



Hydro Aluminium Kurri Kurri Smelter Remediation



*State Significant
Development Assessment
(SSD 6666)*



December 2020

© Crown Copyright, State of NSW through its Department of Planning, Industry and Environment 2020

Cover photo

Kurri Kurri Smelter Archival Revival Historic Image, Newcastle Herald, November 2013

(<https://www.newcastleherald.com.au/story/1935747/archival-revival-kurri-kurri-smelter/#slide=1>)

Disclaimer

While every reasonable effort has been made to ensure this document is correct at time of printing, the State of NSW, its agents and employees, disclaim any and all liability to any person in respect of anything or the consequences of anything done or omitted to be done in reliance or upon the whole or any part of this document.

Copyright notice

In keeping with the NSW Government's commitment to encourage the availability of information, you are welcome to reproduce the material that appears in Hydro Aluminium Kurri Kurri Smelter Remediation State Significant Development Assessment (SSD 6666). This material is licensed under the Creative Commons Attribution 4.0 International (CC BY 4.0). You are required to comply with the terms of CC BY 4.0 and the requirements of the Department of Planning, Industry and Environment. More information can be found at: <http://www.planning.nsw.gov.au/Copyright-and-Disclaimer>.



Glossary

Abbreviation	Definition
AEC	Area of Environmental Concern
AHIMS	Aboriginal Heritage Information Management System
Applicant	Hydro Aluminium Kurri Kurri Pty Ltd
AQIA	Air Quality Impact Assessment
CBP	Clay Borrow Pit
CCO	<i>Chemical Control Order in relation to Aluminium Smelter Wastes Containing Fluoride and/or Cyanide 1986</i>
CCDDR	Containment Cell Detailed Design Report
CIV	Capital Investment Value
Consent	Development Consent
Council	Cessnock City Council
CWS	Capped Waste Stockpile
Department	Department of Planning, Industry and Environment (NSW)
DPI	Department of Primary Industries (NSW)
EHC Act	<i>Environmentally Hazardous Chemicals Act 1985</i>
EIS	Environmental Impact Statement titled <i>Environmental Impact Statement Former Hydro Aluminium Kurri Kurri Smelter Demolition and Remediation</i> , prepared by Ramboll Environ, dated 14 July 2016
EPA	New South Wales Environment Protection Authority
EP&A Act	<i>Environmental Planning and Assessment Act 1979 (NSW)</i>
EP&A Regulation	<i>Environmental Planning and Assessment Regulation 2000</i>
EPBC Act	<i>Environment Protection and Biodiversity Conservation Act 1999 (Commonwealth)</i>
EPI	Environmental Planning Instrument
EPL	Environment Protection Licence
ESD	Ecologically Sustainable Development
LEP	Local Environmental Plan
LTEMP	Long Term Environmental Management Plan
MCC	Maitland City Council
Minister	Minister for Planning and Public Spaces
PAEC	Potential Area of Environmental Concern
PAHs	Polycyclic Aromatic Hydrocarbons

Abbreviation	Definition
Planning Secretary	As defined in section 1.4 of the EP&A Act
RAP	Remediation Action Plan
(former) RMS	former Roads and Maritime Services (now part of TfNSW)
RFS	Rural Fire Service
RtS	Response to Submissions titled <i>Response to Submissions Report Former Hydro Aluminium Kurri Kurri Smelter Remediation</i> , prepared by Ramboll, dated 21 August 2020
SEARs	Planning Secretary's Environmental Assessment Requirements
SEPP	State Environmental Planning Policy
SRD SEPP	<i>State Environmental Planning Policy (State and Regional Development) 2011</i>
SSD	State Significant Development
TfNSW	Transport for New South Wales



Executive Summary

Introduction

Hydro Aluminium Kurri Kurri Pty Ltd (the Applicant) proposes to remediate the former Hydro Aluminium Smelter in Loxford in the Cessnock local government area. The Applicant proposes to excavate hazardous wastes from the site and place them in a purpose-built containment cell. The works are required to make the land suitable for future industrial uses.

This report details the Department of Planning, Industry and Environment's (the Department) assessment of the State significant development application (SSD 6666) for the Hydro Aluminium Kurri Kurri Smelter Remediation.

The Development

The Hydro Aluminium Smelter commenced operation in 1969 producing aluminium products for over 40 years. The Applicant purchased the smelter and 2,000 hectares of surrounding buffer land in 2002 and operated the smelter until it closed in 2014.

Wastes from the aluminium smelting process, including spent potlining (SPL) wastes, were stockpiled on the site from the early 1970's. The waste stockpile contains 327,000 tonnes of hazardous waste and includes contaminants such as cyanide and fluoride. The waste material was uncovered for 20 years, resulting in contaminants leaching into the underlying groundwater extending into the buffer lands. The waste stockpile was covered in 1995 and measures were put in place to prevent further leaching and migration of contaminated groundwater.

The Applicant is seeking to redevelop the smelter site and some of the buffer lands to enable redevelopment of the site for a range of uses. A Planning Proposal to rezone the land is currently under assessment with Cessnock City Council. The main smelter infrastructure has now mostly been demolished and the Applicant has undertaken detailed contamination studies of the remaining waste and contaminated soils. The Applicant now proposes to remediate the land to make it suitable for future land uses.

The proposed development (the development) involves remediating the contaminated waste stockpile, groundwater plume and other contaminated soils across the site. The materials would be placed in a purpose-built containment cell in the western part of the site with capacity for 345,000 tonnes of waste. Some materials would be treated before emplacement to immobilise the contaminants. Contaminated groundwater would be treated in an on-site water treatment plant. The remediation works would be validated and independently audited and the containment cell would be managed in perpetuity. The development is described in detail in a Remediation Action Plan (RAP) submitted with the SSD application.

The development has a capital investment value of \$22 million and would generate 50 jobs during remediation. The Applicant would contribute a further \$6.5 million to fund the long-term management of the containment cell and would provide a series of bank guarantees totalling over \$30 million and insurances for construction and long-term maintenance. The remediation works would take nearly 3 years to complete.

Statutory Context

The development is classified as a State Significant Development (SSD) in accordance with section 4.36 of the *Environmental Planning and Assessment Act 1979* (EP&A Act) as it is defined as a hazardous waste facility that stores more than 1,000 tonnes per year of waste classified in the Australian Dangerous Goods Code. This meets the criteria in Clause 23(5) of Schedule 1 in the State Environmental Planning Policy (State and Regional Development) 2011 (SRD SEPP). Consequently, the Minister for Planning and Public Spaces (the Minister) is the consent authority for the development under section 4.5(a) of the EP&A Act.

Engagement

The Department exhibited the Environmental Impact Statement (EIS) for the development from 11 August 2016 until 12 September 2016. The Department received a total of 24 submissions during the exhibition period, including 11 from government agencies, 3 from special interest groups and 10 from private businesses and community members. Of the 13 public submissions, 5 objected to the development.

Key concerns raised related to the containment cell design and long-term management, air quality and human health, noise, traffic, biodiversity impacts and water and waste management. The Environment Protection Authority (EPA) raised concerns about the proposed treatment of contaminated material before emplacement within the cell and questioned the financial arrangements for long-term management. Cessnock City Council requested clarification on environmental and amenity impacts and the implications of the containment cell on the proposed rezoning of the land.

The Applicant provided three Response to Submissions (RTS) reports in 2018, 2019 and 2020 and met with key agencies to address the issues raised. The Applicant undertook further detailed studies to finalise the proposed treatment method for SPL wastes to meet the requirements of the EPA and relevant legislation for environmentally hazardous chemicals.

The Department and the Applicant have consulted extensively on the long-term management arrangements for the containment cell. The Department engaged two independent experts to assist in reviewing the containment cell design, proposed treatment method and financial modelling for long-term maintenance. This process resulted in the preparation of a Voluntary Planning Agreement (VPA) between the Minister and the Applicant, setting out the obligations and financial arrangements for long-term management of the cell.

Following reviews of the RTS reports and the extensive consultation process undertaken, relevant government agencies recommended conditions for the development.

Assessment

The Department's assessment of the application has considered all relevant matters under Section 4.15 of the EP&A Act, including the objects of the Act and the principles of ecologically sustainable development. The Department identified the key issues for assessment as the remediation approach, long-term management of the waste and human health.

Remediation Approach

The remediation approach, including the proposed treatment of contaminated wastes, treatment and management of groundwater and design of the containment cell, was reviewed by the Department's independent expert (Senversa) and the Site Auditor. The containment cell would be a 'dry tomb', with rainwater prevented from infiltrating through the cap and generating contaminated leachate. The Department concludes the site could be made suitable for future industrial land uses subject to successful implementation of the RAP. The EPA was also satisfied with the proposed treatment method for contaminated wastes and groundwater and the design of the containment cell.

Long-Term Management

As the development would retain up to 345,000 tonnes of hazardous waste in a purpose-built containment cell on the site, there was a need to provide for long-term monitoring, maintenance and funding to ensure there is no on-going risk to human health and the environment. To achieve this, a mechanism was developed to facilitate and fund the long-term management of the cell, ensuring financial protection for the government over the long-term.

As a result of extensive consultation with the Applicant from 2018 to 2020, it was determined that ownership and long-term management of the containment cell would ultimately be transferred to the Waste Assets Management Corporation (WAMC), after an initial 5-year management period by the Applicant. WAMC is a NSW government agency formed to manage and rehabilitate legacy government landfills and other contaminated sites. It currently owns or manages 11 contaminated sites throughout NSW, including the containment cell at the former Pasminco smelter in Boolaroo. WAMC has a range of staff experienced in managing contaminated sites and is well placed to manage the containment cell in perpetuity.

The Department obtained advice from two independent experts. Senversa provided advice about ongoing liabilities and Hall Chadwick provided financial advice on the quantum of funding required for the containment cell in perpetuity. This process resulted in the drafting of a Voluntary Planning Agreement (VPA) to provide a mechanism for long-term management of the cell. The VPA was signed by the Applicant on 11 December 2020. The VPA includes a series of monetary contributions, bank guarantees and insurances that the Applicant must provide at key milestones. These include a \$6.5 million bank guarantee prior to commencing remediation work. A further four bank guarantees totalling \$30 million would also be provided prior to remediation commencing which would be returned in stages subject to meeting certain milestones. A monetary contribution of \$6.5 million would also be provided on completion of the remediation works to fund long-term management. A further \$1 million bank

guarantee (provided once remediation is completed) would be held for the initial 5-year management period by the Applicant.

The value of the monetary contributions and bank guarantees exceeds the total cost of the works, thereby minimising the financial risks to government. These mechanisms have been put in place to ensure the remediation works are completed successfully and are independently verified at key milestones, including cell construction, filling and final capping. The VPA also establishes the insurances the Applicant must obtain for the cell to cover both repair of the cell in the event of its failure and clean-up of any pollution caused by the cell failure. Insurance cover of up to \$10 million is required for a period of 10 years following transfer of cell ownership to WAMC.

The VPA also establishes a 5-year management period by the Applicant, requiring implementation of a Long-Term Environmental Management plan to monitor the integrity and environmental performance of the containment cell. At the end of the 5-year management period, the Applicant would transfer ownership of the cell to WAMC following independent verification of cell integrity, would create an access easement for on-going maintenance and register the VPA on the land title.

The Department is satisfied the arrangements negotiated in the VPA are appropriate to ensure the long-term environmental risks from the development are minimised and a strong framework is in place for perpetual care of the containment cell. Sufficient funding (\$6.5 million) would be available to WAMC to undertake its cell management duties in perpetuity, minimising financial risks to the government, and the expertise and experience of WAMC would ensure the site is effectively managed into the future.

Human Health

The potential for human health impacts during remediation works is low and the Department concludes the remediation works can be managed to ensure risks to on-site workers and off-site receivers are minimal.

The Department has recommended conditions for remediation and validation, independent reporting by the Site Auditor and long-term environmental management. The conditions also require a Health and Safety Plan and measures to manage water, air quality, gas, noise, traffic and biodiversity.

Summary

Overall, the Department's assessment has concluded the development would remove a long-term source of contamination caused by operation of the aluminium smelter and would enable the Applicant to redevelop the site to provide for employment generating uses.

The recommended conditions would ensure the containment cell is managed in perpetuity to minimise residual risks to the environment over the long term. The financial and management arrangements are set out in a VPA, which would ensure adequate funding is available to maintain the cell and continue on-going monitoring.

The Department's assessment concluded the impacts of the development can be mitigated and managed to ensure an acceptable level of environmental performance, subject to the recommended conditions of consent.

Consequently, the Department considers the development is in the public interest and is recommended for approval, subject to conditions.



Contents

Glossary	iii
Executive Summary	v
1. Introduction	1
1.1 The Department's Assessment	1
1.2 Development Background	2
1.3 Site Description.....	3
1.4 Surrounding Land Uses.....	5
1.5 Planning Proposal	5
1.6 Site Contamination	7
1.7 Remediation Options	8
1.8 Environmentally Hazardous Chemicals.....	8
2. Development.....	9
2.1 Amendments to the Development	9
2.2 Description of the Development	10
2.3 Site Auditor	12
2.4 Applicant's Need and Justification.....	12
3. Strategic Context.....	16
3.1 Hunter Regional Plan 2036	16
3.2 Greater Newcastle Metropolitan Plan 2036.....	16
4. Statutory Context	17
4.1 State Significant Development	17
4.2 Permissibility.....	17
4.3 Consent Authority	17
4.4 Other Approvals.....	17
4.5 Other Relevant Legislation	18
4.6 Considerations under Section 4.15 of the EP&A Act	18
4.7 Environmental Planning Instrument	18
4.8 Public Exhibition and Notification	19

4.9	Objects of the EP&A Act.....	19
4.10	Ecologically Sustainable Development	20
4.11	Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act)	21
5.	Engagement.....	22
5.1	Consultation.....	22
5.2	Summary of Submissions.....	22
5.3	Key Issues – Government Agencies	23
5.4	Key Issues – Community, Special Interest Groups and Private Businesses	23
5.5	Response to Submissions	24
5.6	Application Timeframe.....	25
6.	Assessment	27
6.1	Remediation Approach.....	27
6.2	Long Term Management of the Containment Cell	31
6.3	Human Health.....	34
6.4	Other Issues	36
7.	Evaluation	42
8.	Recommendation	45
9.	Determination	46
	Appendices	47
	Appendix A – List of Documents.....	48
	Appendix B – Relevant Supporting Documents.....	49
	Appendix C – Considerations under Section 4.15 of the EP&A Act.....	51
	Appendix D – Considerations of Environmental Planning Instruments	53
	Appendix E – Recommended Conditions of Consent	56
	Appendix F – Voluntary Planning Agreement.....	57



1. Introduction

1.1 The Department's Assessment

This report details the Department of Planning, Industry and Environment's (the Department) assessment of the State significant development application (SSD 6666) to remediate the former Hydro Aluminium Smelter in Loxford, in the Cessnock local government area (LGA), see **Figure 1**.

The proposed development (the development) involves excavating hazardous waste from the former smelter and placing it in a purpose-built containment cell on the site. The development also involves extraction of contaminated groundwater and long-term management of the containment cell.

The Department has considered all documents submitted by the Applicant (Hydro Aluminium Kurri Kurri Pty Ltd) including the Environmental Impact Statement (EIS) and Response to Submissions (RtS) and considered all submissions on the development. The Department obtained independent advice on technical and financial aspects of the development and worked extensively with key agencies and the Applicant to establish the long-term management arrangements for the containment cell.

The Department's assessment of the application to remediate the former Hydro Aluminium Smelter has concluded the development is in the public interest and should be approved, subject to conditions.

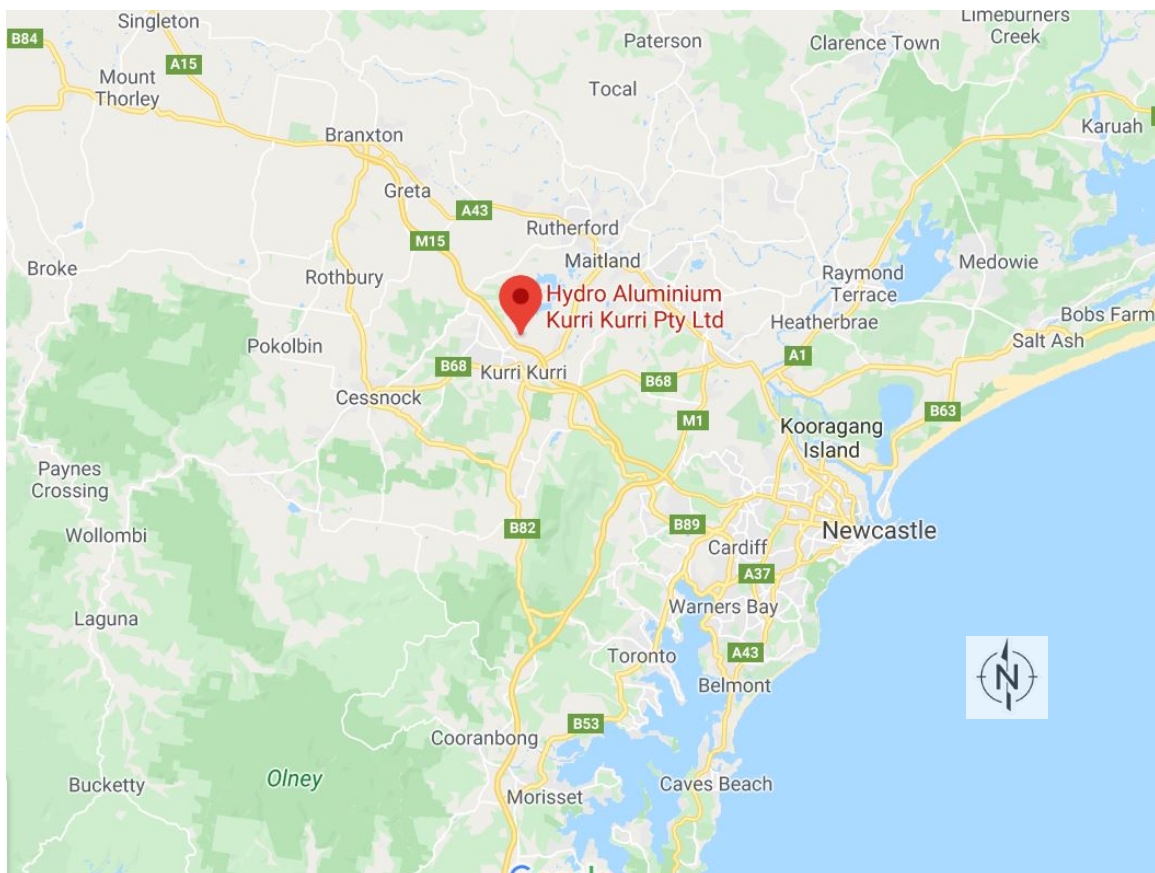


Figure 1 | Regional Location of Hydro Aluminium Smelter

1.2 Development Background

Hydro Aluminium Kurri Kurri Pty Ltd (the Applicant) purchased an operating aluminium smelter in Loxford in 2002, including its surrounding buffer lands covering over 2,000 hectares, see **Figure 2**. The smelter commenced operation in 1969 producing aluminium products for 43 years and was a large regional employer.

