

# Modification of Minister's Approval

## Section 75W of the *Environmental Planning and Assessment Act 1979*

As delegate for the Minister for Planning and Public Spaces, under the Instrument of Delegation executed on 11 October 2017, I approve the modification of the project approval referred to in Schedule 1, subject to the conditions outlined in Schedule 2.



Kelly McNicol  
Acting Director  
Industry Assessments

Sydney 22 AUGUST 2019

File: OBJ17/15267

### SCHEDULE 1

<b>Development Approval:</b>	<b>MP06_0050</b> (granted by the then Minister for Planning on 7 August 2009)
<b>For the following:</b>	Spent Potlining Recycling Facility at Tomago Road, Tomago
<b>Proponent:</b>	Regain Services Pty Ltd
<b>Approval Authority:</b>	Minister for Planning and Public Spaces
<b>Land:</b>	Lot 3 in DP 808004
<b>Modification:</b>	<b>MP 06_0050 MOD 2:</b> increase the processing capacity of SPL from 20,000 tonnes per year to 60,000 tonnes per year and the installation and operation of an additional thermal treatment plant

### SCHEDULE 2

This approval is modified as follows:

#### In Definitions:

1. Delete the definitions for DECC, Department, Minister, Project, Site, Thermal Treatment Plant and insert the following definitions in alphabetical order:

Construction	the demolition and removal of buildings or works, the carrying out of works for the purpose of the Project, including the installation of an additional thermal treatment plant, bulk earthworks, and erection of buildings and other infrastructure permitted by this approval
Department	the Department of Planning, Industry and Environment
EPA	NSW Environment Protection Authority
FRNSW	Fire and Rescue NSW
Minister	Minister for Planning and Public Spaces or delegate
MOD 1	Supporting documentation titled Spent Potliner (SPL) Recycling Facility at Tomago Aluminium Smelter – 75W Modification, dated 19 September 2016,

prepared by AECOM Australia Pty Ltd and Response to Submissions titled Spent Potliner (SPL) Recycling Facility at Tomago Aluminium Smelter – S75W Modification, dated 19 October 2016 prepared by AECOM Australia Pty Ltd

MOD 2	EA titled Environmental Assessment: Capacity Increase at the Regain Spent Potlining Facility, Tomago, dated 13 November 2018 prepared by AECOM Australia Pty Ltd and Response to Submissions titled Response to Submissions Report: Environmental Assessment-Capacity Increase at the Regain Spent Potlining Facility, Tomago, dated 29 March 2019 prepared by AECOM Australia Pty Ltd and supplementary information titled Regain Spent Potlining Treatment Facility – Response to Submissions MP06-0050 Modification 2: NSW EPA letter dated 24 May 2019 prepared by AECOM Australia Pty Ltd
Project	the Project as described in the EA, MOD 1 and MOD 2
Planning Secretary	Planning Secretary of the Department of Planning, Industry and Environment or delegate
Site	the land referred to in Schedule 1
Stage 1 construction	the carrying out of works for the purpose of the Project, as identified in MOD 2 including the construction and installation of the 40,000 tonne per year thermal treatment plant and stormwater controls required to receive and process 60,000 tonnes per year of SPL
Stage 2 construction	the carrying out of works for the purpose of the Project, as identified in MOD 2 including the construction and installation of the drying plant, fine grinding feed bin, fine grinding plant and bulk product bin.
Thermal treatment	involves the heat treatment process which would destroy the cyanide and neutralise the flammable gas hazard associated with SPL while retaining carbon, fluorides, and other inorganic compounds

#### **In Schedule 2: Administrative Conditions**

2. Delete all references to “Director-General” and replace with “Planning Secretary”.

#### **Terms of Approval**

3. Delete and replace Schedule 2 Condition 2 with the following:
  2. The Proponent must carry out the Project generally in accordance with the:
    - (a) Project Application 06\_0050;
    - (b) EA;
    - (c) MOD 1;
    - (d) MOD 2;
    - (e) Project layout plans and drawings listed in Appendix A;
    - (f) statement of commitments listed in MOD 2; and
    - (g) conditions of this approval.

