



# Tomago Aluminium Smelter Modification

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Amendments to Environmental Monitoring Conditions  
State Significant Development Modification Assessment  
(DA 4908/90 MOD 7 & DA 391/80 MOD 8)

October 2020



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Subtitle: Amendments to Environmental Monitoring Conditions (DA 4908-90 MOD 7 & DA 391-80 MOD 8)

*Cover image: Tomago Aluminium (source: Tomago Aluminium Corporation Pty Ltd)*

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# Glossary

<b>Abbreviation</b>	<b>Definition</b>
<b>BCD</b>	Biodiversity Conservation Division
<b>Council</b>	Port Stephens Council
<b>Department</b>	Department of Planning, Industry and Environment
<b>EPA</b>	Environment Protection Authority
<b>EP&amp;A Act</b>	<i>Environmental Planning and Assessment Act 1979</i>
<b>EP&amp;A Regulation</b>	Environmental Planning and Assessment Regulation 2000
<b>EPL</b>	Environment Protection Licence
<b>Minister</b>	Minister for Planning and Public Spaces
<b>NPWS</b>	National Parks & Wildlife Service, DPIE
<b>POEO Act</b>	<i>Protection of the Environment Operations Act 1997</i>
<b>Planning Secretary</b>	Secretary of the Department of Planning, Industry and Environment
<b>SSD</b>	State Significant Development
<b>WMP</b>	Water Management Program

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# 1 Introduction

This report provides the NSW Department of Planning, Industry and Environment's (the Department's) assessment of applications to modify the State significant development (SSD) consents for DA 4908-80 MOD 7 and DA 391-80 MOD 8 for the Tomago Aluminium Smelter (the smelter).

The modification applications seek to amend several environmental monitoring conditions in its current development consents relating to water quality and biodiversity monitoring requirements.

The applications were lodged on 18 June 2020 by Tomago Aluminium Company Pty Ltd (the Applicant) pursuant to section 4.55(1A) of the *Environmental Planning and Assessment Act 1979* (EP&A Act).

## 1.1 Background

The Applicant operates the smelter at 576-638 Tomago Road, Tomago (the site) in the Port Stephens local government area. The smelter is located approximately 13 kilometres (km) northwest of Newcastle (see **Figure 1**). The smelter has been operational since 1983 and occupies approximately 110 hectares of the 500-hectare subject land, and currently manufactures aluminium ingots, billets and slabs with a production capacity of up to 600,000 tonnes per annum (tpa) of aluminium.

The subject site is zoned as IN1 General Industrial under the Port Stephens Local Environmental Plan 2013 and comprises of three land allotments including Lot 202 of Deposited Plan (DP) 1173564, Lot 104 DP 1125747 and Lot 3 DP 808004.

