

ASSESSMENT REPORT

Section 75W Modification

National Ceramic Industries Australia Tile Manufacturing Facility, Rutherford Independent Annual Reporting (09_0006 MOD 2)

1. PROJECT BACKGROUND

NCIA operates a ceramic tile manufacturing facility within the Rutherford Industrial Estate in the Maitland local government area (see Figure 1).

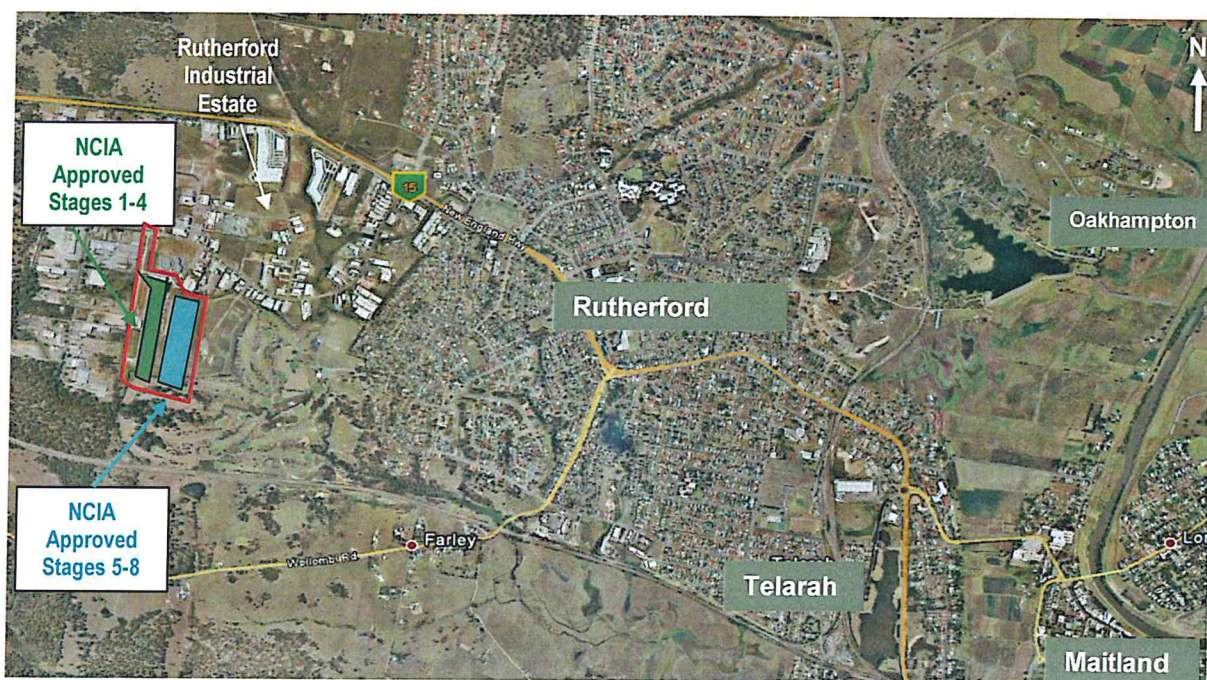


Figure 1: Location of the NCIA Tile Manufacturing Facility, Rutherford

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 (m²) of tiles per year. NCIA are currently operating Stages 1 and 2, producing up to 6.4 million m² 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 m² of tiles per year (see Figure 1). Stages 5 to 8 are yet to be constructed. The approval consolidated the 2003 approval granted for Stages 1 to 4.

Following approval of NCIA's expansion project, an appeal was lodged in the Land and Environment Court by the developer of an adjacent residential development. Following mediation a Deed of Settlement was reached between the parties and in February 2013, NCIA lodged a modification application to amend the noise limits in the project approval. After careful consideration, and consultation with the Environment Protection Authority, the modification request (09_0006 MOD 1) was refused. Subsequently the parties filed a notice of discontinuance in relation to the Land and Environment Court appeal.

NCIA's approval includes standard conditions for annual environmental reporting and regular auditing. The approval requires the annual environmental management report (AEMR) and the environmental audits to be conducted by independent teams that are approved by the Secretary.

2. PROPOSED MODIFICATION

On 13 November 2014, NCIA submitted a section 75W modification application under the Act to remove the requirement for an independent team to prepare the Annual Environmental Management Report (AEMR) as required by Condition 60(a) of the Project Approval.

