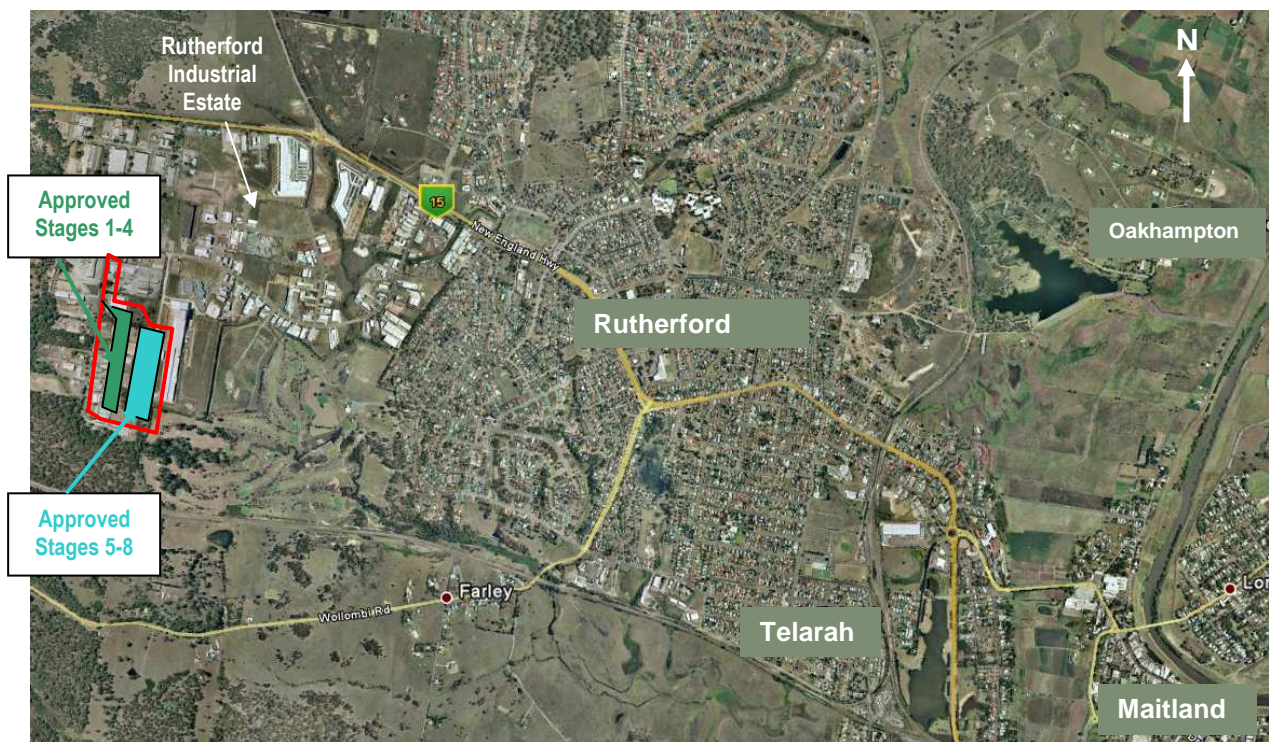


# ASSESSMENT REPORT

## Section 75W Modification NCIA Tile Manufacturing Facility, Rutherford Noise Criteria (09\_0006 MOD 1)

### 1. BACKGROUND

National Ceramic Industries Australia Pty Ltd (NCIA) operates a ceramic tile manufacturing facility within the Rutherford Industrial Estate in the Maitland local government area (see Figure 1).



**Figure 1:** Location of NCIA Tile Manufacturing Facility, Rutherford

The NCIA facility is located on the south-eastern boundary of the Rutherford Industrial Estate, an area of around 210 hectares located immediately west of the suburb of Rutherford. The Rutherford Industrial Estate comprises industries that service the heavy manufacturing, steel and mining sectors. The land uses immediately adjacent to the NCIA facility include industrial premises to the north and west and vacant land to the east and south. The main northern railway line is located approximately 500 metres to the south and the New England Highway is located less than 1km to the north.