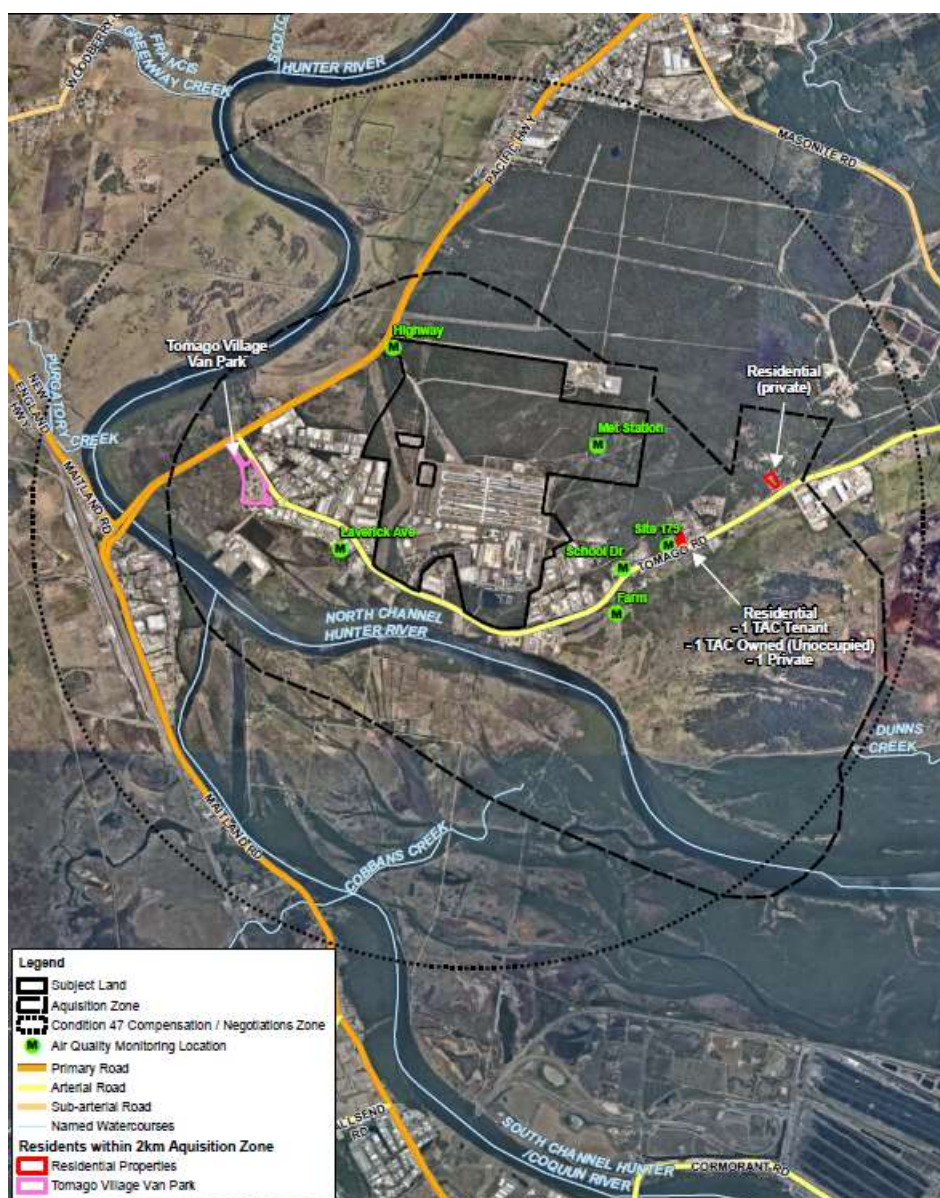


Figure 1: Regional and Locality Context Map - Site Location

It is understood there are two established buffer zones surrounding the smelter, including a 2 kilometre (km) acquisition zone and a 4 km compensation/negotiation zone (refer to **Figure 2**).

The acquisition buffer zone was established when the smelter was originally built and encompassed the potential annual average fluoride exposure risks to landowners within the 2 km radius of the smelter. In accordance with Condition 46 of the DA 391/80 consent (as modified) and Condition 30 of the DA 4908/90 consent, upon request from the landowner within the acquisition buffer zone, the Applicant is required to take all reasonable steps to acquire the property, with the exception of properties located within the “General Industrial” zone under the Port Stephens LEP as well as the Tomago Village Caravan Park situated approximately 1.5 km west of the smelter.

The compensation/negotiation buffer zone was established to provide an opportunity for landowners/occupiers located within 4 km of the smelter to seek an agreement with the Applicant for potential compensation or request for acquisition of property, based on findings of adverse impacts from operations from the site, as per Condition 47 of DA 391/80 (as modified) and Condition 31 of DA 4908/90 (as modified).



**Figure 2:** Subject site and associated buffer zones

Industrial developments located adjacent to the smelter include the Sandvik mining equipment factory, Regain Services Spent Potliner Recycling Facility (within the grounds of the smelter) and the Redlake Enterprises Estate. Other nearby facilities and services are shown in **Figure 3** and include the following:

- the NSW Hunter Academy for Corrective Service, formerly the Tomago Periodic Detention Centre (approximately 500 m to the south);
- the acquired heritage listed Tomago House, (approximately 1 km to the southeast);
- the Tomago Village Caravan Park (approximately 1.5 km to the west); and
- the Hunter Botanic Gardens (approximately 2 km to the north).



**Figure 3: Surrounding land-uses**

The nearest residential areas are located within the 4 km compensation zone and are approximately 3 km to the southwest in Hexham, and 3 km to the northwest in Heatherbrae. The smelter is located in close proximity to the North Channel of the Hunter River and is also in the vicinity of the Kooragang Nature Reserve and the Tomago Sandbeds (local potable water resource).