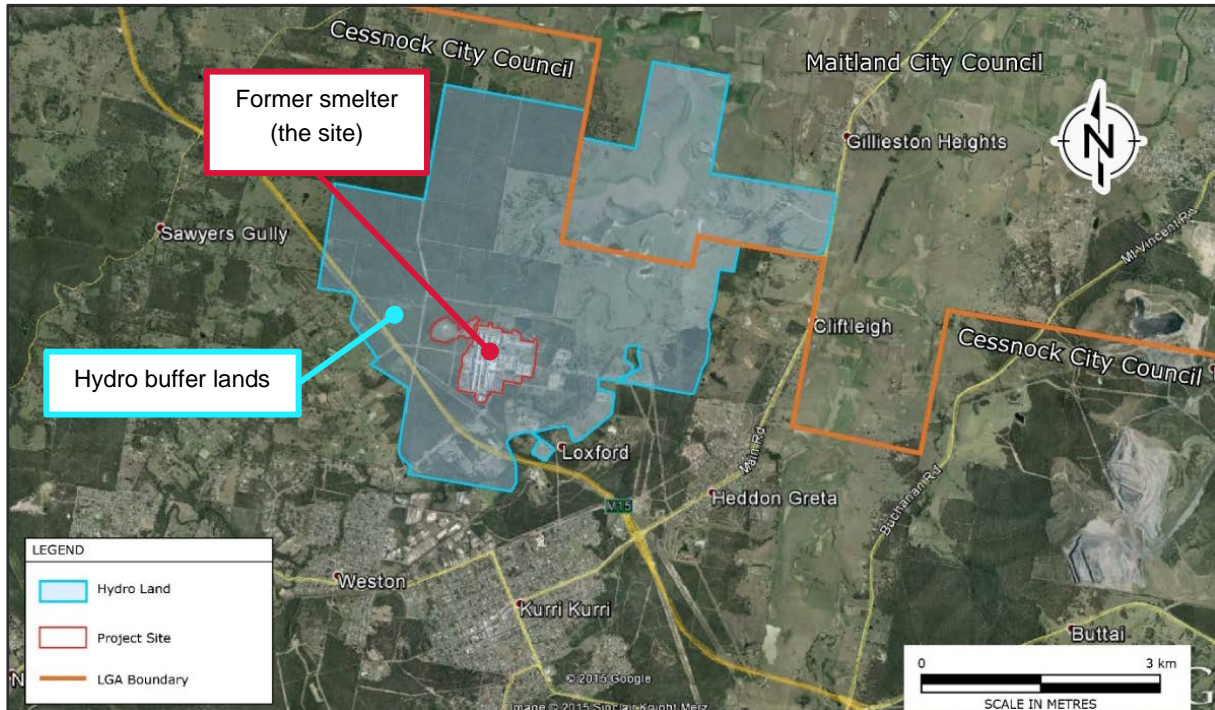


Figure 2 | Location of Smelter and Buffer Lands

Wastes from the aluminium smelting process, including spent potlining (SPL) wastes, were stockpiled on the site. The waste materials contain a range of contaminants, including elevated concentrations of cyanide and fluoride. The stockpiling of this material occurred from the early 1970s until the mid-1990s. The waste was placed directly on the ground and was uncovered (see **Plate 1**). Contaminants from the stockpiled waste have leached into the underlying groundwater, resulting in a contaminant plume extending 300 metres to the north-west of the site, into the surrounding buffer lands owned by the Applicant.



Plate 1 | Uncovered Contaminated Waste Stockpile (pre-1995)

The waste stockpile was capped in 1995 to prevent further leaching and migration of contaminants. Since then it has been referred to as the capped waste stockpile (CWS). SPL wastes have subsequently been stored in purpose-built sheds on the site (see **Plate 2**). A groundwater interception trench and monitoring program was established in 2014 to limit the migration of contaminated groundwater.

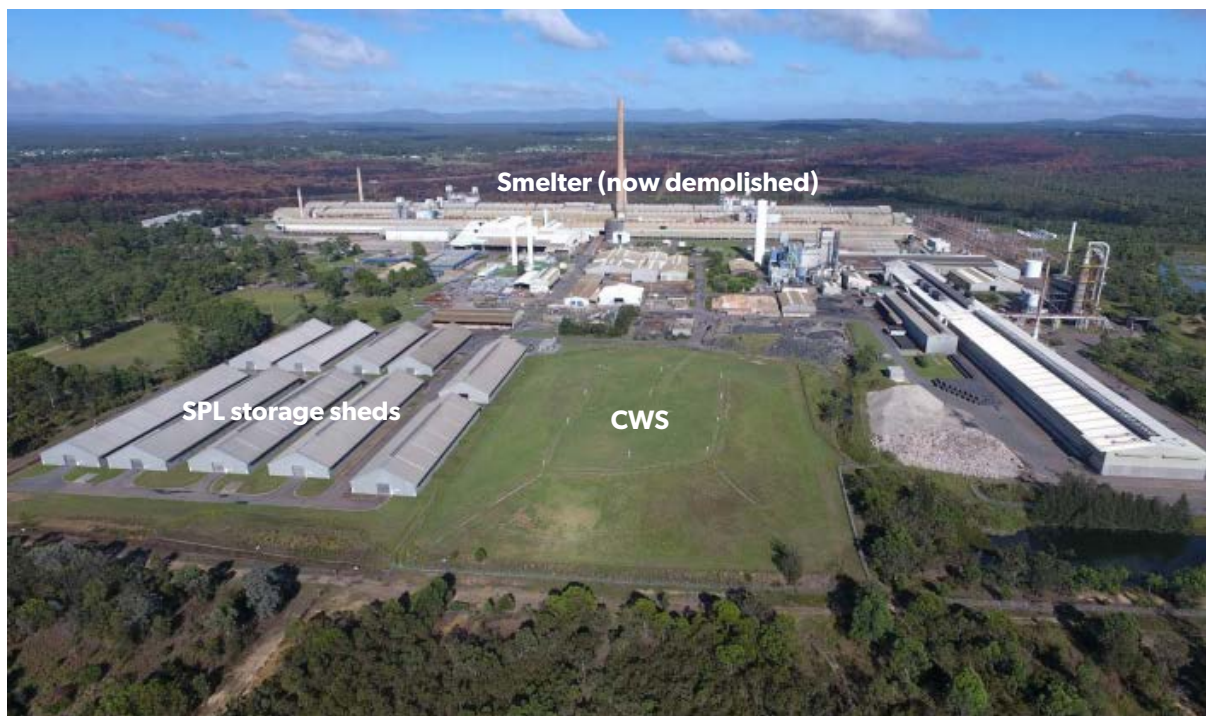


Plate 2 | Covered Contaminated Waste Stockpile (post 1995)

The smelter ceased operating in 2012 and formally closed in 2014. Since closure of the smelter, the Applicant has sought to redevelop the site and some of the buffer lands to provide for future uses including industrial and residential. The Applicant currently has a Planning Proposal under assessment with Cessnock City Council (Council) to rezone the site for these uses (refer to **Section 0** for further detail).

Before the land can be redeveloped, a range of works are needed to make the site suitable for the intended future uses. The Applicant has nearly completed demolition of the main smelting plant and infrastructure, with the switchyard and former anode furnace building still to be demolished. An administration building, the CWS and the SPL waste storage sheds also remain on the site. The Applicant has also conducted detailed contamination investigations across the site, identifying areas of environmental concern (AEC) that require remediation.

The Applicant proposes to remediate the CWS, the associated groundwater plume and AEC across the site. The SPL storage sheds would remain until a recycling or disposal solution is finalised and the SPL in these sheds will not be placed in the containment cell. The Applicant has lodged a State Significant Development application with the Department for remediation of the CWS, groundwater and AEC.

1.3 Site Description

The former smelter 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 the surrounding buffer lands cover 2,000 ha extending into the neighbouring Maitland LGA. The buffer lands were established to restrict uses, other than industrial, from locating close to the smelter site. 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.

Most of the former smelter infrastructure has now been demolished. Demolition works were undertaken in accordance with an approval from Council in 2018. The few remaining structures include an administration building, the CWS and SPL waste storage sheds. Some non-recyclable demolition waste materials remain within the former anode furnace building and contaminated soils are stockpiled on the site. The CWS covers an area of approximately 2.7 ha and contains around 327,000 tonnes (t) of hazardous waste including SPL waste.

An area known as the clay borrow pit (CBP) is located to the west of the former smelter, see **Figure 3**. Clay extracted from this pit was used to cap the waste stockpile in 1995. The CBP was backfilled with inert smelter waste which was subsequently remediated in 2015.

The site's existing stormwater management system remains in place and consists of several dams and surge ponds. Water from the dams is irrigated onto the buffer lands to the north of the site, in accordance with the existing Environment Protection Licence (EPL 1548).

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

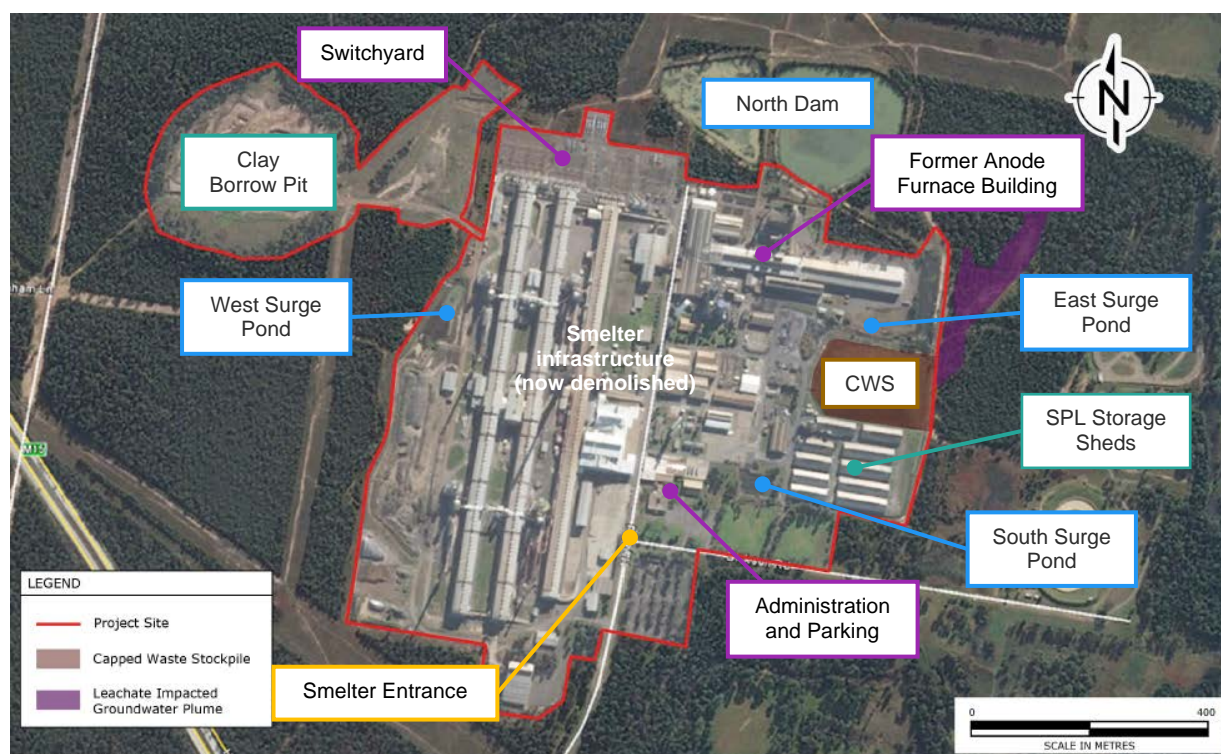


Figure 3 | Main Features of the Site

1.4 Surrounding Land Uses

The surrounding buffer lands are owned by the Applicant and include areas of native vegetation to the north-west and south, and rural lands to the north-east. The Loxford Park Speedway and Junior Motorcycle Club operate within the buffer lands, approximately 200 m to the east (see **Figure 4**).

Two watercourses pass through the former smelter site and drain to Wentworth Swamp, around 1 km north of the site. These include Black Waterholes Creek which passes between the former smelter and the proposed containment cell location and Swamp Creek located to the south-east and east of the site.

The townships of Kurri Kurri, Weston and Heddon Greta are approximately 2 to 3 km to the south, and the centres of Gillieston Heights and Cliftleigh are located 4 to 5 km to the north-east and east respectively. The Kurri Kurri industrial estate is located 1.2 km to the south.

The nearest residential receiver, which is owned by the Applicant, is located 440 m to the south. The nearest receiver not owned by the Applicant is approximately 500 m to the south-east. There are approximately 24 rural residences within 1 km of the site of which 15 are on the Applicant's land in the buffer area.

1.5 Planning Proposal

The Applicant is seeking to redevelop the former smelter site and some of the buffer lands for a range of uses, following successful remediation. In 2015, the Applicant lodged a Planning Proposal with Council to rezone the land for industrial, commercial, residential and recreational uses. The proposed zones are shown on **Figure 5**. The proposal seeks to rezone the former smelter site from Rural Landscape to Heavy and General Industrial. The proposed containment cell location would be excluded from future development. Commercial, residential and recreational uses are proposed in the buffer lands. The Planning Proposal is currently under assessment and will not be finalised until this SSD application for remediation is determined.



Figure 4 | Surrounding Land Uses

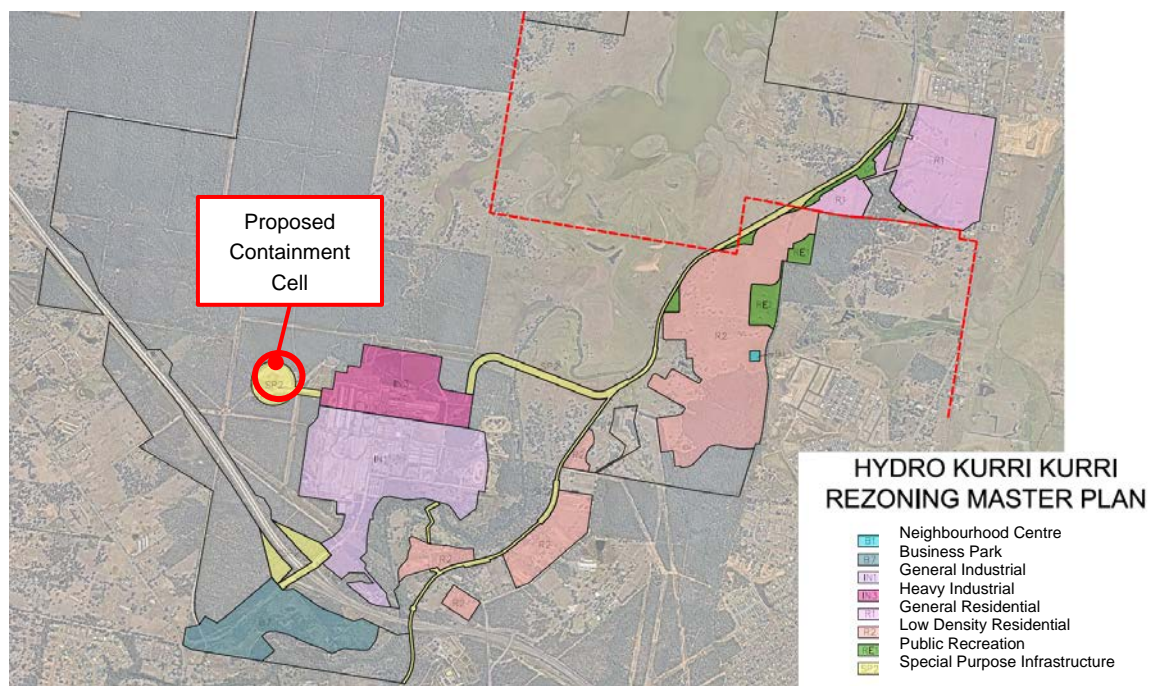


Figure 5 | Planning Proposal Zonings

1.6 Site Contamination

Extensive investigations conducted by the Applicant identified a range of contaminants across the site. These include:

- carcinogenic polycyclic aromatic hydrocarbons (PAHs) in soils and surface fill material at six AEC;
- fluoride, cyanide, PAHs, asbestos, total petroleum hydrocarbons (TPH) and heavy metals in the CWS; and
- elevated levels of fluoride, cyanide and aluminium in groundwater in a plume originating from the CWS.

Contaminated areas relate to the location of former processing units, waste stockpiles, drainage lines and surge ponds. Detailed site investigations identified six AEC requiring remediation and a further four potential AEC that require additional sampling to confirm the need for remediation, see **Figure 6**. The additional sampling was pending completion of the demolition work and most would be undertaken prior to commencing remediation. Sampling at PAEC 27 would be undertaken following decommissioning and demolition of the switchyard, which is yet to be completed.

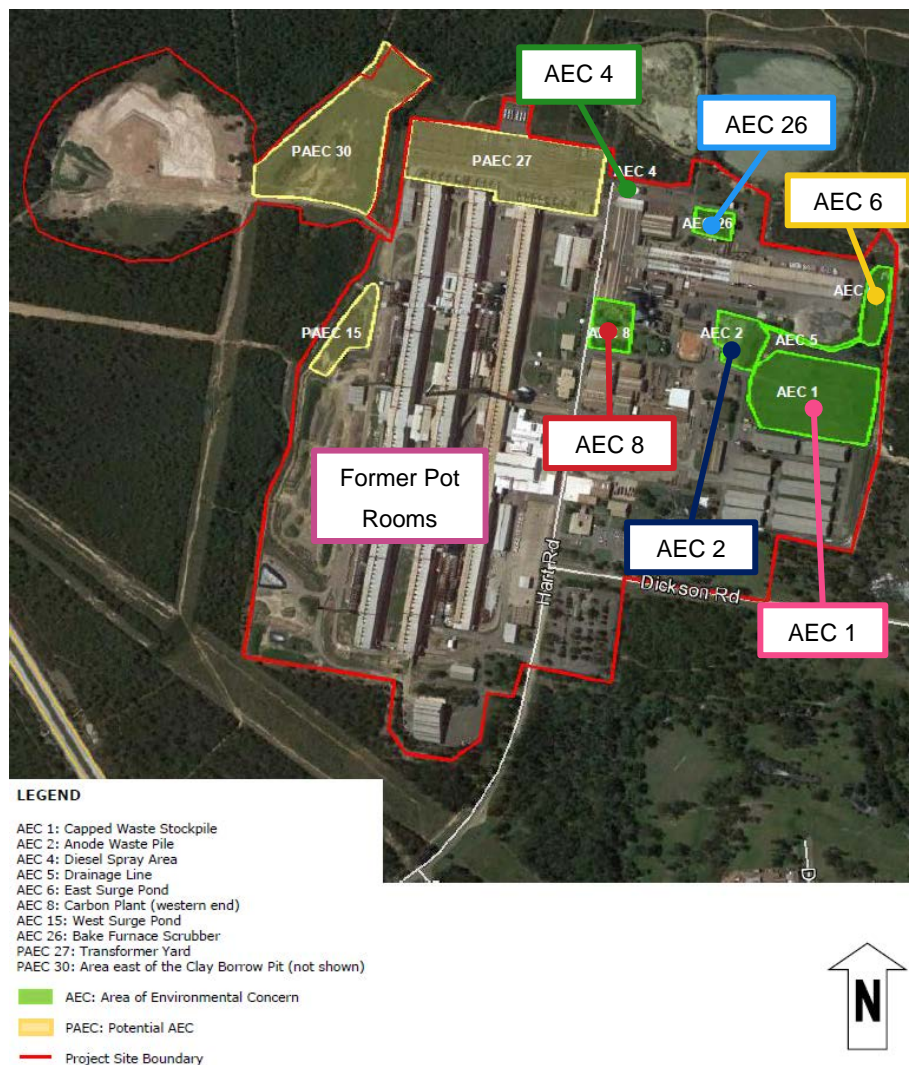


Figure 6 | Location of AEC Requiring Remediation and PAEC

1.7 Remediation Options

The Applicant considered several remedial options for the contamination on site. These included off-site disposal, upgrade of the CWS, thermal treatment, in-situ containment in AEC and an on-site containment cell. These options were evaluated against a range of criteria to determine the most viable option for achieving the remediation objectives, to make the site suitable for future uses.

Following detailed options analysis, the preferred approach was to excavate contaminated material from the AEC, including the CWS, treat the material and then encapsulate it within a purpose-built containment cell on the site. This option was detailed in a Remediation Action Plan (RAP) prepared by Ramboll and submitted with this SSD application. The Department and the EPA reviewed the RAP and accepted the preferred remediation approach of on-site containment with treatment.