#### **Limits on Approval**

4. Delete and replace Schedule 2 Condition 5 with the following:
  5. The Proponent must not receive or process more than 60,000 tonnes of SPL per year.

#### **In Schedule 3: Specific Environmental Conditions**

##### **SOIL AND WATER**

5. Insert new heading and new Condition 15A, immediately after Schedule 3 Condition 15. as follows:

##### **Stormwater Management System**

15A. Prior to the commencement of Stage 1 operations, the Proponent must design, install and operate a stormwater management system (SMS) for the Project. The SMS must:

- (a) be designed by a suitably qualified and experienced person(s) whose appointment has been endorsed by the Planning Secretary;
- (b) be in accordance with the Project as modified by MOD 2 and the plans at Appendix A of this approval;
- (c) be in accordance with applicable Australian Standards; and
- (d) ensure that the system capacity has been designed in accordance with Australian Rainfall and Runoff (Engineers Australia, 2016) and Managing Urban Stormwater: Council Handbook (EPA, 1997) guidelines.

6. Insert new Condition 15B immediately after Schedule 3 Condition 15A as follows:

15B. Prior to the commencement of Stage 1 operations, works-as-executed drawings signed by a registered surveyor must be submitted to the certifying authority demonstrating the stormwater drainage and finished ground levels have been constructed as approved.

7. Insert new Condition 15C immediately after Schedule 3 Condition 15B as follows:

15C. The surface water management system must be operated and maintained for the duration of the Project.

## HAZARDS

8. Delete and replace Schedule 3 Condition 16 with the following:

### Pre-construction

16. At least one month prior to the commencement of Stage 1 construction of the Project as modified by MOD 2 (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 Proponent must prepare and submit for the approval of the Planning Secretary the studies set out under subsections 16(a) to 16(c) below (the pre-construction studies). Construction, other than the preliminary works that are outside the scope of the hazards studies must not commence until approval has been given by the Planning Secretary.

- (a) A Hazard and Operability Study for the Project inclusive of MOD 2, chaired by a qualified person, independent of the Project, approved by the Planning Secretary prior to the commencement of the study. The study shall be carried out in accordance with the Department's Hazardous Industry Planning Advisory Paper No. 8, 'HAZOP Guidelines'. The study report must be accompanied by a program for the implementation of all recommendations made in the report. If the Proponent intends to defer the implementation of a recommendation, reasons must be documented. The study must include and not be limited to concurrent operation of the new and existing thermal treatment plants.
- (b) Construction Safety Study prepared in accordance with the Department's Hazardous Industry Planning Advisory Paper No. 7 'Construction Safety'.

9. Insert new heading and new Condition 16A, immediately after Schedule 3 Condition 16 as follows:

### Pre-commissioning

16A. The Proponent must develop and implement the plans and systems set out under subsections 16A(a) and 16A(b) below. No later than two months prior to the commencement of commissioning of the Project, or within such further period as the Planning Secretary may agree, the Proponent 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) A comprehensive Emergency Plan and detailed emergency procedures for the proposal. The Emergency Plan shall include consideration of the safety of all people outside of the Project who may be at risk from the Project. The plan shall be prepared in accordance with the Department's Hazardous Industry Planning Advisory Paper No. 1, 'Emergency Planning'.
- (b) A document setting out a comprehensive Safety Management System, covering all on-site operations and associated transport activities involving hazardous materials. The document shall clearly specify all safety related procedures, responsibilities and policies, along with details of mechanisms for ensuring adherence to the procedures. Records shall be kept on-site and shall be available for inspection by the Planning Secretary upon request. The Safety Management System shall be developed in accordance with the Department's Hazardous Industry Planning Advisory Paper No. 9, 'Safety Management'.

