

6 September 2024

Ms Sue Higginson  
Committee Chair  
Portfolio Committee 7  
Parliament of NSW  
6 Macquarie St, Sydney NSW 2000

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Dear Ms Higginson

## **CCA Submission - Biodiversity Conservation Amendment (Biodiversity Offsets Scheme) Bill 2024**

### **Industry background and commitment to Environmental outcomes**

Cement, concrete, stone, and sand are the critical materials that enables the \$56 Billion New South Wales construction industry, employing 370,000 workers and contributing 45% of the New South Wales taxation revenue base.

Cement Concrete & Aggregates Australia (CCA) is the peak industry body for cement manufacturers, concrete suppliers, and extractive operators throughout New South Wales. Collectively known as the heavy construction materials industry, our members range from large global companies to SMEs and family operated businesses and are engaged in the quarrying of sand, stone and gravel, the manufacture of cement and the supply of pre-mixed concrete. These businesses service local, regional, and national construction and infrastructure markets to meet New South Wales's building and construction needs through the provision of roads, railways, bridges, ports, airports, hospitals, schools, and footpaths. The reliable and cost-effective supply to these markets is fundamental to sustainable growth and it is CCA's aim to promote policies that recognise the importance of these materials to Australia's sustainable future.

Importantly, CCA members are strongly committed to the protection and improvement of environmental values and minimising environmental impacts when they arise, and we strongly believe that we have an obligation to supply construction materials in an environmentally responsible and sustainable manner. We work within a very complex array of Federal, State and Local Government legislation which aims to protect Australia's unique biodiversity, natural landscapes and lifestyle and we are keen to continue to work with the NSW Government and the wider NSW Community to maintain these protections.

Our industry's approach to enhancing sustainability and biodiversity is outlined in CCA's ***Enhancing Australia's Biodiversity – Extractive Industry Priorities***<sup>1</sup> document which was put together in 2020 in response to the Federal Government's second independent review of the Environment Protection and Biodiversity Conservation (EPBC) Act 1999.

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<sup>1</sup> [Enhancing Australia's Biodiversity – Extractive Industry Priorities](#)

This approach can broadly be summarised as:

- Minimising the environmental impact of extractive operations;
- Progressive and staged onsite rehabilitation and ongoing buffer enhancement;
- Achieve outcomes through collaboration, consultation and partnership;
- Share Biodiversity innovations across the industry and community; and the
- Development of industry capability in biodiversity management.

In 2021, our industry publicly declared its [ambition to deliver net zero carbon cement and concrete to Australian society by 2050](#)<sup>2</sup>. Our sector's Climate Ambition Statement makes three key points:

- Australia's Cement and Concrete Industries recognise the challenges of climate change and adaptation;
- Our industries hold an ambition to reduce their CO2 footprint and deliver society with Net Zero Carbon Concrete by 2050; and
- We are committed to working across the value chain to deliver this in a circular economy, whole-of-life context to support a sustainable built environment.

The Extractive sector has always acknowledged that the initial stage of our supply chain – the extraction of raw materials from the earth's crust (quarrying) - has the potential to impact the surrounding natural environment. However, we equally believe that these impacts can be addressed through inception planning, onsite environmental management measures and the development and implementation of effective and progressive rehabilitation and restoration of quarry sites which contribute to significant, long-term environmental outcomes.

Creating new habitats through rehabilitation and mitigation is common practice for operators in our sector and our members understand the importance of managing biodiversity as part of responsible and proactive risk management under the broader scope of the natural environment and land stewardship. Companies that demonstrate responsible business behaviour, by minimising their ecological footprint, and ensuring the preservation of the natural capital as well as the welfare of communities in their areas of operation, can have a competitive advantage, develop company value, and achieve better long-term sustainability of their operations.

### **Private Land Conservation and Investment**

Quarries, by their very nature, maintain unique characteristics that are different to many other land uses. We estimate that across Australia, there are more than 2,000 privately owned quarries where stone, limestone, gravel, and sand are extracted and that the following characteristics should be considered as part of enhanced approaches to conservation and investment decisions for owners.