1.8 Environmentally Hazardous Chemicals

Aluminium smelter wastes containing fluoride and cyanide are considered environmentally hazardous chemicals and are regulated by the Environment Protection Authority (EPA) under the *Environmentally Hazardous Chemicals Act, 1985* (EHC Act). The Applicant holds a licence (EHC05) under the EHC Act which regulates the processing, storage, transport, treatment and disposal of these wastes. The licence requires the Applicant to comply with the EPA's *Chemical Control Order in relation to Aluminium Smelter Wastes Containing Fluoride and/or Cyanide 1986* (CCO). This includes prohibiting the disposal of aluminium smelter wastes that produce leachable fluoride and cyanide above prescribed thresholds.

Remediation of the site must comply with the requirements of the EHC licence and CCO. The initial RAP proposed excavation of the CWS and disposal into the containment cell without treatment. The EPA noted this would not satisfy the requirements of the EHC and CCO and requested the Applicant evaluate treatment options. The Applicant undertook further detailed investigation, including treatment trials, deciding on the application of gypsum to the CWS material. This would bind the contaminants and prevent leaching of fluoride and cyanide. The EPA agreed with this approach and the RAP was finalised to include treatment of the CWS material before encapsulation within the containment cell.



2. Development

2.1 Amendments to the Development

The development application was amended a number of times during the assessment process to improve project design, environmental outcomes and the arrangements for long-term management of the site. Initially the application included demolition of the redundant smelter infrastructure. However, given the time taken to address issues around the containment cell design and long-term management liabilities, the Applicant requested to remove the demolition components from the application. The Applicant sought and obtained development consent from Cessnock City Council for these works in 2018. The application was also amended to reflect changes to the remedial strategy and leachate management.

Key amendments since the EIS was publicly exhibited include:

- removal of demolition works from the SSD application;
- changes to the remedial strategy, including treatment of CWS material with gypsum and removing the proposal to clean and recycle metal wastes;
- two options for the treatment of leachate from the containment cell, including pumping and off-site disposal by a licensed liquid waste contractor and construction of a leachate treatment plant adjacent to the CWS if needed (and subject to detailed design and separate assessment); and
- provision of financial and legal arrangements for the long-term management of the containment cell.

The finalisation of the long-term management arrangements was the result of extensive negotiations from 2018 to 2020 between the Department and the Applicant and followed the advice of independent experts. It was determined that ownership and long-term management of the cell would be transferred to the Waste Assets Management Corporation (WAMC), a NSW government agency that manages legacy contamination sites across NSW, including the Pasminco smelter in Boolaroo, as well as a \$110 million rehabilitation fund and a \$22 million remediation fund. WAMC has industry experts in landfill leachate and gas management, groundwater and surface water monitoring, stormwater and sediment control and native revegetation. WAMC is ultimately very well placed to manage the containment cell in perpetuity.

The long-term management arrangements are detailed in a Voluntary Planning Agreement (VPA) between the Applicant and the Minister for Planning and Public Spaces. The VPA forms part of the development and includes a series of monetary contributions, bank guarantees and insurances that the Applicant must provide at key milestones. These include a \$6.5 million monetary contribution bank guarantee prior to commencing remediation work. A further four bank guarantees totalling \$30 million would also be provided prior to remediation commencing which would be returned in stages when certain remediation milestones have been satisfied. A monetary contribution of \$6.5 million would then

be provided on completion of the remediation works to fund long-term management. A further \$1 million bank guarantee would be held for the initial 5-year management period by the Applicant.

The VPA also establishes the insurances the Applicant must obtain for the cell, with cover of up to \$10 million required for a period of 10 years following transfer of cell ownership to WAMC.

During the 5-year management period, the Applicant is required to implement a Long-Term Environmental Management Plan to monitor the integrity and environmental performance of the containment cell. At the end of the 5-year management period, the Applicant would transfer ownership of the cell to WAMC following independent verification of cell integrity, would create an access easement for on-going maintenance and register the VPA on the land title. The VPA is described in further detail in **Section 6.2.2**.

2.2 Description of the Development

The main components of the development are summarised in **Table 1**, shown on **Figure 7** to **Figure 10**, and described in full in the RtS, see **Appendix A**.

Table 1 | Main Components of the Development

Aspect	Description
Summary	Remediate the CWS, groundwater plume and AEC at the former smelter site to enable future commercial / industrial land use
Site establishment	<ul style="list-style-type: none"> establish environmental controls including stormwater collection swales and detention basins construct a haul road from the CWS to the containment cell construct a temporary water treatment plant (WTP) near the CWS and a leachate collection sump in the CWS bund continue to use existing demolition compounds, stockpiles and storage areas
Clearing	<ul style="list-style-type: none"> remove 2.5 ha of endangered ecological communities surrounding the containment cell
Containment cell construction	<ul style="list-style-type: none"> four stage construction of a containment cell involving excavation of 100,000 cubic metres (m³) of soil from the former CBP to a depth of 5 m below ground level final containment cell capacity of approximately 345,000 m³ install a multi-barrier cell liner and leachate collection system including pipework, sumps, a leachate storage dam and two leachate buffer storage tanks
Remediation	<ul style="list-style-type: none"> excavate waste from the CWS, AEC and potential AEC apply gypsum to material excavated from the CWS to stabilise contaminants temporarily stockpile contaminated soils excavated from the AEC and potential AEC in the south-eastern part of the site transport and emplace in the containment cell all treated CWS waste, contaminated soils from AEC, potential AEC and non-recyclable demolition wastes and contaminated soils stockpiled on site pump and extract contaminated groundwater from beneath the CWS and treat it in the temporary WTP before discharge to the existing North Dam and subsequent irrigation in accordance with an EPL

Aspect	Description
	<ul style="list-style-type: none"> • pump leachate from the containment cell during filling and post-capping and dispose of leachate off-site using liquid waste contractors
Validation	<ul style="list-style-type: none"> • a Validation Consultant would oversee containment cell construction and remediation works and would validate the CWS, AEC, potential AEC and groundwater treatment on completion of excavation • backfill validated excavations to achieve a consistent final landform using virgin excavated natural material or validated crushed concrete and brick • independent EPA Accredited Site Auditor prepares a Site Audit Report and Site Audit Statement confirming the remediation has been completed in accordance with the RAP and the site is suitable for commercial / industrial land uses.
Cell Capping	<ul style="list-style-type: none"> • install final capping layers designed to shed water • install gas extraction pipes and vent • topsoil and re-vegetate the containment cell
Decommissioning	<ul style="list-style-type: none"> • decommission the temporary WTP once the majority of leachate from beneath the CWS has been removed, treated and discharged to the North Dam for irrigation • following validation, decommission other remediation infrastructure such as wheel wash, weighbridge and gypsum application area
Long Term Management	<p>Preparation of a Long-Term Environmental Management Plan (LTEMP) and implementation of a VPA between the Minister and the Applicant detailing:</p> <ul style="list-style-type: none"> • a 5-year management period by the Applicant, involving: <ul style="list-style-type: none"> - monitoring of leachate and gas generation within the containment cell - collection and off-site disposal of leachate from the cell - maintenance of vegetation cover and capping layers (if required) - on-going groundwater monitoring to verify the contaminant plume is decreasing over time • transfer of cell ownership and dedication of land to WAMC, including an access road easement from Hart Road, upon receipt of a satisfactory Containment Cell Performance Report • monetary contributions of \$6.5 million on completion of remediation • provision of various forms of security, including four bank guarantees reflecting each stage of construction and completion, a \$1 million bank guarantee during the management period and insurances for construction completion and long-term maintenance of the containment cell.
Timeframe	<ul style="list-style-type: none"> • 18 months for the containment cell construction • 33 months to complete remediation, validation and final capping
Construction Hours	<ul style="list-style-type: none"> • Monday – Friday: 7 am to 6 pm • Saturday: 7 am to 1 pm
Capital Investment Value (CIV)	\$22,143,000
Employment	50 remediation jobs, 2 jobs for on-going containment cell management

2.3 Site Auditor

The Applicant appointed Mr Ross McFarland of AECOM as the EPA Accredited Site Auditor to review the RAP and supporting site investigations. The Auditor provided a Site Audit Report and Site Audit Statement, concluding the land can be made suitable for the intended future industrial land uses, subject to:

- further investigation of PAEC, characterisation of the materials and remediation, if required;
- further consideration of emerging contaminants, such as PFAS (Per and Poly Fluoroalkyl Substances);
- implementation of a monitoring program for groundwater, including further human health and ecological risk assessments following removal of the CWS material;
- review and approval of detailed plans for the containment cell, the proposed water treatment plant and site validation; and
- review and approval of a final LTEMP.

The Site Auditor will be engaged throughout the remediation works and will provide a Site Audit Report and Site Audit Statement to the Applicant, EPA and Council on successful completion of the remediation works.

2.4 Applicant's Need and Justification

The Applicant proposes to remediate the site to address legacy contamination from the former smelter. Following demolition of the former smelter buildings and infrastructure, the Applicant wishes to ensure the smelter land is made suitable for appropriate industrial redevelopment. The smelter land and its buffer lands are situated close to transport infrastructure, in particular the Hunter Expressway, and the Applicant maintains that, once remediated, the greater site is ideally located to provide employment and economic benefits to the Hunter region. If the land is not remediated, there would be continued risk to the environment by potential leaching of contaminants and the site and surrounding buffer lands could not be redeveloped.

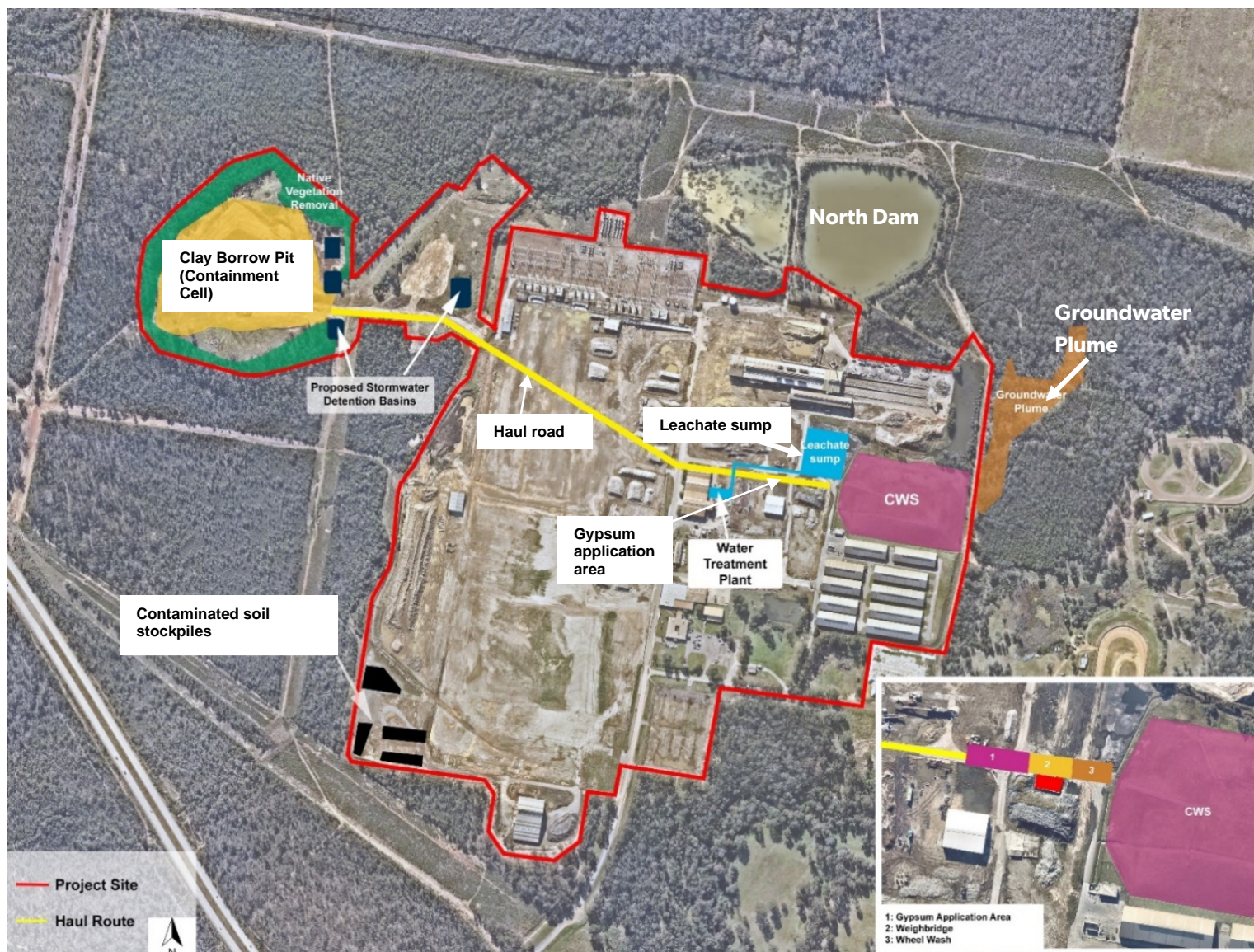


Figure 7 | Main Components of the Development

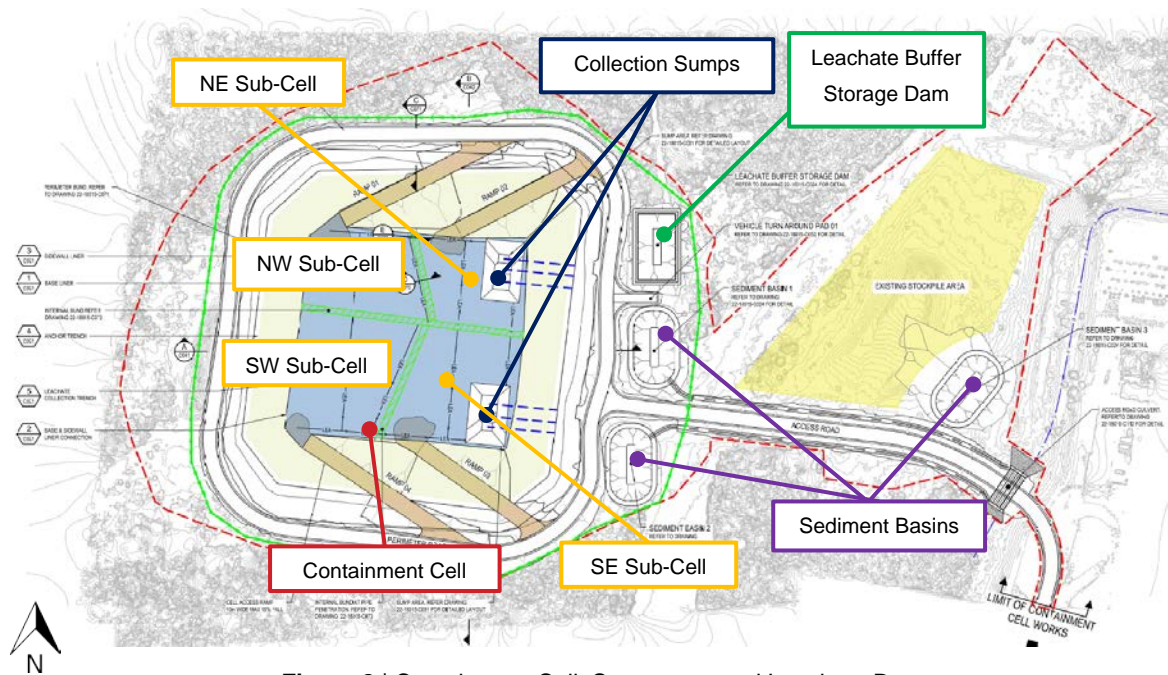


Figure 8 | Containment Cell, Stormwater and Leachate Dams

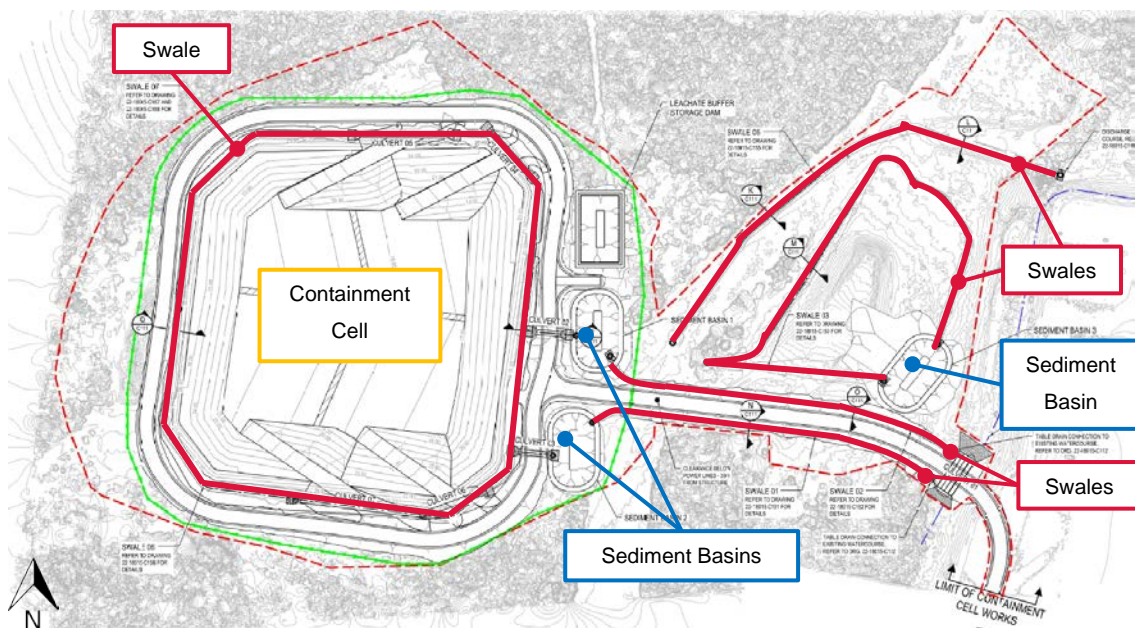
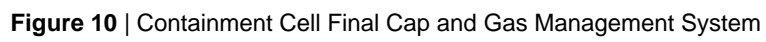


Figure 9 | Proposed Stormwater Management System





3. Strategic Context

3.1 Hunter Regional Plan 2036

The Hunter Regional Plan (Regional Plan) sets out the NSW government's vision for the Newcastle, Lake Macquarie, Port Stephens, Maitland and Cessnock LGAs until 2036. The Regional Plan anticipates the population of the Hunter Region will grow by 25% between now and 2036, resulting in an increased demand for dwellings and jobs. The Regional Plan sets out the vision for the Hunter Region as the leading regional economy in Australia with a vibrant metropolitan city at its heart.

Key priorities of the Regional Plan are to strengthen the regional economy, increase resilience to hazards and climate change, provide greater housing choices and employment as well as promote a biodiversity-rich natural environment. The Regional Plan identifies the Applicant's land, including the smelter site and buffer lands as a Gateway Determination Site, that would help achieve Goal 4, to provide greater housing choice and jobs. Remediating the smelter site would enable the land to be redeveloped for industrial and employment generating uses and would assist in the redevelopment of the surrounding buffer lands for residential uses.

The proposed remediation works supports the strategic goal of providing jobs in the Hunter Region and also supports the growth of Kurri Kurri into an identified regional strategic centre.

3.2 Greater Newcastle Metropolitan Plan 2036

The Greater Newcastle Metropolitan Plan 2036 (GNMP) sets strategies and actions that will drive sustainable growth across Cessnock City, Lake Macquarie City, Maitland City, Newcastle City and Port Stephens communities, which together make up Greater Newcastle.

The development would assist in achieving the strategies for the Cessnock LGA including protecting land around the Hunter Expressway, including the Applicant's site, for employment uses. More broadly, remediation of the site would also enable rezoning of the adjacent buffer lands to provide for commercial, residential and recreational uses to support the growing demands of the Cessnock LGA.



