

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979

**DETERMINATION OF A DEVELOPMENT APPLICATION
PURSUANT TO SECTION 91 OF THE
ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979**

I, the Minister for Urban Affairs and Planning, in pursuance of Section 91 of the Environmental Planning and Assessment Act, 1979, determine the development application referred to in Schedule 1 by granting consent to that application subject to the conditions set out in Schedule 2 (file N94/00305).

The reasons for the imposition of conditions are to protect the environment and minimise adverse impact, to modify details of the development, the subject of the development application and to provide for environmental monitoring and reporting of the future performance of the development.

Minister for Urban Affairs and Planning

Sydney

1995

Schedule 1

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| Application made by: | Cargill Australia Limited |
| To: | Minister for Urban Affairs and Planning |
| In respect of land being: | 140 Cormorant Road, Kooragang Island Part Lot 119 DP 832729 Parish of Newcastle County of Cumberland and Lot 15 DP 1119752 (Raven Street road reserve) |
| For the following development: | Construction and operation of an oilseed processing plant, including storage, associated materials handling, loading and unloading facilities. |
| Development Application: | The Development Application DA No. 18/95 lodged with the Department of Urban Affairs and Planning on 30 May 1995, accompanied by the environmental impact statement (EIS) entitled "Oilseed Processing Plant on Kooragang Island" Volume 1, May 1995, Prepared by HLA Envirosiences Pty Limited. |

Red type refers to 18/1995 MOD 1 (September 2011)

Green type refers to 18/1995 MOD 2 (19 July 2016)

Purple type refers to 18/1995 MOD 4 (7 February 2024)

Schedule 2

CONDITIONS OF DEVELOPMENT CONSENT

GENERAL

TERMS OF APPROVAL

1. The Applicant shall carry out the development generally in accordance with the:
 - a) environmental impact statement (EIS) dated May 1995, prepared by HLA Envirosciences Pty Limited;
 - b) modification application 18/1995 MOD 1 titled '*Proposed modification to odour control system at existing Grain and Oilseed Processing Facility*' prepared by Worley Parsons and dated 30 June 2011;
 - c) ~~conditions of this approval.~~ Modification request DA 18/95 MOD 2 including the Environmental Assessment (EA) titled '*Environmental Assessment Cargill Kooragang Wastewater Management*', prepared by Ramboll Environ and dated April 2016 and the Response to Submissions (RtS) titled '*Response to Submissions Issues*' prepared by Ramboll Environ and dated 26 May 2016.
 - d) Modification application DA18/95-Mod-4, accompanying Cargill Kooragang Oilseed Facility Modification Report and plans dated July 2023 and Response to Submission Report dated 11 September 2023, both prepared by Ramboll.
- 1.1 If there is any inconsistency between the above, the conditions of this approval shall prevail to the extent of any inconsistency.
2. The specific methods, practices and standards may be varied from the description in the EIS where on-going testing, monitoring, or industry related research indicate such variation(s) to be appropriate to avoid harmful or undesirable effects, and/or to improve the quality of the environment.

COMPLIANCE

3. The Applicant shall comply with all the reasonable requirements of the Director in respect of the implementation of measures arising from the following conditions of development consent. Further, the Applicant shall bring to the attention of the Director any matter that may require further investigation and the issuing of instructions from the Director. The Applicant shall implement those instructions to the satisfaction of the Director within such time as the Director may specify.

STATUTORY CONTROLS

4. The Applicant shall meet the requirements of all public authorities having statutory responsibilities in respect of the proposed development.
5. All building, site works, written undertakings or obligations indicated in the plans and supporting documentation submitted to Newcastle City Council under the provisions of the Local Government Act, 1993, or as required under the conditions of this consent, shall be implemented to the satisfaction of the Council prior to the commencement of operations of the plant.
6. The Applicant shall submit for the Council's approval, a Building Application under the provisions of the Local Government Act, 1993, prior to the commencement of any proposed/required building works, including the erection of partition walls, screen walls or fencing. The Building Application shall, to the satisfaction of the Council, comply with the provisions of the Building Code of Australia.
 - 6.1 The Applicant shall obtain a Construction Certificate for the buildings and structures described in the EA and RtS for DA 18/95 MOD 2, issued in accordance with the *Environmental Planning and Assessment Act 1979* prior to the commencement of construction of the works associated with DA18/95 MOD 2.
 - 6.2 All new buildings and structures, and any alterations or additions to existing buildings and structures, that are approved as part of any modification to the consent from DA18/95-Mod-4 and thereafter, must be constructed in accordance with the relevant requirements of the Building Code of Australia.