The smelter is regulated under the *Protection of the Environment Operations Act 1997* (POEO Act) by the Environment Protection Authority (EPA) through an Environment Protection Licence (EPL) (EPL 6163), and is licensed to undertake metallurgical activities, waste processing (non-thermal treatment) and waste storage as Scheduled Activities under the POEO Act.

## 1.2 Approval history

The smelter currently operates under two development consents issued by the then Minister in 1981 and 1991 as follows:

### Development Consent DA 391/80

On 6 March 1981, development consent (DA 391/80) was granted by the then Minister for Planning and Environment for the construction and operation of the smelter with two potliners, and a total aluminium production capacity of up to 220,000 tonnes per annum (tpa).

### Development Consent DA 4908/90

On 11 January 1991, the then Minister for Planning granted consent to DA 4908/90 to expand the existing smelter capacity from 220,000 tpa to 380,000 tpa, and the construction of an additional third pot line.

Excluding this proposal, DA 391/80 and DA 4908/90 have been modified up to six occasions, and there are two modifications applications, DA 391/80 MOD 5 and DA 4908/80 which are currently under assessment by the Department (see **Table 1**).

**Table 1 | Summary of modifications to the development consents DA 391/80 and DA 4908/90**

Mod No.	Summary of Modifications	Approval Authority	Approval Date
<b>DA 391/80 MOD 1</b>	Modified to be consistent with DA 4908/90 to permit the expansion of potlines 1 and 2 and increase total aluminium production capacity to 440,000 tpa.	Minister for Planning and Environment	11 January 1991
<b>DA 391/80 MOD 2 &amp; DA 4908/90 MOD 1</b>	Minor modifications to the consents relating to the management of the buffer zone properties.	Minister for Planning	14 February 1995
<b>DA 391/80 MOD 3 &amp; DA 4908/90 MOD 2</b>	Upgrade of all three potlines to new pot design (APP2) and increasing the total aluminium production from 440,000 to 530,000 tpa.	Minister for Urban Affairs and Planning	23 August 2001
<b>DA 391/80 MOD 4 &amp; DA 4908/90 MOD 3</b>	Increase the total aluminium production capacity from 530,000 to 575,000 tpa.	Executive Director Major Project Assessments	7 December 2009
<b>DA 391/80 MOD 5 &amp; DA 4908/90 MOD 4</b>	Increase the total aluminium production capacity from 575,000 to 585,000 tpa.	Director Regional Assessments	12 October 2015

<b>Mod No.</b>	<b>Summary of Modifications</b>	<b>Approval Authority</b>	<b>Approval Date</b>
<b>DA 391/80 MOD 6 &amp; DA 4908/90 MOD 5</b>	Increase the total aluminium production capacity from 585,000 to 600,000 tpa.	Director Industry Assessments	9 November 2016
<b>DA 391/80 MOD 5 and DA 4908/90 MOD 6</b>	No change in aluminium production throughput proposed. Modification sought for an in the total sulfur dioxide emission limit from the smelter potlines from 11,900 to 13,500 tpa.	N/A	Preliminary discussions

The modifications are described in full in the Statement of Environmental Effects (SEE) included in **Appendix B**.

## 2 Proposed modification

### 2.1 Proposed Modification

An Independent Environmental Audit (IEA) was submitted to the Department on 8 August 2018 following a request from the Department via correspondence, dated 6 April 2018, requiring the Applicant to undertake an IEA under Schedule 2, Condition 39 of DA 4908/90 and Condition 58 of DA 391/80. The Department noted an IEA had not been undertaken by the Applicant since 2010.

The IEA made several recommendations in relation to modifying the Tomago Aluminium development consents relating to several environmental monitoring requirements as follows:

- removing the requirement for fluoride water quality monitoring at Nelson Bay-Anna Bay
- removing the requirement to undertake water quality monitoring at the surge basin as it is covered under EPL 6163
- recommencing the ongoing small mammal trapping program or seeking an agreement with the relevant government agencies to remove this requirement.

Subsequently, the Applicant has lodged two modification applications under section 4.55(1A) of the EP&A Act to modify the development consents DA 392/80 and DA 4908/90 in line with the 2018 IEA recommendations as summarised in **Table 2**.

The proposed modifications are described in full in the Applicant's Statement of Environmental Effects (SEE) and also includes the attached 2018 IEA report (**Appendix B**).

