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Via email: bos.governance@environment.nsw.gov.au

CCAA Submission on Potential Amendments to Biodiversity Conservation Regulation 2017 Consultation Paper

Dear Louisa

Cement Concrete & Aggregates Australia (CCAA) is pleased to lodge this submission on the [Biodiversity Conservation Regulation 2017 Consultation Paper](#).

CCAA is the voice of the heavy construction materials industry in Australia. CCAA members produce most of Australia's cement, concrete, and aggregates, which are crucial to Australia's building and construction sectors.

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

Australia's cement and concrete industries recognise the challenges in NSW of climate change adaption and supports biodiversity outcomes, whilst meeting other NSW Government priorities like the Housing Accord and delivering critical renewable energy and transport infrastructure.

The NSW Government has committed to delivering **377,000 new homes across the state by 2029** as part of its commitment to the **National Housing Accord**, with targets set for both Sydney and regional areas. However, there is a critical shortage in the supply of natural sand in the Greater Sydney region, which is vital in the production of concrete and thus facilitating the construction of homes and transport infrastructure.

CCAA estimates that natural sand reserves are forecast to run out in 2030¹. CCAA members report they want to invest in sand extraction in the Greater Sydney region, but due to the additional costs of managing both biodiversity offsets and significant growth in land prices, there is no return for the investment of what is a relatively low-priced commodity.

Construction sand has low unit value and should preferably be obtained from sources close to markets to minimise both transport costs and the adverse environmental impacts associated with transporting enormous quantities of material.

While the Sydney Basin still contains **hundreds of millions to over a billion tonnes** of extractable sand, much of it is remote from demand centres. With 6–7 million tonnes per annum consumed annually, new supply capacity must be **approved and operational within the next decade** to ensure continuity, particularly for the fine sand so essential to concrete.

¹[CCAA NSW Heavy Construction Materials Supply Strategy July 2024](#)

To facilitate this extraction, this submission responds to the key proposals and issues raised, in the Biodiversity Conservation Regulation 2017 Consultation Paper with a particular focus on their practical implications for project proponents, the private credit market, and the strategic role of government-led offset mechanisms such as the Biodiversity Conservation Fund (**BCF**) and the Credit Supply Fund (**CSF**).

Whilst welcoming the publication of the consultation paper, it is essential that more targeted and meaningful engagement occurs as the Regulation is drafted because the direction the Department is taking is not made clear in the document.

RECOMMENDATIONS

- 1. A carve-out in the Biodiversity Conservation Regulation allowing for rehabilitation of quarries (progressive or final) to count as part of, or all, the biodiversity offset obligation, provided it meets ecological outcome criteria, should be introduced.**
- 2. Offset equivalence should be enabled through:**
 - approved rehabilitation management plans;
 - ecological performance targets and monitoring, and
 - long-term land-use commitments or bonding.
- 3. Flexible offset rules to extractive industries should be applied, particularly where:**
 - no feasible credits are available;
 - the site is in a strategic resource area near urban growth corridors, and
 - the project would otherwise not proceed due to untenable offset costs.
- 4. The development of site-based or precinct-based offset approaches for clustered quarry operations in high-demand regions, to improve coordination and reduce duplication of offset obligations, should be supported.**
- 5. The limited opportunities to develop quarrying sites near to where housing and infrastructure is to be developed, should be a consideration when determining what is a 'genuine' avoidance and minimisation measure.**
- 6. The Department should work closely with industry to ensure that regulatory instruments used to determine what is 'genuine' avoidance and minimisation measures are workable.**
- 7. There should be no limitation on the use of the Biodiversity Conservation Fund (BCF) to acquit offset obligations.**
- 8. Smaller extractive industry sites should have special provisions provided to allow the use of bush regeneration and restoration works to reduce a credit obligation.**

9. **The offset trading groups need to be much broader to allow more options for developers in the market for credits.**
10. **Removing the ability for a mining proponent to meet credit obligations through a commitment to mine site rehabilitation, as set out in the *NSW Plan for Nature* and this consultation paper, should not rule out the opportunity for quarries to rehabilitate as they are normally much smaller in scale and long-term impact.**
11. **An option to enter into some form of agreement or undertaking to regenerate existing land to compensate for some of the credits of this application should be considered.**
12. **Credit should be given to companies who have taken proactive steps to promote positive biodiversity outcomes.**
13. **CCAA believes this industry should be able to participate in the SODA arrangements if additional quarrying, or manufacturing plants are required during construction of projects in the REZ.**
14. **Reforms at the state level must be coordinated with Federal legislation, so that there is no duplication of obligations imposed by the Commonwealth through amendment of the *Environment Protection and Biodiversity Act 1999* (Cth) and the proposed National Environment Standards currently under development.**