10. Insert new heading and new Condition 16B, immediately after Schedule 3 Condition 16A as follows:

**Ongoing - Hazard Audit**

16B. Within 12 months the commencement of stage 1 operations of the Project and every five years thereafter, or at such intervals as the Planning Secretary may agree, the Proponent shall carry out a comprehensive Hazard Audit of the Project and within one month of each audit submit a report to the satisfaction of the Planning Secretary. The Hazard Audit must:

- (a) be carried out at the Proponent expense by a qualified person or team, independent of the Project, approved by the Planning Secretary prior to commencement of the audit. Hazard Audits shall be carried out in accordance with the Department's *Hazardous Industry Planning Advisory Paper No. 5, 'Hazard Audit'*.
- (b) include a review of the site Safety Management System and a review of all entries made in the incident register since the previous audit.
- (c) be accompanied by a program for the implementation of all recommendations made in the audit report. If the Proponent intends to defer the implementation of a recommendation, reasons must be documented.

11. Insert new heading and new Condition 16C, immediately after Schedule 3 Condition 16B. as follows:

**Further Requirements**

16C. The Proponent must comply with all reasonable requirements of the Planning Secretary in respect of the implementation of any measures arising from the reports submitted in respect of Conditions 16, 16A and 16B inclusive, within such time as the Planning Secretary may agree.

**AIR**

**Air Quality Monitoring and Criteria**

12. Delete and replace Schedule 3 Condition 18 with the following:

18. The Proponent must install and operate all SPL plant equipment in line with best practice to ensure the Project complies with all load limits, air quality criteria and air quality monitoring requirements as specified in the EPL for the site.

13. Insert new heading and new Condition 18A, immediately after Schedule 3 Condition 18, as follows:

**Air Quality Management Plan**

18A. Prior to the commencement of Stage 1 operations, the Proponent must prepare an Air Quality Management Plan (AQMP) to the satisfaction of the Planning Secretary. The plan must form part of the OEMP required by Condition 26D and be prepared in accordance with Condition 26. The AQMP must:

- (a) be prepared by a suitably qualified and experienced person(s) whose appointment has been endorsed by the Planning Secretary;
- (b) detail and rank all emissions from all sources of the Project, including particulate emissions;
- (c) describe a program that is capable of evaluating the performance of the operation and determining compliance with key performance indicators;
- (d) identify the control measures that that will be implemented for each emission source; and
- (e) nominate the following for each of the proposed controls:
  - (i) key performance indicator;
  - (ii) monitoring method;
  - (iii) location, frequency and duration of monitoring;
  - (iv) record keeping;
  - (v) complaints register;
  - (vi) response procedures; and
  - (vii) compliance monitoring.

14. Insert a new Condition 18B, immediately after Schedule 2 Condition 18A, as follows:

18B. The Proponent must:

- (a) not commence operations until the AQMP required by Condition 18A is approved by the Planning Secretary; and
- (b) implement the most recent version of the AQMP approved by the Planning Secretary for the duration of the Project.

15. Insert a new heading and delete and replace Condition 19 with the following:

**Post Commissioning Air Emission Verification Report**

19. Within 12 months of commissioning Stage 1 operations and Stage 2 operations, the Proponent must submit a post commissioning air emission verification report (AEVR) to the satisfaction of the Planning Secretary (the report). The AEVR must:
- (a) must be prepared by a suitably qualified and experienced person(s);
  - (b) include all emission test and analytical results from post commissioning emission monitoring required to be undertaken by the EPL;
  - (c) compare the results of the post commissioning monitoring against emission limits contained in the EPL for the relevant emission points where the comparison shows monitored discharge concentrations higher than the EPL limits;
  - (d) must identify mitigation measures to achieve the EPL emission limits; and
  - (e) include details of any amendments to the EPL as a result of the EPA's review of the AEVR.