**Table 2** | Proposed conditions to be modified

Development Consent/Condition	Proposed Modification
Condition 6 (DA 391/80) and Schedule 2, Condition 10 (DA 4908/90)	Remove references to 'Nelson Bay-Anna Bay' from the Hunter Water catchment water monitoring program.
Schedule 2, Condition 20 (DA 4908/90)	Remove condition relating to the requirement to monitor water quality in the stormwater surge basin within the vicinity of Potline 3.
Schedule 2, Condition 45 (DA 4908/90)	Remove the condition relating to the requirement to conduct an ongoing small mammal trapping program for investigating the effects of smelter emissions on the abundance and bone fluoride content of small mammals within 10 km of the smelter.

## 3 Statutory context

### 3.1 Scope of Modifications

The Department has reviewed the scope of the modification applications and considers that the applications can be characterised as a modification involving minimal environmental impacts as:

- the primary function and purpose of the approved development would not change as a result of the proposed modification
- any potential environmental impacts would be minimal and appropriately managed through the existing or modified conditions of consent
- the modification is of a scale that warrants the use of section 4.55(1A) of the EP&A Act.

Therefore, the Department is satisfied the proposed modification applications are within the scope of section 4.55(1A) of the EP&A Act and do not constitute a new development application. Accordingly, the Department considers that the applications should be assessed and determined under section 4.55(1A) of the EP&A Act rather than requiring a new development application to be lodged.

### 3.2 Consent Authority

The Minister for Planning and Public Spaces (Minister) is the consent authority for the application under Section 4.55(1A) of the EP&A Act. However, under the Minister's delegation dated 9 March 2020, the Director, Industry Assessment, may determine the applications where the local Council does not object to the application and no public submissions were received. The proposed modifications meet the terms of this delegation.

## 4 Engagement

Clause 117(3B) of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation) specifies that the notification requirements of the EP&A Regulation do not apply to section 4.55(1A) modifications with minimal environmental impact. Accordingly, the applications were not notified or advertised. However, they were made publicly available on the Department's website on 14 July 2020 and referred to Hunter Water Corporation (HWC), Port Stephens Council (Council), the Biodiversity and Conservation Division (BCD) of the Department and NSW Environment Protection Authority (EPA) for comment.

### 4.1 Summary of Submissions

**HWC** did not object to the modification applications and indicated that they had no specific comments applicable to the application.

**Council** and **BCD** did not raise objections to the modification applications for removing/amending the conditions relating to the specific water quality monitoring requirements at Nelson Bay- Anna Bay (Condition 6, DA 391/80 and Condition 10 DA 4908/90) or the northern surge basin (Potline 3).

**BCD** (which includes National Parks and Wildlife Services, NPWS) acknowledged that the Applicant had fulfilled its requirements of the development consent condition relating to the monitoring of fluorine in small mammal animal bones as part of the ongoing small mammal trapping program (Condition 45, DA 4908/90). However, both Council and BCD further encouraged the Applicant to continue the small mammal trapping program to provide a long-term dataset as it is the longest running trapping program in NSW in examining the effects of vegetation management on small mammal populations.

**EPA** provided initial comments to the Department on 30 July 2020 and similarly did not raise any objections to the modification request in removing the reference to Nelson Bay-Anna in the development consents relating to the HWC catchment water monitoring program, or the removal of condition relating to water monitoring at the surge basin. However, the EPA did recommend the Applicant further discuss options with the EPA relating to the small mammal trapping program.

Subsequently, the Department requested the Applicant consult further with the EPA to finalise an outcome on the continuation of the small mammal trapping program. Correspondence was received from the EPA on 21 September 2020 stating that based on the extent of data available on the effects of the smelter impacts on small mammal populations from the program since the late 1990s to 2013, the EPA concluded and agreed with the Applicant that there was little value in continuing the small mammal trapping program.

## 5 Assessment

The Department has assessed the merits of the proposed modification. During this assessment, the Department has considered the:

- the SEE provided to support the proposed modification (see **Appendix B**)
- existing conditions of consent (as modified)
- supporting documents and subsequent modification applications
- submissions from the public, State government authorities and Council (**Appendix C**)
- relevant environmental planning instruments, policies and guidelines
- requirements of the EP&A Act, including the objects of the EP&A Act.