#### 1.1 NCIA Development Approvals

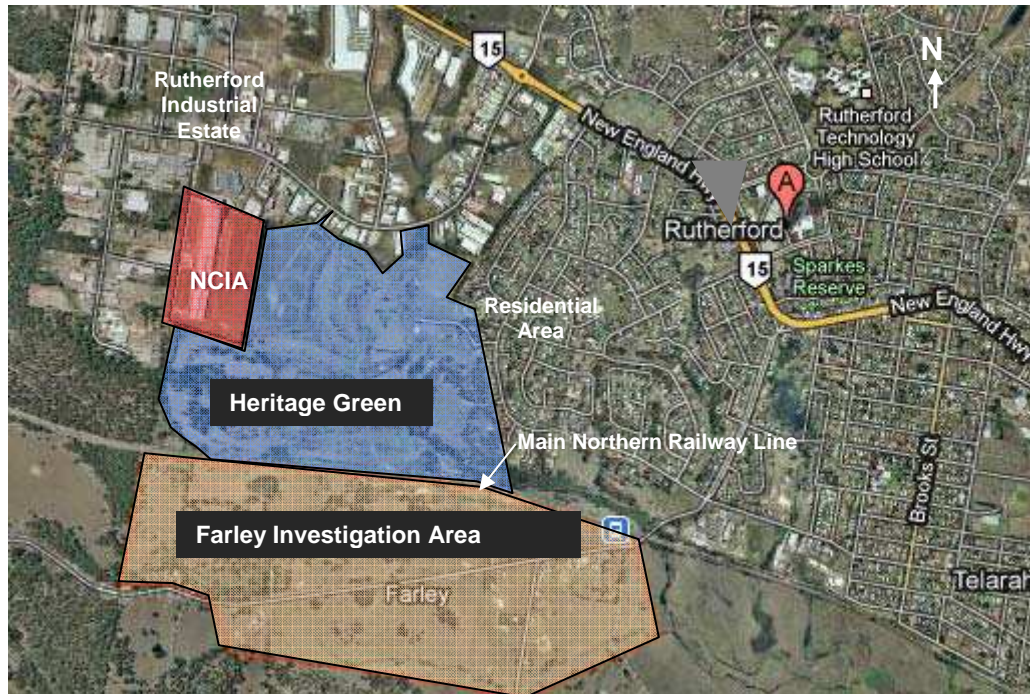
In 2003, NCIA obtained approval from the then Minister for Infrastructure and Planning (DA 449-12-2002-i) to construct and operate four ceramic tile production lines (Stages 1 to 4) within a factory building on the site. The approval allowed for a maximum production rate of 12.8 million square metres (m<sup>2</sup>) of tiles per year. NCIA are currently operating Stages 1 and 2, producing up to 6.4 million m<sup>2</sup> of tiles per year. Subsequent stages would be commenced in response to market demand for tiles.

On 19 January 2012, the Planning Assessment Commission (PAC) approved an expansion to the facility (09\_0006) to allow construction and operation of a second factory building containing four additional production lines (Stages 5 to 8) incorporating the latest generation of tile manufacturing technology. The second factory

building would be located adjacent to the existing building and would enable production to increase up to 25.6 million m<sup>2</sup> of tiles per year (see Figure 1). Stages 5 to 8 are yet to be constructed.

## 1.2 Heritage Green Residential Estate

On 22 March 2011, whilst the Department was assessing NCIA's expansion project, Maitland Council (Council) granted approval to a 445 lot residential subdivision adjacent to the Rutherford Industrial Estate, known as the Heritage Green Residential Estate (see Figure 2).



**Figure 2:** NCIA Facility and Heritage Green Residential Estate

During Council's assessment process, the Department and the Environment Protection Authority (EPA) made submissions to Council raising concerns over the proximity of the proposed residential development to the established Rutherford Industrial Estate and the potential noise, air quality, traffic and safety impacts on future residents.

In particular, the Department noted that Council and the proponent of the Heritage Green development (Victory Parc) have a responsibility to ensure that future residents are aware of adverse amenity conditions associated with living adjacent to a major industrial estate. The EPA also advised Council that it would not be able to regulate industries within the Rutherford Industrial Estate (beyond their existing licence limits) to reduce amenity impacts at the nearest residences within the Heritage Green development.

Notwithstanding, during its assessment of the NCIA expansion project, the Department sought additional commitments from NCIA, involving architectural treatments to the proposed building to minimise noise. The Department and the EPA worked cooperatively with NCIA to achieve a reasonable reduction in noise from the expansion project, such that noise levels from the entire NCIA facility (Stages 1 to 8) would not increase from existing levels (Stages 1 to 4) at the existing residential receivers nearest to the facility (being Kenvil Close to the east and Wollombi Road to the south).

At the same time, Council sought some amendments to the Heritage Green development to address noise and other amenity impacts and approved the development with an increased setback from the Rutherford Industrial Estate, as well as restrictions for certain dwellings to meet internal noise limits.

Both the Department and the PAC accepted that two land uses could co-exist without either adversely restricting the use of the Rutherford Industrial Estate or subjecting future residents of Heritage Green to unacceptable levels of industrial noise.