**In SCHEDULE 4: ENVIRONMENTAL MANAGEMENT, REPORTING AND AUDITING**

16. Delete and replace heading and delete and replace Schedule 4 Condition 26 with the following:

**ENVIRONMENTAL MANAGEMENT**

**Management Plan Requirements**

26. Management plans required under this approval must be prepared in accordance with relevant guidelines, and include:
- (a) details of:
    - (i) the relevant statutory requirements (including any relevant approval, licence or lease conditions);
    - (ii) any relevant limits or performance measures and criteria; and
    - (iii) the specific performance indicators that are proposed to be used to judge the performance of, or guide the implementation of, the development or any management measures;
  - (b) a description of the measures to be implemented to comply with the relevant statutory requirements, limits, or performance measures and criteria;
  - (c) a program to monitor and report on the:
    - (i) impacts and environmental performance of the development; and
    - (ii) effectiveness of the management measures set out pursuant to paragraph (b) above;
  - (d) a contingency plan to manage any unpredicted impacts and their consequences and to ensure that ongoing impacts reduce to levels below relevant impact assessment criteria as quickly as possible;
  - (e) a program to investigate and implement ways to improve the environmental performance of the development over time;
  - (f) a protocol for managing and reporting any:
    - (i) incident and any non-compliance (specifically including any exceedance of the impact assessment criteria and performance criteria);
    - (ii) complaint;
    - (iii) failure to comply with statutory requirements; and
  - (g) a protocol for periodic review of the plan.

*Note: the Planning Secretary may waive some of these requirements if they are unnecessary or unwarranted for particular management plans*

17. Insert a new heading and new Condition 26A, immediately after Schedule 4 Condition 26, as follows:

**Construction Environmental Management Plan**

- 26A. The Proponent must prepare a Construction Environmental Management Plan (CEMP) in accordance with the requirements of Condition 26 and to the satisfaction of the Planning Secretary.

18. Insert a new Condition 26B, immediately after Schedule 4 Condition 26A, as follows:

26B. The Proponent must:

- (a) not commence construction of the development until the CEMP is approved by the Planning Secretary; and
- (b) carry out the construction of the Project in accordance with the CEMP approved by the Planning Secretary and as revised and approved by the Planning Secretary from time to time.

19. Insert a new heading and new Condition 26C, immediately after Condition 26B, as follows:

**Operational Environmental Management Plan**

26C. The Proponent must prepare an Operational Environmental Management Plan (OEMP) in accordance with the requirements of Schedule 4 Condition 26 and to the satisfaction of the Planning Secretary.

20. Insert new Condition 26D, immediately after Schedule 4 Condition 26C, as follows:

26D. As part of the OEMP required under Condition 26C. of this approval, the Proponent must include the following:

- (a) describe the role, responsibility, authority and accountability of all key personnel involved in the environmental management of the Project;
- (b) describe the procedures that would be implemented to:
  - (i) keep the local community and relevant agencies informed about the operation and environmental performance of the Project;
  - (ii) receive, handle, respond to, and record complaints;
  - (iii) resolve any disputes that may arise;
  - (iv) respond to any non-compliance;
  - (v) respond to emergencies; and
- (c) include the following environmental management plans:
  - (i) Air Quality Management Plan (see Condition 18A).

21. Insert new Condition 26E, immediately after Schedule 4 Condition 26D, as follows:

26E. The Proponent must:

- (a) not commence operation until the OEMP is approved by the Planning Secretary; and
- (b) operate the Project in accordance with the OEMP approved by the Planning Secretary (and as revised and approved by the Planning Secretary from time to time).

22. Insert a new heading and new Condition 26F, immediately after Condition 26E, as follows:

**REVISION OF STRATEGIES, PLANS AND PROGRAMS**

26F. Within three months of:

- (a) the submission of a Compliance Report under Condition 28C;
- (b) the submission of an incident report under Condition 27;
- (c) the submission of an Independent Audit under Condition 29;
- (d) the approval of any modification of the conditions of this approval; or
- (e) the issue of a direction of the Planning Secretary under Condition 26I which requires a review.

