

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979

DETERMINATION OF A DEVELOPMENT APPLICATION PURSUANT TO SECTION 101

I, the Minister for Planning, pursuant to Section 101 of the Environmental Planning and Assessment Act 1979 ("the Act"), determine the development application for the expansion of the Tomago Aluminium Smelter ("the smelter expansion") referred to in Schedule 1 by granting consent to the application subject to the conditions set out in the attached Schedule 2.

The reasons for the imposition of the conditions are:

- i) to protect the environment and minimise the adverse impact the development may cause through noise, traffic generation, and air and water pollution;
- ii) to provide for environmental monitoring and reporting;
- iii) to provide for an expanded buffer zone, and
- iv) to provide consistency between the instruments of approval covering the existing aluminium smelter and the smelter expansion, the subject of this application.

DAVID HAY

Minister for Local Government and

Minister for Planning

Sydney, 11th January, 1991

The Department has prepared a consolidated version of the consent which is intended to include all modifications to the original determination instrument.

The consolidated version of the consent has been prepared by the Department with all due care. This consolidated version is intended to aid the consent holder by combining all consents relating to the original determination instrument but it does not relieve a consent holder of its obligation to be aware of and fully comply with all consent obligations as they are set out in the legal instruments, including the original determination instrument and all subsequent modification instruments.

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SUMMARY OF MODIFICATIONS

Application Number	Determination Date	Decider	Modification Description
DA 391/80 MOD 1	11 January 1991	Minister for Planning and Environment	N/A
DA 391/80 Mod 2	14 FEBRUARY 1995	Minister for Planning	N/A
DA 391/80 Mod 3	23 AUGUST 2001	Director General	N/A
DA 391/80 Mod-4	7 DECEMBER 2009	Executive Director	N/A
DA 391/80 -Mod-5	12 OCTOBER 2015	A/Director	increase in the production capacity of the aluminium smelter from 575,000 tonnes per annum to 585,000 tonnes per annum.
DA 391/80 -Mod-6	9 NOVEMBER 2016	Director	Increase in the production capacity of the aluminium smelter from 585,000 tonnes per annum to 600,000 tonnes per annum
DA 391/80 -Mod-7	N/A	N/A	N/A
DA 391/80 -Mod-8	23 October 2020	Director	Amendment to Condition 10
DA 391/80-Mod-9	XX MAY 2023		Allow the processing of Aluminium Dross produced on the site

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SCHEDULE 1

APPLICATION MADE BY:	Mr W Brooks on behalf of Tomago Aluminium Company Pty Limited.
TO:	Port Stephens Shire Council.
IN RESPECT OF:	Expansion of the Tomago Aluminium Smelter on land described below.

FOR INFORMATION

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FOR THE CARRYING OUT OF:

Construction and operation of a third potline containing 280 pots, an additional anode baking furnace and paste plant, extension of the two existing potlines each from 240 to 280 pots and all necessary support facilities and buildings on the properties listed below on the schedule of properties and being described in the Environmental Impact Statement, and the Appendices to the Environmental Impact Statement dated July, 1990 prepared by Crooks Michell Peacock Stewart Pty Limited accompanying the Development Application.

SCHEDULE OF
PROPERTIES

35 Tomago Road, TOMAGO.

Lot 16 DP 258020

45 Tomago Road, TOMAGO.

Lot 15 DP 258020

Land to the north of numbers 35 and 45 Tomago Road being part of portion 6, Parish of Stockton and being the remainder of the land in Certificate of Title Volume 6352 Folio 184 after the excision of land for the Old Punt Road deviation.

36 Tomago Road, TOMAGO

Lot 100 DP 604166

and located on the south side of Tomago Road.

50, 52 and 76 Tomago Road, TOMAGO, located on the south side of Tomago Road.

Lots in DP 258020 and more particularly:

Lot 12, Lot 13 and Lot 14.

35 School Drive, TOMAGO

Lot 70 DP 634535

13 McIntyre Road, TOMAGO

Lot 3232 DP 618103

21a Tomago Road, TOMAGO

Lot 301 DP 634536

43 School Drive, TOMAGO

Lot 3 DP 38904

NOTES:

- (1) To ascertain the date on which this consent becomes effective refer to section 101(9) of the Act.
- (2) To ascertain the date upon which this consent is liable to lapse, refer to section 99 of the Act.

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SCHEDULE 2

CONDITIONS OF DEVELOPMENT CONSENT

TOMAGO ALUMINIUM SMELTER EXPANSION

DA 4908/90 DATED 2 AUGUST 1990

SUBMITTED TO PORT STEPHENS SHIRE COUNCIL

Section 91(3)(b)

1. The Applicant (Tomago Aluminium Company Pty Limited) shall arrange, prior to submitting a Building Application for the smelter expansion to Port Stephens Shire Council, for the completion and lodgement of the attached Form 5 of the Environmental Planning and Assessment Regulation, 1980, in respect of the modifications set out in Schedule 3 to this consent.

General

2. The Applicant shall carry out the expansion of the Tomago Aluminium Smelter generally in accordance with the Environmental Impact Statement (EIS) and Appendices, dated July 1990, prepared by Crooks Mitchell Peacock Stewart Pty Limited and certified by James J. Varjavandi on 27 July 1990; as modified by the Statement of Environmental Effects (SEE) titled Modification of Development Consent for the proposed Production Capacity Increase at Tomago Aluminium Smelter, dated April 2001; as modified by 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, as modified by the project proposal titled Tomago Aluminium Company Pty Ltd Production Capacity Increase 575,000 to 585,000 Tonnes Saleable Metal and accompanied by a letter dated 5 August 2015 from the Tomago Aluminium Company Pty Limited, and as modified by the project proposal titled Tomago Aluminium Company Pty Ltd Production Capacity Increase 585,000 to 600,000 Tonnes Saleable Production, and as modified by the Modification Report titled Aluminium Dross Processing Facility Modification Report Tomago Aluminium Company 17 January 2023 by GHD and as may be modified by the following conditions.

