

29 October 2010

David Kitto
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Mining and Industry
NSW Department of Planning
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Dear Mr Kitto

**Newnes Kaolin Pty Ltd – Sand and Kaolin Mining Operation – Newnes Junction
Development Consent for DA 329-7-2003**

We refer to the above development consent (**Consent**), the application to modify the Consent dated 22 June 2010 (**Modification Application**) and the Notice of Modification granted on 13 October 2010 (**Notice of Modification**).

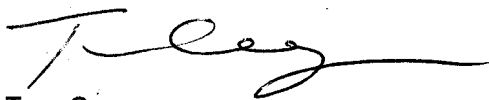
As you are aware, we act for Newnes Kaolin Pty Limited (**Newnes**).

On 27 October 2010, we were advised by Kane Winwood of the Department of Planning that as a result of an amendment to the *Environmental Planning and Assessment Regulation 2000* made on 3 September 2010, the Notice of Modification should have been made under s75W of the *Environmental Planning and Assessment Act 1979* (**EP&A Act**) rather than s96(1A).

In circumstances where the Minister has power under s75W of the EP&A Act to modify the Consent and has assessed the Modification Application having regard to all of the requirements in 75W, the fact that the Modification Application refers to s96(1A) and not 75W of the EP&A Act does not invalidate the Minister's determination as set out in the Notice of Modification.

Notwithstanding this and without surrendering the Notice of Modification or waiving Newnes' rights with respect thereto, Newnes hereby makes an amended Modification Application (enclosed), which seeks modification of the Consent pursuant to s75W of the EP&A Act.

Yours sincerely



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Encl

Copy to: Kane.Winwood@planning.nsw.gov.au

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Dear Mr Kitto

**Newnes Kaolin Pty Ltd – Sand and Kaolin Mining Operation – Newnes Junction
Development Consent for DA 329-7-2003**

We refer to the above development consent (**Consent**).

Background

The Consent is for the development of a kaolin mining and sand quarrying operation.

While the Consent was granted on 14 March 2006 and a number of activities have been undertaken in preparation for the commencement of the development, commercial considerations reflecting the downturn in the construction sector in New South Wales and the unstable financial markets caused by the effects of the global financial crisis have caused the Directors of Newnes Kaolin Pty Ltd (**Newnes**) to defer commencing operations until greater market and financial certainty could be established. Accordingly, no work authorised by the Consent has been carried out.

Newnes now proposes to undertake the works prescribed by the Consent in order to lawfully commence the development approved by the Consent.

Proposed Modifications

In order to enable commencement to occur, Newnes seeks to modify Conditions 5 and 9 of Schedule 5 and Condition 23 of Schedule 3 to the Consent, pursuant to section 75W of the *Environmental Planning and Assessment Act 1979* (NSW).

Condition 5 Schedule 5

Condition 5 of Schedule 5 to the Consent concerns annual reporting requirements and is in the following terms (**Reporting Condition**):

"ANNUAL REPORTING

5. Each year, following the date of this Consent, the Applicant shall prepare and submit an AEMR to the Director-General and the relevant agencies. This report must:
- a) identify the standards and performance measures that apply to the development;
 - b) describe the works carried out in the last 12 months;
 - c) describe the works that will be carried out in the next 12 months;
 - d) include a summary of the complaints received during the past year, and compare this to the complaints received in previous years;
 - e) include a summary of the monitoring results for the development during the past year;
 - f) include an analysis of these monitoring results against the relevant:
 - impact assessment criteria;
 - monitoring results from previous years; and
 - predictions in the EIS and Supplementary Report;
 - g) identify any trends in the monitoring results over the life of the development;
 - h) identify any non-compliance during the previous year; and
 - i) describe what actions were, or are being taken to ensure compliance."

Newnes requests that the Reporting Condition be modified by replacing the words "following the date of this consent" with the words "following the date of the commencement of the development" in the first line of the Condition.

The effect of the proposed modification of the Reporting Condition is that Newnes would be required to prepare and submit its first Annual Environmental Monitoring Report (**AEMR**) to the Director-General and relevant agencies within 12 months of the commencement of development. Subsequent AMERs would be prepared and submitted each year thereafter.

The Condition as amended refers to the commencement of the development and not the ultimate commencement of quarrying operations on the land.

