



Hydro Aluminium Kurri Kurri Smelter Remediation Modification 2

State Significant Development Modification Assessment
(SSD-6666-Mod-2)

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Glossary

Abbreviation	Definition
Council	Cessnock City Council
Department	Department of Planning and Environment (DPE)
EPA	Environment Protection Authority
EP&A Act	<i>Environmental Planning and Assessment Act 1979</i>
EP&A Regulation	Environmental Planning and Assessment Regulation 2000
EPBC Act	<i>Environment Protection and Biodiversity Conservation Act 1999</i>
EPL	Environment Protection Licence
LEP	Local Environmental Plan
Minister	Minister for Planning and Homes
PAD	Potential Archaeological Deposit
Planning Secretary	Secretary of the Department
RAP	Remedial Action Plan
RWEMP	Remediation Works Environmental Management Plan
SEARs	Planning Secretary's Environmental Assessment Requirements
SEPP	State Environmental Planning Policy
SRD SEPP	State Environmental Planning Policy (State and Regional Development) 2011
VPA	Voluntary Planning Agreement

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1 Introduction

This report provides the NSW Department of Planning and Environment's (the Department's) assessment of an application to modify the State significant development (SSD) consent for the Hydro Aluminium Kurri Kurri Smelter Remediation Project (SSD-6666) (the project). The modification application seeks consent to:

- reduce the vegetation clearance area and reduce the biodiversity credit requirements as described in condition B41
- remove the designation of the northern area east of the Clay Borrow Pit (known as Hydro PAD 1 (37-6-3872)), as a potential archaeological deposit (PAD) and remove condition B38 from the development consent
- remediate the material located within the former PAD area.

The modification application was lodged on 5 October 2021 by Hydro Aluminium Kurri Kurri Pty Ltd (the Applicant) pursuant to section 4.55(1A) of the *Environmental Planning and Assessment Act 1979* (EP&A Act).

1.1 Background

The Applicant owns the former Hydro Kurri Kurri Aluminium Smelter at Hart Road, Loxford (the site) in the Cessnock local government area. Most of the former smelter infrastructure was demolished in accordance with a 2018 approval from Cessnock City Council, with only a few buildings remaining onsite.

The SSD-6666 development involves remediation of the smelter site to enable the Applicant to redevelop the site to provide for employment generating uses. The remediation involves excavation of hazardous smelter waste and its placement in a purpose-built containment cell in accordance with the design specifications, criteria and requirements detailed in a Remedial Action Plan (2018 RAP) and a Containment Cell Detailed Design Report (CCDDR), to the satisfaction of the Site Auditor. To ensure robust verification and checks are in place, a Validation Consultant has been appointed to confirm the remediation works comply with the 2018 RAP. A range of robust management plans have been approved, including a Remediation Works Environmental Management Plan (RWEMP), which includes a Soil and Water Management Plan (SWMP), an Aboriginal Heritage Management Plan (AHMP) and a Biodiversity Management Plan (BMP). Financial and ongoing management arrangements are set out in a Voluntary Planning Agreement (VPA) to ensure adequate funding is available for management and monitoring of the containment cell in the long-term.

The original approval for the development involved the removal of 2.5 hectares (ha) of Endangered Ecological Communities (EEC), including some koala feed trees. To offset the impact on the EEC and threatened flora and fauna species, the Applicant is required to retire a total of 155 ecosystem and 582 species credits prior to clearing for remediation works.

During assessment of the original approval, Hydro PAD 1 was identified as an area of high archaeological sensitivity. The existing conditions of consent require the Applicant to prepare an unexpected finds protocol (UFP) for Hydro PAD 1, and ensure any stockpiles are placed on geo-matting in this area.