POLLUTION EMISSIONS AND MONITORING

7. The Applicant shall design, operate and maintain the plant in a manner that would achieve compliance with the Environment Protection Licence (EPL). The Applicant must advise the Department of any variations to the EPL as approved by ~~Office of Environment and Heritage (OEH)~~ the Environment Protection Authority.

ODOUR

- 7.1. The Applicant must not cause or permit the emission of offensive odours from the site, as defined under Section 129 of the *Protection of the Environment Operations Act 1997*.
- 7.2. Within 6 months of the operation of the Biofilters related to 18/1995 MOD1, or within a timeframe otherwise approved by the Director-General, the Applicant shall commission and pay the full cost of an Independent Odour Audit and Validation. This audit must:
 - a) be conducted by a suitably qualified, experienced and independent expert whose appointment has been endorsed by the Director-General;

- b) include odour sampling and analysis for all potential odour sources at the Facility. Odour sampling and analysis must be undertaken in accordance with the requirements of *Approved Methods For Sampling And Analysis Of Air Pollutants In NSW* or alternate methods approved by the OEH;
- c) validate the emissions and impacts predicted in modification application (18/1995 MOD1);
- d) audit the effectiveness of the biofilters in regard to protecting receivers against offensive odour;
- e) determine whether the plant is complying with the requirements in this approval; and if necessary,
- f) recommend and prioritise reasonable and feasible measures to either improve the odour controls on site, such that receivers would be protected against offensive odour from the site.

Within 6 weeks of the completion of an odour audit, the Applicant shall submit a copy of the audit report to both OEH and the Department with a response to any recommendations contained in the audit report.

- 7.3. Unless otherwise directed by the Director-General, the Applicant shall implement the necessary reasonable and feasible odour controls and recommendations of the Independent Odour Audit and Validation.

WORKCOVER REQUIREMENTS

8. The premises shall comply with the requirements of the Dangerous Goods Act, 1975, as administered by Workcover Authority and if necessary, be licenced under this Act.

HAZARD MANAGEMENT

9. At least one month prior to the commencement of construction of the proposed development, except for preliminary works that are outside the scope of hazard studies, or within such further period as the Director of Urban Affairs and Planning or her nominee may agree, the Applicant shall prepare and submit for the approval of the Director, the following studies. In carrying out the studies, the Applicant is required to take into consideration the relevant comments and recommendations made in the preliminary hazard analysis.

(a) Fire Safety

A fire safety study for the proposed development. This study shall cover all aspects detailed in the Department's Hazardous Industry Planning Advisory Paper No. 2, "Fire Safety Study Guidelines". The study shall also be submitted by the Applicant to the New South Wales Fire Brigades for their approval.

The fire safety study shall also address the issues of collection and treatment of contaminated rain water and fire fighting water run-off, including an assessment of the risk to the biophysical environment.

(b) Hazard and Operability Study

A hazard and Operability Study (HAZOP) for the proposed development, chaired by an independent qualified person approved by the Director. The HAZOP shall be prepared in accordance with the Department's Hazardous Industry Planning Advisory Paper No. 8, "Hazard Guidelines".

(c) Final Hazard Analysis

A final hazard analysis (FHA) of the proposed development. This analysis shall be prepared in accordance with the Department's Hazardous Industry Planning Advisory Paper No. 6, "Guidelines for Hazard Analysis".

The FHA shall include:

- a detailed description of automatic and manual emergency systems and shutdown procedures for the entire plant.
- an evaluation of the dust/vapour extraction system to ensure the adequacy of, (i) the extraction rates to prevent build up of dangerous concentrations of dust/vapour; and (ii) the emergency backup/shutdown systems in the event of loss of vacuum/extraction rate.

