

Xavier McMahon

Clayton Utz

Presentation

Rethinking domestic responses to climate change

Biography

Xavier McMahon is a specialist environmental lawyer from Clayton Utz.

Xavier prides himself on his ability to deliver innovative, practical legal solutions for his clients. He is a strong believer that legal advice cannot be provided in isolation; it must be informed by an understanding of the client and the industry in which it operates. This approach, combined with Xavier's specialist knowledge in planning and environmental law, has led to him becoming a trusted advisor to numerous clients across the government, development, resources and infrastructure sectors.

Xavier has worked closely with clients to deliver many of Queensland's most high profile and legally complex projects, including transport infrastructure, CSG-LNG projects, mining projects, industrial developments, high rise buildings, master planned communities and shopping centre developments. Whatever the scale of the project, Xavier enjoys working with clients to deliver real legal outcomes and to look for opportunities to add value.

Abstract

Litigation is increasingly being used by non-government actors as a tool to force responses to the causes and effects of climate change.

To date, 'climate change' litigation has largely involved attempts to extend the application of existing legislation to new and emerging concepts. For example, litigants have argued that existing pollution laws should apply to greenhouse gas emissions, that consideration of a project's impacts should include indirect, downstream impacts (such as impacts from the burning of fossil fuels by a proponent's customers) and that governments' consideration of the public interest should include the principles of ecologically sustainable development and the precautionary principle.

In some cases, litigation has led to legislative and policy reform, even where success has not necessarily followed in the courts. However, it is widely acknowledged that litigation is an inefficient vehicle for reform and that ad hoc, domestic approaches will ultimately need to make way for a coordinated, international response to climate change.

Many of the countries expected to lead this coordinated response are seeing a re-emergence of isolationist politics, evidenced by the 'Brexit' vote in Britain and the

popularity of Donald Trump in the United States, prompting a rethink as to what this means for the direction of climate change policy.

This presentation will look at how domestic laws might further develop in the years to come to respond to climate change issues in the absence of coordinated international responses, including discussion on how existing legal concepts might be applied in novel ways, such the extension of the public trust doctrine to coastal areas (or even the atmosphere) and whether a river or other feature of the environment can have legal rights. We will also consider the challenges and opportunities these developments present for government, landholders, developers and environmental professionals.

RETHINKING DOMESTIC RESPONSES TO CLIMATE CHANGE

Xavier McMahon

CLAYTON UTZ

EIANZ Annual Conference

3 November 2016

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*The talks at the COP21 conference in Paris have culminated in a global deal, with the whole world now signed up to play its part in halting climate change. In other words, this generation has taken vital steps to ensure that our children and grandchildren will see that we did our duty in securing the future of our planet. What is so special about this deal is that it **puts the onus on every country to play its part.***

”