1.2 The Site

The site is located approximately three kilometres (km) north of the township of Kurri Kurri and 10 km south of Maitland in the Cessnock LGA. The former smelter covers around 80 ha of land and is surrounded by buffer lands which were established to restrict uses, other than industrial, from being located close to the smelter site (see **Figure 1**). The site includes several parcels of land, legally described as, Lots 318, 319, 411, 412, 413, 414, 420 and 769 on Deposited Plan (DP) 755231, Lots 1, 2 and part of Lot 3 on DP 456769 and part of Lot 16 on DP 1082775.

Access to the site is from Hart Road, which connects to the Hunter Expressway approximately 380 m south of the site.

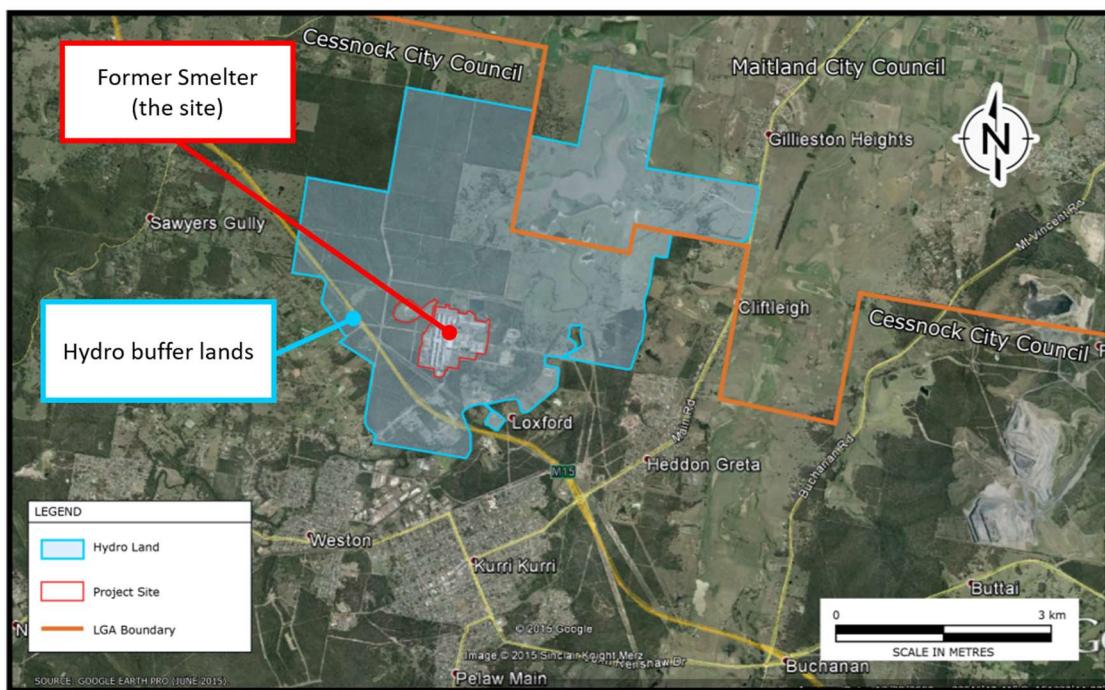


Figure 1 | Local context map

1.3 Approval history

On 23 December 2020, development consent was granted by the then Executive Director, Energy, Industry and Compliance, under delegation from the then Minister for Planning and Public Spaces, for the Hydro Aluminium Kurri Kurri Smelter Remediation (SSD-6666).

The development consent includes the following conditions relevant to the modification application:

- Condition B38
- Condition B41

The development consent has been modified on one occasion (see **Table 1**).

Table 1 | Summary of Modifications

Mod No.	Summary of Modifications	Approval Authority	Type	Approval Date
MOD 1	The construction, operation and decommissioning of a Temporary Water Treatment Plant	Department	s.4.55(1A)	13 September 2021
MOD 2	This modification	Department	s.4.55(1A)	Under Assessment

2 Proposed modifications

2.1 Proposed Modification

The Applicant has lodged a modification application under section 4.55(1A) of the EP&A Act to modify SSD-6666. The modification is described in full in the Statement of Environmental Effects included in **Appendix A** and is illustrated on **Figure 2**.