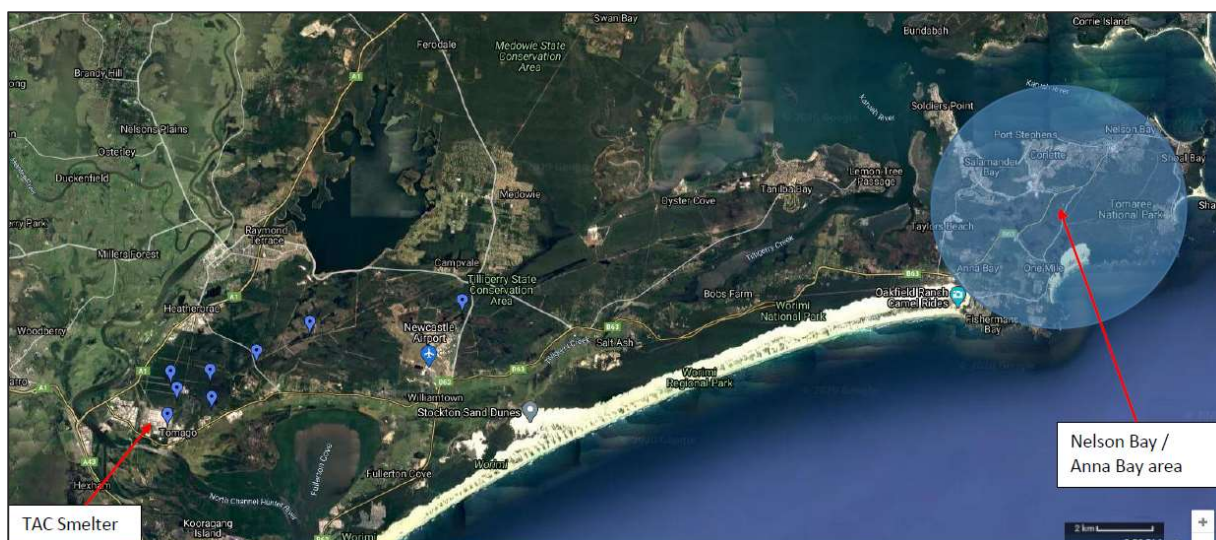
The Department considers the key assessment issue to be justification behind the amendment / removal of existing conditions in the development consents.

### 5.1 Amendment of requirement for monitoring at Nelson Bay- Anna Bay

Condition 6 in DA 391/80 and Schedule 2, Condition 10 in DA 4908/90 of the site's development consents relates to requirements established by the former Hunter Water Board (now Hunter Water Corporation, HWC) in requiring the Applicant to establish a water quality monitoring program at the smelter site, and on HWC catchment areas (Grahamstown, Nelson Bay – Anna Bay and Tomago) within the vicinity of the smelter site. The purpose of HWC's requirements of the monitoring program is to provide trending information relating to fluoride concentrations on groundwater, surface water, rainwater and on flora and fauna in those HWC catchment areas. It is also understood that under the site's EPL 6163, the Applicant is required to annually monitor and report on fluoride, pH and conductivity levels of surface waters within 16.5 km of the smelter.

The monitoring program consists of monthly water quality sampling undertaken at established groundwater monitoring sites in the HWC catchment area within the Tomago Sandbeds (beneficial aquifer). It is understood the water quality sampling activities are undertaken by HWC on behalf of the Applicant, and the results are collated in a quarterly environmental report which are provided to HWC, the EPA, NPWS and the Department. Details of the HWC catchment water monitoring program are documented in the Applicant's revised Water Management Program (WMP) documentation (dated 31 July 2018), and approved by the Department on 17 August 2018.

It was reported in the revised WMP that three initial monitoring bores were established in the Nelson Bay – Anna Bay area which ranged between 15 – 21 km from the smelter (**Figure 4**). It is understood that subsequent to the approval of the third potline in 1991 (DA 4908/90), the original monitoring program was modified and the three monitoring locations within the Nelson Bay-Anna Bay catchment area were removed following consultation with HWC. This decision was based on their distance from the smelter and that the monitoring data collected since the 1980s (as per the requirements of the 1981 DA 391/80 consent) reflected fluoride concentration levels consistent with background levels. It is further understood that the Applicant has not undertaken water quality monitoring in the Nelson Bay-Anna Bay area since 1995.