(d) Construction Safety Study

A construction safety study prepared in accordance with Hazardous Industry Planning Advisory Paper No. 7, "Construction Safety Guidelines".

(e) Transport of Hazardous Materials

Arrangements covering the transport of hazardous materials including details of routes to be used for the movement of trucks and bulk road tankers. The issues addressed in the "Newcastle and Kooragang Island Area Risk Assessment Study" shall be considered and addressed where relevant. Further, the Applicant shall, as far as practicable, enter into contractual arrangement with contract drivers to require the use of routes determined under this condition except where necessary for local deliveries.

9.1 A minimum of one month prior to the commencement of the construction works associated with MP DA18/95-Mod-4 (excluding construction works outside the scope of the Hazard Study) or within such further period as the Planning Secretary of the Department may agree, the Applicant is to update and submit to the Planning Secretary for approval, the following:

- a) the Fire Safety Study as required in condition 9(a) including covering relevant aspects of the New South Wales Government's Best Practice Guidelines for Contaminated Water Retention and Treatment Systems (NSW HMPCC, 1994) where applicable; and
- b) the Final Hazard Analysis as required in Condition 9(c) including:
 - (i). findings and recommendation implementation from the Dust Hazard Assessment;
 - (ii). report on compliance with all relevant Australian and International Standards;

- (iii). report on engineering and management controls implemented to manage the dust explosion hazards for the modification; and
- (iv). qualitative assessment on the overall risk of the site.
- c) the Construction Safety Study as required in Condition 9(d). If the construction period exceeds six months, the commissioning portion of the Construction Safety Study may be submitted two months prior to commencement of commissioning.

Construction, other than of preliminary works, must not commence until approval has been given by the Planning Secretary.

10. At least two months prior to the commencement of operation of the proposed development, or within such further period as the Director may agree, the Applicant shall prepare and submit for the approval of the Director:

(a) Emergency Plan

A comprehensive emergency plan and detailed emergency procedures for the development. This plan shall include detailed procedures for the safety of people in areas outside the development. The plan shall be prepared in accordance with the Department's Hazardous Industry Planning Advisory Paper No. 1, "Industry Emergency Planning Guidelines".

(b) Safety Management System

A comprehensive safety management system, covering all operations on-site and associated transport activities involving hazardous materials. The system should clearly specify all safety related procedures, responsibilities and policies, along with details of mechanisms for ensuring adherence to procedures. Records must be kept on-site and should be available for inspection by the Director upon request. The safety management system should be developed in accordance with the Department's Hazardous Industry Planning Advisory Paper No. 9, "Safety Management".

A Change/Modification Management Procedure shall be included and the procedure followed in all modifications to the plant.

- 10.1 A minimum of two months prior to the commencement of operation of the proposal associated with DA18/95-Mod-4 or within such further period as the Planning Secretary of the Department may agree, the Applicant is to update and submit to the Planning Secretary for approval the following:
 - a) an Emergency Plan as required in Condition 10(a); and
 - b) a Safety Management System as required in Condition 10(b).
 Operations associated with DA18/95-Mod-4 may not commence until written approval has been received from the Planning Secretary for the above documents.

INCIDENT REPORTING

11. Within 24 hours of any incident or near incident with actual or potential significant off-site impacts on people or the biophysical environment, a report shall be supplied to the Department outlining the basic facts. A further detailed report shall be prepared and submitted following investigations of the causes and identification of necessary additional

preventative measures.

HAZARD AUDIT

12. Twelve months after the commencement of operations of the proposed development or within such further period as the Director may agree, the Applicant shall carry out a comprehensive hazard audit of the proposed development and submit a report on the audit to the Director. This audit is to be carried out at the Applicant's expense by a duly qualified independent person or team to be approved by the Director. Hazard audits should be carried out in accordance with the Department's Hazardous Industry Planning Advisory Paper No. 5, "Hazard Audit Guidelines".