Statutory Requirements

3. The Applicant shall meet the requirements of all public authorities having statutory responsibilities in respect of the proposed development and shall negotiate with all relevant authorities with a view to meeting their reasonable requirements.

Requirements of the State Pollution Control Commission

4. The Applicant shall obtain from the State Pollution Control Commission ("the Commission") all statutory approvals required under the Clean Air, Clean Waters, Noise Control, and Environmentally Hazardous Chemicals Acts.

In the event of emissions exceeding the approved levels, or in the event that there are adverse effects on the environment beyond those anticipated at the time of approval and which can be reasonably attributed to emissions from the smelter expansion, the Applicant shall comply with the conditions, directions or notice issued under the foregoing Acts aimed at achieving the approved levels of emissions or at mitigating or eliminating the adverse effects.

5. The Applicant at its own expense shall expand, including, if so required, the establishment of additional monitoring stations, and operate the existing monitoring programs for ambient air and water quality and noise pollution in accordance with any reasonable requirements of the Commission, whether these monitoring programs are carried out by the Applicant, the Commission or an agent of the Commission. Further, the information collected and recorded at the monitoring stations shall be forwarded to the Commission at such intervals as required by the Commission.

Water Management Plan

6. 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;

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- b) be submitted to the Director-General for approval within 12 months of the approval of DA 4908-90 MOD 3;
 - 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.
7. The Applicant at its own expense shall complete, prior to the commencement of the expanded smelter operations forming part of the development, all drainage, paving, materials handling and storage systems and the effluent treatment plant with ancillary liquid effluent disposal systems, in accordance with the requirements of the Commission and the Hunter Water Board ("the Board").

Waste Management Plan

8. 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 4908-90 MOD 3;
 - 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 a system for the treatment of spent pot linings and provide an approximate timeline for the treatment of stockpiled material;

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- 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.

8A The Applicant shall prepare and implement, an updated Waste Management Plan for the site to the satisfaction of the Planning Secretary. This plan must:

- a) be submitted to the Planning Secretary for approval within 3 months of the approval of DA 4980/90-Mod-8;
- b) describe the handling, storage and disposal of all waste streams generated on site, consistent with the *Protection of the Environment Operations Act 1997, Protection of the Environment Operations (Waste) Regulation 2014* and the *Waste Classification Guideline (Environment Protection Authority, 2014)*;
- 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 options available to further reduce and reuse waste;
- f) ensure that all waste materials are sent to sites that can lawfully accept waste; and
- g) describe the waste monitoring program, detail the results of this monitoring and prepare a monitoring and reporting program.

8B The Applicant must:

- a) implement the most recent version of the Waste Management Plan approved by the Planning Secretary

Waste

8C Only aluminium dross produced at the site may be stored and processed in the furnace in accordance with DA 4980-90 MOD -8

- 9. The Applicant at its own expense shall install, and maintain in good working order, in accordance with the requirements of the Commission, adequate stand-by emission collection and treatment facilities to meet possible machine or plant failure for the expansion, including failure involving potlines and carbon bake furnaces.

Requirements of the Hunter Water Board

- 10. The Applicant at its own expense shall establish and operate revised monitoring systems as may be required by the Board.
 - (a) On the land the subject of the application and on any of the Board's lands, at Grahamstown, ~~Nelson Bay~~ **Anna Bay** and Tomago, which constitute part of the Board's catchment areas, for the purposes of providing information on the changes in fluoride concentration and determining, from time to time, the level of fluoride concentration therein in groundwater, surface water, rainwater, and in fauna and flora in those catchment areas; and
 - (b) At or adjacent to the liquid effluent disposal area on the land for the purposes of checking the level of chemical or bacteriological contamination reaching groundwater and on the movement of the infiltration effluent relative to local groundwater flow.
- 11. The Applicant shall continue the monitoring and reporting program as currently agreed with the Board and the Commission, in the vicinity of the smelter expansion and shall only vary the program if agreed by these two authorities.
- 12. The Applicant shall immediately inform the Board of any action or occurrence on the site which may affect the Board's water supply. Further, the Applicant shall, in order to remedy any defect arising out of the action or occurrence, comply forthwith with the requirements of the Board.
- 13. The Applicant shall, in the event of any deleterious effect to the Board's water supply which effect can be attributed to the expanded smelter operations, re-examine the water management scheme and shall make

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such adjustments to that scheme as may be required by the Commission and the Board.

Further, the Applicant shall bear any costs incurred by the Board to remedy the defect in the water supply.