**Figure 4: Proximity of Nelson Bay-Anna Bay catchment area from the smelter and existing Hunter Water catchment monitoring bores**

The 2018 IEA also confirmed that monitoring was not undertaken at Nelson Bay-Anna Bay, and provided a recommendation for the Applicant to liaise with the Department and HWC to remove the requirement for monitoring at Nelson Bay – Anna Bay ('Recommendation 9') from Condition 6 in DA 391/80 and Schedule 2, Condition 10 in DA 4908/90. Following the recommendation from the 2018 IEA, the Applicant liaised with HWC in August 2018 to confirm its position on removing the requirement to monitor in the Nelson Bay – Anna Bay catchment area. The HWC confirmed in correspondence dated 23 August 2018 (refer to SEE in **Appendix B**) that they had no objections in removing the reference to the Nelson Bay – Anna Bay catchment area from the development consents. HWC also further reiterated that the catchment area is a significant distance away from the smelter and that fluoride impacts would not be anticipated in that area.

The HWC, EPA, EES and Council submissions for the modification did not raise any objections to the proposed amendment of the condition in removing the reference and requirement for monitoring at Nelson Bay-Anna Bay.

With consideration of the supporting information provided and noting the distance of the smelter from the catchment area and the historical monitoring data from the monitoring program which has not identified fluoride exceedances in this area, the Department considers the amendment and removal of the 'Nelson Bay-Anna Bay' reference in Condition 6 in DA 391/80 and Schedule 2, Condition 10 in DA 4908/90 to be appropriate. This position is reflected in the Department's recommended modifying instruments.

The Department's assessment concludes the removal of the requirement to monitor at Nelson Bay-Anna Bay would not affect the ability to detect potential water quality impacts arising from the operation of the smelter. Water quality monitoring will continue as part of the Applicant's Water Management Plan and the site's EPL.

## 5.2 Removal of requirement for water quality monitoring at the stormwater surge basin

Schedule 2, Condition 20 of DA 4908/90 is a requirement established by HWC requiring the Applicant to undertake monthly water quality monitoring within the northern stormwater surge basin ('the surge basin') located to the north of the third potline (as referred to in Condition 14 of the consent), with results to be submitted to HWC and the Department.

Stormwater runoff at the site is directed via a system comprising of pipe network, collection sumps and series of underground drainage culverts to a concrete lined sediment basin with a holding capacity of 12,000 cubic metres (m<sup>3</sup>). The sedimentation basin is further connected to a stormwater detention pond with a capacity of 17,400 m<sup>3</sup> which collects the first flush during a rain event (**Figure 5**). Stormwater in excess of the detention basin capacity is discharged directly to the Hunter River.

The purpose of the northern surge basin is to manage stormwater during high intensity rainfall events to prevent burden on the existing stormwater pipe network and drainage system. The surge basin has a capacity of 7,000 m<sup>3</sup> which serves the site's Potline No. 3 and is situated on the northern portion of the smelter (**Figure 5**). A 900 millimetre (mm) diameter pipe connects the surge basin to the main drainage culvert. Within the surge basin is a control valve / sluice gate mechanism which regulates stormwater flow during high rainfall events, where the sluice gate is automatically closed during high water levels detected in the site drainage network, and once the rain intensity decreases, the sluice gate opens allowing water to discharge from the surge basin into the site drainage network. In the SEE (**Appendix B**), the Applicant has indicated that given the nature of the surge basin design in temporarily holding stormwater, the opportunities to undertake water sampling and monitoring from the surge basin in accordance with the requirement of Schedule 2, Condition 20 of DA 4908/90 are impractical.



**Figure 5:** Site stormwater surge basin and stormwater detention pond

The 2018 IEA confirmed that water quality monitoring is not undertaken at the surge basin in accordance with Schedule 2, Condition 20 DA 4908/90, also acknowledging that stormwater is stored within the basin for a limited timeframe following rainfall events and resulting in a limited opportunity to collect a water quality sample. The Applicant has indicated that the stormwater which is discharged from the surge basin to the existing site drainage system is transferred via gravity to two discharge inlet points to the sedimentation basin and the detention basin. Under the site's existing EPL 6163, the site is required to undertake regular monitoring (daily during any discharge) for fluoride, pH, total suspended solids, conductivity and specific hydrocarbon constituents from the two discharge points. Based on this information made available during the 2018 IEA, the audit provided a recommendation for the Applicant to liaise with the Department to remove the requirement to undertake monitoring at the surge basin, noting that the water quality monitoring is already covered by an undertaken in accordance with EPL 6163 ('Recommendation 5').

