

Notice of Modification

Section 96(2) of the *Environmental Planning & Assessment Act 1979*

Under the Minister for Planning's delegation of 4 March 2009, I modify the development consent referred to in Schedule 1, subject to the conditions in Schedule 2.



Chris Wilson
Executive Director

Sydney

7 DECEMBER

2009

SCHEDULE 1

Development consent:

The development consent (DA 391-80) granted by the Minister for Planning on 6 March 1981 for the construction and operation of an aluminium smelter at Tomago, and as modified by the Minister on 11 January 1991, 14 February 1995 and 23 August 2001.

SCHEDULE 2

The development consent is modified by:

- 1) In the paragraph preceding Condition 1, insert the following words after the words "and certified by Gary Freeland on 3 April 2001,":

"and the Statement of Environmental Effects entitled "Production Capacity Increase Statement of Environmental Effects Tomago Aluminium Smelter", prepared by ENSR Australia Pty Ltd, dated May 2009."

- 2) Replacing existing Condition 7 'Water management scheme' with the following:

Water Management Plan

7. The Applicant shall prepare and implement, an updated Water Management Plan for the development to the satisfaction of the Director-General. This plan must:
- a) be prepared in consultation with DECCW and Hunter Water;
 - b) be submitted to the Director-General for approval within 12 months of the approval of DA 391-80 MOD 4;
 - c) include a detailed water balance for the development;
 - d) describe the developments water management system in detail, including:
 - i. the measures that would be implemented to improve water efficiency on site, and reduce the use of potable water;
 - ii. the stormwater management system on site;
 - iii. the treatment and control of wastewater; and

- iv. the irrigation of effluent to the irrigation area and the management of soil and groundwater in this area.
- e) include a description of:
 - i. the relevant statutory requirements; and
 - ii. the measures that would be used to judge the performance of the water management system, and trigger the implementation of any contingency plans.
- f) include a comprehensive program to monitor and report:
 - i. the water efficiency of the development;
 - ii. the effectiveness of the stormwater management system;
 - iii. the volume of effluent discharged and irrigated on site;
 - iv. the quality of the effluent discharged from the site;
 - v. the effects of the effluent discharges on the ecology of the Hunter River;
 - vi. the effects of the irrigation scheme on the irrigation areas; and
 - vii. on groundwater quality, including the Tomago Sandbeds Water Supply Works.
- g) identify the contingency measures that would be implemented should the impacts of the development approach or exceed the relevant standards or performance measures referred to in f) above;
- h) include a protocol for managing and reporting incidents and complaints; and
- i) include a protocol for periodic review of the plan.

3) Replacing existing Condition 14 and 14A 'Waste Disposal' with the following:

Waste Management Plan

- 14. The Applicant shall prepare and implement, a Waste Management Plan for the site in consultation with DECCW and to the satisfaction of the Director-General. This plan must:
 - a) be submitted to the Director-General for approval within 12 months of the approval of DA 391-80 MOD 4;
 - b) characterise all waste imported, exported and re-used on site according to the current waste classification guidelines, and include procedures for classifying each of the waste materials;
 - c) include details of the quantities and destinations of all waste materials;
 - d) describe the measures in place to minimise and manage waste;
 - e) describe the system for the treatment of spent pot linings and provide an approximate timeline for the treatment of stockpiled material;
 - f) describe the options available to further reduce and reuse waste;
 - g) ensure that all waste materials are sent to sites that can lawfully accept waste; and
 - h) describe the waste monitoring program, detail the results of this monitoring and prepare a monitoring and reporting program.

4) Replacing existing Condition 18 with the following:

Flora and Fauna Monitoring Plan

- 18. The Applicant shall prepare and implement, a revised Flora and Fauna Monitoring Plan for the site in consultation with the DECCW to the satisfaction of the Director-General. This Plan must:
 - a) be submitted to the Director-General for approval within 12 months of the approval of DA 391-80 MOD 4;
 - b) include an ecosystem monitoring program to measure the impacts of fluoride and other contaminants on flora and fauna including farm animals and livestock (if any) within the vicinity of the smelter; and
 - c) include a monitoring program for the effects of fluoride on vegetative communities, with provision to be made for compensatory mechanisms for replanting if mangroves or wetlands are adversely affected.

5) Replacing existing Condition 33 'Restriction on trucks – Tomago Road' with the following:

- 33. The Applicant shall ensure that trucks carrying raw and unfinished materials to and from the expanded smelter only use Tomago Road in the event of a road closure or accident on the approved regular transport route (i.e. via Hexham Bridge).

