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Dr Louise Mamouney
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CCAA Submission on the Draft Biodiversity Conservation Amendment (Biodiversity Offsets Scheme) Regulation 2026

Dear Dr Mamouney

Cement Concrete & Aggregates Australia (**CCAA**) appreciates the opportunity to comment on the proposed [Draft Biodiversity Conservation Amendment \(Biodiversity Offsets Scheme\) Regulation 2026](#) (**the draft regulation**).

CCAA is the voice of Australia's heavy construction materials sector, representing the cement, premixed concrete, quarrying and extractive industries. Our members supply the essential materials that underpin housing, public infrastructure, transport networks, renewable energy development and the construction of community facilities across New South Wales. The cement, concrete and aggregates industry contributes over \$4.27 billion to the NSW economy and supports more than 19,000 jobs. Securing local supplies of heavy construction materials is critical to achieving the State's housing, infrastructure and energy ambitions.

As shown in our 2022 submission to [IPART on the Review of the NSW Biodiversity Credits Market](#), a functional, transparent and predictable biodiversity offsets system is critical to delivering these essential materials.

However, our members consistently report structural issues within the NSW biodiversity credit market that are undermining project feasibility, distorting price signals, and suppressing participation in biodiversity stewardship.

CCAA acknowledges that some aspects of the draft regulation may improve clarity, market integrity and scheme administration, including the recognition of certain previous avoidance measures, the proposed exemption for small incursions on the Biodiversity Values Map, and the accreditation of conservation brokers.

However, key elements relating to access to the Biodiversity Conservation Fund, the treatment of quarry rehabilitation, like-for-like requirements, mandatory Biodiversity Assessment Report content and public registers risk increasing cost, uncertainty and delay without necessarily delivering commensurate biodiversity benefits.

Key recommendations

To ensure the draft regulation delivers strong biodiversity outcomes without creating unnecessary barriers to essential construction material supply, CCAA recommends that the NSW Government:

1. **Retain practical access to the Biodiversity Conservation Fund**, including for proponents unable to obtain required credits through the private market within a reasonable timeframe.
2. **Establish a quarry-specific pathway for progressive and final rehabilitation** to be recognised in residual impact and offset calculations where it delivers measurable, secure and independently verified biodiversity outcomes.

3. **Allow staged rehabilitation outcomes to be applied progressively**, including where rehabilitation of an earlier quarry stage can contribute to the biodiversity obligation associated with a later stage.
4. **Provide greater flexibility in like-for-like and geographic requirements** where the required credits are unavailable, provided an alternative delivers an equivalent or better biodiversity outcome.
5. **Publish transparent decision criteria, quarry-specific worked examples and review mechanisms** for determining whether avoid-and-minimise measures are “genuine” and whether all reasonable measures have been taken.
6. **Ensure new Biodiversity Assessment Report requirements are proportionate**, recognise existing information and prior measures, and do not require projects already well advanced to restart assessment work.
7. **Apply materiality and evidentiary thresholds** to vibration, blasting and other prescribed impacts so routine quarry operations do not automatically generate additional offset liabilities.
8. **Protect commercial-in-confidence, intellectual property, security-sensitive and personal information** included in public registers.
9. **Coordinate NSW reforms with the Commonwealth EPBC reforms**, including future National Environmental Standards and bilateral arrangements, to avoid duplicate assessment, rehabilitation and offset obligations.

While we recognise that, as shown on page 2 of the Discussion Paper canvassing the draft regulation, there is generally a lesser reliance of the Biodiversity Conservation Fund to meet offset obligations, it remains an important tool for the quarrying industry.

CCAA maintains its position outlined in our [2025 submission](#) to the Department that the Biodiversity Conservation Fund is an important mechanism for proponents, particularly smaller operators and projects affected by thin or highly constrained credit markets.

The Fund can aggregate biodiversity obligations and support conservation investments that individual proponents may be unable to deliver efficiently. Restrictions on Fund access therefore risk reducing project feasibility without necessarily improving biodiversity outcomes.

Proposed clause 6.13A would restrict payment into the Fund where an obligation exceeds 100 credits of the same class unless a proponent declares that it has taken an “acceptable measure” to attempt to retire the credits. The regulation provides that acceptable measures will be approved by the Environment Agency Head and published separately, but the proposed measures have not yet been provided. The 100-credit threshold applies separately where credit retirement is staged.

CCAA’s primary position remains that access to the Fund should not be unnecessarily restricted. If proposed clause 6.13A is retained, the final framework should specify that acceptable measures include:

- documented searches of the biodiversity credit market;
- enquiries through accredited brokers and relevant registers;
- evidence that the required credit class is unavailable in the necessary quantity;
- evidence that credits cannot be obtained within a reasonable project timeframe;

- circumstances where quoted prices are manifestly inconsistent with reasonable market benchmarks or disproportionate to the scale of the obligation;
- evidence that a suitable equivalent or better biodiversity outcome could be delivered through an alternative pathway, and
- circumstances where staged project delivery makes immediate retirement of the full project obligation impractical.