- Quarries are usually long-term operations – serving community needs for decades;

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<sup>2</sup> [Cement and Concrete Industry declares its ambition to deliver net zero carbon cement and concrete by 2050](#)

- The actual processing part of a quarry is often less than half of the overall quarry property – the remaining area serves as vegetation or as a natural buffer;
- As resources are extracted – quarries are progressively rehabilitated to bring the final landform back to a sensitive state;
- Land Rehabilitation plans are usually determined as part of the quarry approval process to construct waterways, replant local vegetation, and create new fauna habitats;
- Quarrying serves as a temporary land use with great opportunities for the creation of strategic, end of life uses once resources have been exhausted;
- The location of quarries is dictated by geology with often little opportunity for the operation to be moved; and
- The small, overall landscape footprint of the sector

### **Biodiversity Conservation Amendment (Biodiversity Offsets Scheme) Bill 2024 – General Comment**

CCAA and our members are supportive of good legislation to protect the environment, however we consider that this Bill is premature given that there is very little detail contained with the Bill and the Regulations, principles and supporting documents are either not available for public viewing or have not been prepared.

#### **Net positive biodiversity outcomes – Not defined**

As a matter of good practice, concepts or terminology appearing in a Bill should be defined, such as the term “net positive biodiversity outcomes”, Clause 6.2A. It is difficult for CCAA to support a concept that is not well defined. Furthermore, CCAA would contend that the Government and the Minister does not need a piece of legislation to draft a strategy, rather it would be more appropriate for the Minister to prepare a draft strategy and consult on this strategy. Should this strategy require the amendment of the Biodiversity Conservation Act or any other Act of Parliament, then an amendment Bil can be put forward at that time.

CCAA also holds concerns that the inclusion of an undefined concept into the legislation, could be interpreted in a multitude of different ways and could therefore stifle decision making and investment, particularly until strategies and policies are developed. We do not believe that the Government wishes to stifle investment in housing, renewable energy and infrastructure, or the quarries needed to supply the materials for these projects, and accordingly we would call on the Government to address the policy and definitions first before putting the concept of “net positive biodiversity outcomes” into legislation.

#### **Avoid, minimise, and offset hierarchy**

CCAA believes that the term “avoid, minimise and offset hierarchy” also needs further definition. Other states define this terminology in policies rather than in legislation, and we contend that this provides clarity and certainty for investment.

## **Biodiversity Conservation Measures**

Once again, further definition is required around the term “Biodiversity Conservation Measures”, particularly as Clause 6.29A refers to the taking of biodiversity conservation measures in lieu of retiring biodiversity credits. It is important that the measures proposed are understood by industry and also that such measures are not so onerous such as to preclude paying into the Biodiversity Conservation Fund (BCF). This could have a perverse outcome of making biodiversity credits more difficult for landholders should there be a corresponding reduction in the types of biodiversity credits that the BCF seeks to purchase.

## **Access to paying into the Biodiversity Conservation Fund**

CCAA is concerned that the legislation will limit access to paying into the BCF as proposed in section 6.30(2). The BCF is already a last resort in most cases and is also usually the most expensive way to offset a given development. Should a company wish to pay into the BCF for something that can be easily purchased by the Biodiversity Conservation Trust (BCT), this should have the effect of helping to make the BCF more workable, not less. Conversely, limiting its use may make acquitting the BCF more problematic, notwithstanding the intent of the Government to require monies paid into the fund to be acquitted within 3 years. CAA is supportive of a measure which seeks to hold a government process to account through the setting of a timeframe to acquit funds paid in to the BCF.

## **Direction to Assessors**

CCAA is concerned that the proposed provision of directions to assessors, who must already comply with the Act and must obtain and retain certification, will in fact further discourage assessors from entering the profession. Assessors are already facing arguably unsustainable pressures, leading to delays in the assessment process. CCAA recommends that this section be deleted.

## **Additional Registers**

CCAA is of the belief that the establishment of registers for decisions of approving or refusing development consent may lead to assumptions around a particular site, ultimately inappropriately impacting on opportunities for development which may be appropriate in circumstances that are quite different in nature or scope compared with the development that was previously refused.