As part of this modification, the Applicant originally proposed to amend the boundary of the lands relating to SSD-6666. However, in response to issues raised by the Department regarding the Applicant's obligations under the 2018 RAP, RWEMP, and VPA, the Applicant has reduced the scope of the modification by removing the amendment to the project boundary.

The modification now seeks to:

- reduce the size of the native vegetation clearance area around the Clay Borrow Pit (site of the future containment cell) and consequently revise the biodiversity credit requirements described in Condition B41
- remove the designation of the Hydro PAD 1 as a PAD area of high archaeological sensitivity and delete Condition B38
- remediate a portion of the PAD area covered by Condition B38 in accordance with the methodology in the 2018 RAP.

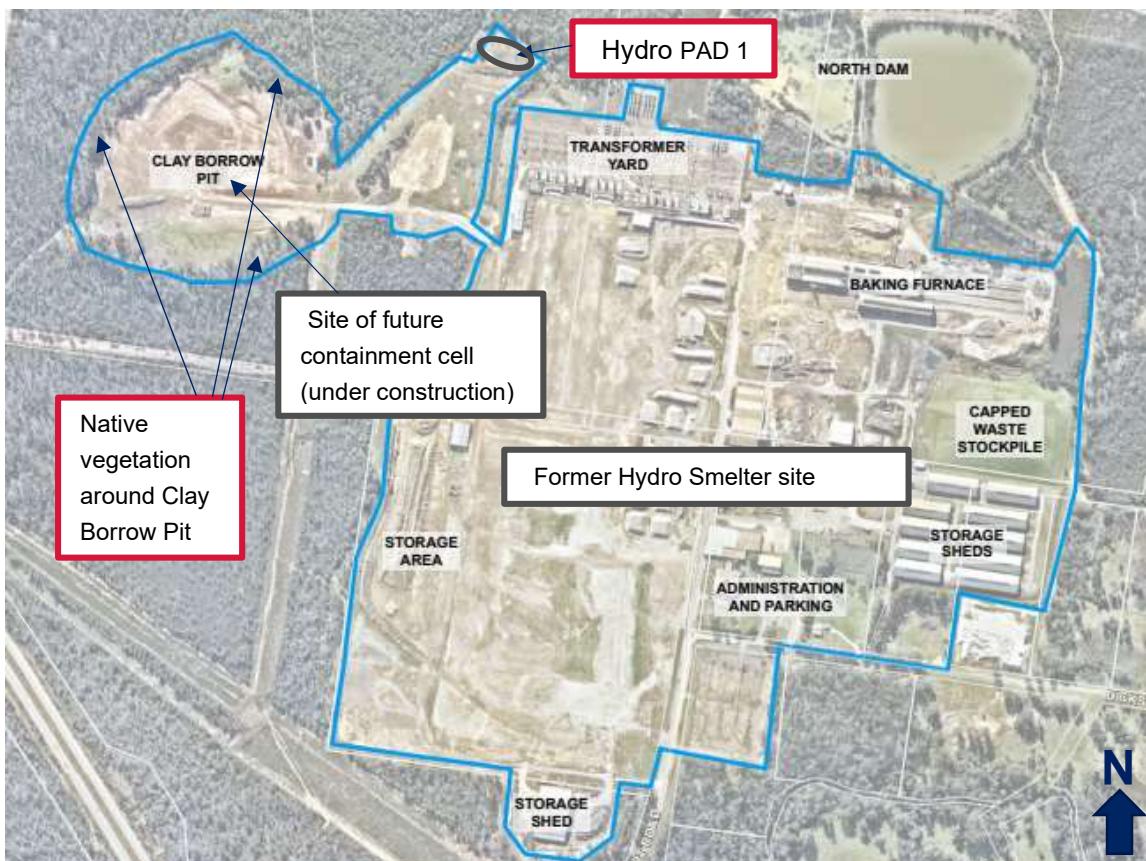


Figure 2 | Proposed modification

2.2 Area of Vegetation Clearance

The area of native vegetation clearance approved under SSD 6666 comprises 2.5 ha of land surrounding the future containment cell. The ecological assessment prepared for the original project detailed the potential impact of this vegetation clearance on biodiversity values and calculated the biodiversity credits required to offset the impacts in accordance with the Biobanking Assessment Methodology (BBAM) (OEH 2014). The project was not deemed to be a controlled action under the Commonwealth Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act). The biodiversity credit requirements for the project are detailed in Condition 41 of SSD 6666 (see **Error! Reference source not found.**).