ENVIRONMENTAL MANAGEMENT

13. The Applicant shall ensure that no waste water resulting from the construction and/or operation of the proposed plant will be discharged into the Hunter River or any of its tributaries.

- 13.1 The Applicant shall prepare and implement a Construction Environmental Management Plan (CEMP) to outline environmental management practices and procedures to be followed during the construction of the biofilter (18/1995 MOD 2). The CEMP shall include, but not necessarily be limited to:

- a) a description of all activities to be undertaken on the site during construction of the biofilter including an indication of stages of construction, where relevant;
- b) statutory and other obligations that the Applicant is required to fulfil during construction;
- c) detailed management measures that would be implemented to address environmental issues i.e., noise, air and water quality,
- d) details of how the environmental performance of the construction works will be monitored, and what actions will be taken to address identified adverse environmental impacts; and
- e) a description of the roles and responsibilities for all relevant employees involved in the construction of the biofilter.

The CEMP shall be submitted for the approval of the Director-General prior to the commencement of construction of the biofilter.

- 13.2 The Applicant shall update the Construction Environmental Management Plan required by Condition 13.1 to include the works associated with DA 18/95 MOD 2. The updated plans shall be submitted to and approved by the Secretary prior to the commencement of any construction works associated with DA 18/95 MOD 2.

The Applicant shall implement the updated plan throughout construction works associated with DA 18/95 MOD 2.

- 13.3 The Applicant shall ensure wastewater resulting from the operation of the wastewater treatment plant will be managed and discharged as described in the EA and RtS for DA 18/95 MOD 2.

13.4 Prior to the commencement of commissioning the upgraded wastewater treatment plant and the wastewater pumping station, and associated discharges to the Hunter Water Trade Waste Network as part of DA 18/95 MOD 2, the Applicant must provide evidence to the Secretary that the Applicant has the approval of the Hunter Water Corporation to commence discharge of treated wastewater to the trade waste network.

13.5 The Applicant is to update the Construction Environmental Management Plan as required by Condition 13.1 (and updated under Condition 13.2) to include the works associated with DA18/95-Mod-4. The updated plan shall be submitted to and approved by the Planning Secretary of the Department prior to the commencement of any construction works associated with DA18/95-Mod-4.

14. The Applicant shall prepare and submit to the Council an Environmental Management Plan (EMP) for the Council's approval prior to the commissioning of the plant. This plan shall include but not be limited to the following:

- (a) full details of anticipated waste water volumes and quality together with the proposed treatment and method of disposal;
- (b) full details of anticipated solid waste generation and methods of disposal;
- (c) full details regarding pest and vermin control, surface water management, dust controls, air emissions and environmental monitoring. Any approvals relating to the disposal of waste or pollution control and issued by the EPA shall be submitted with the EMP.

The Applicant shall also forward a copy of the EMP to the Director of Urban Affairs and Planning for information.

14.1 The Applicant shall update the Environmental Management Plan required by Condition 14 to include the works associated with DA 18/95 MOD 2. The updated plan shall be submitted to the Secretary prior to the commencement of operation associated with DA 18/95 MOD 2.

The Applicant shall implement the updated plan throughout operation of the development.

14.2 The Applicant is to update the Environmental Management Plan as required by Condition 14 (and updated under Condition 14.1) to include the works associated with DA18/95/Mod-4. The updated plan shall be submitted to the Planning Secretary of the Department prior to the commencement of operation of the development associated with DA18/95/Mod-4.

The updated plan shall be implemented throughout the operation of the development.

15. The construction and operation of the facility is to be carried out so that there is no interference with the amenity of the neighbourhood due to emission of any offensive noise, vibration, smell, fumes, smoke, vapour, steam, soot, ash, dust, or otherwise as a result of the proposed development.

16. The Applicant shall ensure to the satisfaction of the Council that all stormwater

run-off from the proposed development is collected and disposed of in a suitable stormwater receival system. Full details of such a system are to be submitted to the Council in accordance with Condition 6 of this consent.

Note: The Applicant is advised to consult with the Council's Engineering Design Section in regard to this prior to preparing drainage design.

