

1 February 2013

Commercial-in-Confidence

Mr Chris Ritchie
Manager - Manufacturing and Rural Industries
Department of Planning and Infrastructure
GPO Box 39
SYDNEY NSW 2001

Dear Mr Ritchie

National Ceramic Industries Australia, Approval Modification MP 09-0006

1.0 Introduction

National Ceramic Industries Australia Pty Ltd (NCIA) was granted project approval (MP 09_0006) under section 75J of the *Environmental Planning and Assessment Act 1979*, by the Planning and Assessment Commission on 19 January 2012. This project approval rationalised and consolidated the development as already approved under NCIA's development consent (DA No. 449-12-2002-I, now surrendered) and that of a proposed expansion of NCIA's ceramic tile facility based in Rutherford, NSW.

2.0 Background

NCIA has been involved in mediation with the McCloy Group (Victory Parc Pty Ltd) regarding the approved Heritage Green development and the approved NCIA facility expansion. The mediation was implemented so both parties could reach an agreement as to a way forward whereby both projects could proceed without further objections from either party. The mediation resulted in a Deed of Settlement dated 7 December 2012. The Deed specifies specific actions required by both parties and the required timeframes.

NCIA is required under the Deed to lodge a modification to its project approval within two months of the Deed being signed, that is 7 Feb 2013.

3.0 Requested modifications

Schedule 6A of the *Environmental Planning & Assessment Act 1979*, provides that section 75W continues to apply for the purpose of the modification of a project applications and concept plans approved before or after the repeal of Part 3A of the Act.

As such NCIA wish to formally request a modification its project approval (MP 09_0006) pursuant to section 75W of the *Environmental Planning and Assessment Act 1979*.

3.1 Condition 26

In accordance with condition 2.1 of the Deed of Settlement, NCIA is required to apply for a modification to condition 26 of its consent by adding the following:

"Provided however that upon the commencement of operation of the first of any stages 3-8 in this approval, and the registration with the LPI of a plan of residential subdivision comprising of stage 9 of the Land in lot 100 DP 1091841 pursuant to development consent 08/2357, as amended, table 5 shall be amended by the replacement of the words 'Kenvil Close' with the words 'the 35dBa acoustic contour (the green line) in the acoustic plan No. TE188-10p01 (rev 0) dated 27 March 2012 by Renzo Tonin and Associates'."

3.2 Condition 6

In accordance with condition 2.1 of the Deed of Settlement, NCIA is required to apply for a modification to condition 6 of its consent:

"within 12 months of this approval, or as otherwise agreed by the director general"

With the words:

"on the commencement of operations of the first of any stages 3-8 in this approval"

3.3 Environmental implications of the requested modifications

3.3.1 Condition 26

The requested modification, when triggered by the commencement of operations of the first of any stages 3-8, would represent a more stringent noise monitoring criteria than the noise monitoring criteria which currently exists. In essence, the amended noise monitoring criteria would see the existing Kenvil Close monitoring location be re-located towards the NCIA facility to the predicted 35dBA noise contour, while maintaining the existing noise limit (i.e. 35dBA).

It is considered that there would be no environmental impact resulting from this modification.

3.3.2 Condition 6

The requested modification, seeks to amend the timing of the surrender of NCIA's development consent (DA 449-12-2002-i). The purpose of this modification is to ensure NCIA's project approval is the only active regulatory compliance document (other than NCIA's EPL), resulting in the surety of implementation of the modified condition 26.

It is considered that there would be no environmental impact resulting from this modification.

It is noted however the NCIA has issued to DPI a duly signed notice of surrender of its development consent. As a result NCIA's project approval is soon to be the only active regulatory compliance document (other than NCIA's EPL). This previous action may render the requested modification to condition 6 unnecessary.

Please do not hesitate to contact me should you wish to discuss or clarify the above.

Yours sincerely



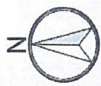
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cc: Chris Schneider, Managing Director, NCIA
Enclosures: Deed of Settlement (7 Dec 2012) & Acoustic plan No. TE188-10p01 (rev 0)

Acoustic Plan No. TE188- 10p01 (rev 0)

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Date: 27/03/12
Scale: NTS
Ref: TE188-10P01 (rev 0)

Project:
TE188-10 Heritage Green

Figure 1 :
Projected NCIA Noise Contours for the Expansion Incorporating
Noise Mitigation (Stage 1-8)

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