14. The Applicant shall install additional monitoring bores in the vicinity of the proposed stormwater surge basin (shown on Figure 5.1 of the 1990 EIS as a stormwater retention pond to the north of the new potline and located within the gazetted catchment area), test samples from these bores every month or as agreed, and supply the results to the Board and Commission. If the results are not satisfactory to the Board, the Applicant shall take remedial action as agreed by the Board.
15. The Applicant shall ensure that the storage areas for spent pot linings are secure and do not allow contaminants to reach groundwater. If such contamination is detected, the Applicant shall immediately remove the spent pot linings to a secure location and satisfactorily remove the contamination.
16. The Applicant shall install additional monitoring points, as required by the Board, if contamination becomes evident within the catchment area.
17. The Applicant shall, as required by the Board, replace any existing sampling points affected by the smelter expansion to an agreed location nearby, and establish an adequate correlation of results by taking samples from the original and the relocated sampling points.
18. The Applicant shall, prior to the commencement of the expanded smelter operations, complete the integration of both the construction and the start-up phases to ensure that all pollution control measures meet the requirements of the Commission and the Board.
19. The Applicant shall, prior to the commencement of the expanded smelter operations, provide for the safe storage or disposal of all waste materials from the site, including combustible, solid and hazardous wastes, waste oils and effluent wastes, in accordance with the requirements of the Commission, the Council and the Board. Further, the applicant shall:
 - a) ensure that all storage for spent pot linings and other hazardous wastes associated with the smelter expansion, in addition to being roofed, shall be 'hard sealed', concreted, kerbed and guttered in order to prevent ingress of rainwater, and shall comply with the requirements of the Commission; and
 - b) ensure, in accordance with the requirements of the Commission, the Board and the Council, that there is control of pollution from human wastes, oils and other waste materials produced during construction of the proposed smelter expansion.
20. The Applicant shall monitor water quality in the proposed stormwater surge basin, referred to in condition number 14, to the satisfaction of the Board and submit the results to the Board and the Commission.
21. The Applicant shall excavate and revegetate the proposed borrow areas for construction fill material in accordance with the Board's requirements, and shall enter into an agreement with the Board before commencing clearing and excavation on the borrow areas.
22. The Applicant shall restrict excavation to a depth which is at least 1 metre above the highest groundwater level. This minimum distance of 1 metre is not to be reduced unless agreed by the Board.
23. The Applicant shall remove and store the topsoil and vegetation for use in restoration of borrow areas.
24. The Applicant shall restore the cleared and excavated areas with local endemic species to a standard nominated by the Board, which shall be not less than that adopted by the Board for mineral sands mining activities. Respreading of topsoil and revegetation shall as far as possible be completed progressively after excavation.
25. The Applicant shall take all reasonable steps to ensure there is no spillage of contaminated material within the Grahamstown and Tomago catchment areas. The Applicant shall adopt all practical means, including the use of sealed trucks to avoid spillage. Any spillage must be immediately cleaned up to the satisfaction of the Board.
26. The Applicant shall extend the Deed of Indemnity with the Board to include the plant extension.
27. The Applicant shall meet the normal water supply amplification charges imposed by the Board for additional demand placed on the water supply system.
28. The Applicant shall protect the Board's trunk watermain where they are crossed by the proposed construction access road, by means of a bridge or other structure agreed by the Board.

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Affected Lands and Residences

29. The Applicant shall, in accordance with the requirements of the Commission, provide filtering and purifying systems or such other alternatives, such as reticulated water, as approved by the Commission, to existing farm and residential properties which depend on tank or dam water for domestic and stock purposes, provided that such farms and residential properties are within 2 kilometres of the site of the development or at such other distance as determined by the Commission, to prevent the concentration of fluoride in these water supplies exceeding:

- (a) In the case of water for human consumption, 1.0 mg/litre; and
- (b) In the case of water for stock, crop and other domestic uses, a level prescribed by New South Wales Agriculture and Fisheries.

30. The Applicant upon receipt of a request from an owner of land within the buffer area described in this condition to purchase that land shall:

- (a) take all reasonable steps to acquire the property; and
- (b) subject to agreement on the purchase price, acquire such property,

for the purpose of establishing an expanded buffer areas around the proposed expanded smelter within the boundaries as shown on Map "1" attached to these conditions, except for

- (c) land zoned "general industrial" under the Port Stephens Local Environmental Plan - Shire of Port Stephens, unless the lands are subject to non-conforming uses;
- (cc) **land zoned "general industrial" under the Port Stephens Local Environmental Plan - Shire of Port Stephens, subject to non-conforming uses where the Applicant was the registered proprietor at any time since 1 January 1980;**
- (d) lands zoned "Special Uses";
- (e) land which is in ownership of the State Government, a State authority or instrumentality at the date of this consent, land which subsequently comes into such ownership and the Hunter River; and
- (f) the Caravan Park situated on the southern side of Tomago Road.

If agreement cannot be reached regarding the acquisition price, then the land owner may refer the matter to the Secretary of the Department of Planning for determination by an independent panel.

Upon receipt of the matter, the Secretary shall arrange for the constitution of a panel to determine the acquisition price. The panel shall consist of:

- (g) The Director of Planning or her nominee;
- (h) The President of the Law Society of New South Wales or his nominee;
- (i) The President of the NSW Division of the Australian Institute of Valuers and Land Managers (Inc), or his nominee.

In determining the acquisition price, the panel shall have regard to –

- (j) The current market value of the property at the date on which the matter is referred to the panel but on the basis that the more valuable of either the use of the property as conducted at 6 March, 1981, or the use as at the date of this consent, had continued.
- (k) The cost to the land owner of disturbance and relocation if the land owner elects to relocate his existing activity, PROVIDED THAT for the purpose of assessing this cost, the land owner will be deemed to be relocating within the sub-region known as the Lower Hunter.
- (l) Following the determination by the Panel the Applicant shall offer to purchase the relevant property at a price not less than that determined by a majority of the panel.
- (m) The Applicant shall meet the costs of providing the panel and any costs associated therewith unless otherwise determined by the panel.

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- (n) In the event that the landowner does not accept within 12 months the offer of the Applicant, then the Applicant's obligations under this clause shall lapse. Non-acceptance or refusal by the landowner shall not prejudice any rights under condition number 31.

Nothing in this clause shall remove, limit or prejudice the rights of any owner of land within the buffer zone existing prior to the date of this consent.

Pending acquisition of all properties included in the proposed expanded buffer area the Applicant shall provide on January each year until 1994 a report to the Department of Planning indicating the progress of acquisition, and upon request thereafter.