Since approval of the project, the remediation contractor has advised a smaller disturbance footprint can be achieved for works around the containment cell and therefore only 1.53 ha of vegetation needs to be cleared. With the reduction in clearing, there would be a reduction in the number of threatened flora affected as well as a reduction in the area of threatened fauna habitat impacted. To reflect this, a revised biobanking assessment recalculated the biodiversity credits required.

During the biodiversity credit recalculation it was noted an error had occurred during the ecological assessment prepared for the original project, which had concluded that 14.23 ha of habitat for the Southern Myotis would be removed during remediation works. The correction of this error was included in this modification and the Southern Myotis area of impact was revised to 0.4 ha, with a corresponding reduction in the number of species credits from 313 to 9.

Overall, the modification results in a reduction in the requirements for both ecosystem and species credits, as summarised in **Error! Reference source not found.**

Table 2 | Overview of vegetation area and biodiversity credits

Description	Approved area of impact	Revised area of impact	Approved credits to be retired - Condition 41	Revised credits to be retired
Ecosystem		Ecosystem Credits		
Parramatta Red Gum - Narrow Leaved Apple Prickly leaved Paperbark Shrubby Woodland in the Cessnock Kurri Kurri Area	1.35 ha	0.97 ha	94	68
Spotted Gum-Red Ironbark Narrow leaved Ironbark - Grey Box Shrub grass Open Forest of the Lower Hunter	1.15 ha	0.56 ha	61	30
TOTAL	2.5 ha	1.53 ha	155	98
Species		Species Credits		

Description	Approved area of impact	Revised area of impact	Approved credits to be retired - Condition 41	Revised credits to be retired
Green-thighed frog	1.46	0.56	19	5
Koala	1.35	0.97	35	25
Southern Myotis	14.23	0.4	313	9
Regent Honeyeater	1.15	0.56	89	43
Eucalyptus parramattensis subsp. decadens	-	-	56	14
Small-flower Grevillea	-	-	70	0
TOTAL			582	96

2.3 Area of High Archaeological Significance

2.3.1 Reclassification of Hydro PAD 1 and deletion of Condition B38

The 2015 Aboriginal cultural heritage assessment report (ACHAR) for the project identified the 0.24 ha Hydro PAD 1 as an area of high archaeological sensitivity (see **Figure 3**). Research suggested this area had retained a moderate degree of ground integrity and the ACHAR therefore recommended Hydro PAD1 should, in the event of its use for stockpiling, be protected through geo-matting. This recommendation was subsequently formalised in Condition B38 and included as a management measure in the project's AHMP.