Introduction

Cement Concrete and Aggregates Australia (CCAA) is pleased to address the questions contained in the consultation paper:

Avoiding and Minimising impacts on biodiversity values

- 1. Should the “avoid and minimise” standards consider measures taken before the site assessment process?**
- 2. What types of measures to avoid and minimise impacts should be recognised as genuine?**
- 3. Are there any development types that require specific considerations in relation to defining genuine avoidance and minimization measures?**

As indicated previously, given the critical shortage of sand in the Sydney basin, with competing demands of finding new areas for housing, there are limited opportunities to develop quarrying sites near where housing and infrastructure is to be developed, something necessary for the efficient operation of the heavy material supply chain.

This is a consideration when determining what is a genuine avoidance and minimisation measure.

The “**avoid and minimise**” standards should also consider measures taken during an earlier step in the land planning process. In addition, the hierarchy’s application on a parcel of land should be limited to once during the planning process to ensure the Scheme is achieving strategic outcomes for biodiversity, while ensuring the efficient operation of the heavy materials supply chain and jobs.

The structure of other regulations that govern the operation of our industry is also something that should be considered when considering whether there has been an attempt to mitigate biodiversity loss.

The quarry approval process has always been aimed at minimising disturbance and impacts to native vegetation, threatened species, threatened vegetation communities and threatened populations. In the past, offsets were applied and called Environmental Protection Zones, often on the same or a neighbouring lot to the quarry.

These non-development areas were agreed to between council and quarry managers/owners in a similar way that the stewardship sites are now agreed to, but without the exorbitant costs involved. Rehabilitation of the site was also always an expectation and condition of consent.

The ability to avoid disturbance when digging a resource out of the ground is impossible. However, the sand quarry industry is tightly regulated to ensure that environmental impacts are minimised and kept to a low impact as determined by science and the regulators who set the standards for allowable impacts.

Sand quarries are required by their licensing approval to undertake monthly ground water monitoring, regular ground water quality testing, continuous air quality monitoring, regular noise monitoring and in some cases threatened species monitoring for the duration of the quarry life.

Compliance with carefully developed industry specific regulatory requirements should be considered when considering whether there has been a 'genuine' attempt to do something in this area.

'Genuineness'

Finally, the Biodiversity Assessment Method (BAM) has strong guidance on the avoid, minimise, and offset hierarchy.

There is therefore some concern with the extremely subjective nature of what constitutes a 'genuine' attempt to mitigate biodiversity loss, a concept introduced through the amendments made to the principal Act by Parliament in 2024.

The Department will need to work closely with industry to ensure that regulatory instruments are workable.

Reducing reliance on the Biodiversity Conservation fund

- 1. What approaches to reducing reliance on the biodiversity conservation fund do you think would best deliver biodiversity outcomes and support the credit market?**
- 2. Are there any ways to reduce reliance on the Biodiversity Conservation Fund that have not been identified that should be considered?**
- 3. Are there circumstances in which the use of Biodiversity Conservation Fund is beneficial that should be retained?**

The Biodiversity Conservation Fund has potential to consolidate credit requirements and make investments in conservation in a way that individual owners/companies could not make operating individually.

There are 2000 privately owned quarries in NSW where stone, limestone, gravel and sand are extracted.

Any restriction to fund access would particularly impact smaller developers with limited access to capital and so lead to subsequent reductions in the level of supply of building materials to the supply chain and environmental benefits for the people of the State.

Moreover, CCAA believes that all the evidence, including the Government's own recent actions in moving away from a 'no net loss' goal for the biodiversity legislative suite to a 'nature positive' outcome, points away from reducing the role of Governments in centralising the provision of offsets.

CCAA therefore opposes any limitations on the use of the Biodiversity Conservation Fund (BCF) to acquit offset obligations.

It is critical for industry that an administratively easy, relatively fast, and financially viable method is maintained to acquit offset obligations.