NCIA advised that AECOM is the preferred company to prepare the AEMR as it has undertaken environmental monitoring for NCIA for the past ten years and has a thorough understanding of the NCIA facility, its environmental obligations and reporting requirements. Additionally, AECOM have comprehensive information and data needed to prepare the AEMR. However, AECOM is not considered to be an independent team, as AECOM prepared the Environmental Assessment for the original project application in 2010.

3. STATUTORY CONSIDERATION

3.1 Approval Authority

In accordance with Clause 12 of Schedule 6A of the 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.

The Minister for Planning delegated responsibility for the determination of section 75W modification applications to Directors and Managers who report to the Executive Director, Infrastructure and Industry Assessments where:

- the relevant local council has not made an objection; and
- a political disclosure statement has not been made; and
- there are no public submissions in the nature of objections.

The proposal complies with the terms of the delegation as Maitland Council (Council) does not object to the proposal, a political disclosure statement has not been made in relation to the application, and no public submissions were received in the nature of objections. Accordingly, the Manager – Industry Assessments may determine the application in accordance with the Minister's delegation dated 10 November 2014.

3.2 Modification

The Department is satisfied that the application can properly be characterised as a modification to the original development consent, and can therefore be assessed and determined under Section 75W of the Act.

The Department notes that the modification is administrative and would not change the primary function and purpose of the approved project. The modification is of a minor scale and warrants the use of Section 75W of the Act.

3.3 Consultation

The Department made the application publicly available on its website and consulted directly with Council. Wider consultation with other agencies and the community was considered to be unnecessary because the modification would not change the impact profile of the facility.

Council did not provide any comments on the modification.

No public submissions were received regarding the modification.

4. ASSESSMENT

The Department has reviewed the Secretary's Assessment Report and Project Approval for the original application and notes that there is no specific justification for requiring an independent team to prepare the AEMR. The purpose of the AEMR is to provide an analysis of annual monitoring data for comparison against relevant criteria.

It is standard practice for the Proponent and / or their environmental consultants to prepare the AEMR, as they have an in-depth knowledge of the facility and generally collect the monitoring data. NCIA advised that AECOM has undertaken environmental monitoring for the NCIA facility for the past ten years and has a thorough understanding of the environmental performance of the facility. Additionally, AECOM have comprehensive information and data needed to prepare the AEMR. The Department acknowledges that AECOM is suitably qualified and experienced in preparing environmental performance reports and should not be precluded from preparing the AEMR, on the basis that it prepared the Environmental Assessment for the project application.

The Department also notes that the model conditions for industry projects, prepared in 2013 following a consultative process with key stakeholders, Councils and government agencies, do not require an independent team to prepare annual reports. Hence, the Department generally does not include this requirement in project approvals and development consents.

The NCIA project approval also includes a separate requirement for an independent environmental audit every three years (Condition 61). The auditing requirement differs from the AEMR in that it reviews the environmental performance of the facility and recommends actions to improve performance. Condition 61a) requires the audit to be conducted by an independent team whose appointment has been endorsed by the Secretary. This requirement is also reflected in the model conditions and is routinely included in project approvals and development consents. The Department considers that this requirement is sufficient for ensuring that the environmental performance of the NCIA facility is routinely reviewed by an independent team.

Considering the above, the Department is satisfied that removing the requirement for an independent team to prepare the AEMR is appropriate and would not result in inadequate reporting.

5. CONCLUSION

The Department's assessment concludes that the proposed modification is minor and would not change the impacts of the approved project. The Department considers that the

requirement for an independent team to prepare the AEMR was an administrative error, is unnecessary and is not standard practice, as shown by the Department's model conditions. The Department also considers that there are adequate provisions within the project approval to ensure that the environmental performance of the facility is reviewed by an independent team through the requirement for independent environmental audits. The Department is satisfied that the proposed modification is acceptable and should be approved.

6. RECOMMENDATION

It is RECOMMENDED that the Manager, Industry Assessments:

- **consider** the findings of this report;
- **approve** of the proposed modification under Section 75W of the Act; and
- **sign** the attached notice of modification (Tag A).

T Whiteman
Planning Officer
Industry and Key Sites



17.12.14

Deana Burn
Planner
Industry Assessments



17/12/14

Chris Ritchie
Manager
Industry Assessments

APPENDIX A: NOTICE OF MODIFICATION