16.1 Except as may be expressly provided for in the EPL for the development, the Applicant shall comply with section 120 of the Protection of the Environment Operations Act 1997.

17. The Applicant, when undertaking any alteration to the natural surface levels of the site, shall undertake all practicable measures to ensure that no additional surface water impounds or drains onto adjoining properties. Appropriate measures are to be detailed and submitted to Council in accordance with Condition 6 of this consent.
18. The development shall be constructed and maintained to meet the continuous noise goals set out in the recommendations of the acoustic report in the EIS prepared by HLA Envirosciences and dated May 1995. The Applicant (acoustic consultant) shall provide the Council within two months of the plant being fully operational with written certification indicating compliance with these noise goals.
19. The Applicant shall ensure that appropriate controls are adopted during the construction phase of the development to control dust emissions.

ON-SITE TRAFFIC AND PARKING

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21. The Applicant shall provide industrial type vehicular crossings, for truck access, being 8m wide in respect of the ingress and 8m wide for the egress with a minimum separation of 3m being constructed across the public footway at the proposed driveway entrance/exit. These shall be provided in accordance with the Council's guidelines and design specifications and at no cost to the Council. They shall also be maintained to the satisfaction of the Council.

Note: The ingress is to have a 60° splay on the approach side and the egress a 60° splay on the departure side.

22. The Applicant shall provide a commercial type vehicular crossing 6m wide for the car access being constructed across the public footway at the proposed driveway entrance/exit. This shall be constructed in accordance with the Council's guidelines, design specifications and maintained to the satisfaction of the Council. The crossing shall be provided at no cost to the Council.
23. The Applicant shall provide on-site parking for a minimum of 45 vehicles in accordance with the Council's adopted Car Parking Code. These must be provided to the satisfaction of the Council and details submitted to the Council for approval in accordance with Condition 6 of this consent.

24. The Applicant shall construct suitable kerbing or dwarf walls along the edge of all garden and/or grassed areas adjacent to driveways and parking bays to discourage the encroachment of vehicles thereon.
25. The pavements of all parking and loading bays are to be permanently marked and loading bays and visitor parking facilities clearly marked to the satisfaction of the Council.
26. The vehicular entrance and exit driveways and the direction of traffic movement within the site shall, to the satisfaction of the Council, be clearly indicated by reflective signs and pavement markings.
27. All vehicles are to be loaded or unloaded wholly within designated loading bays, or as otherwise provided in accordance with the conditions of this consent. Under no circumstances are vehicles to be loaded or unloaded at the kerbside, across the public footpath, or in a manner which obstructs vehicular access to the site.
28. All vehicles or plant associated with the operation of the facility shall be parked within the confines of the site and in the spaces designated on plans submitted in accordance with this consent.
29. All vehicular movement to and from the site shall be in a forward direction.
30. The Applicant shall ensure that proposed parking areas, driveways, loading bays and turning areas are maintained clear of obstruction and are used exclusively for the purpose of car parking, loading, unloading and vehicle access. Under no circumstances are such areas to be used for the storage of goods or waste materials.

LANDSCAPING

31. All proposed planting and landscape elements indicated on the submitted landscape concept plan, or otherwise required as a condition of this consent, shall be implemented to the satisfaction of the Council.
32. The Applicant shall, in consultation and to the satisfaction of the Council, prepare and submit to the Council in accordance with Condition 6 of this consent, a detailed landscaping plan for the proposed development. A suitably qualified person shall be engaged to assist in preparing the plan. The plan shall also be prepared having regard to the following:
 - (a) the Council's Development Control Plan No. 33; and
 - (b) the Newcastle Landscape Structure Plan 1989, particularly Plant Matrix 3.2
33. The Applicant shall submit a report to the Council prior to the operation of the plant to verify that appropriate works have commenced in accordance with the approved landscape plan.
34. The Applicant shall ensure that landscaped areas are kept free of parked vehicles, stored goods, garbage or waste material and are permanently maintained to the satisfaction of the Council.