23. Insert new Condition 26G, immediately after Condition 26F, as follows:

26G. The strategies, plans and programs required under this approval must be reviewed, and the Department must be notified in writing that a review is being carried out.

24. Insert new Condition 26H, immediately after Condition 26G, as follows:

26H. If necessary to either improve the environmental performance of the Project, cater for a modification or comply with a direction, the strategies, plans and programs required under this approval must be revised, to the satisfaction of the Planning Secretary. Where revisions are required, the revised document must be submitted to the Planning Secretary for approval within six weeks of the review.

**Note:** This is to ensure strategies, plans and programs are updated on a regular basis and to incorporate any recommended measures to improve the environmental performance of the Project.:

## REPORTING AND AUDITING

25. Insert a new heading and delete and replace Condition 27 with the following:

### **Incident Notification, Reporting and Response**

27. The Department must be notified in writing to [compliance@planning.nsw.gov.au](mailto:compliance@planning.nsw.gov.au) immediately after the Proponent becomes aware of an incident. The notification must identify the Project (including the Project application number and the name of the Project if it has one) and set out the location and nature of the incident. Subsequent notification requirements must be given, and reports submitted in accordance with the requirements set out in Appendix B

26. Insert a new heading and delete and replace Condition 28 with the following:

### **Non-Compliance Notification**

28. The Department must be notified in writing to [compliance@planning.nsw.gov.au](mailto:compliance@planning.nsw.gov.au) within seven days after the Proponent becomes aware of any non-compliance.

27. Insert new condition 28A, immediately after Condition 28, as follows:

- 28A. A non-compliance notification must identify the Project and the application number for it, set out the condition of approval that the Project is non-compliant with, the way in which it does not comply and the reasons for the non-compliance (if known) and what actions have been, or will be, undertaken to address the non-compliance.

28. Insert new condition 28B, immediately after Condition 28A, as follows:

- 28B. A non-compliance which has been notified as an incident does not need to also be notified as a non-compliance.

29. Insert a new heading and new condition 28C, immediately after Condition 28B, as follows:

### **Compliance Reporting**

- 28C. No later than six weeks before the date notified for the commencement of operations as described in Mod 2 a Compliance Monitoring and Reporting Program prepared in accordance with the Compliance Reporting Post Approval Requirements (Department 2018) must be submitted to the Department.

30. Insert new condition 28D, immediately after Condition 28C, as follows:

- 28D. Compliance Reports of the Project must be carried out in accordance with the Compliance Reporting Post Approval Requirements (Department 2018).

31. Insert new condition 28E, immediately after Condition 28D, as follows:

- 28E. The Proponent must make each Compliance Report publicly available no later than 60 days after submitting it to the Department and notify the Department in writing at least seven days before this is done.

32. Insert a new heading and delete and replace Condition 29 with the following:

### **Independent Audit**

29. No later than four weeks before the date notified for the commencement of operations as described in MOD 2 an Independent Audit Program prepared in accordance with the Independent Audit Post Approval Requirements (Department 2018) must be submitted to the Department.

33. Delete and replace Condition 30 with the following:

30. Independent Audits of the Project must be carried out in accordance with:
- (a) the Independent Audit Program submitted to the Department under Condition 29 of this approval; and
  - (b) the requirements for an Independent Audit Methodology and Independent Audit Report in the Independent Audit Post Approval Requirements (Department 2018).

34. Insert new Condition 31, as follows:

31. In accordance with the specific requirements in the Independent Audit Post Approval Requirements (Department 2018), the Proponent must:

- (a) review and respond to each Independent Audit Report prepared under Condition 30 of this approval;
- (b) submit the response to the Department; and
- (c) make each Independent Audit Report and response to it publicly available no later than 60 days after submission to the Department and notify the Department in writing at least seven days before this is done.

