CEMENT CONCRETE & AGGREGATES AUSTRALIA

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Research Director
Agriculture and Environment Committee
Parliament House
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CCAA SUBMISSION – VEGETATION MANAGEMENT (REINSTATEMENT) AND OTHER LEGISLATION AMENDMENT BILL 2016

Cement, Concrete and Aggregates Australia (CCAA) is the peak industry body representing the $12 billion-a-year heavy construction materials industry in Australia. Our members are involved in the extraction and processing of quarry products, as well as the production and supply of cement, pre-mixed concrete and supplementary materials. We welcome the opportunity to make a submission to the Agriculture and Environment Committee in relation to the *Vegetation Management (Reinstatement) and Other Legislation Amendment Bill 2016* (the Bill), particularly in relation to the extractive industry.

Specific characteristics of the extractive industry

The extractive industry has a number of specific characteristics that impact on our interaction with vegetation management frameworks:

- Quarries supply the essential raw materials needed to support new infrastructure. 90% percent of all extractive products are used in the construction of homes, commercial buildings, schools, hospitals, roads and bridges. In general, quarries only provide materials to their local communities, and quarry material needs to be sourced from specific geological areas. It is not imported from overseas, nor from other parts of Australia. It is a "high volume, low value" material and transportation costs are significant.

- Extractive industry operators are long-term participants in an industry with many extractive resource areas in Queensland having lives in excess of 50 years. Existing extractive resources sites contain substantial reserves, which, over a long period of time, the industry has identified, investigated, secured and, in a majority of cases, have obtained the necessary planning approvals. Compared to other land uses, extractive industry has a very small footprint.

- The extractive industry carries out progressive vegetation clearing and rehabilitation in line with sequenced extraction. Quarry operators aim to rehabilitate local ecosystems and reduce their environmental impact through ongoing rehabilitation projects. This is a significant part of the quarrying industry, as 80% of our quarry land is actually undisturbed. For example, rehabilitated areas are often covered with soil and overburden found on-site using techniques that reproduce the topography of the terrain and tailing ponds are capped with layers of binding materials. Horticulturalists often work with quarry managers, and provide advice for rehabilitating terminal faces and worked-out areas.

- Quarries represent substantial capital investments and certainty in legislation is a primary concern for CCAA members. This is due to the length of time that operations take to progress from initial investigations through subsequent stages of development applications, to extraction, rehabilitation and closure.

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Overall comments on the Bill

CCAA acknowledges the pre-election commitment made by the Labor Government, and the overall intention of the Bill, particularly in relation to the protection of high value regrowth vegetation and watercourses impacting on the Great Barrier Reef. CCAA also acknowledges that specific provisions for the extractive industry operating in Key Resource Areas (put in place by successive Queensland Governments) remain, and that self-assessable codes for extractive operators in non-KRA areas still remain (though subject to future review). These provisions are important for ensuring operators can continue to provide building materials for the local construction industry. Should there be any proposal to review the industry specific provisions or the self-assessable codes for extractive operators, CCAA would appreciate the opportunity to be consulted prior to any proposed changes being made and welcomes the opportunity to provide feedback at the relevant time.

However, there are aspects of concern for CCAA members in the proposed legislation, and these areas are outlined below.

1) Changes to the *Environmental. Offsets Act 2014* such that **all**, and not just "significant", residual impacts on a prescribed environmental matter will need to be counterbalanced by an environmental offset. We believe this a very significant change of position that could have wide reaching ramifications for our industry. CCAA does not support the change of policy position resulting in the omitting of the word 'significant' from the Act on the basis that the change will result in reduced flexibility and certainty when practically working through the assessment process under the EO Act. We hold concern that the changes will require an increased number of applications to engage with the offsets regime (including projects that will only have minor impacts on environmental matters) and have the potential to reduce flexibility when reaching practical outcomes around environmental offsets and subsequently result in increased cost and timeframe burdens to extractive industry when navigating offset requirements. We also hold concern that the changes have not fully considered the balancing of State interests, having the potential to impede the efficient, equitable and affordable supply of construction materials to the market subject to the detail contained within future versions of the supporting regulation, guidelines and codes. We remain available and willing to work with the State and look forward to further meaningful engagement on these matters.