4. Statutory Context

4.1 State Significant Development

The development is a State significant development (SSD) pursuant to section 4.36 of the *Environmental Planning and Assessment Act 1979* (EP&A Act) as it is defined as a hazardous waste facility that stores more than 1,000 tonnes per year of waste classified in the Australian Dangerous Goods Code. This meets the criteria in Clause 23(5) of Schedule 1 in the State Environmental Planning Policy (State and Regional Development) 2011 (SRD SEPP).

In accordance with Clause 8(2) of the SRD SEPP, the remainder of the development, including remediation of the CWS materials, contaminated soils and treatment of groundwater, are also classified as SSD.

As the development is SSD, the Minister for Planning and Public Spaces, or a delegate, is the consent authority.

4.2 Permissibility

The site is zoned RU2 Rural Landscape under the Cessnock Local Environmental Plan 2011 (CLEP 2011). Waste management facilities are not listed as prohibited development or development permitted without consent; therefore, the development is permissible with consent in the RU2 zone.

4.3 Consent Authority

On 9 March 2020, the Minister delegated the functions to determine SSD applications to the Executive Director, Energy, Industry and Compliance where:

- the SSD application has not already been referred by the Planning Secretary to the Independent Planning Commission for determination as at the date of delegation, and
- the relevant local council has not made an objection, and
- there are fewer than 50 unique public objections, and
- a political disclosure statement has not been made by the Applicant.

There were 5 public objections to the development and Cessnock City Council and Maitland City Council did not object. No reportable political donations were made by the Applicant in the last two years and no relevant reportable political donations were made by any persons who lodged a submission.

Accordingly, the application can be determined by the Executive Director under delegation.

4.4 Other Approvals

Under section 4.42 of the EP&A Act, other approvals may be required and must be approved in a manner that is consistent with any Part 4 consent for the SSD under the EP&A Act. Relevant legislation for this application includes the *Protection of the Environment Operations Act 1997* (POEO Act).

The Applicant holds an Environment Protection Licence (EPL 1548) for the site, which was issued by the EPA under the POEO Act. The EPL regulates the storage of hazardous and restricted solid waste at the site and irrigation of effluent over the land. The EPL includes groundwater monitoring and reporting requirements for the CWS. The EPA was engaged throughout the assessment process and provided detailed recommendations for long term management of the containment cell. The EPA advised the EPL would need to be varied to cover the proposed remediation works.

4.5 Other Relevant Legislation

The Applicant holds a licence (EHC05) under the EHC Act which regulates the processing, storage, transport, treatment and disposal of aluminium smelter wastes. The licence requires the Applicant to comply with the EPA's *Chemical Control Order in relation to Aluminium Smelter Wastes Containing Fluoride and/or Cyanide 1986* (CCO). This includes prohibiting the disposal of aluminium smelter wastes that produce leachable fluoride and cyanide above prescribed thresholds.

Remediation of the site would comply with the requirements of the EHC licence and CCO, by treating waste from the CWS with gypsum to ensure leachable fluoride and cyanide is contained below prescribed thresholds. The EPA confirmed it was satisfied with the proposed treatment method to meet the requirements of the EHC licence and CCO.

4.6 Considerations under Section 4.15 of the EP&A Act

Section 4.15 of the EP&A Act sets out matters to be considered by a consent authority when determining a development application. The Department's consideration of these matters is set out in **Section 6** and **Appendix C**.

4.7 Environmental Planning Instrument

Under section 4.15 of the EP&A Act, the consent authority, when determining a development application, must take into consideration the provisions of any environmental planning instrument (EPI) and draft EPI (that has been subject to public consultation and notified under the EP&A Act) that apply to the proposed development.

The Department has considered the development against the relevant provisions of the following key EPIs:

- State Environmental Planning Policy (State and Regional Development) 2011 (SRD SEPP)
- State Environmental Planning Policy (Infrastructure) 2007 (ISEPP)
- State Environmental Planning Policy No 44 – Koala Habitat Protection (SEPP 44)
- State Environmental Planning Policy No 55 – Remediation of Land (SEPP 55) and draft State Environmental Planning Policy (Remediation of Land) (draft Remediation SEPP)
- Cessnock Local Environmental Plan 2011 (CLEP 2011).

Development Control Plans (DCPs) do not apply to SSD under Clause 11 of the SRD SEPP.

Detailed consideration of the provisions of all EPIs applying to the development is provided in **Appendix B**. The Department is satisfied the development is generally consistent with the relevant provisions of the EPIs.

4.8 Public Exhibition and Notification

In accordance with section 2.22 and Schedule 1 to the EP&A Act, the development application and any accompanying information of an SSD application are required to be made publicly exhibited for at least 28 days. The application was on public exhibition from Thursday 11 August 2016 until Monday 12 September 2016 (a total of 33 days). Details of the exhibition process and notifications are provided in **Section 5.1**.

4.9 Objects of the EP&A Act

In determining the application, the consent authority should consider whether the development is consistent with the relevant objects of the EP&A Act. These objects are detailed in section 5 of the EP&A Act. The Department has fully considered the relevant objects of the EP&A Act, including the encouragement of Ecologically Sustainable Development (ESD), see **Table 2**.

Table 2 | Considerations Against the EP&A Act

Objects of the EP&A Act	Consideration
(a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,	The development would ensure the proper management and conservation of natural resources, by remediating and preventing contaminated soil and groundwater entering Swamp Creek and Wentworth Swamp. Remediation works would enable the site to be redeveloped for employment uses, improving the economic welfare of the region.
(b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,	The Department considers the development integrates all socio-economic and environmental considerations and seeks to avoid potentially serious or irreversible environmental damage. The Department is satisfied the development can be carried out in a manner consistent with the principles of ESD.
(c) to promote the orderly and economic use and development of land,	The development would make the site suitable for future industrial uses meeting the growth demands of Kurri Kurri and would encourage the orderly and economic use and development of land in the Cessnock and Maitland LGAs.
(e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,	Construction of the containment cell would require removal of 2.5 ha of native vegetation which would be offset through the retirement of biodiversity credits. The Department's assessment concluded the impacts on native vegetation and fauna would not significantly

Objects of the EP&A Act	Consideration
	impact threatened species and would be appropriately offset.
(f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),	The Department's assessment concludes that with the imposition of conditions of consent and implementation of all recommended mitigation measures, any potential impacts on Aboriginal cultural heritage would be adequately mitigated and managed.
(i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,	The Department has assessed the development in consultation with, and giving due consideration to, the technical expertise and comments provided by government agencies and Council. This is consistent with the object of sharing the responsibility for environmental planning between the different tiers of government in the State.
(j) to provide increased opportunity for community participation in environmental planning and assessment.	The application was exhibited in accordance with Clause 9, Schedule 1 to the EP&A Act to facilitate public involvement and participation in the environmental planning and assessment of this SSD application.

4.10 Ecologically Sustainable Development

The EP&A Act adopts the definition of ESD found in the *Protection of the Environment Administration Act 1991*. Section 6(2) of that Act states that ESD requires the effective integration of economic and environmental considerations in decision-making processes and that ESD can be achieved through the implementation of:

- (a) *the precautionary principle*
- (b) *inter-generational equity*
- (c) *conservation of biological diversity and ecological integrity*
- (d) *improved valuation, pricing and incentive mechanisms.*

The potential environmental impacts of the development have been assessed and, where potential impacts have been identified, mitigation measures and environmental safeguards have been recommended.

Based on its detailed assessment of the project, as described in **Section 6**, the Department considers the development would not adversely impact on the environment and is consistent with the objectives of the EP&A Act and the principles of ESD.

4.11 Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act)

Under the EPBC Act, assessment and approval is required from the Commonwealth government if a development is likely to impact on a matter of national environmental significance (MNES), as it is considered a 'controlled action'.

The development would remove 2.5 ha of an Endangered Ecological Community (EEC) listed on the EPBC Act, including some koala feed trees. In June 2015, the Applicant referred the development to the former Commonwealth Department of the Environment (DoE), now Department of Agriculture, Water and the Environment (DAWE). On 24 March 2016, the former DoE concluded the development would *not* constitute a 'controlled action' and the project does not require approval under the EPBC Act.

5. Engagement

5.1 Consultation

5.1.1 Consultation by the Applicant

The Applicant, as required by the Planning Secretary's Environmental Assessment Requirements (SEARs), undertook consultation with relevant local and State authorities as well as the community and affected landowners. The Applicant's consultation activities are detailed in the EIS and RtS.

5.1.2 Consultation by the Department

The Department consulted widely on the application throughout the assessment process. This included public exhibition of the EIS and meetings with key government agencies. The Department's consultation activities are described in detail in the following sections.

After accepting the DA and EIS for the application, the Department:

- made it publicly available from Thursday **11 August 2016** until Monday **12 September 2016** (33 days):
 - on the Department's website
 - at the Department's former information centre (23-33 Bridge Street, Sydney)
 - at Cessnock City Council (62-78 Vincent Street, Cessnock)
 - at Maitland City Council (285-287 High Street, Maitland)
- notified landowners in the vicinity of the site about the exhibition period by letter
- notified and invited comment from relevant State government authorities, Cessnock City Council and Maitland City Council by letter
- advertised the exhibition in the Newcastle Herald, Cessnock Advertiser and Maitland Mercury.

5.2 Summary of Submissions

A total of 24 submissions were received during the exhibition period, including nine from State government authorities, one from Cessnock City Council, one from Maitland City Council, three from special interest groups, three from private businesses and seven from community members.

Of the 13 public submissions received, 5 objected to the development. A summary of the issues raised in submissions is provided below, with a link to the submissions included in **Appendix A**. The Department has considered and assessed the matters raised in all submissions throughout **Section 6** of this report.

5.3 Key Issues – Government Agencies

The Department received 11 submissions from Councils and government agencies. The submissions and issues raised are discussed below.

Department of Primary Industries (DPI) provided recommendations on the hydrological assessment.

The **Environment Protection Authority (EPA)** raised concerns regarding waste management, CWS material treatment and remediation, leachate management, groundwater validation criteria, ongoing management, impacts of air quality, noise and water.

NSW Health Hunter New England Local Health District (HNELHD) had no objection to the development but made comments on air quality and noise impacts, soil and water, and human health risk.

Hunter Local Land Services (Hunter LLS) had no specific comments on the development.

Water Group, DPIE (former Department of Industry – Lands and Water) requested a groundwater monitoring program be included in the LTEMP for the containment cell.

The Biodiversity and Conservation Division of the Department (BCD) (former Office of Environment and Heritage) requested further information on biodiversity, flooding, archaeological testing and requested the Applicant register Potential Archaeological Deposits (PAD) in the Aboriginal Heritage Information Management System.

Transport for NSW (TfNSW) (incorporating former RMS) had traffic comments relating only to the Stage 2 demolition, which has now been removed from the application.

NSW Rural Fire Service (RFS) requested a Bush Fire Hazard Assessment (BFHA) for the development.

SafeWork NSW raised no objection to the development and stated the information provided addressed its requirements.

Cessnock City Council (Council) did not object to the development but raised issues regarding the containment cell design, soil and water remediation, impacts on air quality, biodiversity, heritage and traffic, proposed rezoning and permissibility of the containment cell site and stormwater management.

Maitland City Council (MCC) did not object to the development and requested the Applicant provide additional information regarding SPL disposal, groundwater remediation and downstream impacts on Wentworth Swamp, wastewater treatment and discharge, and the ongoing management of the containment cell including groundwater and surface water monitoring.

5.4 Key Issues – Community, Special Interest Groups and Private Businesses

5.4.1 Community issues

Of the 7 submissions received from the individuals, three objected to the development, three provided comments and one supported the development. Key Issues raised in the community submissions were waste management, potential impacts of the remediation works and long-term management of the containment cell.

5.4.2 Special Interest Groups

The **Priority Research Centre for Geotechnical Science and Engineering, University of Newcastle** (CGSE, UoN) objected to the development on the grounds of the potential failure of the proposed liner system for the containment cell and the resulting groundwater infiltration and contamination caused by the contained SPL.

The **Australian Workers' Union** (AWU) did not object to the development. AWU raised concerns regarding appropriate recycling of SPL waste and the safety of future workers and users of the site considering the potential risks of leakage from the containment cell.

The **Total Environment Centre** (TEC) did not object to the development but raised concerns about the fate of the SPL waste.

5.4.3 Private Businesses

Tellus Holdings Ltd objected to the development as the EIS did not include assessment of a near surface arid geological repository or a stability and erosion risk assessment of the containment cell. Tellus also noted the ongoing management burden, insufficient water impact assessment and biodiversity offset strategy.

Kurri Autos did not object to the development but raised concerns regarding the proposed remediation strategy, monitoring programs, long-term management of the containment cell, human health and air quality impacts and management measures for the North Dam to prevent overflow and direct discharge.

Weston Aluminium Pty Ltd did not object to the development but stated the SPL waste should be locally recycled and not encapsulated within the containment cell.

5.5 Response to Submissions

The Applicant submitted two draft RtS reports in 2018 (known collectively as 2018 RtS) and one draft RtS in 2019 (2019 RtS). The draft RtS reports were provided to key agencies to consider whether they adequately addressed the issues raised. The comments provided by the key agencies are summarised below.

Council was satisfied with the Applicant's response.

The **EPA** was satisfied all its issues, including treatment of CWS material and design of the containment cell had been addressed, however still had concerns regarding the financial arrangements for the long-term management of the containment cell.

BCD recommended conditions for biodiversity offsets, noting the Applicant could not use the bio-certification process to offset the impacts of the development.

Water Group, DPIE recommended the Applicant update the LTEMP to include a groundwater monitoring program.

5.5.1 Independent Technical Review

Following submission of the 2018 RtS, the Department engaged an environmental consultancy, Senversa, to undertake an independent, detailed review of the remediation strategy, containment cell

design, the liabilities identified for long-term management and the management arrangements proposed in the EIS.

Senversa advised the documents provided insufficient detail on the treatment of CWS material, design and construction of the containment cell, materials proposed to be placed in the containment cell and post remediation validation. Senversa noted the plans for long-term management of the containment cell had not yet been finalised and recommended the Applicant undertake further investigation after construction of the containment cell. Senversa advised the Applicant to provide additional scope and preliminary cost estimates for the long-term containment cell management.

Subsequently, Senversa reviewed the 2019 RtS, including the long-term liabilities for containment cell management and the management item costings provided. Following some clarification, Senversa considered the Applicant had provided a reasonable and adequate assessment of long-term financial risks and liabilities for managing the containment cell. Senversa also confirmed the requested additional information had been either provided in the RtS or could be addressed in post-approval stages. Senversa made recommendations regarding the financial requirements for long-term management of the containment cell.

5.5.2 Independent Financial Review

Following Senversa's confirmation of the costings provided for the long-term management liabilities, the Department engaged an independent financial expert, Hall Chadwick, to review and verify the assumptions and calculations in the financial model provided by the Applicant. Hall Chadwick required some adjustments to the assumed investment return and discount rate used in the modelling to ensure the current monetary amount, known as the net present value (NPV), of the future ongoing costs was accurately calculated. Accordingly, the Applicant updated its estimate of the funding required to provide for the long-term financial obligations. The updated NPV formed the basis of negotiations around the monetary contribution required by the VPA to fund management of the containment cell in perpetuity.

5.5.3 Final RtS 2020

Following extensive discussions with the Department and relevant government agencies, in August 2020, the Applicant submitted the final RtS report (2020 RtS). The final RtS made no substantial changes to the technical assessments but reflected the final arrangements agreed for the long-term management of the containment cell. The final RtS and supporting documents were made publicly available on the Department's website.

5.6 Application Timeframe

The Department notes the SSD 6666 application was submitted in August 2016 and has been ongoing for over four years. Due to the complex, technical nature of the development a substantial amount of additional information was required to address concerns arising from submissions on the EIS. This information was provided in a series of RtS reports during 2018 and 2019 and was verified by experts to ensure appropriate treatment of SPL in the CWS and a robust containment cell design.

As the development would retain up to 345,000 tonnes of hazardous waste in a purpose-built containment cell on the site, there was a need to secure appropriate funding for long-term monitoring

and maintenance within a robust management mechanism. In the RtS, the Applicant originally proposed to transfer its perpetual management liabilities to a third-party company following completion of remediation works, however due to the high deemed risk of failure, an alternative management solution was required by the Department. During 2019 and 2020, the Department undertook extensive discussions with the Applicant around the financial securities and management structure required for the containment cell in the long-term. These negotiations resulted in an agreement to transfer ownership of the completed containment cell to WAMC and for the Applicant to provide a monetary contribution of \$6.5 million for its perpetual care. These arrangements, along with relevant construction securities, were reflected in the terms of a VPA which was executed by the Applicant on 11 December 2020.



6. Assessment

The Department has considered the EIS, the issues raised in the submissions, the Applicant's RtS, supplementary information and independent advice in its assessment of the development. The Department considers the key assessment issues are:

- the remediation approach
- long-term management of the containment cell
- human health.

Several other issues have also been considered and are addressed in **Table 4** in **Section 6.4**.

6.1 Remediation Approach

The remedial strategy for managing hazardous waste from the former smelter over the long-term was a key consideration during the Department's assessment. The Department and the EPA identified issues with the initial remedial approach presented in the EIS and the Applicant carried out further detailed investigations to refine the strategy to address the issues raised. The remediation approach needed to satisfy two key requirements:

1. to provide secure containment of the waste material over the long-term, to ensure no environmental or human health impacts for on-site users or surrounding receptors; and
2. to enable future redevelopment of the remediated land for industrial uses.

The final remediation approach is described in detail in the RAP, which was reviewed by the independent Site Auditor. The Site Auditor concluded the former smelter site could be made suitable for future industrial use subject to further characterisation of waste materials, groundwater monitoring, further human health and ecological risk assessments following removal of the CWS and review and approval of detailed management plans including the LTEMP.

The Department engaged independent experts Senversa to assist with its review of the RAP, including the proposed treatment of CWS material, management of groundwater and leachate and design of the containment cell.

6.1.1 Treatment of CWS Material

The Applicant considered several options for remediating the site to enable future redevelopment for industrial uses. Initially, the option described in the EIS involved excavating contaminated material from the CWS and placing it into a containment cell without any treatment. The EPA noted this would not meet the requirements of the EHC licence and CCO, which prohibits disposal of aluminium smelter wastes with leachable fluoride and cyanide above prescribed thresholds.

The Applicant undertook further investigations and small-scale trials to determine the effectiveness of applying gypsum to the CWS material to reduce leaching. Following an extensive process of

consultation, the EPA confirmed the application of gypsum (at 10% by weight) would enable the remediation to comply with the EHC licence and CCO by reducing the solubility of contaminants and subsequent leaching.

Senversa reviewed the proposed treatment approach and trial data and raised some questions about the effectiveness of gypsum for the full-scale remediation works, and for treating other wastes that are contained within the CWS. However, Senversa noted the potential for variability in leachate conditions had been considered at several steps throughout the development of the remedial approach. Senversa noted that a cell liner degradation assessment had considered long-term continuous exposure to leachate to inform design of the liner system; and the application of gypsum at 10% by weight provided a factor of safety to account for variability in the contaminants. Senversa ultimately concluded that the EPA had reviewed and accepted the proposed approach and the remediation works would be subject to a Site Audit, which would cover the waste treatment approach.

The Applicant would also engage a Validation Consultant to produce a Remediation Validation Report, detailing how the remediation works have been undertaken in accordance with the RAP, including the use of gypsum to treat material from the CWS before containment within the cell.

The Department considers the proposed treatment of CWS materials would ensure the Applicant can meet its regulatory obligations and would reduce further leaching of contaminants to an acceptable level. The remediation works have multiple checks in place, such as oversight by the Validation Consultant and ultimate sign-off by the Site Auditor, which would provide adequate rigour to the treatment and remediation process. The Department and the EPA are satisfied with the proposed treatment approach. A range of measures are also proposed for the protection of the containment cell lining system from damage due to leachate exposure, or other factors. These are described in Section 6.1.3.