CCAA also recommends that the 100-credit threshold not be finalised until DCCEE publishes an impact assessment showing how the threshold would affect quarry and other development projects. The threshold and acceptable-measures policy should be reviewed after 12 months of operation, with industry consultation.

Recognition of progressive and final quarry rehabilitation

CCAA opposes the blanket removal of mine-site rehabilitation as an offset option where that removal also prevents genuine quarry rehabilitation outcomes from receiving appropriate recognition.

Quarry operations are geographically constrained and may operate over long periods, but they are generally staged and are capable of progressive and final rehabilitation. This distinguishes quarrying from permanent land uses such as housing, warehousing and other developments where the impacted land is not ultimately returned to an ecological function.

CCAA does not propose that every legally required rehabilitation activity should automatically generate full biodiversity credits. Rather, the framework should distinguish between:

- **rehabilitation that reduces the duration, extent or seriousness of the project's residual biodiversity impacts**, which should be recognised when calculating the residual offset obligation; and
- **rehabilitation that delivers additional, measurable improvement beyond the minimum legal rehabilitation requirement**, which should be capable of qualifying as an offset or biodiversity conservation measure.

CCAA recommends a staged rehabilitation pathway under which:

- the first stage of a quarry may be supported by an off-site offset, market-purchased credits or a Fund payment;
- rehabilitation of a completed stage may be assessed and verified before impacts from a later stage commence;
- independently verified biodiversity gains from that earlier rehabilitation may be applied toward the obligation for the later stage;
- the rehabilitation outcome must be secured through an approved management plan, bond, enforceable conditions or another appropriate legal mechanism;
- measurable ecological performance criteria, monitoring and reporting requirements must apply;
- the outcome must be delivered within a reasonable and ecologically relevant timeframe, rather than being deferred for several decades;

- no biodiversity gain may be counted twice, and
- only the component of rehabilitation exceeding the minimum legal baseline would qualify as an additional offset outcome.

This approach is consistent with CCAA's Commonwealth EPBC position that progressive rehabilitation should be recognised either as mitigation that reduces residual impacts or, where it delivers additional and durable improvement, as a compensatory restoration outcome.

CCAA recognises the policy principle that merely complying with a minimum legal requirement should not, by itself, create an additional biodiversity credit. However, proposed clause 6.10AA(1)(a) should not prevent a decision-maker from:

- recognising legally required rehabilitation when determining the actual duration and extent of residual biodiversity impacts, or
- recognising components of a rehabilitation proposal that exceed the minimum legal requirement and deliver additional biodiversity improvement.

Guidance should therefore distinguish between the legal baseline and additional rehabilitation measures. A rehabilitation measure should be capable of being considered “genuine” to the extent that it goes beyond the minimum legal requirement, responds to site biodiversity values and is supported by independently verifiable evidence.

Vibration and blasting impacts

CCAA does not oppose assessment of vibration and blasting where credible evidence demonstrates that those activities are likely to cause a material impact on threatened species or threatened ecological communities.

However, the addition of vibration and blasting as prescribed biodiversity impacts should not mean that every quarry involving blasting automatically incurs an additional biodiversity obligation. The final regulation, Biodiversity Assessment Method and guidance should:

- require a credible causal connection between the activity and the affected biodiversity value;
- apply an appropriate materiality or significance threshold;
- permit proponents to rely on site-specific monitoring, modelling and expert evidence;
- recognise operational controls that avoid or minimise the relevant impact, and
- avoid duplicating noise, vibration and ecological requirements already imposed through planning approvals or environment protection licences.

CCAA acknowledges that clearer documentation of avoidance and minimisation may improve certainty where expectations are objective and known in advance. Many quarry proponents already undertake alternatives analysis, footprint optimisation and mitigation planning as part of project design and financial feasibility assessment.

The concern is not the need to provide relevant evidence; it is the risk of open-ended documentation and repeated studies where existing information is already fit-for-purpose.

The final regulation, BAM and guidance should therefore:

- apply information requirements proportionately to project scale, risk and complexity;
- recognise existing State planning studies, monitoring data and previous site investigations;
- avoid requiring proponents to repeatedly document alternatives that are not geologically, operationally or economically feasible;
- provide standard templates and examples for alternative-footprint analysis;
- clarify when information is sufficient for a decision;
- require any additional information request to identify the specific decision-relevant uncertainty being addressed, and
- recognise prior avoid-and-minimise measures where they remain relevant and are supported by reliable information.

CCAA supports the proposed ability to recognise previous measures taken within five years, or older measures that remain reliable, are already registered or are secured through a legally binding arrangement.