The Reporting Condition requires that an AEMR describe and report on the development in a number of respects. In particular, the AEMR must describe works carried out in the last 12 months and include a summary of the monitoring results for the development during the past year. As noted above, no development has been carried out since the date of the Consent. The requirement to prepare an AEMR prior to the commencement of the development serves no purpose.

The Condition as modified would satisfy the purpose and intent of the existing Condition.

Condition 9 Schedule 5

Condition 9 of Schedule 5 to the Consent concerns the establishment of a Community Consultative Committee and is in the following terms (**Committee Condition**):

"COMMUNITY CONSULTATIVE COMMITTEE

9. Within 3 months of the date of this Consent, the Applicant shall establish a Community Consultative Committee to oversee the environmental performance of the development.
- The CCC shall:

a) be comprised of at least:

- 2 representatives from the Applicant, including the person responsible for environmental management at the quarry;
- 1 representative from Council (if available); and
- at least 2 representatives from the local community,

whose appointment has been approved by the Director-General in consultation with the Council;

b) be chaired by an independent chairperson, whose appointment has been endorsed by the Director-General;

c) meet at least twice a year;

d) undertake regular inspections of the mine operations;

e) review and provide comment on the environmental performance of the development, including any construction or environmental management plans, monitoring results, audit reports, or complaints; and

f) be operated in accordance with any guidelines the Department may publish in regard to the operation of Community Consultative Committees for mining projects."

The Committee Condition is to be modified by replacing the words "within 3 months of the date of this consent" with the words "prior to carrying out any development" in the first line of the Condition.

The effect of the proposed modification is that Newnes would only be required to establish a Community Consultative Committee prior to carrying out any development.

The main function of the Community Consultative Committee is to oversee the environmental performance of the operation of the mine. Relevantly however, it is also intended that it monitor compliance with the construction management plan.

The amended Condition requires the Community Consultative Committee to be established prior to the commencement of the development, not the commencement of quarrying operations authorised under the Consent. This is in conformity with Condition 8 of Schedule 5 to the Consent, which requires that an Environmental Manager be employed "prior to carrying out any development". The Environmental Manager is required to be part of the Committee.

Given that the primary role of the Community Consultative Committee is to inspect mine operations and review the environmental performance of the development, it is unreasonable to require its establishment at a time significantly prior to the commencement of development works.

The Condition as amended achieves the purpose and intent of the Condition as presently drafted.

Condition 23 Schedule 3

Condition 23 of Schedule 3 to the Consent (**WMP Review Condition**) concerns the review of the Water Management Plan that is required to be prepared under Condition 18 of Schedule 3 to the Consent and is in the following terms:

"23. Each year from the date of this consent, the Applicant shall:

- (a) review, and if necessary update, the Water Management Plan; and

(b) report the results of this review in the AEMR, including:

- the results of monitoring;
- details of the review for each sub-plan;
- amendments to the sub-plans;
- details of the measures undertaken/proposed to address any identified issues."

The WMP Review Condition is requested to be modified by replacing the words "from the date of this consent" with the words "from the date of the commencement of the development".

The effect of the proposed modification of the WMP Review Condition would be that Newnes would only be required to prepare a review of the Water Management Plan and report the results of the review in the AEMR each year after the date of commencement of development.

The proposed amendment to the WMP Review Condition accords with the reasons for the proposed amendment of the Reporting Condition. In circumstances where a Water Management Plan is not implemented nor required to be implemented until a number of years after the grant of the Consent, a requirement that the Water Management Plan be reviewed or updated each year from "the date of the Consent" lacks utility.

The Condition as modified satisfies the purpose and intent of the Condition as presently drafted.

Section 75W – Statutory Considerations

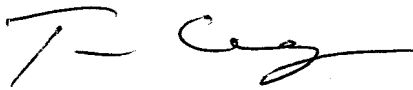
Section 75W provides that the Minister may modify the approval (with or without conditions).

Conclusion

It is respectfully requested that the Minister for Planning modify the Consent as requested in accordance with section 75W of the *Environmental Planning and Assessment Act 1979* (NSW).

Please contact us should you require anything further.

Yours sincerely



 Marcus McAdam

Director

NEWNES KAOLIN PTY LTD