6.1.2 Management of Contaminated Groundwater and Leachate

Contaminated Groundwater Plume

The Applicant's proposed approach to remediating contaminated groundwater involves removing the primary source of contamination (the CWS), pumping the contaminated groundwater and treating it in a temporary WTP on site. The treated water would then be stored in the existing North Dam for irrigation onto the buffer lands in accordance with the EPL. The Applicant would continue to monitor contaminant levels within groundwater on a quarterly basis for 2 years following removal of the CWS to establish if fluoride and cyanide levels in the groundwater have reduced over time. If monitoring concludes the contaminant levels have not sufficiently reduced, the Applicant would implement the contingency plan endorsed by the Site Auditor in the RAP and investigate additional remediation options that would further treat or manage impacted groundwater.

The Site Auditor's review of the RAP concluded the proposed approach should remove the risk of harm to human health and the environment but recommended a final risk assessment be undertaken to ensure no unacceptable risk remains. This recommendation would be implemented via the Site Audit process, ensuring that the final risk assessment is completed before the issue of a final Site Audit Statement.

The Department notes the EPA and Senversa are satisfied the temporary WTP would sufficiently treat contaminated groundwater to meet the leaching limits under the CCO and ensure the treated water would have no adverse impacts when discharged to the irrigation area. The EPA did not provide any further recommendations for on-going monitoring of groundwater beyond the requirements of the EPL.

The Department reviewed the proposed approach to treating contaminated groundwater and notes the advice of the Site Auditor and the EPA. The Department is satisfied the EPL includes groundwater monitoring and this would continue until stable or decreasing contaminant trends are recorded. In the event contaminants do not reduce as predicted, the Department is satisfied the contingency planning provided in the RAP is sufficient to mitigate residual impacts to groundwater. The Department does not require any additional conditions for groundwater monitoring beyond the requirements of the EPL.

Leachate from the Containment Cell

The Applicant initially proposed to construct a second, permanent WTP to treat leachate generated within the containment cell. After reviewing the detailed design and considering the low predicted leachate generation rate (388 litres per year after five years of capping), the WTP was removed from the design and the Applicant proposed to collect leachate in an on-site leachate storage dam and dispose of it to a licensed liquid waste management facility. The Applicant also proposes to provide two leachate buffer storage tanks as a contingency measure.

Leachate generation simulation testing using a total leachate volume 50% higher than predicted informed the design of the leachate management and liner system of the containment cell. A total of 1.3 megalitres (ML) of leachate storage capacity is included in the design, with two 1 ML supplementary above ground leachate buffer storage tanks. The Applicant noted this capacity is adequate to contain and manage leachate generation during standard conditions and for high rainfall events.

Following exhibition of the EIS, the Department and the EPA requested additional information, including modelling of possible containment cell leakage. Additional modelling provided in the RtS concluded any hypothetical leakage from the containment cell would only move at low concentrations over a small distance and have minimal impacts on the downstream environment.

The EPA reviewed the RtS and did not raise any further concerns about leachate management. Senversa requested consideration of additional leachate volumes if cell construction takes longer or infiltration through the cap is higher than expected. The Applicant confirmed it could manage variations in leachate generation using the buffer storages and by increasing the volume of leachate collected and disposed off-site. Senversa reviewed this information and provided no further comments.

Given the containment cell has been designed to ensure a relatively small amount of ongoing leachate, the Department and the EPA were satisfied with the Applicant's approach to collect and dispose of leachate to a licensed liquid waste management facility.

6.1.3 Design of the Containment Cell

The containment cell would be constructed in four stages, to limit the exposed area at any one time and the amount of leachate generated. The cell would be located 2 m above the groundwater level and has been designed with a multi-barrier system to prevent leakage from the cell.

The EPA noted the containment cell design in the EIS was generally consistent with the *NSW Solid Waste Landfill Guidelines* (EPA, 2016). The Site Auditor also considered it was adequate subject to a further audit to confirm the suitability of the detailed design.

The Department requested further information on the preliminary design, including a geotechnical assessment of the CBP location, quality assurance and validation for the construction, and contingency measures in the event of containment cell leakage. Senversa recommended the Applicant consider the long-term need for the containment cell beyond the design capacity of 100 years as well as the stability of the final landform.

The 2019 RtS included a Containment Cell Detailed Design Report (CCDDR) prepared by GHD which outlined the construction methodology and quality assurance for each stage of cell construction. The containment cell lining system would comprise high-density geomembrane which was tested for oxidation degradation from elevated temperatures and UV radiation and found to be stable when immersed with the contaminated material under extreme conditions. Combined with a robust capping layer and the 'dry entombment' low moisture internal environment, the containment cell was shown to have a considerably longer lifespan than the original 100-year estimate. The 2019 RtS also included a Preliminary Geotechnical Investigation showing the existing CBP location comprises highly impermeable residual clays and bedrock which would be suitable for the proposed containment cell.

The Department provided the 2019 RtS to Council, MCC, government agencies and Senversa for review and they all advised they had no further comments on the containment cell design. Senversa requested additional information on the adequacy and robustness of the containment cell validation methodology. The Applicant confirmed this would be described in the technical specification for the containment cell construction contractor and would be further verified by the Site Auditor. Senversa was satisfied with the response and did not provide further comments.

The Department has reviewed the containment cell design information and the advice of Senversa and the EPA. The Department considers the Applicant has conducted a thorough assessment and modelling of the design and notes the containment cell would include a series of engineered liners to minimise water infiltration into the cell and infiltration of leachate into the groundwater. The capping layer is engineered to prevent damage and exposure of contaminants. The Department's assessment concludes the containment cell design is robust and appropriate and the CBP site would be geotechnically suitable for the containment cell.

To ensure the containment cell functions as designed, the Department notes the cell construction would be verified in the Remediation Validation Report and by the independent Site Auditor.

6.1.4 Conclusion

The Department has reviewed the remediation approach and design documentation provided by the Applicant. Concerns raised by the EPA, Senversa, other government agencies and the public were addressed through the provision of additional information, and detailed discussions between the Applicant, the Department and the EPA.

The Department notes an EPA accredited Site Auditor reviewed the RAP and considered the proposed remediation methods were technically feasible, environmentally justifiable and consistent with relevant legislation, policies and guidelines. Based on confirmation from the EPA, the Department is satisfied applying gypsum to the CWS materials represents appropriate treatment to ensure fluoride and cyanide levels are below the CCO threshold. In addition, an independent review and validation of the remediation program would be undertaken by the Site Auditor on completion of the remediation works.

To ensure the remediation works are carried out in a timely manner in accordance with the RAP and appropriate validation is undertaken, the Department has recommended conditions requiring:

- appointment of a Validation Consultant and an accredited Site Auditor throughout the remediation works
- preparation of a Remediation Validation Report by the Validation Consultant for submission and approval within six months of completion and capping of the containment cell
- submission by the Site Auditor of a Site Audit Report (SAR) and Site Audit Statement (SAS), consistent with the CLM Act, within six months of submission of the Remediation Validation Report.

The Department concludes the proposed remediation approach, subject to conditions, would ensure all contaminated materials are removed and placed within the purpose-built containment cell and would make the site suitable for future industrial land uses.

6.2 Long Term Management of the Containment Cell

As contaminated materials would remain in the containment cell in perpetuity, ongoing monitoring and management is essential to ensure the cell capping and containment system remain capable of protecting human health and the environment into the future. This section discusses the Department's assessment of the proposed measures to provide for perpetual care of the containment cell with a high degree of certainty.

6.2.1 Long Term Environmental Management Plan

A draft LTEMP was provided in the RtS detailing the ongoing monitoring, maintenance and contingency actions for the containment cell, including detection and monitoring of leachate generated within the cell. The draft LTEMP also detailed proposed scheduled monitoring of ammonia and methane from the gas vents and regular inspection of the cap to ensure containment cell integrity. The Site Auditor reviewed the draft LTEMP concluding it was a suitable framework document but noted further detailed design information is required to finalise the LTEMP.

Senversa also reviewed the draft LTEMP and concluded it was appropriate and made recommendations regarding the refinement, finalisation and independent review of the final LTEMP. Submissions from government agencies requested additional monitoring be included in the final LTEMP for leachate, gas and groundwater.

The Department reviewed the draft LTEMP and considered the advice of government agencies and Senversa. The Department considers the final LTEMP will be critical for ensuring the containment cell is appropriately maintained and managed. These include measures to minimise soil erosion, maintain monitoring wells in working order and restrict burrowing animals from disturbing the cell capping. The

Site Auditor, government agencies and Senversa were generally satisfied with the draft LTEMP, subject to further details being included in the final version. The Department has recommended conditions for the final LTEMP, including a review by the Site Auditor and approval from the Planning Secretary, prior to completing the filling of the containment cell. The recommended conditions also require implementation of the approved LTEMP in perpetuity. With these conditions in place, the Department is satisfied the containment cell would be appropriately managed to ensure there are no on-going risks to human health or the environment.

6.2.2 Financial Arrangements for Cell Management in Perpetuity

Initially, the Applicant proposed a financial and ownership structure for the containment cell in the EIS that involved transfer of ownership of the completed cell to a third-party company and financing through a 'trust' structure. The Department reviewed the proposed structure and concluded it was not sufficiently robust for perpetual management of the cell. The proposed structure presented uncertainty and risks for the NSW government should the Applicant become insolvent before completing the remediation works. The EPA also raised concerns with the financial arrangements proposed by the Applicant.

From 2018 to 2020, the Department and the Applicant consulted extensively on alternative arrangements that would address the uncertainties and potential risks for long-term management. The Department appointed Senversa to identify the liabilities for maintaining and managing the containment cell. Senversa's first review noted there were uncertainties around the treatment of the CWS material, the design of the containment cell and that several aspects of long-term maintenance had not been accounted for. The Applicant completed further work to address these deficiencies and updated its financial modelling to incorporate all identified liabilities and costs.

The Department subsequently engaged Hall Chadwick to review the financial modelling, to ensure the liability costings were correctly translated to a NPV. These independent reviews formed the basis of negotiations between the Applicant and the Department and agreement was ultimately reached in late 2020. The Department worked with the Applicant to prepare a VPA which sets out the management framework for the containment cell in perpetuity. The Applicant signed the VPA on 11 December 2020 (see **Appendix F**).

As detailed in Section 2.1, the VPA includes:

- a 5-year management period during which the Applicant must implement the LTEMP;
- transfer of the containment cell to the WAMC following the 5-year management period;
- creation of an access easement from the containment cell connecting to Hart Road;
- monetary contributions of \$6.5 million paid on completion of the remediation works;
- financial securities, including:
 - a \$6.5 million Monetary Contribution Bank Guarantee;
 - an Initial Period Bank Guarantee of \$1 million; and
 - four Remediation Works Bank Guarantees totaling \$30 million, to be progressively returned at key milestones during construction (see **Table 3**);
- transfer of construction warranties to the WAMC upon transfer of cell ownership;
- provision of insurance cover in the amount of at least \$10 million; and

- registration of the VPA on the title of the containment cell land.

Table 3 | Remediation Works Bank Guarantee details

Remediation Works Bank Guarantee Details	Timing for return of Bank Guarantee	Works for each Separable Portion (SP)	Sign Off
BG 1 \$ 4 million	On completion of SP2 Part 1	Construction of project infrastructure	Validation Consultant (Stage 1A) and Independent Engineer (Stage 1B)
BG 2 \$ 8 million	On completion of SP2 Part 2	Construction of containment cell Stage 1 (preparation and lining)	Independent Engineer
BG 3 \$ 13 million	On completion of SP2 Part 3	Site remediation and material transfer to containment cell	Site Auditor
BG 4 \$ 5 million	On completion of SP2 Part 4	Containment cell Stage 2 (capping and completion)	Independent Engineer and Site Auditor

The terms of the VPA are legally enforceable obligations and have been agreed to by the Applicant.

The Department's assessment of the financial arrangements for managing the cell in perpetuity concluded:

- the provision of bank guarantees from the Applicant before commencing any work would ensure the government is protected in the event the Applicant does not complete the remediation works and government is required to complete the works;
- the financial model provided by the Applicant calculated the monetary amount required to ensure an adequate income stream for the perpetual care of the containment cell. The Department notes the final inputs and assumptions in the model were confirmed acceptable by both Senversa and Hall Chadwick and is therefore satisfied sufficient funds (\$6.5 million) would be provided to allow the government to implement the LTEMP in perpetuity;
- following completion of the remediation works, the Applicant proposes to manage the cell in accordance with the final LTEMP for a Management Period of 5 years. At the end of the Management Period, the VPA requires a Containment Cell Performance Report confirming satisfactory environmental performance and the absence of defects, is provided to the Minister's Nominee before the transfer of land ownership is effective. This arrangement would provide a high degree of certainty regarding the containment cell's fitness for purpose;

- construction and design warranties for the containment cell would be assigned to the government, thereby providing increased security due to the ability to draw on these in the case of material defects; and
- the Applicant would provide and pay for insurance cover in the amount of at least \$10 million covering failure of the containment cell for up to ten years following cell transfer date. As the insurance would cover both repair of the containment cell in the event of its failure and clean-up of any pollution caused by the cell failure, the Department considers provision of this insurance would also offer a high degree of security to government.

The Department is satisfied the arrangements negotiated in the VPA are sufficient to ensure the long-term environmental risks from the development are minimised and a strong framework is in place for perpetual care of the containment cell, providing financial protection for the NSW government over both the short and long term.

6.3 Human Health

The development has the potential to pose risks to the health of on-site workers and off-site sensitive receivers during remediation works, particularly from excavation, transfer of contaminated materials to the containment cell and treatment of CWS impacted groundwater. One of the key aims behind the development is the need to remediate the site to ensure it is suitable for future industrial use and does not pose a risk to human health.

Background

Ramboll prepared a Human Health Risk Assessment (HHRA) for the development in accordance with relevant guidelines. The HHRA identified 16 off-site sensitive receivers, including residents and users of nearby recreational facilities (see **Figure 11**).

The HHRA examined contamination emission sources, dust deposition concentration levels, and chemical concentration levels in soils and groundwater. Based on the Air Quality Impact Assessment (AQIA) and previous site environmental investigations, the HHRA found the main contaminants of concern (CoC) in dust were Polycyclic Aromatic Hydrocarbons (PAHs), chromium and fluoride. CoC were identified in soil at the CWS (Total Petroleum Hydrocarbons (TPH) and PAHs), with fluoride and cyanide in the CWS impacted groundwater.

Potential Impacts and Proposed Mitigation

To determine the potential for impacts on human health, the HHRA included an Exposure and Toxicity Assessment (ETA). For on-site workers, the ETA found that CoC would enter the body primarily through dermal contact, inhalation and incidental ingestion, while for off-site sensitive receivers, this would primarily be through inhalation. The ETA concluded:

- the potential risks to onsite workers would be low and acceptable except:
 - during the CWS materials removal, as ammonia, methane, hydrogen, hydrogen cyanide and hydrogen sulphide beneath the CWS could dissipate and dilute in ambient air
 - during treatment of the CWS impacted groundwater, when soluble fluoride and total cyanide would exceed the health-based groundwater criteria

impacts to off-site receivers caused by soils and groundwater would be negligible as they would be contained within the site, while impacts caused by dust would be low, with ground level concentrations of particulates, metals, air toxics and diesel-combustion pollutants complying with the EPA's impact assessment criteria and the National Environment Protection Measure at all sensitive receivers. SafeWork NSW had no comments on the HHRA, however HNELHD recommended residential receivers be advised not to use rainwater as a potable source during the remediation works. The Department requested additional information about health impacts on future users of the site and the proposed engineering controls to manage contaminant exposure for onsite workers. This information was provided in a draft Health and Safety Plan (HSP) in the 2019 RtS.

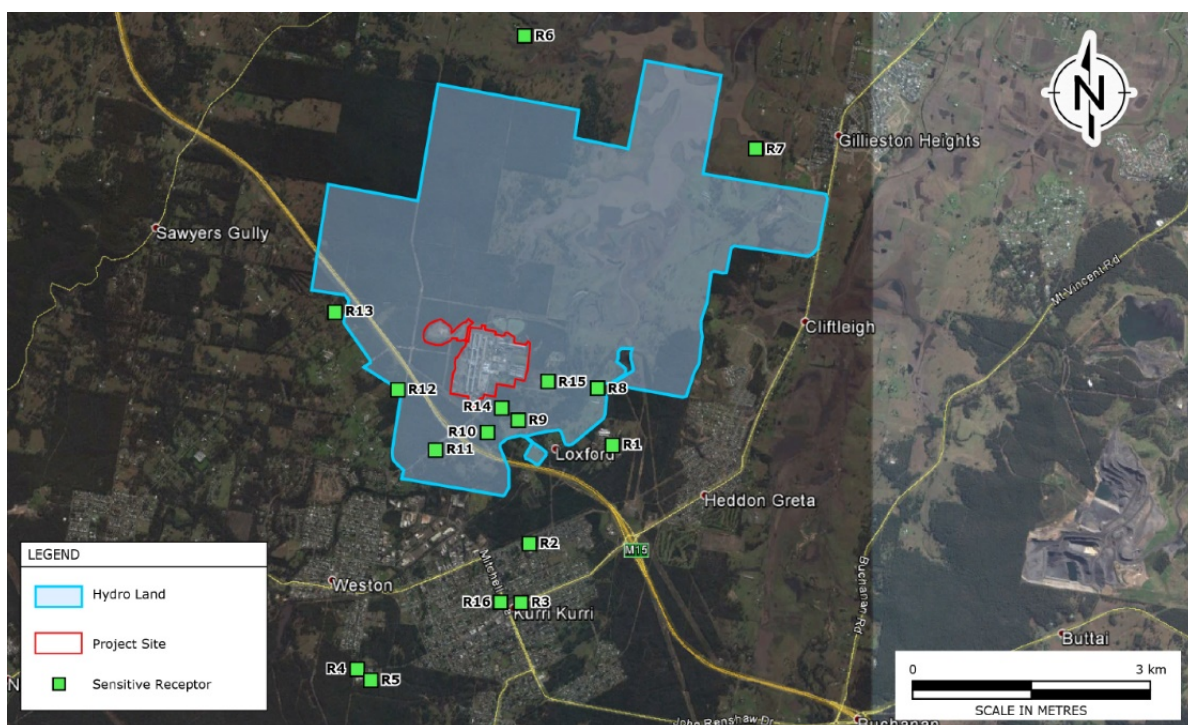


Figure 11 | Sensitive Receivers in Site Vicinity (HHRA)

Assessment and Recommendations

The Department has reviewed the HHRA, RtS, and all submissions and concludes the remediation works would be of low risk to off-site receivers, noting the nearest receiver is 440 m from the site and pollutants in dust were predicted to comply with relevant criteria based on a conservative HHRA. While only a precautionary measure, the Department notes the Applicant's commitment in the RtS to advise local residents to refrain from using rainwater as a potable drinking water source during the remediation works.

The Department notes the soluble fluoride and cyanide in the CWS impacted groundwater exceed the relevant criteria and toxic gases could be released from the CWS when material is excavated before being treated with gypsum. However, by implementing the stringent measures outlined in the draft HSP, including routine inspections, monitoring, use of misting sprays, limiting excavation areas and the use of fit-for-purpose PPE, the Department considers health risks to on-site workers could also be adequately managed. The Applicant would also conduct the works in accordance with the health and safety requirements of SafeWork NSW.

To ensure human health risks are minimised, a condition of consent is recommended requiring preparation and implementation of a final HSP, incorporating the proposed safety measures, prior to the commencement of remediation works. In addition, a requirement for the Applicant to inform the community of the need to refrain from using rainwater as a potable water supply has been included in the conditions of consent.

With these measures in place, the Department concludes the remediation works can be managed to ensure risks to human health are low and acceptable.