We would also suggest that smaller extractive industry sites should have special provisions provided to allow the use of bush regeneration and restoration works to reduce a credit obligation.

Quarries that produce washed sands have large parcels of land tied up as storage for tailings, these areas can be rehabilitated to natural bushland however most operators elect to rehabilitate to agricultural land to avoid this.

If a concession could be granted for future offsetting obligations, operators would have an incentive to regenerate vast areas of land creating more biodiversity, rather than simply paying into the BCF.

Simplifying offset trading rules for ecosystem credits

- 1. How would changing the rules impact projects or biodiversity stewardship agreement with which you are familiar?**
- 2. Do you have any suggestions as to how the offset trading rules for ecosystem credits could be simplified without compromising biodiversity outcomes?**
- 3. If you are a participant in the scheme, what benefits do you see in these types of changes? What else could Government consider in making these changes?**
- 4. Are there changes to the use of species credits that the government should also consider?**

The offset trading groups need to be much broader to allow more options for developers in the market for credits.

Applicants should have the option to translocate certain species as an alternative to buying credits.

For example, one of our members has translocated the threatened species *tetratheca glandulosa* into a bush regeneration area.

Nature positive actions such as this should be recognised.

Balancing the application of the scheme with biodiversity risks

- 1. What options provide the right balance between robust identification of potential impacts on biodiversity values and reducing regulatory burden?**
- 2. Are there other options that Government should consider?**
- 3. Are there unintended consequences, and how can the impact of these be reduced?**

Requiring the industry to pay twice to rehabilitate quarry sites

Under the current regulatory settings proponents are required to purchase expensive offset land or credits, even where rehabilitation on the same site can achieve equivalent or superior outcomes.

This is particularly problematic in metropolitan and peri-urban regions like the Sydney Basin, where:

- Land costs are prohibitively high (often \$1–2 million/ha);
- Credit supply is limited or unavailable; and
- Many sand quarries – essential for concrete and housing – are not proceeding due to the cumulative costs of land, approvals, and offsets.

This situation is exacerbating a looming shortage of sand and aggregate in the Sydney Basin – a shortage that will impact infrastructure delivery, housing supply, and affordability through 2030 and beyond, as discussed previously in this submission.

CCAA members have suggested that current policy structures unduly prejudice the efficient operation of extractive industries such as sand quarries.

The extractive industry is required to adhere to the Act if their operations are unable to avoid the disturbance to native vegetation.

In many cases, avoidance is difficult as natural resources are often located underneath undeveloped land where native vegetation may still occur as long term existing, remnant or re-established over time. Impacts to native vegetation will usually trigger biosecurity offset scheme obligations.

Depending on the size of the area to be impacted, and the species which may occur within that area, offsetting could potentially cost up to millions of dollars.

Quarries are conditioned via their development approvals to rehabilitate the site which they had disturbed to undertake extraction of resources, as is appropriate.

However, the rehabilitation is often conditioned to such an extent that the financial burden is as much, or more, than the cost of the credits generated to clear the vegetation in the first instance.

Bonds are held by Councils and State Government, over the life of the quarry and until the rehabilitation effort is signed off as being completed.

It follows that quarries are essentially having to pay twice to disturb native vegetation while other industries, pay once, with offsetting obligations undertaken prior to the start of an operation's life and rehabilitation obligations discharged at its end.

This double payment is limiting the number of new quarry projects to service the Sydney basin that are being commenced and leads to and flow on effects to the rest of building and construction supply chain.

Retention of rehabilitation credits

This means that CCAA particularly opposes the removal of an ability for a mining proponent to meet a credit obligation through a commitment to mine site rehabilitation as set out in the *NSW Plan for Nature*.

Quarries differ markedly from traditional mining and infrastructure projects in both scale and environmental legacy. They are generally:

- smaller in footprint;
- of short operational duration; and
- capable of full or near-full site rehabilitation, including restoration of native vegetation, ecological corridors, and water features.

Unlike more permanent developments, quarries have a unique capacity to be returned to ecological function.

CCAA believes that progressive and final rehabilitation of quarry sites can deliver meaningful and measurable biodiversity outcomes – especially when supported by management plans and post-closure compliance mechanisms.

We would particularly appreciate the opportunity to discuss this matter with the Department.