31. The Applicant shall expeditiously seek to reach agreement, in the event of claims for compensation or requests for acquisition of property being received by the Applicant from land owners or occupiers of land within 4 kilometres of the site, claiming that their property is affected by emissions from the development. If agreement cannot be reached, the claim or request may be referred to the Secretary of the Department of Planning for determination by an independent panel.

Upon receipt of the matter, the Secretary shall arrange for the constitution of a panel to determine the claim or request. The panel shall consist of:

- (a) The Director of Planning or her nominee;
- (b) The President of the Law Society of New South Wales or his nominee;
- (c) The President of the NSW Division of the Australian Institute of Valuers and Land Managers (Inc), or his nominee.

The panel shall determine:—

- (d) Whether the claimant has a claim resulting from emissions from the proposed development;
- (e) If so, whether the claim can be settled by payment of compensation without acquisition of the claimant's property;
- (f) If so, the amount of such compensation; or
- (g) If the claim cannot be settled by compensation, the acquisition price for the property; and
- (h) The costs, if any, to be awarded to the claimant in respect of expenses for legal advice and representation and expert witnesses.
- (i) In the case of any publicly owned lands within 4 kilometres of the site the panel shall consider whether a claim can be settled by the provision of an equivalent replacement habitat which is not environmentally affected by the smelter operation.

In determining the price for acquisition referred to above, if the panel decides that acquisition is warranted, the panel shall have regard to:—

- (j) The market value of the claimant's land unaffected by the Tomago Aluminium Smelter and having regard to the existing use of the land;
- (k) The length of time which has elapsed since the granting of development approval and completion of the development, if relevant; and
- (l) The cost to the claimant of disturbance and relocation if the claimant elects to relocate his existing activity, PROVIDED THAT for the purpose of assessing this cost, the claimant will be deemed to be relocating within the sub-region known as the Lower Hunter.

The decision of the panel shall be binding on the Applicant.

The Applicant will meet the costs of providing the panel and any costs associated therewith.

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Upgrading Roads and Provision of Facilities

32. The Applicant shall comply with its undertaking to the Port Stephens Shire Council regarding:
- (a) the upgrading of approximately 1.7 kilometres of Tomago Road from the Smelter to the Pacific Highway; and
 - (b) the costs of providing sports, recreational community facilities,
- in accordance with the exchange of correspondence between the Applicant and the Council dated 27 November, 1990 and 5 December, 1990, respectively.
33. The Applicant shall meet the costs of those improvements made necessary by the proposed development to the following intersections, as agreed with the Roads and Traffic Authority:
- (i) SH10 and Old Punt Road,
 - (ii) Old Punt Road and Airstrip Road; and
 - (iii) Tomago Road and McIntyre Road.
34. All designs and specifications associated with improvement work shall be submitted to Council's Local Traffic Committee for its concurrence prior to the commencement of work.

Transport

35. Construction traffic at the eastern boundary of the development shall only use the existing service road from the Industrial Estate. Access is denied directly to MR302, even on a temporary basis.
36. **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).**

Safety Studies and Hazard Management

37. Not less than one month prior to the commencement of construction of the proposed development, except for preliminary works that will not be affected by study results, or within such further period as the Director of Planning or her nominee ("the Director") may agree, the Applicant shall prepare and submit for the approval of the Director the following studies:

(Construction Safety Study)

- (i) Comprehensive organisational and operational safety procedures proposed to be implemented on the development site during the construction period for the proposed development. This report should cover, inter alia, any demolition and the commissioning of plant. Further, the Applicant shall comply with the reasonable requirements of the Director in respect of the implementation of any measures, arising from the subject approval, during the construction period.

(Hazard and Operability Study)

- (ii) A Hazard and Operability Study (HAZOP) for the proposed development to be carried out at the Applicant's expense and conducted by an independent qualified person approved by the Director.

(Final Hazard Analysis)

- (iii) A hazard analysis and risk assessment of the detailed design layout of the proposed development as well as the existing development to be prepared at the Applicant's expense. Measures to reduce the quantities of chlorine used and stored shall be considered. Alternatives to air tempered LPG shall be considered for backup fuel.

(Fire Safety Study)

- (iv) A fire safety study for the proposed development as well as the existing development. This study shall cover all aspects detailed in the Department's Hazardous Industry Planning Advisory Paper No. 2 Fire Safety Study Guidelines. This study shall also be submitted for the approval of the New South Wales Fire Brigades.

Emergency Plan

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38. Not less than 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 comprehensive emergency plan and detailed emergency procedures for the proposed development as well as the Applicant's existing currently approved development.

This plan should include detailed procedures for the safety of people in areas outside the development and potentially affected by the development. The plan should be in accordance with the Department's Hazardous Industry Planning Advisory Paper No. 1 Industry Emergency Planning Guidelines.

Hazard Audit

39. Within 12 months of the approval of DA 490890 MOD 3, 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.
- 39A. 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.
- 39B. 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.

DA 4908/90 MOD 8

- 39C At least one month prior to the commencement of construction of DA 4980/0-Mod-8 (except for construction of those preliminary works that are outside the scope of the hazard studies), or within such further period as the Planning Secretary may agree, the Applicant must prepare and submit for the approval of the Planning Secretary the studies set out under subsections a) to b) below (the pre-construction studies). Construction, other than of preliminary works, must not commence until approval has been given by the Planning Secretary and, with respect to the Fire Safety Study, approval has also been given by Fire and Rescue NSW.
- a) A Fire Safety Study for the modification. This study must cover the relevant aspects of the Department's Hazardous Industry Planning Advisory Paper No. 2, 'Fire Safety Study Guidelines' and the New South Wales Government's Best Practice Guidelines for Contaminated Water Retention and Treatment Systems (NSW HMPCC, 1994). If the fire safety system for the modification is integrating with the existing fire safety study, an update of the existing fire safety study is to be undertaken. The study must also be submitted to Fire and Rescue NSW for approval.
 - b) A Construction Safety Study, prepared in accordance with the Department's Hazardous Industry Planning Advisory Paper No. 7 'Construction Safety'. For developments in which the construction period exceeds six months, the commissioning portion of the Construction Safety Study may be submitted two months prior to commencement of commissioning.