35. Insert new heading and new Condition 32, as follows:

#### **Monitoring and Environmental Audits**

32. Any condition of this approval that requires the carrying out of monitoring or an environmental audit, whether directly or by way of a plan, strategy or program, is taken to be a condition requiring monitoring or an environmental audit under Division 9.4 of Part 9 of the EP&A Act. This includes conditions in respect of incident notification, reporting and response, non-compliance notification, compliance reporting and independent auditing.

***Note:** For the purposes of this condition, as set out in the EP&A Act, "monitoring" is monitoring of the Project to provide data on compliance with the approval or on the environmental impact of the Project, and an "environmental audit" is a periodic or particular documented evaluation of the Project to provide information on compliance with the approval or the environmental management or impact of the Project.*

36. Insert new heading and new Condition 33 as follows:

#### **ACCESS TO INFORMATION**

33. At least 48 hours before the commencement of construction until the completion of all works under this approval, the Proponent must:

- (a) make the following information and documents (as they are obtained or approved) publicly available on its website:
  - (i) the documents referred to in Schedule 2 Condition 2 of this approval;
  - (ii) all current statutory approvals for the Project;
  - (iii) all approved strategies, plans and programs required under the conditions of this approval;
  - (iv) the proposed staging plans for the Project if the construction, operation or decommissioning of the Project is to be staged;
  - (v) regular reporting on the environmental performance of the Project in accordance with the reporting requirements in any plans or programs approved under the conditions of this approval;
  - (vi) a comprehensive summary of the monitoring results of the Project, reported in accordance with the specifications in any conditions of this approval, or any approved plans and programs;
  - (vii) a summary of the current stage and progress of the Project;
  - (viii) contact details to enquire about the Project or to make a complaint;
  - (ix) a complaints register, updated monthly;
  - (x) the Compliance Report of the Project;
  - (xi) audit reports prepared as part of any Independent Audit of the Project and the Proponent's response to the recommendations in any audit report;
  - (xii) any other matter required by the Planning Secretary; and
- (b) keep such information up to date, to the satisfaction of the Planning Secretary.