2) Extractive industry operations outside Key Resource Areas We believe consideration should be given to the State incorporating amendments to the *Sustainable Planning Regulation 2009 (SPR)* to ensure that the exemption provisions for the extractive industry in Key Resource Areas extend to non Key Resource Areas as well. This is because many quarries, particularly smaller quarries in regional areas, are not listed within KRAs, yet are still important for supplying building materials for local regional communities, and the overall vegetation footprint would be very low.

   Furthermore, there are some definitional issues of "extractive industry" in the legislation that need to be corrected. There is no section 22A (3) in the VMA and as such the ongoing reference to it in Schedule 24 Part 2 Item 2(i) should be corrected. Section 22A(3) of the VMA was removed in 2013 by section 46 (6) of the *Vegetation Management Framework Amendment Act 2013*.

3) Changes to the onus of proof under the VMA. Extractive industry often occurs in remote areas but also occurs adjacent to urban areas. Quarries typically comprise a relatively small area of disturbance in a much larger land holding or lease area. In urban settings we understand that CCAA members regularly deal with unlawful access issues and as such there is some risk that unknown third parties could cause clearing (e.g. by burning) without invitation or consent. The CCAA holds concerns about the very real potential for occupiers to be wrongfully accused of unlawful clearing and be prosecuted for such an offence because they cannot adduce positive proof that the unlawful clearing was caused by an unauthorised third party.

   CCAA also holds concerns about the provision to exclude the ability to rely on the defence of mistake of fact in a proceeding for a vegetation clearing offence under the VMA, in particular, its inconsistency with Section 24 of the Criminal Code which specifically provides that if individuals make an honest mistake they cannot be charged with an offence as they are not seen as criminally responsible for their acts.

On a technical drafting issue, our legal advisers (HopgoodGanim Lawyers) have identified a potential drafting issue associated with the new item of prohibited development proposed for Schedule 1 of the

SPA. This is best illustrated by a practical scenario, for example, a proposal for a new quarry in a KRA (outside the urban footprint) that requires the clearing of remnant (Category B) and regulated regrowth (Category C) vegetation.

In that example:

- A development application for operational works will not be required to clear the regulated regrowth vegetation (category C) because of Schedule 24, Part 2, Item 2(i) of the SPR.
- A development application for operational works will need to be made to clear the remnant vegetation (category B) and this application can be made (that is, it is not prohibited) because the clearing would be for a relevant purpose (section 22A(2)(i) clearing for an extractive industry.
- In relation to the proposed new Schedule 1, Item 4 of the SPA
    - Yes, the MCU is assessable development other than under section 232(1);
    - Yes, the MCU will involve operational work that is clearing vegetation;
    - Yes because of the clearing the chief executive will be a concurrence agency for the MCU if a development application were made for the MCU (Schedule 7);
    - No, some of the clearing will be for a relevant purpose (the remnant vegetation) however the clearing of the regrowth vegetation will not be for a relevant purpose.

On this example, one reading of the new prohibition is that it would not be possible to apply for the MCU (even though the operational work for the clearing is not prohibited by existing Schedule 1 item 3 of the SPA). If the intention of the new item of prohibited development is to prevent applicants from making MCU applications to circumvent the existing Schedule 1 Item 3 prohibition then it is queried whether the new item of prohibited development is more simply drafted to read "material change of use involving development which is prohibited pursuant to Schedule 1, Item 3."?

CCAA thanks you for the opportunity to provide feedback on the *Vegetation Management (Reinstatement) and Other Legislation Amendment Bill 2016*. To further discuss any of the issues raised in the submission, please contact me [redacted]

Yours sincerely

[redacted]

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