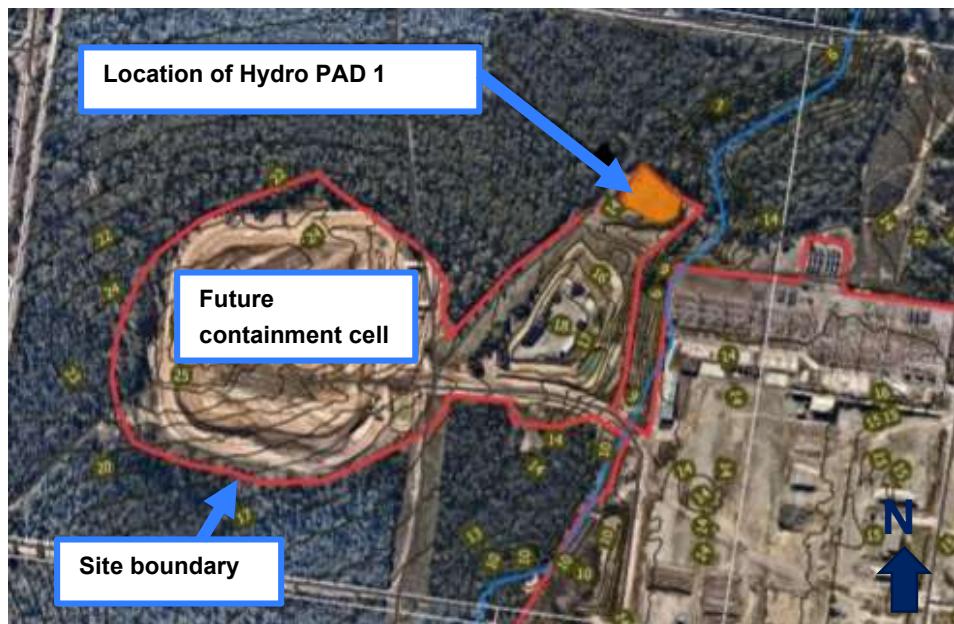


Figure 3 | Location of Hydro PAD 1

During contamination investigations across the site in 2020 and 2021, it was found that land within the Hydro PAD 1 was actually disturbed by earthworks (excavation and filling) around 1983, resulting in complete loss of potential artefact-bearing soils. Consequently, the Applicant finds the Hydro PAD 1 area should no longer be classified as a PAD of high archaeological sensitivity.

On these grounds the Applicant seeks to delete Condition 38, as Hydro PAD 1 no longer requires protection by geo-matting during remediation works.

2.3.2 Remediation of the Hydro PAD 1 area

Hydro PAD 1 was included in a 2021 data gap assessment completed to assess the areas of environmental concern that were not sampled as part of the Phase 2 Environmental Site Assessment (ESA) and Phase 2 ESA Additional Investigations for the project. The Hydro PAD 1 area was found to contain fill material, including some contaminated materials and the modification therefore proposes this area be remediated. The remediation of former Hydro PAD 1 would be undertaken in accordance with the remediation works outlined in the 2018 RAP and the RWEMP.

Machinery (excavators and loaders) involved in the broader remediation works would be used for the excavation, loading and transportation of the excavated material. It is estimated the remediation of Hydro PAD 1 would require:

- excavation of an area approximately 23 m in diameter to a minimum depth of 1.8m below ground level
- excavation of approximately 774 m³ of heavy metal and PAH impacted material to be placed in the containment cell

The lateral and vertical extent of the contaminated material would be confirmed through delineation works that would be completed prior to the commencement of remediation. Validation sampling following remedial excavation works would confirm completion of remediation, in accordance with the approval for the project, with ultimate sign-off provided by the Site Auditor.

Excavated material would be either reused onsite for excavated areas, where deemed suitable, or disposed of in the contaminant cell if unsuitable for reuse.

2.4 Applicant's Justification for the Proposed Modification

The Applicant has justified the need for the modification as it would:

- result in improvements to biodiversity outcomes due to reduced vegetation clearance.
- allow remediation of a contaminated area that would previously have remained due to incorrect designation as an area of high archaeological sensitivity.

3 Statutory Context

3.1 Scope of Modifications

The Department has reviewed the scope of the modification application and considers the application can be characterised as a modification involving minimal environmental impacts as the proposal:

- would not increase the environmental impacts of the project as approved
- the primary function and purpose of the approved development would not change as a result of the proposed modification
- any potential environmental impacts would be minimal and appropriately managed through the existing or modified conditions of consent
- the modification is of a scale that warrants the use of section 4.55(1A) of the EP&A Act.
- is substantially the same development as originally approved
- would not involve any further disturbance outside the already approved disturbance areas for the project.