6.4 Other Issues

The Department's assessment of other issues is provided in **Table 4**.

Table 4 | Assessment of Other Issues

Findings	Recommendations
Biodiversity	
<ul style="list-style-type: none"> Construction of the containment cell would require removal of 2.5 ha of native vegetation listed in NSW as Endangered Ecological Communities (EEC). This includes 1.35 ha of Kurri Sand Swamp Woodland EEC and 1.15 ha of Lower Hunter Spotted Gum – Ironbark Forest EEC. The proposed clearing would impact on two threatened flora species and habitat for four threatened fauna species. Removal of 1.35 ha of Kurri Sand Swamp EEC would remove some koala feed trees, although the site does not contain core koala habitat nor was a resident population identified during field surveys. The Applicant's ecological assessment concluded the proposed clearing would not significantly impact the EECs, threatened flora and fauna species, or koalas given the small amount of clearing, the industrial nature of the site and the availability of other quality habitat within Hydro's buffer lands. The Applicant calculated the credits required to offset these impacts in accordance with BCD's Biobanking Assessment Method, requiring a total of 155 ecosystem credits and 582 species credits. BCD recommended the Applicant offset the biodiversity impacts of the development by retiring the ecosystem and species credits. The Applicant has committed to implement a Biodiversity Management Plan to minimise impacts on native fauna, including installing nest boxes to compensate for loss of hollow bearing trees. The Department's assessment concludes the biodiversity impacts would be minor and can be managed effectively by offsetting of 	<p>Require the Applicant to:</p> <ul style="list-style-type: none"> offset ecosystem and species credits prior to clearing for remediation works prepare and implement a Biodiversity Management Plan (BMP) as part of the Remediation Works Environmental Management Plan (RWEMP).

Findings	Recommendations
<p>ecosystem and species credits and the Department's recommended conditions.</p>	
<p>Air Quality</p>	
<ul style="list-style-type: none"> • Remediation works would generate emissions of dust (particulate matter), metals, air toxics and diesel-combustion air pollutants (nitrogen dioxide, sulfur dioxide and carbon monoxide). Transport, unloading and application of gypsum would also generate dust. • An Air Quality Impact Assessment (AQIA) was prepared for the EIS and a review of the AQIA was submitted with the RtS. • The AQIA review concluded ground level concentrations of particulates, metals, air toxics and diesel-combustion pollutants would comply with the EPA's impact assessment criteria and the National Environment Protection Measure (NEPM) at all sensitive receivers. • Gypsum material would be stored in a shed on site reducing the potential for wind erosion and particulate emissions. The Applicant proposed a range of measures to minimise emissions, including on site speed limits, use of water to suppress dust, a dust monitoring network and a gas collection and venting system for the containment cell. • The EPA requested further information about the concentration of air toxics at the site boundary. Council recommended an expanded dust monitoring network and requested more details on gas emissions including detection, treatment, prevention and safety protocols. • These concerns were addressed in the RtS. The Applicant confirmed the containment cell would produce low levels of gas based on the nature of the contaminants. The Applicant also committed to a gas emission monitoring program for ammonia and methane and a contingency response plan in the final LTEMP. • After reviewing the RtS, the EPA and Council raised no further air quality issues. • The Department notes the large size of the site and distance to sensitive receivers and is satisfied the air quality impacts of the remediation works and on-going emissions from the containment cell would be minor and below relevant limits. 	<p>Require the Applicant to:</p> <ul style="list-style-type: none"> • prepare an AQMP prior to the commencement of remediation works • prepare a GMP prior to the completion of filling of the containment cell

Findings	Recommendations
<ul style="list-style-type: none"> • The Department has recommended conditions for an Air Quality Management Plan (AQMP) as part of the RWEMP and a Gas Monitoring Plan (GMP) as part of the LTEMP. • The Department's assessment concludes air quality impacts would be managed effectively by the Department's recommended conditions. 	
Stormwater and Flooding	
<ul style="list-style-type: none"> • The remediation works have the potential to contaminate stormwater with leachate from the open containment cell, impacting surrounding watercourses and Wentworth Swamp. • The Applicant's proposed stormwater system would divert clean stormwater away from the open cells into dedicated sediment basins via swales. The Applicant proposes to manage water impacts through implementation of an erosion and sediment control plan. • The development would not result in changes to stormwater management or capacity for the rest of the site. The existing dams would not require upgrade and discharge of stormwater to the irrigation area would continue under the EPL. • Following completion of remediation works, the Applicant does not propose ongoing stormwater quality monitoring at the containment cell as contaminants would be securely encapsulated and cell capping has been designed to divert surface water away from the capped surface to reduce infiltration through the cell. Implementation of the LTEMP would ensure ongoing integrity of the cell lining and capping systems. • The EPA and Council did not raise any concerns regarding stormwater management. • The EIS advised the site is located above the 1% AEP flood level. As such the remediation works would be protected from flood waters. • As there would be no major change to overall ongoing water management at the site, the Department concludes it is unlikely there would be adverse impacts on surrounding watercourses and Wentworth Swamp. • The Department recommends conditions requiring the Applicant to install and maintain erosion and sediment control measures and install the stormwater management system prior to placement of waste materials in the containment cell. Works-as-executed 	<p>Require the Applicant to:</p> <ul style="list-style-type: none"> • install and operate suitable erosion and sediment controls • install and operate a stormwater management system prior to placement of waste in the containment cell • provide works-as-executed drawings for the stormwater system to the Site Auditor.

Findings	Recommendations
<p>drawings must also be provided to the Site Auditor to demonstrate the system has been constructed in accordance with the design.</p> <ul style="list-style-type: none"> The Department's assessment concludes stormwater would be managed effectively in accordance with the EPL and the Department's recommended conditions. 	
Noise and Vibration	
<ul style="list-style-type: none"> A Noise and Vibration Impact Assessment (NVIA) was prepared in accordance with the Interim Construction Noise Guidelines (2009) (ICNG) and the NSW Road Noise Policy (2011) (RNP). The NVIA identified 36 sensitive receivers, the nearest located approximately 440 m to the south. The NVIA found remediation works would comply with relevant criteria at all receivers during both standard and out of hours construction periods. Cumulative traffic noise would also comply with the RNP criteria. Due to the distance to the nearest sensitive receiver (440 m), the NVIA considered it unlikely the remediation works would generate vibration impacts giving rise to annoyance or structural damage. The NVIA included a range of standard noise mitigation and management measures, such as using less noise-intensive equipment, positioning fixed plant away from sensitive receivers and using limited numbers of plant during out of hours works. Public and agency submissions did not raise concerns about noise. The Department's assessment concludes the remediation works would not generate significant noise and vibration impacts. The Department has recommended standard noise conditions. 	<p>Require the Applicant to:</p> <ul style="list-style-type: none"> comply with the working hours listed in the consent meet relevant construction noise management levels limit vibration to meet relevant standards at sensitive receivers.
Hazards	
<ul style="list-style-type: none"> The EIS identified the main hazardous activities would be excavation, transport and placement of the CWS material in the containment cell. The CWS contains approximately 62,000 tonnes of SPL, which may emit flammable gases when in contact with water. The EIS deemed the development to be Low Hazard Development and a level 1 (qualitative assessment) was undertaken. The Department requested additional details of the types and quantities of potential gases. The RtS clarified that hydrogen sulphide, ammonia and methane could be generated, however, due to the heterogenous nature of the CWS material, it is very difficult to 	<p>Require the Applicant to:</p> <ul style="list-style-type: none"> prepare a Fire Safety Study and a Construction Safety Study pre-construction prepare an Emergency Plan and Safety Management System pre-commissioning

Findings	Recommendations
<p>predict the quantity of gases. Based on the results of laboratory tests and gas well testing within the CWS, it is however predicted the impacts from gas generation would be low.</p> <ul style="list-style-type: none"> Following this clarification, the Department notes a quantitative estimation of the gases would be highly hypothetical and would not add value to the assessment, particularly due to the relatively isolated location of the development (440 m to nearest residence). Notwithstanding the expected low concentrations of gas, the Applicant provided strict control measures to mitigate the potential impacts. The Department's assessment concludes the development would present a low level of hazard risk if the control measures are implemented. To ensure safety is not compromised during the remediation works, several hazards-related conditions are recommended. 	<ul style="list-style-type: none"> prepare a Pre-start up Compliance Report
Traffic and Access	
<ul style="list-style-type: none"> The remediation works would occur over a period of up to three years and generate traffic with the potential to impact on the safety and efficiency of the surrounding road network. Low levels of traffic would be generated during long-term maintenance of the site. Hyder Consulting prepared a Traffic Impact Assessment (TIA) which identified peak remediation periods would generate up to 17 truck movements per day and post-remediation management would generate up to 4 truck movements per day. The construction haul routes include the Hunter Expressway, Main Road and Hart Road. SIDRA analysis predicted the key intersections (Hunter Expressway/Main Road and Hunter Expressway/Hart Road) would perform at a high level of service during peak remediation works. A TIA Addendum was provided in the RtS assessing the additional traffic impacts from transportation of gypsum to the site (18 truck movements per day) and transport of leachate off site (4 truck movements per day). The highest number of total daily truck movements was predicted to be 35 movements per day. Under all assessed scenarios, the key intersections would continue to operate at a high level of service. TfNSW and Council had no residual concerns regarding traffic. 	<p>Require the Applicant to:</p> <ul style="list-style-type: none"> provide sufficient parking onsite ensure no vehicles queue on public roads.

Findings	Recommendations
<ul style="list-style-type: none"> The Department's assessment concludes the remediation works would have minimal impact on the efficiency and safety of the road network and is satisfied traffic impacts would be appropriately managed through standard traffic conditions relating to onsite movements and parking. 	
Aboriginal Heritage	
<ul style="list-style-type: none"> Most of the Hydro site has been subject to extensive disturbance for industrial development and is unlikely to contain intact Aboriginal heritage items. An Aboriginal Cultural Heritage Assessment (ACHA) for the development identified one new Aboriginal archaeological site (HYDRO-IA35-15) comprising an isolated stone artefact with low scientific significance to the east of the CBP. An area of high archaeological sensitivity was also recognised near the area earmarked for ENM stockpiling north-east of the CBP. The Applicant proposes surface collection and relocation of HYDRO-IA35-15 before any works commence in the area. BCD requires the Applicant to register this site in the Aboriginal Heritage Information System (AHIMS). The Department notes the low archaeological sensitivity of the site and considers the proposed management measures are appropriate. The Department recommends the Applicant implement an unexpected finds protocol and requires stockpiles in the area of high archaeological sensitivity (as shown in Figure 23 of the ACHA) to be placed on geo-matting. The Department's assessment concludes the impacts of the development on Aboriginal cultural heritage would be minimal and able to be managed effectively through the Department's recommended conditions. 	<p>Require the Applicant:</p> <ul style="list-style-type: none"> ensure stockpiles are placed on geo-matting in the area of high archaeological sensitivity prepare an Unexpected Finds Protocol.



7. Evaluation

The Department's assessment of the application has fully considered all relevant matters under section 4.15 of the EP&A Act, the objects of the EP&A Act and the principles of ESD. The Department also consulted key government agencies and engaged independent experts to assist with its assessment of the application. Independent experts provided advice to the Department on the remediation approach and the environmental and financial liabilities for long-term management.

The Applicant is proposing to remediate the former Hydro Aluminium Smelter to enable future industrial land uses. The development involves remediating a waste stockpile containing 327,000 tonnes of hazardous waste by treating the material and emplacing it within a purpose-built containment cell on the site, with capacity for 345,000 tonnes of waste. The development also involves treating contaminated groundwater and excavating other contaminated soils across the smelter site for placement in the containment cell.

An independent Site Auditor has been appointed to oversee the remediation works and has provided a Site Audit Report to the Department on the RAP.

The key issues for assessment include the remediation approach, long-term management of the containment cell and human health. A range of other issues including biodiversity, air and noise, stormwater, hazards, traffic and Aboriginal heritage were also assessed.

The remediation approach was refined throughout the assessment process to address issues raised by the Department, its independent experts and the EPA. The key changes included treatment of the contaminated material before emplacement within the cell, and collection and off-site disposal of leachate generated from the cell. The treatment of the contaminated material was a critical aspect of the remediation approach, enabling the Applicant to meet its obligations under the *Environmentally Hazardous Chemicals Act, 1985* and ensure leachable levels of fluoride and cyanide would be below relevant thresholds. The proposed approach for off-site disposal of leachate was considered appropriate, given the cell would be a 'dry tomb', with minimal leachate generated.

The containment cell design was also subject to review and changes throughout the assessment process. The Department's independent expert Senversa provided advice on the design to ensure the long-term integrity of the cell. The Applicant provided a detailed cell design report in the RtS which set out the methodology and quality assurance for each stage of cell construction. The Department, Senversa and relevant government agencies were ultimately satisfied with the proposed cell design.

As the development would retain up to 345,000 tonnes of hazardous waste in the containment cell, there was a need to provide for long-term monitoring, maintenance and funding to ensure there are no on-going risks to human health and the environment, or liabilities for government. WAMC, a NSW

government entity, would take ownership of the cell following a 5 year management period by the Applicant.

The Department worked extensively with the Applicant to establish the long-term management framework for the containment cell. This involved input from two independent experts, firstly from Senversa on the on-going liabilities for maintaining the cell and secondly from Hall Chadwick verifying the monetary amount to cover the liabilities. This process took two years and resulted in a VPA to provide a mechanism for perpetual care of the cell which was signed by the Applicant on 11 December 2020.

The Department is satisfied the arrangements negotiated in the VPA are sufficient to ensure the long-term environmental risks from the development are minimised and a strong framework is in place for perpetual care of the containment cell, minimising financial risks to government as:

- the provision of bank guarantees, before commencing any work, would ensure financial protection if the Applicant does not complete the remediation works and government is required to complete them;
- the final inputs and assumptions in the Applicant's financial model were confirmed acceptable by independent experts, providing confidence that the \$6.5 million monetary contribution represents sufficient funds for WAMC to implement the LTEMP in perpetuity;
- a high degree of certainty is provided by the requirement for a containment cell performance report, confirming good environmental performance and the absence of defects before transfer of containment cell land to WAMC;
- increased security for material defects is provided through the transfer of design warranties for cell construction to WAMC; and
- the Applicant would provide and pay for insurance cover of at least \$10 million for failure of the containment cell for up to ten years following the cell transfer date.

The potential for human health impacts during remediation works is low and the Department concludes the remediation works can be managed to ensure risks to on-site workers and off-site receivers are minimal.

The Department considers the impacts of the remediation works can be managed and/or mitigated to ensure an acceptable level of environmental performance, subject to the recommended conditions of consent including:

- implementation of management and mitigation measures identified by the Applicant;
- engagement of a Site Auditor to independently review the implementation and validation of the remediation works;
- preparation and implementation of a Remediation Works Environmental Management Plan and LTEMP;
- implementation of a Health and Safety Plan to minimise human health risks;
- offsetting the loss of biodiversity values; and
- financial and environmental management arrangements for the perpetual care of the containment cell (as described in the VPA).

Overall, the Department's assessment has concluded the development would remove a long-term source of contamination caused by operation of the aluminium smelter and would enable the Applicant to redevelop the site to provide for employment generating uses. If the project did not proceed, there would be an on-going risk to the environment from the potential leaching of contaminants from the CWS material into the surrounding buffer lands.

On balance, the Department considers the development is in the public interest and is recommended for approval, subject to conditions (included in **Appendix E**).



8. Recommendation

For the purpose of section 4.38 of the *Environmental Planning and Assessment Act 1979*, it is recommended that the Executive Director, Energy, Industry and Compliance, as delegate of the Minister for Planning and Public Spaces:

- **considers** the findings and recommendations of this report
- **accepts and adopts** all of the findings and recommendations in this report as the reasons for making the decision to grant consent to the application
- **agrees** with the key reasons for approval listed in the notice of decision
- **grants consent** for the application SSD 6666 for the Hydro Aluminium Kurri Kurri Smelter Remediation
- **signs** the attached development consent (see **Appendix E**).

Recommended by:

15/12/20

Sheelagh Laguna

Principal Planning Officer
Industry Assessments

Recommended by:

15/12/20

Chris Ritchie

Director
Industry Assessments



9. *Determination*

The recommendation is: **Adopted by:**

23 December 2020

Mike Young

Executive Director

Energy, Industry & Compliance



Appendices

Appendix A – List of Documents

Appendix B – Relevant Supporting Documents

Appendix C – Considerations under Section 4.15 of the EP&A Act

Appendix D – Consideration of Environmental Planning Instruments

Appendix E – Recommended Conditions of Consent

Appendix F – Voluntary Planning Agreement

Appendix A – List of Documents

The Department has considered the following documents in its assessment of the development:

- Environmental Impact Statement – Former Hydro Aluminium Kurri Kurri Smelter Demolition and Remediation, Ramboll Environ, July 2016
- Response to Submissions Report – Former Hydro Aluminium Kurri Kurri Smelter Remediation, Ramboll, August 2020
- Submissions from the general public, Cessnock City Council, Maitland City Council and State government agencies
- objects and relevant provisions of the EP&A Act
- relevant environmental planning instruments, policies and guidelines.

These documents are available on the Department's website at:

<https://www.planningportal.nsw.gov.au/major-projects/project/11486>

Appendix B – Relevant Supporting Documents

- Environmental Impact Statement, Former Hydro Aluminium Kurri Kurri Smelter Demolition and Remediation, Ramboll Environ, July 2016
- Response to Submissions Report, Former Hydro Aluminium Kurri Kurri Smelter Remediation, Ramboll, February 2019 and August 2020
- Hydro Remediation Project (SSD 6666) Amendment of Proposed Project prepared by Hydro dated 3 September 2020
- Independent Review: Potential Liabilities – Proposed Containment Cell Former Hydro Aluminium Smelter, Kurri Kurri NSW prepared by Senversa dated 29 November 2018
- Response Review – Former Hydro Aluminium Smelter, Kurri Kurri NSW prepared by Senversa dated 18 April 2019
- Former Hydro Aluminium Smelter Remediation Independent Assessment of NPV and Assessment of Proposed Funding Structure prepared by Hall Chadwick dated 13 November 2019
- Capped Waste Stockpile Waste Management Options Evaluation Study, Ramboll, October 2017
- Hydro Aluminium Kurri Kurri Pty Ltd containment cell Design Report, GHD, August 2018
- Hydro Aluminium Kurri Kurri Pty Ltd CWS Waste Management Option 4 Remediation Design and Proposed Validation of Treatment, Ramboll, March 2018
- Site Audit Report and Site Audit Statement for the Remedial Action Plan, Hydro Aluminium Kurri Kurri Smelter Site Audit, Part B2 – Appropriateness of RAP for Smelter Area, AECOM, July 2018
- Remedial Action Plan, Hydro Aluminium Smelter Kurri Kurri, Ramboll, July 2018
- Groundwater Fate and Transport Modelling, Leachate Plume – Capped Waste Stockpile, Hydro Aluminium Smelter Kurri Kurri, Environ Australia, February 2015
- Preliminary Screening Level, Health Risk Assessment for Fluoride and Aluminium, Part of the Kurri Kurri Aluminium Smelter, Environ Australia, April 2013
- Remedial Action Work Plan, Clay Borrow Pit Area, Kurri Kurri NSW, Environ Australia, December 2014
- Tier 2 Ecological Risk Assessment, Kurri Kurri Aluminium Smelter, Environ Australia, March 2013
- Phase 1 Environmental Site Assessment, Kurri Kurri Aluminium Smelter, Environ Australia, October 2013
- Phase 2 Environmental Site Assessment, Kurri Kurri Aluminium Smelter, Environ Australia, January 2015
- Phase 2 Environmental Site Assessment, Kurri Kurri Aluminium Smelter, Environ Australia, November 2012
- Remedial Options Study, Hydro Aluminium Smelter, Environ Australia, May 2014
- Validation Report, Clay Borrow Pit Area, DLA Environmental Services, October 2015
- containment cell Long Term Management Plan, Ramboll, December 2017
- Hydro Aluminium Kurri Kurri Stormwater Management Report – Flood Modelling and Hydrology Review, Pulver Cooper & Blackley, Issue G, July 2018
- Preliminary Geotechnical Investigation, Proposed containment cell, Clay Borrow Pit, Environ Australia, February 2015

- Fate and Transport of Leachate, Proposed Hydro containment cell, Ramboll Environ, September 2017
- Hydro Aluminium Kurri Kurri Pty Ltd Draft Work Health & Safety Management Plan, Hydro Aluminium Kurri Kurri Pty Ltd, April 2018
- 2017 Annual Landfill Gas Monitoring Report, Hydro Aluminium, Ramboll, May 2018
- Eco Logical Australia 2015. Kurri Hydro Aluminium Smelter Demolition Project - Ecological Assessment. Prepared for Hydro
- Plume Delineation Report, Capped Waste Stockpile, Environ Australia, September 2016
- Hydro Aluminium Smelter Capped Waste Stockpile 2015 Annual Groundwater Monitoring Report, Ramboll Environ, April 2016.