-UK Prime Minister, David Cameron



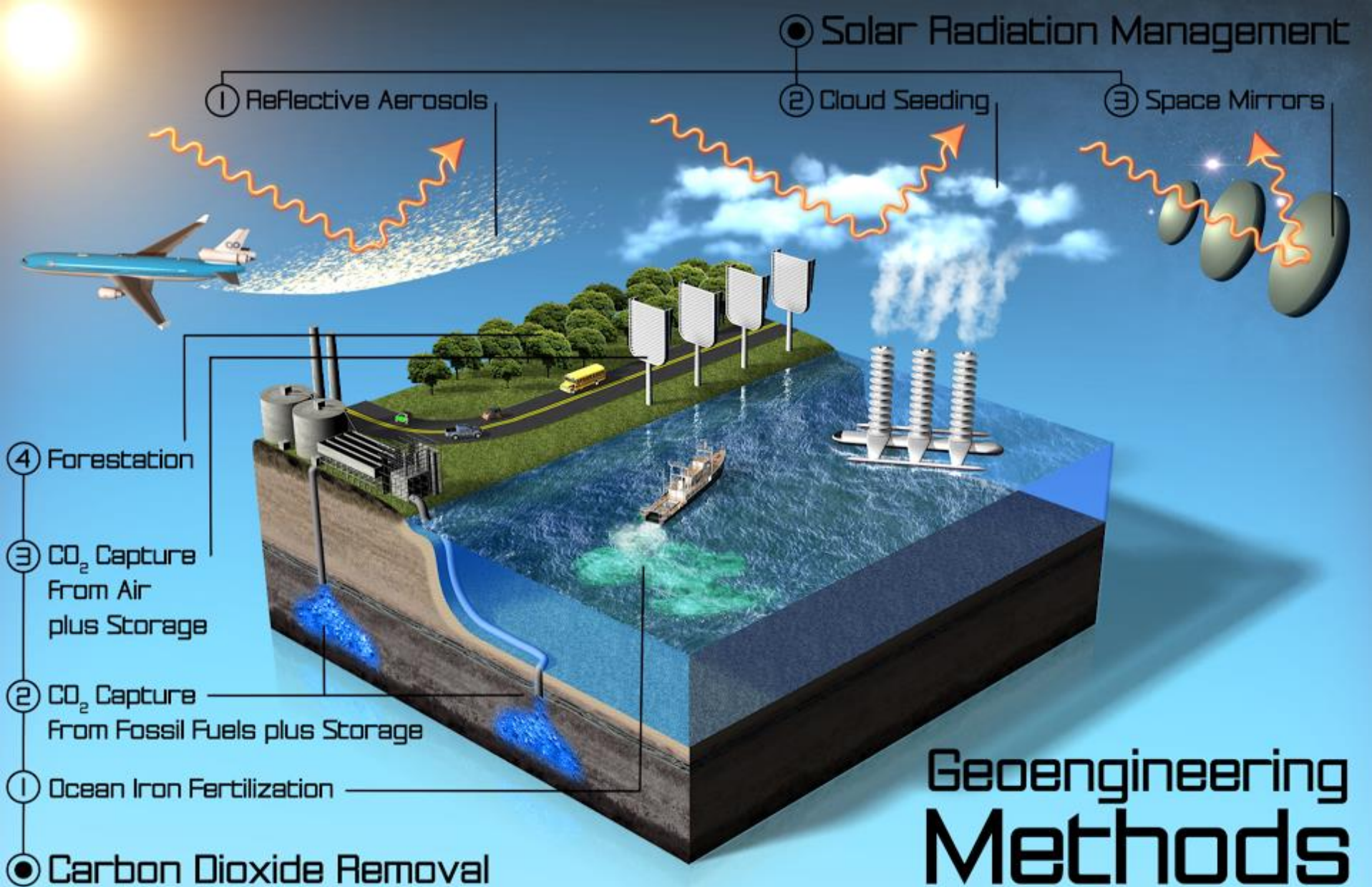
Donald J. Trump 
@realDonaldTrump

 Follow


The concept of global warming was created by and for the Chinese in order to make U.S. manufacturing non-competitive.

5:15 AM - 7 Nov 2012

  97,860  62,494



Sources: IPCC / Royal Society | More info: www.get2.cc/5e

 climatecentral.org

Questions

1. Does it matter that laws have not been designed for the purpose of addressing climate change?
2. Who should have standing to bring climate change litigation?
3. Is there a role for "piecemeal" responses to climate change?

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Regulatory flexibility

1. Has its limitations

2. May be necessary to "imply" authorisations or restrictions

3. The evolving public interest...

Evolving public interest



Photo: Fairfax Media, Peter Rae, 2016

Legal standing



Personhood

"throughout legal history, each successive extension of rights to some new entity has been... a bit unthinkable"

- Christopher Stone

Photo: Shahaira/iStock, Outside 2016

Public trust



ISS007E10807

Photo: NASA, 2003

"The future of the people of the world, the future of our planet, is in your hands. We cannot afford indecision, half measures or merely gradual approaches. Our goal must be a transformation."

-U.N. Secretary-General, Ban Ki-moon



Photo: UNEP

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