning system can better tackle greenhouse gas emissions, EDO NSW July 2016

[www.edonsw.org.au](http://www.edonsw.org.au)