Appendix C – Considerations under Section 4.15 of the EP&A Act

Section 4.15 of the EP&A Act requires that the consent authority, when determining a development application, must take into consideration the following matters:

Table 5 | Considerations under Section 4.15 of the EP&A Act

Provision	Comment
(a) the provisions of:	The Department has considered the relevant
(i) any environmental planning instrument, and	Environmental Planning Instruments (EPIs) and draft EPIs in its assessment of the proposed
(ii) any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Director-General has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and	development in Appendix D of this report. Pursuant to Clause 11 of the SRD SEPP, development control plans do not apply to State significant development.
(iii) any development control plan, and	A Voluntary Planning Agreement between the Applicant and the Minister has been agreed, outlining the long-term management arrangements for the containment cell.
(iiia) any planning agreement that has been entered into under Section 7.4, or any draft planning agreement that a developer has offered to enter into under Section 7.4, and	The Department has undertaken its assessment of the development in accordance with all relevant matters as prescribed by the regulations, the findings of which are contained within this report.
(iv) the regulations (to the extent that they prescribe matters for the purposes of this paragraph), and	The site is not located within a coastal zone and no coastal zone management plan applies to the development.
(v) any coastal zone management plan (within the meaning of the <i>Coastal Protection Act 1979</i>) that apply to the land to which the development application relates,	
(b) the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,	The Department has considered the likely impacts of the development in detail in Section 6 . The Department concludes that all environmental impacts can be appropriately managed and mitigated through the recommended conditions of consent.

Provision	Comment
(c) the suitability of the site for the development,	The development is permissible with consent in the RU2 Rural Landscape zone under the Cessnock Local Environmental Plan 2011 (CLEP 2011). The development would remediate contaminated land and make the site suitable for future commercial and industrial uses.
(d) any submissions made in accordance with this Act or the regulations,	All matters raised in submissions have been summarised in Section 5 and given due consideration as part of the assessment of the development in Section 6 .
(e) the public interest.	The development would remove a long-term source of contamination from operation of the former Hydro Aluminium Smelter and make the site suitable for future employment generating uses. The remediation works would generate 50 jobs over a 3 year period and would be managed to minimise environmental and amenity impacts. On balance, the Department considers the development is in the public interest.

Appendix D – Considerations of Environmental Planning Instruments

Under section 4.15 of the EP&A Act, the consent authority, when determining a DA, must take into consideration the provisions of any Environmental Planning Instruments (EPIs) and draft EPI (that has been subject to public consultation and notified under the EP&A Act) that apply to the development.

The Department has considered the development against the relevant provisions of the following key EPIs, including:

- State Environmental Planning Policy (State and Regional Development) 2011 (SRD SEPP)
- State Environmental Planning Policy (Infrastructure) 2007 (ISEPP)
- State Environmental Planning Policy No 33 – Hazardous and Offensive Development (SEPP 33)
- State Environmental Planning Policy No 44 – Koala Habitat Protection (SEPP 44)
- State Environmental Planning Policy No 55 – Remediation of Land (SEPP 55) and draft State Environmental Planning Policy (Remediation of Land) (draft Remediation SEPP)
- Cessnock Local Environmental Plan 2011 (CLEP 2011).

The Department's assessment of the above EPIs is provided below. The Department is satisfied the development complies with the relevant provisions of these EPIs.

State Environmental Planning Policy (State and Regional Development) 2011 (SRD SEPP)

The SRD SEPP identifies certain classes of development as State significant developments (SSDs). Development for the purpose of a hazardous waste facility that transfers, stores or disposes of solid or liquid waste classified in the Australian Dangerous Goods Code and handles more than 1,000 tonnes per annum of waste meets the criteria in Clause 23(5), Schedule 1 to the SRD SEPP and is therefore SSD.

The development involves construction and operation of a containment cell that would store up approximately 345,000 tonnes of hazardous waste. As such, the development is classified as SSD.

State Environmental Planning Policy (Infrastructure) 2007 (ISEPP)

The ISEPP aims to facilitate the effective delivery of infrastructure across the State and lists the type of development defined as traffic generating development. The development constitutes traffic generating development in accordance with the ISEPP as it consists of a waste or resource management facility.

The development was referred to TfNSW for consideration. TfNSW did not object to the development and did not recommend any conditions. The development would generate small volumes of traffic and once the containment cell is capped and completed, the development would generate only minor on-going traffic movements.

State Environmental Planning Policy No 44 – Koala Habitat Protection (SEPP 44)

SEPP 44 has now been replaced by the Koala Habitat Protection SEPP 2020, however SEPP 44 applies to the development as the application was lodged in 2016.

SEPP 44 aims to encourage the proper conservation and management of areas of natural vegetation that provide habitat for koalas to ensure a permanent free-living population over their present range and reverse the current trend of koala population decline.

The Applicant submitted an Ecological Assessment (EA) that considered the potential for the development to impact on koalas and their habitat. The EA noted the removal of 1.35 ha of Kurri Sand Swamp EEC would remove some koala feed trees, although the site does not contain core koala habitat nor was a resident population identified during field surveys. The clearing was considered unlikely to significantly impact koalas, given it is a small strip located adjacent to the already cleared CBP and would not result in fragmentation of koala habitat.

The Department is satisfied the development would not have significant impacts on koalas or their habitats.

State Environmental Planning Policy No 55 – Remediation of Land (SEPP 55)

Clause 7 of the SEPP 55 requires the consent authority must not consent to the carrying out of any development on land unless:

- (a) it has considered whether the land is contaminated, and
- (b) if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out, and
- (c) if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for the purpose.

The Department is satisfied that the Applicant has prepared a Remedial Action Plan (RAP) detailing the proposed remediation works including remedial methodology. With the implementation of the RAP, the land will be made suitable for future industrial and commercial uses.

Draft State Environmental Planning Policy (Remediation of Land) (draft Remediation SEPP)

The draft Remediation SEPP retains the key operational framework of the current SEPP 55, whilst adding new provisions relating to changes in categorisation and introducing modern approaches to the management of contaminated land. The development has been assessed against SEPP 55 (above), and the Department is satisfied the development would be consistent with the draft Remediation SEPP.

Cessnock Local Environmental Plan 2011 (CLEP 2011)

CLEP 2011 aims to:

- conserve and enhance, for current and future generations, the ecological integrity, environmental heritage and environmental significance of Cessnock,
- encourage development for employment purposes in appropriate locations having regard to proximity to appropriate infrastructure,
- provide opportunities for a range of new housing and housing choice in locations that have good access to public transport, community facilities and services, retail and commercial services and

employment opportunities, including opportunities for the provision of adaptable and affordable housing.

The site is zoned RU2 Rural Landscape under the Cessnock Local Environmental Plan 2011 (CLEP 2011). Waste management facility is not listed as a prohibited development or a development permitted without consent, therefore the development is permissible with consent in the RU2 zone. Thus, the Minister for Planning and Public Spaces or a delegate may determine the carrying out of the development. The site would be rezoned following remediation, with the proposed zoning accurately reflecting the use of the land as industrial.

The Department has also considered all matters raised by Cessnock City Council in its assessment of the development (see **Section 6** of this report) and recommended conditions.

Appendix E – Recommended Conditions of Consent

The recommended conditions of consent for SSD 6666 can be found on the Department's website at:

<https://www.planningportal.nsw.gov.au/major-projects/project/11486>

Appendix F – Voluntary Planning Agreement



11 December 2020

Minister for Planning and Public Spaces
Level 15, 52 Martin Place, Sydney NSW 2000

Copies

Chris Ritchie
Director, Industry Assessments
Department of Planning, Industry and Environment
4 Parramatta Square, 12 Darcy Street
PARRAMATTA NSW 2124

Dear Minister

**Letter of offer to enter into a planning agreement
State Significant Development Application No. SSD 6666**

We refer to State Significant Development Application No. SSD 6666 (**SSDA**) lodged by Hydro Aluminium Kurri Kurri Pty Ltd (ABN 55 093 266 221) (**Hydro**).

Hydro irrevocably offers to enter into a planning agreement with the NSW Minister for Planning and Public Spaces (ABN 20 770 707 468) under section 7.4 of the *Environmental Planning and Assessment Act 1979* in connection with the SSDA in the terms of the planning agreement attached to this letter (and executed by Hydro).

The VPA requires Hydro to provide a monetary contribution bank guarantee, and four separate remediation works bank guarantees, on the commencement date of the VPA – being the date on which the Minister executes the VPA (**Bank Guarantees**). In anticipation of this obligation, Hydro undertakes to provide the Bank Guarantees to the Minister by 24 December 2020.

Yours faithfully,
for Hydro Aluminium Kurri Kurri Pty Limited

A handwritten signature in dark ink, appearing to read 'Richard Brown', followed by a long horizontal flourish.

Richard Brown
Managing Director
richard.brown@hydro.com

Encl.

Hydro Aluminium Kurri Kurri Pty Limited
P.O. Box 1 Kurri Kurri
NSW 2327
Australia

Visiting address:
Hart Rd Loxford
NSW
Australia

www.hydro.com ACN 093 266 221
T +61 249 371 555 ABN 55 093 266 221
F +61 249 370 253



HOLDING REDLICH

Dated

2020

Planning Agreement

Environmental Planning and Assessment Act 1979

Minister for Planning and Public Spaces (ABN 20 770 707 468)

Hydro Aluminium Kurri Kurri Pty Ltd (ABN 55 093 266 221)

Sydney . Melbourne . Brisbane . Cairns

www.holdingredlich.com

Table of contents

1.	Definitions and interpretation	3
1.1	Definitions.....	3
1.2	Interpretation	8
2.	Operation and application of this deed	9
2.1	Operation.....	9
2.2	Planning agreement under the Act	10
2.3	Application.....	10
3.	Application of sections 7.11, 7.12 and 7.24 of the Act.....	10
4.	Development Contributions	10
4.1	Developer to provide Development Contributions	10
4.2	Acknowledgement	10
5.	Interest.....	10
5.1	Interest for late payment.....	10
6.	Enforcement	11
6.1	Compulsory Acquisition	11
6.2	Developer to provide Security	11
7.	Registration	11
7.1	Registration of deed	11
7.2	Evidence of registration.....	11
7.3	Release and discharge of deed	12
7.4	Developer's interest in Land	12
8.	Dispute Resolution.....	12
8.1	Not commence	12
8.2	Written notice of dispute	12
8.3	Attempt to resolve.....	12
8.4	Mediation	13
8.5	Court proceedings	13
8.6	Not use information	13
8.7	No prejudice	13
9.	GST	13
9.1	Definitions.....	13
9.2	Intention of the parties.....	13
9.3	Reimbursement	13
9.4	Consideration GST exclusive	14
9.5	Additional Amounts for GST	14
9.6	Non monetary consideration.....	14
9.7	Assumptions	14
9.8	No merger.....	14
10.	Assignment and transfer	14
10.1	Right to assign or novate	14
10.2	Right to transfer Land	15
10.3	Replacement Security	15

11. Capacity.....	16
11.1 General warranties	16
11.2 Power of attorney.....	16
12. Reporting requirement.....	16
13. General Provisions	17
13.1 Entire deed	17
13.2 Variation	17
13.3 Waiver.....	17
13.4 Further assurances	17
13.5 Time for doing acts	17
13.6 Governing law and jurisdiction	17
13.7 Severance.....	17
13.8 Preservation of existing rights	17
13.9 No merger.....	18
13.10 Counterparts.....	18
13.11 Relationship of parties	18
13.12 Good faith	18
13.13 No fetter	18
13.14 Explanatory note.....	18
13.15 Expenses and stamp duty	18
13.16 Notices	19
Schedule 1.....	20
Schedule 2 Address for Service.....	22
Schedule 3 Land.....	23
Schedule 4 Development Contributions	24
Schedule 5 Security terms.....	33
Schedule 6 Remediation Works.....	35
Schedule 7 Scope of Works	42
Schedule 8 Independent Engineer's Deed	43
Execution page	44
Annexure A Containment Cell Plan.....	45
Annexure B Containment Cell Land Plan.....	46
Annexure C Access Road Concept Plan	47
Annexure D Access Road Certificate of Compliance	48
Annexure E Stage 1A Works Certificate of Compliance.....	49

This Planning Agreement is dated

2020

Parties:

Minister

Minister for Planning and Public Spaces (ABN 20 770 707 468)
of Level 15, 52 Martin Place, Sydney NSW 2000

Developer

Hydro Aluminium Kurri Kurri Pty Ltd (ABN 55 093 266 221)
of Hart Road, Loxford NSW 2326

Introduction:

- A** The Developer owns the Land.
- B** The Developer has lodged a Development Application for Development Consent to carry out the Development on the Land.
- C** The Developer has offered to enter into this deed with the Minister to provide the Development Contributions in connection with the Development.

It is agreed:

1. Definitions and interpretation

1.1 Definitions

In this **deed**, unless the context clearly indicates otherwise:

Access Easement means an easement over the Access Road Land, if required, for the purpose of providing the Minister and the owner or occupier of the Containment Cell Land a right of access to and from the Containment Cell Land by any means and the nearest public road, being Hart Road, Loxford.

Access Road means the road to be constructed by the Developer providing access to the Containment Cell Land, within the potential area for the Access Road identified on the Access Road Concept Plan, with the final location to be determined by the Access Road Plan, in accordance with clause 3.4 of Schedule 4 of this deed.

Access Road Certificate of Compliance means a certificate from an appropriately qualified engineer in the form attached as Annexure D.

Access Road Concept Plan means the plan attached at Annexure C as amended from time to time in accordance with clause 3.4 of Schedule 4 of this deed.

Access Road Land means:

- (a) during the period prior to the Minister's approval of the Access Road Plan in accordance with clause 3.4(g)(i) of Schedule 4 of this deed, that part of the Land identified on the Access Road Concept Plan as the potential area for the Access Road; and

- (b) during the period after the Minister's approval of the Access Road Plan in accordance with clause 3.4(g)(i) of Schedule 4 of this deed, that part of the Land identified on the Access Road Plan as the area for the Access Road.

Act means the *Environmental Planning and Assessment Act 1979* (NSW).

Address for Service means the address of each party appearing in Schedule 2 of this deed or any new address notified by any party to all other parties as its new Address for Service.

Approval means any approval, authorisation, consent, licence, permit, exemption, certificate or any other approval required by law.

Authority means any Federal, State or local government or semi-governmental, statutory, judicial or public person, instrumentality or department.

Bank Guarantee means an irrevocable and unconditional undertaking:

- (a) by an Australian bank which is an eligible financial institution for the purposes of Treasury Circular NSW TC14/01 dated 24 January 2014 as amended, supplemented or substituted from time to time; and
- (b) on terms acceptable to the Minister, in the Minister's absolute discretion,

to pay the face value of that undertaking (being such amount as is required under this deed) on demand.

Base CPI means the CPI number for the quarter ending 31 March 2020.

Business Day means any day that is not a Saturday, Sunday, public holiday or bank holiday in Sydney, and concludes at 5pm on that day.

Claim includes a claim, demand, remedy, suit, injury, damage, loss, cost, liability, action, proceeding or right of action.

CLM Act means the *Contaminated Land Management Act 1997* (NSW).

Commencement Date means the date this deed commences in accordance with clause 2.1 of this deed.

Completion of Remediation Works means the date on which a Site Audit Statement and Site Audit Report are issued in relation to the Remediation Works.

Consent Authority has the same meaning as in the Act.

Construction Certificate has the same meaning as in the Act.

Construction Remediation Works means so much of the Remediation Works as relates to:

- (a) the construction of the Containment Cell, including all design and temporary works, the construction of infrastructure associated with the Containment Cell (such as the installation of pipework for collection of groundwater, collection sumps for leachate and 'anchor' trenches) and the construction of the access road to the Containment Cell and the perimeter road, as described in SSD 6666; and
- (b) the Stage 1B Works.

Containment Cell means the containment cell and associated infrastructure proposed to be constructed by the Developer on the Land in accordance with any Remediation Consent and generally as shown on the plan at Annexure A.

Containment Cell Condition Report means the report prepared by the Developer in accordance with clause 3.3 of Schedule 4 of this deed.

Containment Cell Contribution means the:

- (a) management and maintenance of the Containment Cell up to and during the Management Period in accordance with the LTEMP; and
- (b) construction of the Access Road,

in accordance with clause 3 of Schedule 4 of this deed.

Containment Cell Insurance means the insurances taken out and maintained by the Developer in accordance with clause 3.7 of Schedule 4 of this deed.

Containment Cell Land means that part of the Land to be transferred to the Minister, including the land on which the Containment Cell is located, in accordance with the terms of this deed and as shown on the Containment Cell Land Plan.

Containment Cell Land Plan means the plan attached as Annexure B to this deed.

Containment Cell Land Subdivision Plan means any Plan of Subdivision which creates a separate lot for the Containment Cell Land prepared in accordance with clause 3.4 of Schedule 4 of this deed.

Containment Cell Land Transfer Date means the date on which the Developer is to transfer the Containment Cell Land to the Minister in accordance with Schedule 4 of this deed.

Contamination has the same meaning as in the CLM Act.

CoRD Holder Consent means the electronic document lodged through an ELNO that provides consent to the registration of instruments and plans.

Costs means any loss, cost, fee, charge, expense, Tax, rate, fine, penalty or debts including those in connection with advisors and any compensation payable to any person in accordance with the law.

CPI means the Sydney Consumer Price Index (All Groups) published by the Commonwealth Statistician, or if that index no longer exists, any similar index that the Minister specifies, in his or her sole discretion, for the purposes of this deed.

CPI Adjustment Date means 1 July 2021 and each anniversary of 1 July 2021 thereafter.

Current CPI means the CPI number for the quarter ending on 31 March in the relevant adjustment year.

Date for Completion means the date 4 years from the date the Remediation Consent is granted.

Department means the NSW Department of Planning, Industry and Environment.

Development means the development of the Land generally in accordance with SSD 6666, comprising remediation of the former Hydro Kurri Kurri Aluminium smelter site including excavation of onsite contaminated areas, excavation and treatment of capped waste stockpile (CWS) material, construction of a purpose built containment cell, placement of contaminated

materials in the containment cell, treatment of CWS leachate and the contaminated groundwater plume beneath the CWS and ongoing management of the containment cell in perpetuity.

Development Application has the same meaning as in the Act.

Development Consent has the same meaning as in the Act.

Development Contributions means the contributions to be provided by the Developer in accordance with Schedule 4 and Schedule 6 of this deed.

ELNO has the same meaning as in the *Electronic Conveyancing National Law* (NSW).

Explanatory Note means the note exhibited with a copy of this deed when this deed is made available for inspection by the public pursuant to the Act, as required by the Regulation.