Following approval of NCIA's expansion project, Victory Parc lodged an appeal in the Land and Environment Court in relation to the noise limits and residential receiver locations. Following mediation, a Deed of Settlement



was reached between the parties on 7 December 2012 with the agreement requiring each party to lodge applications to modify their respective development approvals to manage noise impacts (see Appendix C).

The Department understands that Victory Parc lodged an application with Council, consistent with the Deed of Settlement, to modify the residential layout. The modification sought to increase the setback from the boundary with the Rutherford Industrial Estate to at least 185 metres and to increase the allowable internal noise levels inside certain residential dwellings.

On 1 February 2013, NCIA lodged a modification application under section 75W of the *Environmental Planning and Assessment Act 1979* (EP&A Act), consistent with the Deed of Settlement, to modify the location of the nearest residential receiver for noise regulation.

## **2. PROPOSED MODIFICATION**

NCIA have sought approval to:

- modify condition 26 of schedule 3 of the project approval (09\_0006) to amend the location of the nearest residential receiver, thereby removing Kenvil Close as the nearest receiver and replacing it with a 35dB(A) noise prediction contour line (see Figure 3); and
- modify condition 6 of schedule 2 of the project approval (09\_0006) to amend the timing for surrendering the 2003 development consent to require surrender prior to the commencement of any of Stages 3 to 8. The purpose of this modification is to ensure that there is only one active approval for the NCIA facility, which would ensure implementation of the amended noise condition (described above) prior to any additional operations at the NCIA facility.

The application was supported by a copy of the noise prediction contours prepared by Renzo Tonin & Associates for the Heritage Green development, dated 27 March 2012. A revised noise assessment was not included with the application.

## **3. STATUTORY CONSIDERATION**

### Section 75W

In accordance with Clause 12 of Schedule 6A of the EP&A Act, Section 75W of the Act as in force immediately before its repeal on 1 October 2011 and as modified by Schedule 6A, continues to apply to transitional Part 3A projects.

Under Section 75W of the EP&A Act, the Minister is obliged to be satisfied that what is proposed is indeed a modification of the original proposal, rather than being a new project in its own right.

The Department notes that:

- the primary function and purpose of the approved project would not change as a result of the proposed modification; and
- the modification is of a scale that warrants the use of Section 75W of the EP&A Act.

Therefore, it is considered that the proposed modification is within the scope of Section 75W of the EP&A Act. Consequently, the Department considers that the application should be assessed and determined under Section 75W of the EP&A Act rather than requiring a new development or project application to be lodged.

### Approval Authority

The Minister was the approval authority for the original project approval, and is consequently the approval authority for this application.

However the Executive Director, Development Assessment Systems and Approvals, may determine this application on behalf of the Minister in accordance with the Minister's delegation dated 27 February 2013, subject to the following:

- where the relevant local Council/s has not made an objection;
- where a political donations disclosure statement has not been made; and
- there are less than 25 public submissions in the nature of objections.

The Department is satisfied that the application meets the terms of the delegation and that the Executive Director may determine the application under delegated authority.



**Figure 3:** Predicted noise contours and nearest residential receiver Kenvil Close (Renzo Tonin & Associates 27 March 2012)

## 4. CONSULTATION

In accordance with Section 75W of the EP&A Act, the Department made the application publicly available on its website and consulted with Maitland Council and the Environment Protection Authority. A summary of the issues raised in submissions is provided below. A copy of each submission is included in Appendix B.

**Maitland Council (Council)** raised no concerns with the modification and noted that the amendments would provide a more stringent control on the acoustic performance of the NCIA facility by applying the 35dBA criteria to a location closer to the NCIA facility than the current receiver at Kenvil Close. Council also noted that the modification to amend the timing for surrender of the existing consent would provide greater certainty by making the trigger point the commencement of any operations related to Stages 3 - 8.

The **Environment Protection Authority (EPA)** advised that the noise limits in the project approval (09\_0006) were based on the application of all reasonable and feasible noise mitigation measures and that no information was presented in the modification application that alters the EPA's position regarding the appropriate noise limits. The EPA confirmed that the existing 35dBA limit at Kenvil Close applies under prevailing meteorological conditions, is appropriate and is consistent with the *NSW Industrial Noise Policy (INP)*.

The EPA also advised that it would not regulate noise from the NCIA facility for any properties (within the Heritage Green development) that are predicted to exceed noise levels in excess of 40dBA. Similarly, the EPA noted that it would have limited ability to resolve any complaints about emissions from industries within the Rutherford Industrial Estate by future residents of the Heritage Green development.