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- 39D** The Applicant must update and implement the plans and systems set out under subsections (a) to (b) below. No later than two months prior to the commencement of commissioning of the DA 49801/90 Mod 8, or within such further period as the Planning Secretary may agree, the Applicant must submit for the approval of the Planning Secretary documentation describing those plans and systems. Commissioning must not commence until approval has been given by the Planning Secretary.
- a) Update of the Emergency Plan and detailed emergency procedures for the development. The Emergency Plan must include consideration of the safety of all people outside of the development who may be at risk from the development. The plan must be prepared in accordance with the Department's *Hazardous Industry Planning Advisory Paper No. 1, 'Emergency Planning'*.
 - b) Update of the Safety Management System, covering all on-site operations and associated transport activities involving hazardous materials. The document must clearly specify all safety related procedures, responsibilities and policies, along with details of mechanisms for ensuring adherence to the procedures. Records must be kept on-site and must be available for inspection by Planning Secretary upon request. The Safety Management System must be developed in accordance with the Department's *Hazardous Industry Planning Advisory Paper No. 9, 'Safety Management'*.
- 39E** Within twelve months after the commencement of operation of the DA 4980/90-Mod-8 and every five years thereafter, or at such intervals as the Planning Secretary may agree, the Applicant must carry out a comprehensive Hazard Audit of the development. Division 9.4 of Part 9 of the EP&A Act applies to these audits. The audits must:
- a) be carried out at the Applicant's expense by a qualified person or team, who have been approved by the Planning Secretary and are independent of the development;
 - b) be carried out in accordance with the Department's *Hazardous Industry Planning Advisory Paper No. 5, 'Hazard Audit Guidelines'*; and
 - c) include a review of the site Safety Management System and a review of all entries made in the incident register since the previous audit.

Compliance with Safety Studies and Hazard Management Requirements

40. The Applicant at its own expense shall comply with all the reasonable requirements of the Director in respect of the implementation of any measures arising from the approvals given in respect of conditions 37 to 39 above, within such time as the Director may agree. Such compliance, where applicable, shall be prior to the commencement of operations of the proposed development and shall bring to the Director's notice those matters which the Applicant considers may require further investigation. Further, that upon the receipt of the Director's reasonable instructions, the Applicant shall proceed to implement those instructions to the satisfaction of the Director within such time as the Director may approve.

Landscaping and Carparking

41. Prior to lodging a building application, the Applicant shall cause to be prepared detailed landscaping plans by a qualified landscape architect to the satisfaction of Council. The landscaping shall provide as far as reasonably practicable, a barrier of suitable fast growing, fluoride resistant trees, with a view to minimising impact, particularly from airborne fluoride emissions, on the Botanic Gardens.
42. The Applicant shall, prior to the commencement of the development prepare a plan showing the design and layout of the car parking area on the land and shall submit a plan for approval by the Council. All car parking spaces shall be separately accessible, clearly marked, adequately paved and drained and shall comply with the requirements of the Council.

Acid Sulfate Soil Management

- 42A** The Applicant shall, prior to the commencement of construction, prepare an acid sulfate soil management plan in accordance with the Acid Sulfate Soil Manual, 1998. The plan shall be implemented during the construction of DA 4980/90-Mod 8.

Requirements of the National Parks and Wildlife Service

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43. Should evidence of Aboriginal occupation be uncovered during excavation and construction, the Applicant shall cease work in the area concerned and inform the National Parks and Wildlife Service (NPWS) immediately and take action in accordance with the requirements of the NPWS.
44. The Applicant at its own expense shall comply with the requirements of the Director of National Parks and Wildlife for making good damage to the Kooragang Nature Reserve and Hexham Swamp Nature Reserve where the damage is found to be attributable to emissions from the expanded smelter and comply with the reasonable requirements of the Commission to mitigate or eliminate the cause of damage.
45. The Applicant at its own expense shall continue to conduct the existing small mammal trapping programme, or a modified programme as agreed with the Commission and the NPWS, to investigate the effects of smelter emissions on the relative abundance and bone fluoride content of small mammals within 10 km of the smelter, as part of an ongoing research programme, planned with the NPWS, into the effects on native fauna within the smelter zone of influences, with the results being forwarded to the NPWS.

Hunter Region Botanic Gardens Ltd

46. The Applicant shall establish a fluoride monitoring system within the Gardens and the results obtained shall be made available to the Chairman of the Gardens or his representative.

Energy Conservation

47. The applicant in respect of the development shall minimise energy usage and conserve heat and energy, such as by the use of thermal energy recovery from the gases evolved during the smelting operation, heat recovery measures in anode baking, and minimisation of heat loss from electrolytic cells, where technically and economically practicable, in the design and construction of the smelter expansion.

Environmental Monitoring and Reporting

48. The Applicant shall ensure that, unless already included in the environmental monitoring program required under condition number 5, the following requirements are met to the satisfaction of NSW Agriculture and Fisheries, the Commission, the Board, NPWS, and the Director:
 - (a) Monitoring of stormwater discharge from the Applicant's property to establish levels of possible pollutants, including fluoride, heavy metals and cyanide, discharged to the Hunter River, to be undertaken at a point or points to be selected and agreed upon by the Applicant and the authorities referred to above.
 - (b) A bio-accumulation and sediment monitoring program for fluoride and other relevant substances be established at the nearest feasible location or locations downstream from the point where the stormwater discharge enters the Hunter River with the experimental design being developed in consultation with NSW Agriculture and Fisheries.