Therefore, the Department is satisfied the proposed modification is within the scope of section 4.55(1A) of the EP&A Act and does not constitute a new development application. Accordingly, the Department considers that the application should be assessed and determined under section 4.55(1A) of the EP&A Act rather than requiring a new development application to be lodged.

3.2 Consent Authority

The Minister for Planning and Homes (the Minister) is the consent authority for the application under section 4.5(a) of the EP&A Act. Under the Minister's delegation of 26 April 2021, the Director, Industry Assessments, may determine the application under delegation as:

- the application has not been made by a person who has disclosed a reportable political donation under section 10.4 of the EP&A Act
- there are fewer than 15 public submissions (other than a council) in the nature of objections, and
- Council has not made a submission by way of objection under the mandatory requirements for community participation listed under Schedule 1 of the EP&A Act.

3.3 Mandatory Matters for Consideration

The Department undertook a comprehensive assessment of the application against the mandatory matters for consideration as part of the original assessment of SSD-6666. This modification application does not result in significant changes that would alter the Department's consideration of the mandatory matters for consideration under section 4.15(1) of the EP&A Act and conclusions made as part of the original assessment.

3.4 Biodiversity Conservation Act 2016

Section 7.17 of the BC Act specifies that if the determining authority is satisfied a modification will not increase the impact on biodiversity values, a biodiversity development assessment report (BDAR) is not required.

Given vegetation clearance would be reduced, the Department is satisfied there will be no additional clearing of native vegetation or habitat loss beyond that previously assessed and considered under SSD-6666. Although consideration has been given to the biodiversity impacts of the modification, for the reasons discussed above, the Department's assessment concludes a complete BDAR is not necessary for the proposed modification.

4 Engagement

4.1 Department's Engagement

Clause 117(4) of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation) requires a section 4.55(1A) modification application to be notified or advertised if specified by a community participation plan. The Department's Community Participation Plan notes the exhibition requirements for such modifications are discretionary, and based on the urgency, scale and nature of the proposal.

Given the proposed changes would result in minimal environmental impacts (see **Section 5**), the application was not notified or advertised. However, it was made publicly available on the Department's website on 7 October 2021 and was referred to Cessnock City Council, Heritage NSW, EPA, DPE – Water group and DPE – Biodiversity and Conservation Division (BCD) for comment.

4.2 Government Advice

Council did not object however requested caution in respect to uncovering of Aboriginal relics. Council also requested the 2018 RAP be updated to reflect the proposed additional material, and that works be undertaken in accordance with the relevant construction management plans and RAP.

EPA did not object but requested the soil investigation/validation and remediation works be completed as per the RWEMP, the 2018 RAP and Section 8.6 of the Environmental Impact Statement (EIS). EPA advised that any contaminated material awaiting placement in the containment cell should be managed appropriately to prevent leachate pollution of water.

BCD did not object and requested reassessment of impacts on koalas and recalculation of the 'species credit' obligation for the remaining impacted koala habitat.

DPE – Water did not object and had no comments.

Heritage NSW did not object and had no comments.

The Department requested additional information, including the full implications of each component of the modification in terms of the Applicant's obligations under the RAP, RWEMP, VPA and the conditions of consent for SSD-6666 (as applicable).

4.3 Response to Government Advice

On 4 January 2022, the Applicant submitted a response to the issues raised by the agencies. The response was made publicly available on the Department's website and referred to BCD for comment.

In response to BCD's request, a revised Biodiversity Assessment was provided which recalculated the species credits for koalas and their habitat. This resulted in the requirement to retire 25 species credits to offset impacts to 0.97 ha of potential Koala habitat. BCD advised it was satisfied with the information provided.

4.4 Response to the Department

In response to issues raised by the Department, the Applicant removed the amendment to the project boundary. The Applicant also noted that evidence of remediation would include a Remediation Validation Report and a Site Audit Report and Site Audit Statement prepared by the Site Auditor. The RWEMP would be amended to reflect the modification, if approved, particularly to ensure any additional remediation is consistent with the RWEMP, the RAP and the EIS.