In May 2018, the Applicant sought advice from HWC on its position for the removal of Condition 20 of the DA4908/90 consent relating to the water quality monitoring and reporting of the surge basin following the recommendation provided in the 2018 IEA report. The HWC confirmed in correspondence dated 27 May 2018 (refer to SEE in **Appendix B**) that they had no concerns or objections to the removal of the condition.

HWC, EES and Council submissions did not raise any objections to the removal of the condition requirement relating to the monitoring at the surge basin. EPA also did not object with removing the condition and acknowledged that EPL 6163 requires the Applicant to undertake regular water quality monitoring at the stormwater discharge points.

The Department has considered the supporting information provided in the modification SEE (including the 2018 IEA) and advice from the EPA and notes that the required monitoring at the stormwater surge basin is considered impracticable. The Department therefore recommends that Schedule 2, Condition 20 from the DA 4908/90 consent is deleted.

The Department's assessment concludes that the removal of the requirement to monitor at stormwater surge basin would not impact the stormwater quality management at the smelter. Water quality monitoring for the discharge of stormwater at the site will continue as part of the Applicant's Water Management Plan and the requirements of the site's EPL.

### **5.3 Removal of requirement for conducting ongoing small mammal trapping program**

An ongoing small mammal monitoring program was undertaken in the vicinity of the site from 1982 to 2013. The annual surveys were conducted to determine the potential effects of fluoride exposure on small mammals (bone fluoride content) in the vicinity of the smelter, and required for compliance of Schedule 2, Condition 45 of DA 4908/90 and a previous condition of EPL 6163. Condition 45 of the DA 4908/90 also required the Applicant to submit results to the NPWS.

Details of the small mammal trapping program are documented in the Applicant's revised Flora and Fauna Monitoring and Buffer Zone Management Plan (the management plan) which was approved by the Department on 19 December 2018. It is reported in the management plan that at the time of its preparation, the Applicant was in discussions with NPWS and EPA on the value of continuing the small mammal trapping program. Furthermore, included in the management plan was a consultancy report

prepared by SMEC in July 2015 and titled “*Tomago Aluminum Company Small Mammal Trapping Program Review*” in which it undertook a review of the 32 years of data from the small mammal trapping program. The 2015 SMEC report concluded that the Applicant had a substantial time series of data from the study and based on the data that “*although bone fluoride accumulation had increased at locations nearest the Tomago smelter, it does not seem to have impacted on the abundance and distribution of small species.*” A copy of the 2015 SMEC report is also provided in the SEE (**Appendix B**).

It is understood that discussions between the Applicant and EPA commenced in early 2014 regarding the discontinuation of the small mammal trapping condition requirement (condition M5.7) from the EPL 6163. The EPA noted from the review of the data that there was a large variability of fluoride results between individual animals tested at the site, with a firm trend for higher bone fluoride density in mammals closer to the smelter and levels progressively lower further away from the site. The EPA indicated this observation was not unexpected and agreed with the Applicant that the continued testing via the existing program at the time would serve little purpose. Condition M5.7 was subsequently removed from EPL 6163 in a licence variation (Notice No. 15177795) dated 14 October 2014, however it was also flagged on the EPL variation that the EPA would be in discussions with the Applicant regarding alternative investigations into small mammals to confirm that adverse impacts from fluoride at the current load limit cap are unlikely to be occurring. It is understood that a copy of the 2015 SMEC report was provided to the EPA for consideration by the Applicant.

Correspondence was also sent to NPWS in June 2018 from the Applicant with regards to seeking advice on the curtailment of the small mammal trapping program based on the data collected from 32 years of monitoring. NPWS responded that it was supportive of the continuation of the program as it is one of the longest running trapping programs in the State and provide a long-term dataset to examine the effects of vegetation management (in particularly fire management) on small mammal populations. Following the outcome of the NPWS correspondence, the Applicant has reasoned in the SEE that the intent of the small mammal trapping program required in Schedule 2, Condition 45 of DA 4908/90 to investigate the effects of smelter emissions on the relative abundance and bone fluoride content of small mammals within 10 km of the smelter has been achieved, and that there is little gained for the continuation of the program.

