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Endorsed by LGNSW Board
in December 2022

NSW Environment Protection Authority
Via email: climatechange.review@epa.nsw.gov.au

Draft Environment Protection Authority (EPA) Climate Change Policy and Action Plan

As the peak body for local government in NSW, representing NSW general purpose councils and related entities, Local Government NSW (LGNSW) welcomes the opportunity to comment on the EPA's draft Climate Change Policy and associated Action Plan.

This is a draft submission and is subject to review and approval of the LGNSW Board. Any changes will be advised at the earliest opportunity.

The draft Climate Change Policy and Climate Change Action Plan are a welcome start to regulating greenhouse gas emissions in NSW. The Action Plan aligns with LGNSW's calls for urgent action to implement policy and programs to achieve emissions reduction targets. The EPA's proposal to stage the collection of data, provide guidance and set sector-wide targets for licensees in consultation with those sectors is reasonable.

As the EPA has noted, councils can be consent authorities, co-regulators of environmental legislation, community leaders and advocates, and licensees (for example, as operators of waste facilities and sewage treatment plants). This puts councils in a unique position of being regulated by the EPA, but also working with the EPA to regulate other industry either as (planning) consent authority or as appropriate regulatory authority (ARA) under the Protection of the Environment Operations (POEO) Act. Comments relating to these roles are provided below.

Councils as Licensees

The draft Policy and Action Plan will require licensees to develop Climate Change Mitigation and Adaptation Plans (CCMAPs). We note that councils, as holders of environment protection licences for infrastructure such as landfill sites, waste-water treatment plants and quarries, will be required to develop CCMAPs in due course. However, some councils may not have an understanding of their facility's emissions (e.g. fugitive emissions from wastewater treatment).

NSW councils have been assessing climate change risks and developing adaptation plans for their organisation. The local government climate change survey indicates that 82% of councils have in the past undertaken climate change risk assessments and developed action plans. However, recent surveys suggest councils require significant support from other spheres of government to ensure that these assessments are renewed. Many of the previous assessments were undertaken in conjunction with the local government insurer and were high level, first-pass assessments. LGNSW recommends through the EPA's Climate Change Action Plan process that EPA consider the level of climate risk assessment or vulnerability study required.

While climate projections are readily available, interpreting this data will require analysis to understand how these often compounding and cascading risks will impact the specific operations. Councils would welcome support to interpret how climate hazards would impact their licenced operations.

In relation to calculating emissions (for use in developing CCMAPs), we urge the EPA to use existing processes such as the Clean Energy Regulator's Emission Reduction Fund methods and National Greenhouse Energy and Reporting Scheme (NGERS) wherever possible to reduce duplication. The process for preparing CCMAPs should also be streamlined as much as possible e.g. through provision of templates for CCMAPs, guides, online systems. This could also include future integration of the CCMAPs into plans which licensees are already required to prepare such as environmental management plans (EMPs) and pollution incident response management plans (PIRMPs).

Councils as Consent Authorities

It is illustrative that the 2022 NSW Independent Flood Inquiry recommended (as part of recommendation 19) that the NSW Government – working with councils – build a disaster adaptation plan for each city and town, with planning instruments discouraging (and in many cases forbidding) development in disaster-likely areas. These plans are recommended to be developed under the NSW Climate Change Adaptation Strategy. LGNSW has supported this recommendation in principle, but notes the current critical resourcing constraints of local government mean that councils will need targeted resourcing and support from the NSW Government for any new or additional responsibilities. The CCMAPs developed by licensees would provide a valuable source of information about local climate risks and adaptation activities which could inform disaster adaptation planning.

Councils as Co-Regulators

The consultation FAQs and 'Fact sheet for councils' notes the role of councils as environmental co-regulators under the POEO Act. While the documents make it clear the Policy and Action Plan apply to licensees, it is not clear whether the targets and guidance developed for key industry sectors will also be applicable to non-licensed activities in the same sector (e.g. those activities below the licensing threshold, where councils are the ARA).

The documents would also benefit from clarity outlining what (if any) are the implications of the Policy for councils in their regulatory capacity. This could include setting out whether councils will also be expected to apply similar considerations to their POEO regulatory activities. Councils have expressed concern that – at some point – there will be an expectation for councils to apply the same approach to the significantly larger number of individuals and businesses they regulate but without the resources or mechanisms that the EPA has available to it. It is essential that any additional requirements placed on councils as co-regulators be matched with the requisite resources and support.

Conclusion

The EPA has clearly signalled its intent to work with councils and industries to understand their current approaches to addressing climate change, to understand what further measures are feasible, and to set an achievable path (and target) going forward. This consultative approach is welcomed.

It is also clear that there is still much work to be done by the EPA in terms of identifying the 'key industry sectors' to be tackled and in developing guidance and targets for those sectors. It will be important that the EPA keep an open dialogue and continue consulting with councils and other licensees as it implements the Policy and Action Plan.

Thank you again for the opportunity to comment on the EPA's draft Climate Change Policy and Action Plan. If you would like further information on LGNSW's position, please contact Susy Cenedese, Strategy Manager Environment on 02 9242 4080 or susy.cenedese@lgnsw.org.au

Yours sincerely

A handwritten signature in black ink, appearing to be 'Damian Thomas', with a long horizontal flourish extending to the right.

Damian Thomas
Director Advocacy