Flora and Fauna Monitoring Plan

- c) **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:**
 - i. **be submitted to the Director-General for approval within 12 months of the approval of DA 4908-90 MOD 3;**
 - ii. **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**
 - iii. **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.**
49. The Applicant shall expand and operate the existing programme designed for monitoring of employee health and medical examination, to include the additional employees in positions created by the smelter expansion, to the satisfaction of the Health Department of New South Wales.
50. The Applicant shall provide to the Department of Planning, NSW Agriculture and Fisheries, the Commission, the Board, NPWS, and the Council the results and analyses of environmental monitoring undertaken in pursuance of the provisions of conditions number 5 and 48. Such results and analyses shall be provided on a quarterly basis, for review by the responsible government bodies in order to identify any areas of non-

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compliance so that the necessary remedial action can be instituted. The Applicant shall agree to Council making the reports available on request for public inspection.

51. The Applicant shall bear the costs associated with the establishment and operation of all monitoring programmes referred to in these conditions, the analysis of data, recording results and providing information required to all relevant authorities.

Annual Report

52. The Applicant shall, within six (6) months of the commencement of construction of the proposed development, ascertain the requirements of the Director in relation to an annual report to be submitted at the Applicant's expense to the Director, the Commission and the Council in respect of the performance of the development. Each report shall be in respect of the calendar year ending 31 December and the first such report shall be submitted by 31 March in the following year. The Applicant shall agree to Council making the reports available on request for public inspection.
53. The annual report shall provide the following information:
- (a) the performance of the development;
 - (b) the stage of implementation reached and the effectiveness of the environmental controls and conditions relating to the development;
 - (c) results of environmental monitoring in respect of air, water and noise pollution and the effects on flora and fauna;
 - (d) production levels for operations undertaken during the preceding 12 months;
 - (e) modifications made or intended to be made to operations, if any, to mitigate any adverse environmental impacts; and to meet the reasonable requirements of the Director, the Commission or the Council.

Informing Council

54. The applicant shall forward to the Council copies of all approvals and requirements of authorities related to the development.

Dispute resolution

55. Any dispute arising between any of the parties in respect of the above conditions, including a conflict between the above conditions and conditions attached to the consent for the original smelter, shall be referred to the Minister for Planning for resolution.

56. **Until the proposed modification is fully implemented, the Applicant shall include an Annual Progress Report on the proposed expansion program in the Annual Report (see Condition 52). The Annual Progress Report must:**

- (a) Describe the status of the implementation of the expansion program;**
- (b) Assess the environmental impacts of the expansion program against the goals identified in the SEE for the proposed expansion; and**
- (c) Outline the proposed program for the implementation of the remainder of the expansion.**

57. **The Applicant shall:**

- (a) Install continuous real time monitoring of gaseous fluoride emissions from the roof vents in each potline; and**
- (b) Maintain and operate an ambient air quality monitoring network, including sulphur dioxide monitoring in the vicinity of the smelter**

to the satisfaction of the EPA.

58. **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;**

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- 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 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.

58A. 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.

58C The Applicant must update its Air Quality Monitoring Program required by Condition 58, prior to the commencement of operation of DA 4908-90 MOD 9 and to the satisfaction of the Secretary

58D The Applicant must update its Air Quality Monitoring Program required by Condition 58, prior to the commencement of operation of DA 4980/90 Mod 8 and to the satisfaction of the Secretary

58E Applicant must prepare and submit an Air Quality Verification Report within three months following commencement of operation of DA 4980/90 Mod 8 to the satisfaction of the Planning Secretary. The Air Quality Verification Report shall include:

- a) a validation of the predictions made in the Air Quality Impact Assessment titled “Tomago Aluminium Smelter: Secondary Dross Processing Plant – Air Quality Assessment”, prepared by Katestone Environmental Pty Ltd, dated April 2023;
- b) comparison of monitoring results with any limits or conditions in the EPL;
- c) an outline of management and mitigation measures to address any exceedances of the criteria; and
- d) a description of contingency measures in the event the management and mitigation measures are not effective in reducing air quality impacts to meet the criteria and timing for implementing and validating the effectiveness of these measures

58F The Applicant must fit all flue gas discharge points for DA 4980-90 MOD 9 with air emission sampling ports to allow for discharge air pollutant monitoring in accordance with Australian Standard AS4323.1

Noise

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59. 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

60. 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 transformers;
 - 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.

- 60A. The Applicant must prepare a Construction Noise and Vibration Management Plan for the development to the satisfaction of the Planning Secretary. The Plan must:

- a) be prepared by a suitably qualified and experienced noise expert;
- b) be approved by the Planning Secretary prior to the commencement of construction 4980/90-Mod-8;
- c) describe procedures for achieving the noise management levels in EPA's Interim Construction Noise Guideline (DECC, 2009) (as may be updated or replaced from time to time);
- d) describe the measures to be implemented to manage high noise generating works such as piling, In close proximity to sensitive receivers
- e) include strategies that have been developed with the community for managing high noise generating works; and
- f) include a complaints management system that would be implemented for the duration of the development.

- 60B The Applicant must:

- a) not commence construction of any relevant stage of the development until the Construction Noise and Vibration Management Plan required by condition 0 is approved by the Planning Secretary; and
- b) implement the most recent version of the Construction Noise and Vibration Management Plan approved by the Planning Secretary for the duration of construction.

