

21 April 2023

Dr Ken Henry AC
Lead Independent Reviewer
Statutory review of the Biodiversity Conservation Act 2016
Department of Planning and Environment
Locked Bag 5022
PARRAMATTA NSW 2124

Email: biodiversity.review@environment.nsw.gov.au

Dear Dr Henry AC,

CCAA SUBMISSION: BIODIVERSITY CONSERVATION ACT 2016 – FIVE-YEAR REVIEW

We thank you for the opportunity to put together our thoughts on the consultation paper that has been developed for the statutory, five-year review of the Biodiversity Conservation Act 2016 (The Act) in New South Wales. The background of the Act, including its purpose, terms of reference, scope, provisions and statutory requirements, including the commencement of its administrative clause to review its policy settings and objectives after five years from 25 August 2017, are noted.

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. The COVID-19 pandemic had a significant impact upon the economy of New South Wales and the construction sector, supported by an efficient heavy construction materials supply chain, continues to play a pivotal role to support economic recovery efforts.

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 CCAA's ***Enhancing Australia's Biodiversity – Extractive Industry Priorities***¹ 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. 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](#)². 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.

¹ [Enhancing Australia's Biodiversity – Extractive Industry Priorities](#)

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

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” from the new Minister. 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 any proposals arising from this statutory review mirror those that arise in consultation with options presented at the Federal level.

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.

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;
- 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

As set out in the consultation paper, private land conservation is critical for expanding conservation efforts and mitigating the loss of biodiversity. However, challenges exist with private land conservation (PLC) agreements, as established under the Act, given their onerous nature, complexity, cost and the time taken to obtain approval.

In our submission to the proposal for IPART to review and monitor the operation of the NSW Biodiversity credits market over the next three years³, CCAA highlighted the following concerns and lack of incentive for private landowners:

³ [Monitoring the NSW Biodiversity Credits Market Review](#)

- 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

Biodiversity Offsets Scheme

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.

While recent changes to the scheme were implemented last year, 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 2021⁴, 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

⁴ [CCAA Submission to the NSW Parliament Inquiry – Integrity of the NSW Biodiversity Offsets Scheme](#)

additional flexibility be built in to consider connectivity of land or other strategic biodiversity projects, along with the carrying out of regular reviews to ensure the competitiveness of the offsets market is improved and maintained.

Once again, CCAA thanks you for the opportunity to comment on the statutory, five-year review of the Biodiversity Conservation Act 2016 in New South Wales and we encourage the NSW Government consider our thoughts and suggestions, in light of the challenges that exist with the operation of the Biodiversity Offsets Scheme.

We welcome the opportunity to discuss this matter with you in further detail. Accordingly, I can be contacted on 0448 848 848 or email Jason.kuchel@ccaa.com

Yours sincerely,



JASON KUCHEL
State Director, New South Wales & South Australia