Recognising regeneration of quarrying sites and recognising previous proactive action

As referred to above, CCAA's members have reported numerous examples of projects becoming unviable because of the cost of credits and or nearby land to offset - especially the Sydney basin where we have a critical shortage of sand.

As an example, one of our members submitted an application requiring the clearing of four hectares of native vegetation to allow for the extraction of five million tonnes of sand.

The cost of biodiversity credits to allow for the removal of this vegetation makes the project unviable.

If the option to enter into some form of agreement, to regenerate existing land to compensate for some of the credits, this application could be feasible.

In 2017, the same company referred to above, had a formal Biodiversity Assessment undertaken on a property where they were proposing to quarry for sand within a location identified for extractive industry in the Maroota area, via the Sydney Regional Environmental Plan No 9—Extractive Industry (No 2—1995) (1995 EPI 574). This assessment resulted in the requirement to enter the Biodiversity Banking and Offset Scheme.

Rather than purchase credits directly from the Biodiversity Conservation Trust, they invested in offsetting their credit obligation on land they already owned in the Maroota area with a 40ha Biodiversity Stewardship Site approved in early 2024.

In August 2024, the Royal Botanic Gardens Victoria and the Western Sydney University contacted one of our members regarding a flora species which had a BioNet record as being present within the newly formed Stewardship Site.

This species, *Macrozamia elegans*, is currently being evaluated for threatened species listing in NSW. The Royal Botanic Gardens Victoria in Melbourne have been growing the species to learn more about its growing requirements as it appears to be declining in its natural environment.

The company was immediately on board assisting in whatever capacity was required to benefit in this important research. A team of botanists searched the stewardship site last year in September successfully locating a few areas within the site where the species occurs.

Since then, monitoring equipment has been placed onsite to capture soil moisture and light levels over a 12-month period which will aid the base level information needed for the Royal Botanic Gardens Victoria to successfully grow this species in a controlled environment.

There is no financial benefit to the company involved in this research project. The species is not yet listed as threatened therefore there is no opportunity for species credit creation within the Stewardship Site from its presence. It simply shows the dedication and interest of one of our members to the natural environment in which they work within.

The difference is they owned nearby bush land in 2017, unlike now where they want to create a new mine and with high land prices in the Sydney basin, any land purchase would make the project unviable.

Credit should be given to companies who have taken proactive steps to promote positive biodiversity outcomes.

Conservation investment strategies and Strategic offset delivery agreements (SODA)

More than 200,000 biodiversity credits are needed for the Central West Orana Renewable Energy Zone (REZ).

NSW Government's first REZ is 20,000 square kilometres, centred by Dubbo and Duneedoo, and requires nearly six GW of renewable energy generation capacity.

CCAA supports the approach this opportunity has created for large scale integrated conservation in the region through the construction of renewable energy projects.

CCAA believes our industry, which is vital to the construction of these projects, should be able to participate in the SODA arrangements if additional quarrying, or manufacturing plants are required during construction of projects in the REZ.

Conclusion

It follows from these observations that industry must have a full opportunity to participate in the development of relevant regulatory instruments supporting the restructure of the biodiversity offsets scheme.

We have one final observation to make.

As we stated in our submission to the statutory five-year review of the Biodiversity Conservation Act 2016, reforms at the state level must be **coordinated with Federal legislation**, so that there is no duplication of obligations imposed by the Commonwealth through amendment of the *Environment Protection and Biodiversity Act 1999* (Cth) and the proposed National Environment Standards currently under development.

This is because alignment is essential to:

- avoid creating regulatory conflict between jurisdictions, and
- reduce "green tape" for industry operating nationally.

CCAA appreciates the opportunity to contribute to this important review. Regulatory stability, coupled with practical reform, is essential to advancing both biodiversity outcomes and project certainty. We encourage the Department to continue working closely with industry stakeholders to shape balanced, workable regulations.

We remain available for further discussion and would welcome future engagement on the implementation of these reforms.

Once again, CCAA thanks you for the opportunity to make a submission on proposed changes to the Biodiversity Conservation Regulation 2017, and we encourage the NSW Government to consider our thoughts and suggestions.

CCAA would appreciate the opportunity to discuss our submission further. Please contact Melinda Pavey, State Director on 0448 848 848 or email melinda.pavey@ccaa.com.au

Yours sincerely

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