During the assessment the Department also requested clarification regarding the clearance area of Southern Myotis habitat. The Applicant confirmed this had been an error in the original application.

5 Assessment

The Department has assessed the merits of the proposed modification. During this assessment, the Department has considered the:

- the SEE and RTS provided to support the proposed modification (see **Appendix A**)
- the documentation and Department's assessment report for the original development application and subsequent modification application(s) (see **Appendix A**)
- submissions from State government agencies and Council (**Appendix A**)
- relevant environmental planning instruments, policies, and guidelines
- requirements of the EP&A Act, including the objects of the EP&A Act.

The Department's assessment of issues is provided in **Table 2**.

5.1 Assessment Issues

Table 2 | Assessment of Issues

Findings	Recommendations
<p>Biodiversity</p> <ul style="list-style-type: none">• To reflect the net reduction in vegetation clearing from 2.5 ha to 1.53 ha, the Applicant provided a Biodiversity Assessment (BA) report that recalculated the biodiversity credits required to offset the revised impacts.• The BA calculated a reduction in total ecosystem credits required from 155 to 98 and species credits from 582 to 71.• BCD requested reassessment of the impacts on koalas and in December 2021 a revised the BA report was provided showing 25 species credits would be required to offset impacts to 0.97 ha of potential Koala habitat.• BCD had no further comments. Details of the final revised biodiversity credits are shown in Error! Reference source not found.• The Department has reviewed the information provided and considers the modification would have a positive impact on biodiversity values compared to the original approval, as it would result in a reduction in native vegetation clearance.• Noting BCD was satisfied with the revised credit offsets, the Department concludes recalculations of biodiversity credits is justified and recommends amendment of Condition 41 to reflect	Amendment to Condition B41 to reflect recalculated biodiversity credit requirements

Findings	Recommendations
<p>the ecosystem and species credit requirements shown in the December 2021 BA report.</p>	
<p>Aboriginal Cultural Heritage</p>	
<ul style="list-style-type: none"> The modification involves the reclassification of the area north east of the Clay Borrow Pit (Hydro PAD 1) as the area has been found to have negligible potential for subsurface Aboriginal archaeological deposits. The Applicant prepared an addendum ACHAR which included consultation with 34 Registered Aboriginal Parties (Registered APs). Eleven Registered APs responded to the consultation and all agreed with the Applicant's conclusion that the Hydro PAD 1 site has negligible Aboriginal heritage value and its status as a PAD is no longer valid. Heritage NSW had no comments on the addendum ACHAR. Council did not object however requested caution in respect to future uncovering of Aboriginal relics. The Applicant has since lodged a request with the Aboriginal Heritage Information Management System (AHIMS) Registrar to have the status of Hydro PAD 1 changed to 'Not a Site'. Confirmation of the change of AHIMS register status was received on 26 October 2021. The Department notes the Applicant prepared an AHMP as part of the original development which includes an unexpected finds protocol (UFP) to be implemented in the event potential Aboriginal relics are unearthed on the site. The Department is therefore satisfied the AHMP and the UFP are sufficient to adequately protect any potential Aboriginal relics. The Department has reviewed the outcomes of the addendum ACHAR and the consultation with Registered APs, Heritage NSW and Council and is satisfied it is appropriate the designation of the Hydro PAD 1 as a PAD of high archaeological sensitivity be removed. With the change to designation, the requirements of Condition B38 are no longer required and the Department recommends it be deleted. 	<p>Removal of Condition B38</p>