CCAA supports a proportionate exemption for small, low-risk incursions on the Biodiversity Values Map. However, guidance should clarify how the 100 m² threshold applies to multiple non-contiguous areas and to minor operational activities undertaken over the life of a quarry. Routine activities required for safety, access maintenance, fire management, weed and pest control, drainage, rehabilitation and environmental compliance should not be unintentionally aggregated in a way that triggers disproportionate assessment requirements.

Broker accreditation should be implemented in a way that does not create a shortage of available brokers, additional delay or excessive fees. The accreditation framework should include appropriate biodiversity, market, financial and conflict-of-interest competencies, supported by a clear code of conduct and transitional arrangements for existing service providers.

CCAA has no in-principle objection to replacing individual biodiversity stewardship payment accounts with a common account, provided that:

- scheduled management payments for each stewardship site remain fully protected;
- site-level contributions, liabilities and payments remain transparent;
- there is no inappropriate cross-subsidisation of underfunded sites;
- landholders receive clear information before electing whether to retain a legacy account;
- the election period is sufficiently long, and
- existing contractual and stewardship obligations are not adversely altered.

The draft regulation still contains dates “to be confirmed” for legacy account elections and transitional operation. These should be finalised only after consultation with affected landholders.

Public registers and protection of sensitive information

CCAA supports transparency about final biodiversity decisions, offset conditions and approved avoid-and-minimise measures. However, proposed clauses 9.5A–9.6B and 9.9A may result in reports and related information being made publicly accessible or supplied to the Environment Agency Head for publication.

The final regulation and guidance should expressly protect:

- commercially sensitive resource and reserve information;
- proprietary ecological models, methodologies and intellectual property;
- confidential landholder and contractual information;
- site security and operational information;
- personal information, and
- culturally sensitive information.

Proponents should be given notice of information proposed for publication and an opportunity to identify material requiring redaction, aggregation or de-identification. Public registers should distinguish between final approved information and draft, contested or superseded material, and should include a process for correcting inaccurate information.

This is directly consistent with CCAA's Commonwealth submissions on the [Draft EPBC Standard for Data and Information](#) and [Draft EPBC Standard for Community Consultation](#).

There also needs to be a transparent assessment guidance and review processes for decision makers, so proponents can better understand how judgements are made to help avoid subjectivity and inconsistency.

Transitional arrangements

Proposed clause 6.10AAA applies the new mandatory report requirements based on whether a Biodiversity Development Assessment Report or Biodiversity Certification Assessment Report is certified after commencement. This may require substantial rework where a report is already well advanced but has not yet been formally certified.

CCAA recommends that the transitional arrangements also protect projects where, before commencement:

- formal assessment requirements have been issued;
- field surveys have materially commenced;
- an accredited assessor has been engaged, and substantial report preparation has occurred.
- a scoping report or development application has been lodged, or
- the Department has agreed the assessment pathway.

Such projects should be permitted to continue under the existing requirements or be subject only to targeted supplementary requirements, rather than having to restart the assessment process.

Alignment with Commonwealth EPBC reforms

Consistent with CCAA's Commonwealth EPBC submissions, the NSW Biodiversity Offsets Scheme must be designed to operate coherently with the amended **Environment Protection and Biodiversity Conservation Act 1999 (Cth)**, the National Environmental Standards and any revised NSW–Commonwealth bilateral or accreditation arrangements.

CCAA recommends that NSW seek arrangements that:

- recognise NSW Biodiversity Offsets Scheme assessments, credits and rehabilitation outcomes for Commonwealth purposes where they are equivalent in effect;
- prevent proponents from being required to offset the same impact twice;
- establish conversion or recognition rules where NSW and Commonwealth metrics differ;
- recognise a single set of fit-for-purpose ecological surveys and data wherever possible;
- align avoidance, mitigation, rehabilitation and offset terminology;
- ensure NSW-approved staged rehabilitation can be appropriately considered under the Commonwealth framework;
- prevent conflicting approval, management, monitoring and reporting conditions, and
- provide transitional certainty for existing and approved quarry operations.

The objective should be a single, outcomes-equivalent biodiversity package capable of satisfying both State and Commonwealth requirements, rather than parallel assessments and separate offset calculations for the same impacts.

The interaction between the NSW reforms and the Commonwealth's amended land-clearing and referral provisions should be assessed before commencement, particularly for existing quarry operations, staged expansions and land that has remained undisturbed during long operational periods.

CCAA recommends that DCCEEW establish a quarry and extractive-industry implementation working group before the relevant provisions commence. The group should address the BCF acceptable-measures policy, staged rehabilitation, like-for-like variation rules, quarry-specific avoid-and-minimise guidance, public-register safeguards and alignment with the Commonwealth EPBC framework.

CCAA would still value the opportunity to discuss with the Department the impact of these proposed regulations on quarrying with the Department before they come into operation.

For further information, please contact Melinda Pavey on

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Yours sincerely

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