#### **Appendix**



34. Delete Appendix A and replace as follows:

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APPENDIX A

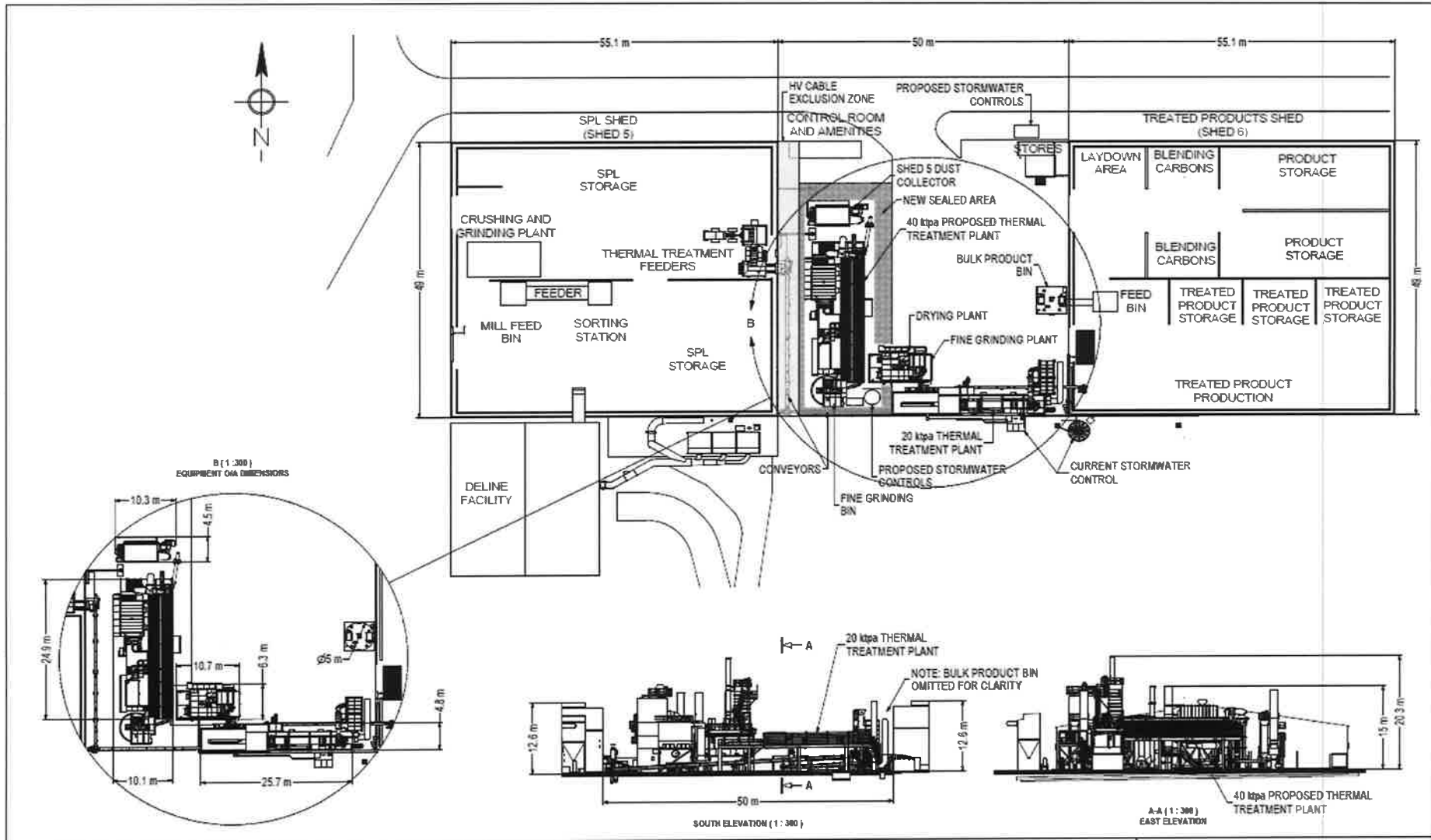


Figure 1: Conceptual Site Layout

35. Insert new heading and Appendix B as follows:

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## APPENDIX B - INCIDENT NOTIFICATION AND REPORTING REQUIREMENTS

### WRITTEN INCIDENT NOTIFICATION REQUIREMENTS

1. A written incident notification addressing the requirements set out below must be emailed to the Department at the following address: [compliance@planning.nsw.gov.au](mailto:compliance@planning.nsw.gov.au) within seven days after the Applicant becomes aware of an incident. Notification is required to be given under this condition even if the Applicant fails to give the notification required under condition 27 or, having given such notification, subsequently forms the view that an incident has not occurred.
2. Written notification of an incident must:
  - a. identify the development and application number;
  - b. provide details of the incident (date, time, location, a brief description of what occurred and why it is classified as an incident);
  - c. identify how the incident was detected;
  - d. identify when the applicant became aware of the incident;
  - e. identify any actual or potential non-compliance with conditions of consent;
  - f. describe what immediate steps were taken in relation to the incident;
  - g. identify further action(s) that will be taken in relation to the incident; and
  - h. identify a project contact for further communication regarding the incident.

### INCIDENT REPORT REQUIREMENTS

3. Within 30 days of the date on which the incident occurred or as otherwise agreed to by the Planning Secretary, the Applicant must provide the Planning Secretary and any relevant public authorities (as determined by the Planning Secretary) with a detailed report on the incident addressing all requirements below, and such further reports as may be requested.
4. The Incident Report must include:
  - a. a summary of the incident;
  - b. outcomes of an incident investigation, including identification of the cause of the incident;
  - c. details of the corrective and preventative actions that have been, or will be, implemented to address the incident and prevent recurrence; and
  - d. details of any communication with other stakeholders regarding the incident.