6) Replacing existing Condition 50 with the following conditions:

50. The Applicant shall prepare and implement, an Air Quality Monitoring Program for the development to the satisfaction of the Director-General. This program must:
- a) be prepared in consultation with DECCW;
 - b) be submitted to the Director-General for approval by 1 May 2010;
 - c) include:
 - i. three additional SO₂ monitoring sites; ensuring sufficient monitoring points around "the Farm" precinct;
 - ii. mapping of all monitoring points;
 - iii. a description of the monitoring to be undertaken including pollutants, units of measure, frequency and sampling method;
 - iv. a program to monitor and report on the ongoing performance of the development; and
 - v. a description of the contingency measures that would be implemented should the monitoring identify any non-compliances/exceedances.
- 50A. The Applicant shall prepare and submit an Air Quality Verification Report to the satisfaction of the Director-General and the DECCW by 30 May 2013 or once the facility is operational at full capacity, whichever comes sooner. The Air Quality Verification Report shall include:
- a) a validation of the predictions made in the SEE titled "Production Capacity Increase Statement of Environmental Effects Tomago Aluminium Smelter", prepared by ENSR Australia Pty Ltd, dated May 2009;
 - b) monitoring data required by the EPL;
 - c) comparison of monitoring results with any limits or conditions in the EPL; and if necessary
 - d) additional measures that would be implemented to comply with the requirements of the EPL.

7) Replacing existing Conditions 51 and 52 with the following:

Noise

51. The Applicant shall ensure that the noise from the operation of the development does not exceed any noise limits specified in the EPL for the facility.

Noise Auditing and Reporting

52. The Applicant must undertake pre and post modification noise audits to ensure the expansion does not increase noise emissions from the transformers. The auditing must be undertaken by a suitably qualified and experienced person whose appointment has been endorsed by the Director-General, and include:
- a) a pre modification noise audit and report which must:
 - i. be provided to DECCW and the Department and approved by the Director-General prior to the commencement of the expansion;
 - ii. be undertaken during a period when the facility is operating under normal operating conditions;
 - iii. identify the existing noise levels produced by the transformers; and
 - iv. report any noise complaints received in the last 12 months.
 - b) a post modification noise audit and report which must:
 - i. be provided to DECCW and the Department and approved by the Director-General;
 - ii. be undertaken within 5 years of the date of this modification approval or once the facility is operational at full capacity, whichever comes sooner;
 - iii. identify the noise levels produced by the transformer;
 - iv. compare the transformer noise levels with the levels identified in the pre modification noise audit in a) above;
 - v. report any noise complaints received since undertaking the previous noise audit;
 - vi. assess whether any noise management or mitigation measures are required;
 - vii. describe any measures proposed to be implemented, including a timetable for the implementation; and
 - viii. detail how the effectiveness of these measures would be assessed and reported.

8) Replacing existing Condition 58:

58. Within 12 months of the approval of DA 391-80 MOD 4, and then as directed by the Director-General, the Applicant shall commission and pay the full cost of an Independent Environmental Audit of the development. This audit must:
- a) be conducted by a suitably qualified, experienced, and independent team of experts whose appointment has been endorsed by the Director-General;
 - b) include a Hazard Audit in accordance with the Department's Hazardous Industry Planning Advisory Paper No. 5 – Hazard Audit Guidelines. The audit shall include a review of the Safety Management System and of all incidents recorded and be accompanied by a program for the implementation of all recommendations made in the audit report. If the Applicant intends to defer the implementation of a recommendation, justification must be included;
 - c) assess the environmental performance of the development, and its effects on the surrounding environment and sensitive receivers;
 - d) assess whether the development is complying with the conditions, relevant standards, performance measures, and statutory requirements;
 - e) review the adequacy of any strategy/plan/program required under this approval; and, if necessary,
 - f) recommend measures or actions to improve the environmental performance of the development, and/or any strategy/plan/program required under this approval.

9) Inserting the following Conditions:

59. Within 6 weeks of completing this audit, or as otherwise agreed by the Director-General, the Applicant shall submit a copy of the audit report to the Director-General with a response to any recommendations contained in the audit report.
60. Within 3 months of submitting an audit report to the Director-General, the Applicant shall review and if necessary revise the strategy/plans/programs required under this approval to the satisfaction of the Director-General.