RAIL TRANSPORTATION

35. Prior to the construction and upgrade of rail receival facilities for the development, the Applicant shall consult with the Department of Transport regarding appropriate configuration and standards under the provisions of the New South Wales Rail Safety Act, 1993.
36. The Applicant shall provide appropriate protection for the rail level crossing at Cormorant Road (MR 108) in accordance with the requirements of the New South Wales Rail Safety Act, 1993 and prior to any rail movements relating to the operation of the plant.
37. Prior to the plant commencing operation, the Applicant shall consult the Department of Transport and the Roads and Traffic Authority regarding the future need for half boom gates at the rail crossing of Cormorant Road (MR 108).

LIGHTING

38. The Applicant shall design all on-site flood lighting in a manner which will not interfere with road traffic safety or navigation beacons in surrounding waterways. They shall also be designed to ensure that the amenity of adjoining premises is maintained. Full details are to be submitted to the Council in accordance with Condition 6 of this consent.

UTILITY SERVICES

39. Arrangements to the satisfaction of the Hunter Water Corporation and Shortland Electricity shall be made for the supply of water and electricity prior to the commencement of operations of the plant.
40. Any necessary alterations to public utility installations shall be made at the Applicant's own expense and to the requirements of both the Council and the relevant authority/s.

SCHEDULE OF FINISHES

41. The external design of the plant and materials are to be in accordance with the Council's guidelines and requirements. This information is to be included with the Building Application submitted to the Council in accordance with Condition 6 of this consent.
 - 41.1 The colours and design of the buildings and structures are to be consistent with those used on the existing buildings and structures on the site. This information is to be included in the Construction Certificate application in accordance with Condition 6.1 with of this consent.

OTHER

42. Adequate provision is to be made for the storage of garbage, discarded or returnable packaging, other forms of trade waste and arrangements made for the regular removal and disposal of these to the satisfaction of the Council. The storage area(s) are to be appropriately located within the site and suitably screened.
43. The Applicant shall seek the approval of the Council prior to undertaking any work within a public road.
- 41.1 Prior to the commencement of construction of any part of the development that is located on Raven Street (Lot 15 DP 1119752), the Applicant shall obtain all necessary approvals from the relevant roads authority for those aspects of the development that are to be located on Raven Street.
44. ~~All waste building materials must be disposed of at the Council's Waste Disposal Depot or other approved sites.~~ The Applicant shall ensure that any waste building materials generated on the site is classified in accordance with the EPA's Waste Classification Guidelines (DECCW, 2009) or any superseding document, and disposed of at a facility that may lawfully accept the waste.
45. The Applicant shall ensure that no goods or advertising signs are displayed or allowed to stand on a public footpath or street.
46. The Applicant shall ensure that any flags, bunting or other promotional material is arranged and maintained to the satisfaction of the Council. Details should be submitted to the Council in accordance with conditions of this consent.
47. The Applicant shall ensure that all goods and industrial activity is confined within the building, or within designated areas for such purposes indicated on the submitted plans or otherwise provided in accordance with the conditions of this consent.
48. The Applicant shall ensure that the proposed cooling tower is registered with the Council in accordance with the provisions of the New South Wales Public Health Act and Regulation, 1991 and the Council's policy for the control of Legionnaires Disease.

REASONS FOR CONDITIONS

1. To ensure that airborne emissions and noise from the proposal are within prescribed acceptable limits;
2. To ensure that potential hazards do not pose an unacceptable risk, both on-site and off-site;
3. To ensure best management practices and technology is adopted in the operation of the facility;
4. To ensure that satisfactory arrangements have been made for the disposal of waste; and

5. To protect the environment and amenity of the locality both during construction and operation of the plant.

RIGHT OF APPEAL

If you are dissatisfied with this decision, section 97 of the Environmental Planning and Assessment Act, 1979 gives you the right to appeal to the Land and Environment Court within 12 months of the date of receipt of this notice.

- Note:**
- (a) This consent operates from the date endorsed on the notice of determination of the development application (see Section 93 of the Environmental Planning and Assessment Act, 1979); and
 - (b) This consent lapses 5 years after the date from which it operates (see Section 99 of the Environmental Planning and Assessment Act, 1979)