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61. In consultation with the NPWS, the Applicant shall assist in the development of, and participate in, a periodic monitoring program targeting specific areas/species within Kooragang Island Nature Reserve.
62. The Applicant shall obtain a Section 50 certificate under the *Hunter Water Act 1991* for any increases in potable water demand associated with the proposed expansion.
63. At least 1 month before commencing the construction of any component of the modification, or within such further period as the Director may agree, the Applicant shall submit the following studies to the Director for approval:
- a) A Fire Safety Study covering all aspects detailed in the Department's *Hazardous Industry Planning Advisory Paper No. 2 - Fire Safety Study Guidelines* and the New South Wales Government's *Best Practice Guidelines for Contaminated Water Retention and Treatment Systems*. The Study shall focus on the alterations to the existing development, which are the subject of this modification. The Applicant shall also submit the Study for the approval of the NSW Fire Brigades.
 - b) A Construction Safety Study prepared in accordance with the Department's *Hazardous Industry Planning Advisory Paper No. 7 - Construction Safety Study Guidelines*. The Study shall detail specific measures to address hazards associated with construction activities on an operating development. The Applicant may seek the Director's approval to stage submission of the Study, consistent with staging of construction.
- Construction shall not commence until the Director has approved both studies, and the Commissioner of the NSW Fire Brigades has approved the Fire Safety Study.
64. Within 12 months of commencing the construction of any component of the modification, or within such further period as the Director may agree, the Applicant shall submit the following studies to the Director for approval:
- a) An Updated Emergency Plan and detailed emergency procedures for the site, prepared in accordance with the Department's *Hazardous Industry Planning Advisory Paper No. 1 - Industry Emergency Planning Guidelines*. The Plan shall be an update of the existing emergency plan for the site.
 - b) A Safety Management System, covering all operations on-site and associated transport activities involving hazardous materials. The System shall clearly specify all safety related procedures, responsibilities and policies, along with details of mechanisms for adherence to procedures and managing change. Records shall be kept on site and shall be available for inspection by the Director-General upon request. The Safety Management System shall be an update of the existing system for the site and be prepared in accordance with the Department's *Hazardous Industry Planning Advisory Paper No. 9 - Safety Management*.
65. Within 24 hours of any incident with actual or potential significant off-site impacts on people or the biophysical environment, a report shall be supplied to the Director outlining the basic facts. A further detailed report shall be prepared and submitted following investigations into the causes and identification of additional preventative measures. That report must be submitted to the Director no later than 14 days after the incident. The Applicant shall maintain a register of accidents, incidents and potential incidents. The register shall be made available for inspection at any time by the Director.
66. [DELETED]

NOTE:

This approval does not relieve the applicant of the obligation to obtain any other approval under the Local Government Act, 1919, as amended, the ordinances made thereunder (including approval of building plans), or any other Act.