## **Nationally Consistent Approach to Biodiversity**

As our sector takes a significant interest in biodiversity outcomes, we are also keenly aware of the Federal Government’s Nature Positive Plan, in response to the Federal EPBC Review and its call for “fundamental reform”. While we welcome clear priorities through the development of National Environmental Standards, faster and better decision-making instruments, and the emergence of detailed, draft legislation for public comment, we remain concerned that any amendments in New South Wales legislation may not work hand-in-hand with proposals in the Federal Act. In order to avoid costly duplication and green tape and to

deliver nationally consistent outcomes, we ask that the NSW Bill be delayed to ensure that legislation can be consistent with the Federal Government work in this space.

We believe that a nationally consistent approach can assist with adapting to the challenges of climate change, minimising its effects and to increase biodiversity resilience.

### **Biodiversity Offsets**

The Act establishes the Biodiversity Offsets Scheme with the aim to avoid, minimise and offset impacts of development. The scheme applies to certain proposals that need consent under the Environmental Planning and Assessment Act 1979. Parts of the scheme also apply to clearing proposals on rural land that require approval by the Native Vegetation Panel under the LLS Act.

The scheme remains overly costly and complex and does not support an effective or strong enough market for offset credits.

In our submission to the NSW Parliamentary Inquiry into the Integrity of the Biodiversity Offsets Scheme in 2021<sup>3</sup>, CCAA argued that the scheme presently fails to deliver long-term, strategic biodiversity objectives and conservation were not being achieved. In particular, costs were being added to developments when actual outcomes are questionable.

A range of supply barriers arising from the scheme have contributed to ineffective outcomes such as:

- Assessment complexity and the need to find expert ecologists to assist with an application;
- Challenges for smaller landholders to meet the detailed and overly extensive requirements and complexity of the management plan;
- Uncertainty of future land use once credits have been created;
- Land value once a perpetual Biodiversity Stewardship Agreement is in place; and an
- Inability to identify offsets for connectivity as part of a future project consideration through the Biodiversity Assessment Method (BAM).

As quarry projects are largely individually owned and projects developed over time, biodiversity offsets are mainly secured in an ad hoc manner. The BAM does not provide incentive for connectivity between offsets or to other conservation lands. Moving offset assessments to a post approval phase means that there is no incentive within the approval process to identify offsets and for connectivity or strategic value of the offset to be part of a project's consideration.

Ultimately, we believe that the scheme can be improved to deliver stronger conservation and biodiversity outcomes when developer charges are set at a price that encourages and incentivises the purchasing of credits (thus delivering greater confidence to participate in the offset market), that additional flexibility be built in to consider connectivity of land or other

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<sup>3</sup> [CCAA Submission to the NSW Parliament Inquiry – Integrity of the NSW Biodiversity Offsets Scheme](#)

strategic biodiversity projects, along with the carrying out of regular reviews to ensure the competitiveness of the offsets market is improved and maintained.

In our submission to the proposal for IPART to review and monitor the operation of the NSW Biodiversity credits market over the next three years<sup>4</sup>, CCAA highlighted the following concerns and lack of incentive for private landowners:

- Lack of a strong enough market – lack of credits to deliver quarry rehabilitation projects;
- Inflexibility – former calculator was many times more expensive than the costs of buying and managing land offsets;
- Significant upfront costs – deters the incentive to be involved and participate;
- Purchase uncertainty – lack of certainty that credits will be purchased once created; and
- Credits must be fully retired – lag time between completing the Biodiversity Stewardship Agreement (BSA) and finding developers to purchase and retire all individual credits means landholders continue to fund all management actions.

Once again, CCAA thanks you for the opportunity to comment on the Biodiversity Conservation Amendment (Biodiversity Offsets Scheme) Bill 2024 and we encourage the NSW Government to consider our thoughts and suggestions.

We welcome the opportunity to discuss this matter with your Parliamentary Committee in further detail. Accordingly, please contact Jason Kuchel, State Director NSW, SA, ACT & NT on 0448 848 848 or email [Jason.kuchel@ccaa.com](mailto:Jason.kuchel@ccaa.com)

Yours sincerely

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Chief Executive Officer

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<sup>4</sup> [Monitoring the NSW Biodiversity Credits Market Review](#)