Findings	Recommendations
<p>Remediation of area east of Clay Borrow Pit (former Hydro PAD 1)</p> <ul style="list-style-type: none"> Hydro PAD 1 was previously not considered for remediation due to its status of high archaeological sensitivity. Further investigation has shown the area contains fill and some contaminated materials and requires remediation to make it suitable for future uses. Remediation would be completed in accordance with the methodology of the 2018 RAP and the RWEMP. The RWEMP would be amended to reflect the removal of the designation of Hydro PAD 1 and the proposed remediation activities in this area. The Applicant considered a range of impacts of the remediation, including air quality, soil and water, noise and vibration, waste, traffic and visual. This assessment concluded there would be no additional impacts beyond those of the original approval. The Applicant did not propose any additional mitigation measures except for update of the SWMP to include the area of the former Hydro PAD 1. The EPA did not object to remediation of the area, and required the relevant remediation works to be completed consistent with the 2018 RAP, the RWEMP and the EIS. Council required the Applicant to take caution and cease works should any Aboriginal relics be uncovered. The Department requested clarification of what evidence would be provided to demonstrate remediation has been satisfactorily completed. The Applicant advised evidence would be provided consistent with the remainder of the Project site, and as described in conditions B10, B11 and B12 of the development consent for SSD 6666. Primary evidence would be a Remediation Validation Report prepared by the Validation Consultant, and an associated Site Audit Report and Site Audit Statement prepared by the Site Auditor. Given the small scale of the remediation of the former Hydro PAD 1 area in terms of the overall remediation works, the Department is satisfied any impacts of its remediation could be satisfactorily managed by the existing conditions of consent and relevant updates to management plans, including the SWMP and RWEMP. 	<p>No additional conditions are required.</p> <p>Amendment of relevant management plans.</p>

6 Evaluation

The Department has assessed the proposed modification in accordance with the relevant requirements of the EP&A Act.

The Department considers the proposed modification is appropriate on the basis that:

- the proposed modification will result in minimal environmental impacts beyond the approved facility
- the removal of the classification of the area previously designated as a potential archaeological deposit will allow for the remediation of that area.
- the proposed modification will lead to a reduction in native vegetation clearing

The Department is satisfied that the modification should be approved, subject to conditions.

7 Recommendation

It is recommended that the Director Industry Assessments, as delegate of the Minister for Planning and Homes:

- **considers** the findings and recommendations of this report
- **determines** that the application SSD-6666-Mod-2 falls within the scope of section 4.55(1A) of the EP&A Act
- **forms the opinion** under section 7.17(2)(c) of the *Biodiversity Conservation Act 2016* that a BDAR is not required to be submitted with this application as the application will not increase the impact on biodiversity values on the site
- **accepts and adopts** all of the findings and recommendations in this report as the reasons for making the decision to approve the modification
- **modify** the consent SSD-6666
- **signs** the approval of the modification (**Appendix B**).

Recommended by:



Zoe Halpin
Planning Officer
Industry Assessments

Recommended by:



Sheelagh Laguna
Principal Planning Officer
Industry Assessments

8 Determination

The recommendation is **Adopted** by:



04/03/2022

Chris Ritchie

Director

Industry Assessments

as delegate of the Minister for Planning and Homes

Appendices

Appendix A – List of Documents

The Department has relied upon the following key documents during its assessment of the modification:

Modification Application

- 'Hydro Remediation Project' Modification 2 to SSD 6666 – Project Boundary and Aboriginal Heritage Amendments' prepared by Ramboll Australia Pty Ltd, dated 7 September 2021 - <https://www.planningportal.nsw.gov.au/major-projects/project/42041>

Submissions and Advice

- <https://www.planningportal.nsw.gov.au/major-projects/project/42041>

Response to Request for Information

- 'Hydro Kurri Kurri Aluminium Smelter Remediation-Modification 2 (SSD-6666-Mod-2): Response to Agencies' Comments' prepared by Ramboll Australia Pty Ltd dated 4 January 2022 - <https://www.planningportal.nsw.gov.au/major-projects/project/42041>

Department's Assessment Report for SSD-6666

- <https://www.planningportal.nsw.gov.au/major-projects/project/42041>

Appendix B – Notice of Modification

- <https://www.planningportal.nsw.gov.au/major-projects/project/42041>

Appendix C – Consolidated Consent

- <https://www.planningportal.nsw.gov.au/major-projects/project/42041>