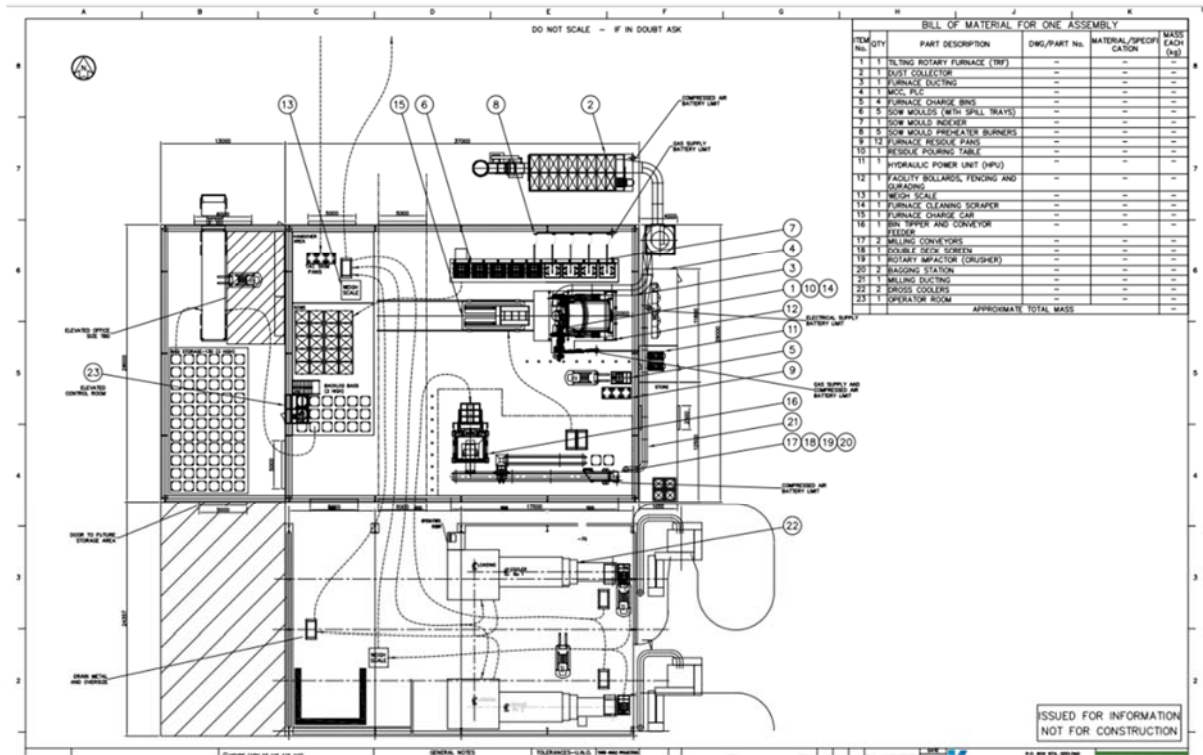
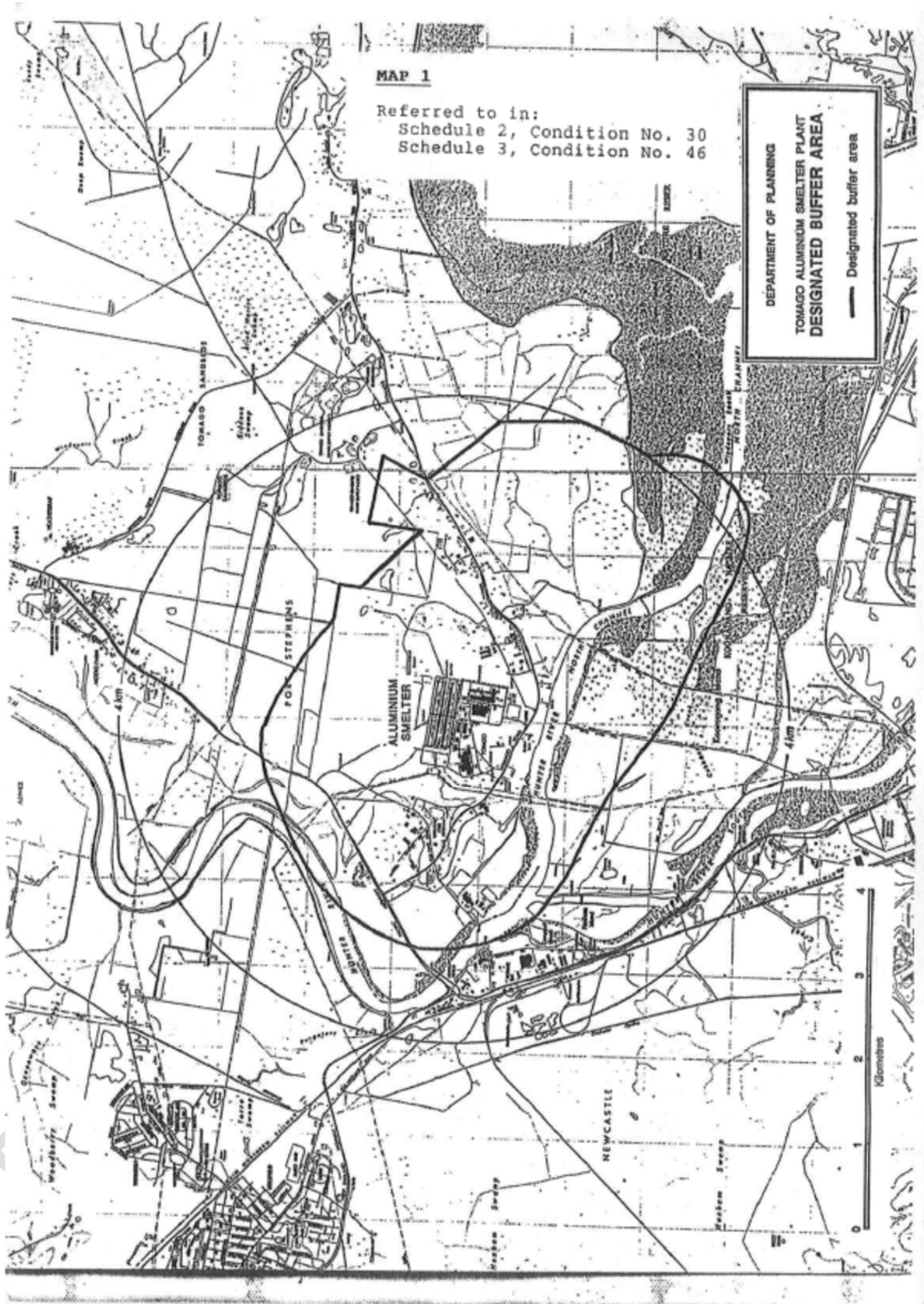


Figure 1 Layout of DA 391/80 Mod 9



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FORM 5

Referred to in:

Schedule 2, Condition No. 1.

ENVIRONMENTAL PLANNING AND ASSESSMENT REGULATION, 1980

FORM 5.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979.

MODIFICATION OF A CONSENT GRANTED UNDER THE ACT OR A RIGHT CONFERRED BY DIVISION 2 OF PART IV OF THE ACT.

I,, of

being the owner of the land described in Column A of the following Table do, by this memorandum, modify *the consent/the right (having effect in relation to that land) specified in Column B of the Table in the manner and to the extent indicated in Column C of the Table.

TABLE

Column A	Column B	Column C
Description of land	Particulars of *the consent/the right that is modified	Manner and extent of the modification of *the consent/the right
ALL THOSE pieces or parcels of land situate at Tomago, Shire of Port Stephens, Parish of Stockton and County of Gloucester being Lot 100, Deposited Plan 604166 in Certificate of Title Volume 13997 Folio 58, Lots 12, 13, 14, 15 and 16, Deposited Plan 258020 in Certificates of Title Volume 13767 Folios 91, 92, 93, 94 and 95, respectively, Lot 3, Deposited Plan 38904 in Certificate of Title Volume 13811 Folio 196, the whole of the land in Certificate of Title Volume 6353 Folio 184, And the whole of the land secondly described in Conveyance No. 269 Book 2018 but excepting Lots 1, 2, 3, 4, 5 and 6 in Deposited Plan 38904.	Consent to a Development Application for the development of an aluminium smelter made by Tomago Aluminium Company Pty Limited to Port Stephens Shire Council, determined pursuant to section 101 of the Environmental Planning and Assessment Act, 1979 by Eric Bedford, as Minister for Planning and Environment, dated 6 March, 1981 with Annexure, as modified by the Minister's letter of 16 August, 1983 (File 80/10069).	As set out on the attached Schedule 3.