## 5. ASSESSMENT

In its assessment of the merits of the proposed modification, the Department considered:

- the Director-General's Assessment Report and Project Approval 09\_0006 for the original project (see Appendix D);
- documentation supporting the proposed modification (see Appendix C);
- submissions from Council and the EPA (see Appendix B);
- relevant environmental planning instruments, policies and guidelines; and
- relevant provisions of the EP&A Act, including the objects of the Act.

The key issue for consideration relates to noise impacts; the Department's consideration of this issue is provided below.

In relation to the request to modify the timeframe to surrender the existing development consent (DA 449-12-2002-i), the Department notes that this condition has already been satisfied, with NCIA surrendering the development consent on 18 January 2013. Therefore, the request to modify condition 6 of schedule 2 is void. Project approval 09\_0006 is the only active approval for the NCIA facility and applies to all operating and approved stages (Stages 1 to 8).

### 5.1 Noise

#### Background

In 2011, the Department undertook a thorough assessment of the noise impacts associated with NCIA's expansion project, including detailed consideration of the impacts on the adjacent Heritage Green residential development. The Department reviewed the noise modeling undertaken by both parties (Heggies Pty Ltd for the NCIA expansion project and Renzo Tonin & Associates for the Heritage Green development).

Given the proximity of the Heritage Green residential development to the Rutherford Industrial Estate, the Department sought commitments from NCIA during the assessment process to reduce the noise impacts of the expansion project through architectural treatments to the proposed factory building. NCIA re-modeled the noise impacts with the additional mitigation measures included and predicted that the impacts of the expansion project were no greater than those from the existing NCIA facility (Stages 1 to 4). The Department and the PAC noted that the existing NCIA facility was routinely meeting existing noise criteria.

The Department and the EPA were satisfied that NCIA had committed to implementing all reasonable and feasible mitigation measures to reduce noise. The EPA provided the Department with recommended noise conditions, which were included in the Department's recommended project approval and subsequently approved by the Planning Assessment Commission (PAC). During the PAC's assessment process, Council confirmed that it was satisfied with the recommended conditions. The conditions include:

- noise limits of 35dB(A) at the nearest residential receivers in Kenvil Close and Wollombi Road;

- implementation of specific architectural measures to reduce noise from the second factory building including façade and roof treatments and enclosure of plant; and
- noise validation studies at the commencement of each stage of operation (Stages 1 to 8) to ensure compliance with the noise limits; and
- a requirement to implement measures to rectify any non-compliances.

The noise limit of 35dB(A) at the nearest existing residence, reflected the level routinely achieved by the existing facility (Stages 1 to 4); and the predicted level for the expanded facility (Stages 5 to 8) with architectural noise treatments in place.

The EPA has indicated that these conditions would be reflected in the Environment Protection Licence (EPL) for the facility, however the EPL has yet to be modified (to cover the expansion project), pending the outcome of the mediation process between NCIA and Victory Parc.

The noise assessment for NCIA's expansion project indicated that, even with the implementation of all reasonable and feasible noise mitigation measures, the expansion project would result in noise impacts of over 40dBA at some residents in the Heritage Green development. Both the Department and the EPA advised Council of its concerns over these impacts (and other amenity impacts, such as air quality) prior to Council approving the residential development. The Department also advised Council that further amenity impacts (particularly noise) would be likely for future residents of the Heritage Green development due to the approved Minimbah Third Track rail project, located directly to the south.

Despite the Department and EPA's concerns regarding amenity impacts on future residents of the Heritage Green development, Council approved the 445 lot residential subdivision with an increased setback from the boundary of the adjacent Rutherford Industrial Estate. Council included some conditions on the Heritage Green development to manage amenity impacts, such as restrictions to single storey dwellings on the lots nearest the industrial estate and requirements for glazing or similar to meet internal noise limits. Council advised the PAC that it was satisfied with the recommended conditions for the NCIA facility.

The Department accepted that with the implementation of conditions on both developments, noise impacts for future residents of the Heritage Green development would be higher than for existing residents at Kenvil Close, but would be consistent with that of a suburban/industrial interface. The Department and the EPA considered that NCIA had done everything reasonable and feasible to mitigate noise impacts from the expansion project. The Department also noted that it is Council's responsibility to ensure all future residential applications within Heritage Green include all reasonable and feasible measures to reduce noise, and that residents are made aware of the amenity impacts associated with living adjacent to an industrial estate.