While the 2018 IEA confirmed that the small mammal trapping program had ceased in 2014 with the EPA approving the discontinuation of the program and removing the requirement from EPL 6163, this was considered a non-compliance as further consultation was not appropriately undertaken with the EPA and NPWS and the discontinuation of the program was not approved by the Department or NPWS. The 2018 IEA reported as a corrective action (‘Correction Action 3’) for the Applicant to recommence survey and reporting of small mammal trapping program or seek agreement from the Department, NPWS and EPA to remove Schedule 2, Condition 45 from the DA 4908/90.

In BCD’s submission for this modification, it acknowledged that the Applicant had fulfilled its requirements for the monitoring of fluorine in animal bones, however still encouraged the Applicant to continue the small mammal trapping program as per the same reasons stated in the response provided by NPWS in June 2018. It was further stated in the advice that NPWS could provide support to the Applicant in gaining funding and/or resources to ensure the continuation of the program. Council’s submissions also stated similar reasons for the continuation of the trapping program.

Following a request from the Department, the Applicant further liaised with the EPA to discuss and finalise an outcome on the small mammal trapping program requirements. Final correspondence was

provided to the Applicant from the EPA (dated 21 September 2020) acknowledging that the effects of the smelter on small mammal populations have been thoroughly investigated through to 2013 from the trapping program, and with the EPA agreeing with the Applicant that there was little value in continuing the program, subject to changes to the nature of the smelter's operations in the future.

The Department agrees with BCD and EPA in that the Applicant has fulfilled the requirements of Condition 45 DA 4908/90 through the extensive data collected between 1982 to 2013 from the small mammal trapping program. Although the data has shown a bone fluoride increase in small mammals closer to the smelter, which the EPA has indicated is not unexpected, the smelter has not impacted on the abundance and distribution of the small mammal species in the vicinity of the site.

The Department has also considered BCD and Council's recommendation for the Applicant to continue the small mammal trapping program, however as the justification is unrelated to the original intent of the requirements of Condition 45 of DA 4908/90, the Department is not satisfied a condition requiring its continuation can be supported.

While the Department recommends the deletion of the condition, the Department notes it is open to the Applicant to continue the mammal trapping program outside the requirements of the development consent and to this end, suggests the Applicant liaise with BCD to look at opportunities for its continuation.

The Department's assessment concludes the requirements of Condition 45 of DA 4908/90 have been met and recommends the condition be removed.

## 6 Evaluation

The Department has assessed the proposed modification in accordance with the relevant requirements of the EP&A Act. The Department considers the proposed modification is appropriate on the basis that:

- the proposed modification will result in minimal environmental impacts beyond the approved facility;
- the recommendations do not alter the operation of the smelter but simplify the consent by amending several environmental monitoring and reporting conditions; and
- the continued operations of the site would be effectively managed by the conditions of consent (as modified) of DA 391/80 and DA 4908/90.

The Department is satisfied that the modification should be approved, subject to conditions.

## 7 Recommendation

It is recommended that the Director, Industry Assessments, as delegate of the Minister for Planning and Public Spaces:

- **considers** the findings and recommendations of this report;
- **determines** that the modification applications DA 4908/90 MOD 7 and DA 391/80 MOD 8 within the scope of section 4.55(1A) of the EP&A Act;
- **accepts and adopts** all of the findings and recommendations in this report as the reasons for making the decision to grant consent to the modification applications;
- **modify** the consents DA 4908/90 and DA 391/80; and
- **signs** the attached modifying instruments (**Appendix A**).

**Recommended by:**



23 October 2020

**Ellen Luu**

Senior Environmental Assessment Officer  
Industry Assessments

**Recommended by:**



23 October 2020

**Joanna Bakopanos**

Team Leader  
Industry Assessments

## 8 Determination

The recommendation is **Adopted** by:



23 October 2020

**Chris Ritchie**

Director

Industry Assessments

as delegate of the Minister for Planning and Public Spaces

# Appendices

## Appendix A – Notice of Modification

## **Appendix B – Modification Application**

<https://www.planningportal.nsw.gov.au/major-projects/project/36986>

<https://www.planningportal.nsw.gov.au/major-projects/project/36991>

## Appendix C – Submissions

<https://www.planningportal.nsw.gov.au/major-projects/project/36986>