The Department determined that it was satisfied that, with the commitments from both NCIA and Heritage Green, the two land uses could co-exist without either adversely restricting the use of the Rutherford Industrial Estate or subjecting future residents of Heritage Green to unacceptable levels of industrial noise. The PAC noted that the approval of residential development adjacent to an established industrial estate should have regard to potential noise, dust and other amenity impacts arising from industries.

### Consideration

The Department has considered NCIA's request to modify the location of the nearest residential receiver to bring it closer to NCIA's boundary, along a 35dBA noise prediction contour line (as shown in Figure 3).

Firstly, the Department notes that the issue of noise amenity impacts on the Heritage Green development was considered at length during the Department's assessment of the NCIA expansion project as well as by the PAC in its consideration of the project. NCIA were requested to incorporate a range of architectural treatments to reduce noise and a revised noise assessment was submitted demonstrating that NCIA could meet a noise limit of 35dBA at the nearest residential receiver in Kenvil Close. This assessment was consistent with the INP and the EPA confirmed that it could regulate the NCIA facility on this basis.

The current request to modify the nearest receiver location for noise compliance purposes was not accompanied by a revised noise assessment and the noise prediction contours submitted were not determined in accordance with the INP. In its submission, the EPA noted that no information was provided with the application to alter the EPA's position regarding the appropriate noise limits for the NCIA facility. The Department concurs with the EPA and notes that the modification application was not supported by a noise assessment conducted in accordance with the INP.



In addition, the Department notes that it is not accepted practice to establish a noise receiver location for compliance purposes along a noise prediction contour line. Noise criteria in a project approval and EPL are established by determining the project specific noise level at an existing receiver, in accordance with the INP. The EPA confirmed that it would only include noise criteria for existing residences in NCIA's EPL; and it would not include a noise prediction contour line. Therefore, the EPA does not support the modification.

The Department and the EPA also note that there are other industrial noise sources within the Rutherford Industrial Estate that would contribute to noise impacts on the residents of the Heritage Green development, which must be taken into account when regulating noise from individual premises.

As such, it is recommended that the proposed modification to amend the existing noise receiver location be refused.

## 6. CONCLUSION

The Department has assessed the proposed modification in accordance with the requirements of clause 8B of the EP&A Regulation 2000. This assessment has concluded that the modification:

- is not supported by an appropriate noise assessment;
- is not consistent with the extensive noise assessment conducted by the Department, the EPA and the PAC for the original project application;
- is not consistent with the *NSW Industrial Noise Policy* and current best practice in terms of noise regulation in NSW;
- is not supported by the relevant regulatory authority (EPA) and would not be regulated by the EPL; and
- is not in the public interest.

Consequently, the Department is satisfied that the modification should be refused.

## 7. RECOMMENDATION

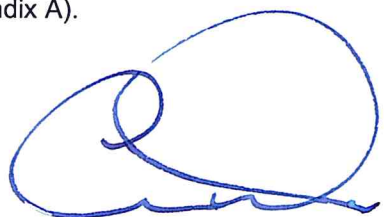
Under delegation of the Minister, it is **RECOMMENDED** that the Executive Director, Development Assessment Systems and Approvals:

- **consider** the findings and recommendations of this report;
- **determine** that the proposed modification is within the scope of Section 75W of the EP&A Act;
- **refuse** the application; and
- **sign** the attached instrument (Appendix A).

Deana Burn  
Planner - Industry

  
Chris Ritchie  
Manager  
Industry, Social Projects and Key Sites

9/9/13

 10-9-13  
Chris Wilson  
Executive Director  
Development Assessment Systems and Approvals

## **APPENDIX A: INSTRUMENT OF REFUSAL**

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See separate file titled 'Instrument of Refusal' on the Department's website:

[http://majorprojects.planning.nsw.gov.au/index.pl?action=view\\_job&job\\_id=5834](http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=5834)



## **APPENDIX B: SUBMISSIONS**

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See separate files on the Department's website:

[http://majorprojects.planning.nsw.gov.au/index.pl?action=view\\_job&job\\_id=5834](http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=5834)

## **APPENDIX C: DOCUMENTATION SUPPORTING MODIFICATION APPLICATION (09\_0006 MOD 1)**

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See separate files on the Department's website under 'Application & Declaration':

[http://majorprojects.planning.nsw.gov.au/index.pl?action=view\\_job&job\\_id=5834](http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=5834)

## **APPENDIX D: DIRECTOR-GENERAL'S ASSESSMENT REPORT AND PROJECT APPROVAL (09\_0006)**

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See separate files on the Department's website under 'Determination':

[http://majorprojects.planning.nsw.gov.au/index.pl?action=view\\_job&job\\_id=3550](http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=3550)