Fit for Purpose means, in respect of any part of the Remediation Works, fit for the purposes stated in or to be reasonably inferred from this deed (and the documents referenced therein including but not limited to the Remediation Consent and the RAP).

General Register of Deeds means the land register maintained under the *Conveyancing Act 1919* (NSW) and so titled.

GST means any form of goods and services tax payable under the GST Legislation.

GST Legislation means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Independent Engineer means an appropriately qualified engineer engaged by the Developer in accordance with clause 3 of Schedule 6 of this deed.

Independent Engineer's Deed means the deed between the Minister, the Developer and the Independent Engineer substantially in the form that appears at Schedule 8 of this deed (with any changes to be agreed, in writing, by the Minister, acting reasonably).

Land means the land described in Schedule 3 of this deed.

LTEMP means the Long Term Environmental Management Plan prepared by the Developer in accordance with the Remediation Consent.

Management Period means a period of not less than 5 years commencing on the Remediation Works Completion Date.

Mediation Program means the Mediation Program of the Law Society of New South Wales as published on its website and as varied from time to time.

Minister means the NSW Minister for Planning and Public Spaces and includes (where relevant) the Minister's nominee, the Secretary and the Secretary's nominee.

Monetary Contribution means the monetary contribution to be provided by the Developer in accordance with Schedule 4 of this deed for the purpose of ensuring environmental protection measures for the perpetual care of the Containment Cell and associated infrastructure on the Containment Cell Land.

NSW EPA means the NSW Environment Protection Authority.

Planning Application means:

- (a) a Development Application; or

(b) any other application required under the Act.

Plan of Subdivision means a registered plan of subdivision within the meaning of section 195 of the *Conveyancing Act 1919* (NSW).

Public Road has the same meaning as in the *Roads Act 1993* (NSW).

Private Road has the same meaning as in the *Roads Act 1993* (NSW).

Proposed Dealing has the meaning given in clause 3.4 of Schedule 4 of this deed.

RAP means the Remedial Action Plan - Hydro Aluminium Smelter Kurri Kurri prepared by Ramboll dated 2 July 2018 as amended from time to time (with the Minister's agreement).

Real Property Act means the *Real Property Act 1900* (NSW).

Register means the Torrens title register maintained under the Real Property Act.

Regulation means the *Environmental Planning and Assessment Regulation 2000* (NSW).

Remediation has the meaning given to it in *State Environmental Planning Policy No. 55 – Remediation of Land* and **remediate** has a corresponding meaning.

Remediation Consent means any Development Consent granted for the Development.

Remediation Criteria means the remediation criteria set out in the RAP.

Remediation Validation Report has the same meaning as in the Remediation Consent.

Remediation Works means all works to be undertaken in accordance with the Remediation Consent, including associated design, and, for the avoidance of doubt, includes the road that will form part of the Containment Cell Land.

Remediation Works Completion Date means the date on which the Minister provides the Developer with a notice in accordance with clause 3.2(f) of Schedule 4 of this deed.

Remediation Works Construction Contribution means the carrying out of the Remediation Works in accordance with the Remediation Consent and this deed by the Date for Completion.

Roads Authority has the same meaning as in the *Roads Act 1993* (NSW).

Secretary means the Secretary of the Department.

Security means the Bank Guarantees for the amounts and on the terms specified in Schedule 5 and Schedule 6 of this deed.

Scope of Works means the scope of work for design and construction of the Remediation Works at Schedule 7 of this deed.

Site Auditor has the same meaning as in the CLM Act.

Site Audit Statement means a site audit statement as that term is defined in the CLM Act and that:

- (a) has been prepared in accordance with the Remediation Consent; and
- (b) is addressed to the Minister.

Site Audit Report means a site audit report as that term is defined in the CLM Act and that:

- (a) has been prepared in accordance with the Remediation Consent; and
- (b) is addressed to the Minister.

SSD 6666 means the State Significant Development Application No. SSD 6666 made by the Developer for the Development.

Stage 1A Works means the following works and activities forming part of SP2 Part 1 as outlined in the Scope of Works:

- (a) set-up of contractor's temporary project facilities;
- (b) installation of temporary fencing at work areas;
- (c) installation of soil and water management infrastructure at the site of the Containment Cell;
- (d) stockpiling of excavated material at temporary stockpiles for later use; and
- (e) clearing and excavation of clay borrow pit area for the Containment Cell.

Stage 1A Works Certificate of Compliance means a certificate from the Validation Consultant in the form attached as Annexure E.

Stage 1B Works means the following works and activities forming part of SP2 Part 1 as outlined in the Scope of Works:

- (a) creation of main East-West Haul Road;
- (b) creation of permanent creek crossing (culverts); and
- (c) construction of 5 dams – 1 leachate dam, 3 sediment basins at Containment Cell site and 1 leachate dam at the capped waste stockpile.

Stage means each of the sections indicated as part of "SP2" in the Scope of Works at Schedule 7 of this deed.

Stage Completion has the meaning set out in clause 6 of Schedule 6 of this deed.

Suitably Qualified Consultant means a consultant certified under either the Environment Institute of Australia and New Zealand's Certified Environmental Practitioner (Site Contamination) scheme (CEnvP(SC)) or the Soil Science Australia Certified Professional Soil Scientist Contaminated Site Assessment and Management (CPSS/ CSAM) scheme.

Tax means a tax, duty (including stamp duty and any other transaction duty), levy, impost, charge, fee (including a registration fee) together with all interest, penalties, fines and costs concerning them.

Validation Consultant has the same meaning as in the Remediation Consent.

1.2 Interpretation

In this deed unless the context clearly indicates otherwise:

- (a) a reference to **this deed** or another document means this deed or that other document and any document which varies, supplements, replaces, assigns or novates this deed or that other document;

- (b) a reference to **legislation** or a **legislative provision** includes any statutory modification, or substitution of that legislation or legislative provision and any subordinate legislation issued under that legislation or legislative provision;
- (c) a reference to a **body** or **authority** which ceases to exist is a reference to either a body or authority that the parties agree to substitute for the named body or authority or, failing agreement, to a body or authority having substantially the same objects as the named body or authority;
- (d) a reference to the **introduction**, a **clause**, a **schedule** or an **annexure** is a reference to the introduction, a clause, a schedule or an annexure to or of this deed;
- (e) **clause headings**, the **introduction** and the **table of contents** are inserted for convenience only and do not form part of this deed;
- (f) the **schedules** and **annexures** form part of this deed;
- (g) a reference to a **person** includes a natural person, corporation, statutory corporation, partnership, the Crown or any other organisation or legal entity;
- (h) a reference to a **natural person** includes their personal representatives, successors and permitted assigns;
- (i) a reference to a **corporation** includes its successors and permitted assigns;
- (j) a reference to a right or obligation of a party is a reference to a right or obligation of that party under this deed;
- (k) an **obligation** or **warranty** on the part of 2 or more persons binds them jointly and severally and an obligation or warranty in favour of 2 or more persons benefits them jointly and severally;
- (l) a requirement to do any thing includes a requirement to cause that thing to be done and a requirement not to do any thing includes a requirement to prevent that thing being done;
- (m) **including** and **includes** are not words of limitation;
- (n) a word that is derived from a defined word has a corresponding meaning;
- (o) **monetary amounts** are expressed in Australian dollars;
- (p) the singular includes the plural and vice-versa;
- (q) words importing one gender include all other genders;
- (r) a reference to a thing includes each part of that thing; and
- (s) neither this deed nor any part of it is to be construed against a party on the basis that the party or its lawyers were responsible for its drafting.

2. Operation and application of this deed

2.1 Operation

This deed commences on the date that this deed is signed by all the parties.

2.2 Planning agreement under the Act

This deed constitutes a planning agreement within the meaning of section 7.4 of the Act and the parties agree on the matters set out in Schedule 1 of this deed.

2.3 Application

This deed applies to:

- (a) the Land; and
- (b) the Development.

3. Application of sections 7.11, 7.12 and 7.24 of the Act

The application of sections 7.11, 7.12 and 7.24 of the Act is excluded to the extent stated in Schedule 1 of this deed.

4. Development Contributions

4.1 Developer to provide Development Contributions

The Developer undertakes to provide, or procure the provision of, the Development Contributions to the Minister subject to, and in accordance with, the provisions of Schedule 4 and Schedule 6 of this deed.

4.2 Acknowledgement

The Developer acknowledges and agrees that, subject to section 7.3 of the Act, the Minister:

- (a) has no obligation to use or expend the Development Contributions for a particular purpose despite any provision of this deed to the contrary and has no obligation to repay the Development Contributions; and
- (b) in circumstances where the Development Contributions are transferred to any Authority, has not made any representation or warranty that the Development Contributions will or must be used for a particular purpose by that Authority.
- (c) The Developer acknowledges and agrees that no approval or acceptance of any plan or specification by the Minister as required by this deed relieves the Developer of responsibility to properly design and construct the Remediation Works.

5. Interest

5.1 Interest for late payment

- (a) If the Developer fails to pay a monetary amount due to the Minister on the due date for payment, the Developer must also pay to the Minister interest at a rate of 2% above the loan reference rate charged by the Commonwealth Bank of Australia from time to time.
- (b) Interest is payable on the daily balance of amounts due from the due date for payment of those amounts until all outstanding amounts (including interest on those amounts) have been paid to the Minister.

6. Enforcement

6.1 Compulsory Acquisition

In addition to clause 6.2 below, the parties agree that clause 3.8 of Schedule 4 is the provision of security for the transfer of the Containment Cell Land to the Minister.

6.2 Developer to provide Security

The Developer has agreed to provide security to the Minister for the performance of the Developer's obligations under this deed by providing the Security to the Minister in accordance with the terms and procedures set out in Schedule 5 and clause 4 of Schedule 6.

7. Registration

7.1 Registration of deed

- (a) Within 20 Business Days of receiving a copy of this deed executed by the Minister, the Developer at its own expense is to take all practical steps and otherwise do anything to procure:
 - (i) the consent of each person, as required by the Registrar-General, who:
 - (A) has an estate or interest in the Land registered under the Real Property Act; or
 - (B) is seized or possessed of an estate or interest in the Land,
 to the registration of this deed on the title to the Land and to the terms of this deed;
 - (ii) the execution of any documents reasonably required to procure the registration of this deed on the title to the Land;
 - (iii) the production of the relevant certificates of title or electronic lodgement of the relevant CoRD Holder Consents through an ELNO; and
 - (iv) the lodgement of this deed in a registrable form at the NSW Land Registry Services for registration by the Registrar-General in the relevant folio of the Register for the Land, or in the General Register of Deeds if this deed relates to land not under the Real Property Act.
- (b) The Developer will take all practical steps and otherwise do anything reasonably required to procure the registration of this deed within three months of the date of this deed in the relevant folio of the Register for the Land, or in the General Register of Deeds if this deed relates to land not under the Real Property Act, including promptly responding to any requisitions made by the Registrar-General in respect of this deed and/or any ancillary documents.

7.2 Evidence of registration

- (a) The Developer must provide the Minister with evidence of the lodgement of this deed pursuant to clause 7.1(a)(iv) within 10 Business Days of such lodgement at the NSW Land Registry Services.
- (b) The Developer will provide the Minister with a copy of the relevant folio of the Register for the Land and a copy of the registered dealing containing this deed within 10 Business Days of receipt of notice of registration of this deed.

7.3 Release and discharge of deed

- (a) The Minister agrees to do all things reasonably required by the Developer to release and discharge this deed with respect to any part of the Land (other than the Containment Cell Land and the Access Road Land) upon:
 - (i) the Developer paying the Monetary Contribution to the Minister; and
 - (ii) Completion of the Remediation Works with respect to that part of the Land.
- (b) The Minister agrees to do all things reasonably required by the Developer to release and discharge this deed from the Access Road Land upon the satisfaction of clause 7.3(b)(i) or (ii) as follows (and subject to the Completion of Remediation Works in relation to the Access Road (as relevant) and payment of the Monetary Contribution):
 - (i) to the extent that the Access Road is to be a Public Road, the Minister has provided the Developer with a notice in accordance with clause 3.4(g) of Schedule 4 of this deed and the Access Road has been dedicated to the Roads Authority as a Public Road; and
 - (ii) to the extent that the Access Road is a Private Road, the Minister has provided the Developer with a notice under clause 3.4(g) of Schedule 4 of this deed and the Access Easement has been registered over the Access Road Land.

7.4 Developer's interest in Land

The Developer represents and warrants that it is:

- (a) the owner of the Land identified in Schedule 3 of this deed; and
- (b) legally and beneficially entitled to obtain all consents and approvals and to compel any person referred to in or contemplated by clause 7.1(a)(i) to assist, cooperate and to otherwise do all things necessary for the Developer to comply with its obligations under clause 7.

8. Dispute Resolution

8.1 Not commence

A party must not commence any court proceedings relating to a dispute unless it complies with this clause 8.

8.2 Written notice of dispute

A party claiming that a dispute has arisen under or in relation to this deed must give written notice to the other party specifying the nature of the dispute.

8.3 Attempt to resolve

On receipt of notice under clause 8.2, the parties must endeavour in good faith to resolve the dispute expeditiously using informal dispute resolution processes such as mediation, expert evaluation or other methods agreed by them.

8.4 Mediation

If the parties do not agree within 21 Business Days of receipt of notice under clause 8.2 (or any further period agreed in writing by them) as to:

- (a) the dispute resolution technique and procedures to be adopted;
- (b) the timetable for all steps in those procedures; or
- (c) the selection and compensation of the independent person required for such technique,

the parties must mediate the dispute in accordance with the Mediation Program. The parties must request the president of the Law Society of NSW or the president's nominee to select the mediator and determine the mediator's remuneration.

8.5 Court proceedings

If the dispute is not resolved within 60 Business Days after notice is given under clause 8.2 then any party which has complied with the provisions of this clause 8 may in writing terminate any dispute resolution process undertaken under this clause and may then commence court proceedings in relation to the dispute.

8.6 Not use information

The parties acknowledge the purpose of any exchange of information or documents or the making of any offer of settlement under this clause 8 is to attempt to settle the dispute. No party may use any information or documents obtained through any dispute resolution process undertaken under this clause 8 for any purpose other than in an attempt to settle the dispute.

8.7 No prejudice

This clause 8 does not prejudice the right of a party to institute court proceedings for urgent injunctive or declaratory relief in relation to any matter arising out of or relating to this deed.

9. GST

9.1 Definitions

Words used in this clause that are defined in the GST Legislation have the meaning given in that legislation.

9.2 Intention of the parties

The parties intend that:

- (a) Divisions 81 and 82 of the GST Legislation apply to the supplies made under and in respect of this deed; and
- (b) no additional amounts will be payable on account of GST and no tax invoices will be exchanged between the parties.

9.3 Reimbursement

Any payment or reimbursement required to be made under this deed that is calculated by reference to a cost, expense, or other amount paid or incurred must be limited to the total cost, expense or amount less the amount of any input tax credit to which any entity is entitled for the acquisition to which the cost, expense or amount relates.

9.4 Consideration GST exclusive

Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under this deed are exclusive of GST. Any consideration that is specified to be inclusive of GST must not be taken into account in calculating the GST payable in relation to a supply for the purposes of this clause 9.4.

9.5 Additional Amounts for GST

- (a) To the extent an amount of GST is payable on a supply made by a party (**Supplier**) under or in connection with this deed (the **GST Amount**), the recipient must pay to the Supplier the GST Amount.
- (b) However, where a GST Amount is payable by the Minister as recipient of the supply, the Developer must ensure that:
 - (i) the Developer makes payment of the GST Amount on behalf of the Minister, including any gross up that may be required; and
 - (ii) the Developer provides a tax invoice to the Minister.

9.6 Non monetary consideration

Clause 9.5 applies to non-monetary consideration.

9.7 Assumptions

The Developer acknowledges and agrees that in calculating any amounts payable under clause 9.5 the Developer must assume the Minister is not entitled to any input tax credit.

9.8 No merger

This clause does not merge on completion or termination of this deed.

10. Assignment and transfer

10.1 Right to assign or novate

- (a) Prior to a proposed assignment or novation of its rights or obligations under this deed, the party seeking to assign its rights or novate its obligations (**Assigning Party**) must seek the consent of the Minister and:
 - (i) satisfy the Minister (acting reasonably) that the person to whom the Assigning Party's rights or obligations are to be assigned or novated (**Incoming Party**) has sufficient assets, resources and expertise required to perform the Assigning Party's obligations under this deed insofar as those obligations are to be novated to the Incoming Party;
 - (ii) procure the execution of an agreement by the Incoming Party with the Minister on terms satisfactory to the Minister (acting reasonably) under which the Incoming Party agrees to comply with the terms and conditions of this deed as though the Incoming Party were the Assigning Party; and
 - (iii) satisfy the Minister, acting reasonably, that it is not in material breach of its obligations under this deed.

- (b) The Assigning Party must pay the Minister's reasonable legal costs and expenses incurred under this clause 10.1.

10.2 Right to transfer Land

- (a) Subject to clause 10.2(b), the Developer must not sell or transfer to another person (**Transferee**) the whole or any part of the:
 - (i) the Land - prior to the payment of the Monetary Contribution in accordance with clause 2 of Schedule 4 of this deed and Completion of Remediation Works with respect to the relevant part of the Land;
 - (ii) the Access Road Land - prior to the date on which the matters set out in clause 7.3(b)(i) or (ii) are satisfied; or
 - (iii) the Containment Cell Land - before the Containment Cell Land Transfer Date, even if the Developer has paid the Monetary Contribution in accordance with clause 2 of Schedule 4 of this deed and following Completion of Remediation Works.
- (b) The Developer may only sell or transfer the whole or any part of the Land, the Access Road Land, or the Containment Cell Land (as applicable) to a Transferee prior to satisfying the relevant matters set out in clause 10.2(a)(i) to (iii) if prior to the proposed sale or transfer the Developer:
 - (i) satisfies the Minister, acting reasonably, that the proposed Transferee has sufficient assets, resources and expertise required to perform any of the remaining obligations of the Developer under this deed or satisfies the Minister, acting reasonably, that the Developer will continue to be bound by the terms of this deed after the transfer has been effected;
 - (ii) procures the execution of an agreement by the Transferee with the Minister on terms satisfactory to the Minister, acting reasonably, under which the Transferee agrees to comply with the terms and conditions of this deed as though the Transferee were the Developer; and
 - (iii) satisfies the Minister, acting reasonably, that it is not in material breach of its obligations under this deed.
- (c) The Developer must pay the Minister's reasonable legal costs and expenses incurred under this clause 10.2.
- (d) The Minister agrees not to sell or transfer its interest in the Containment Cell Land or to novate or assign its interest in the Planning Agreement other than to another Minister, NSW government agency, State owned corporation or local council, without the Developer's consent which cannot be unreasonably withheld.

10.3 Replacement Security

Provided that:

- (a) the Developer has complied with clauses 10.1 and 10.2; and
- (b) the Transferee or Incoming Party (as the case may be) has provided the Minister with a replacement Security in accordance with the requirements of Schedule 5 and Schedule 6 of this deed,

the Minister will promptly return the Security to the Developer.

11. Capacity

11.1 General warranties

Each party warrants to each other party that:

- (a) this deed creates legal, valid and binding obligations, enforceable against the relevant party in accordance with its terms; and
- (b) unless otherwise stated, it has not entered into this deed in the capacity of trustee of any trust.

11.2 Power of attorney

If an attorney executes this deed on behalf of any party, the attorney declares that it has no notice of the revocation of that power of attorney.

12. Reporting requirement

- (a) By 1 September each year until the Containment Cell Land Transfer Date or as otherwise agreed with the Secretary, the Developer must deliver to the Secretary a report (in a format acceptable to the Secretary) for the period 1 July to 30 June of the preceding financial year which must include the following matters, as applicable:
 - (i) details of all Development Consents and Subdivision Certificates issued in relation to the Development;
 - (ii) a description of the status of the Development including a plan that identifies what parts of the Development have been completed, are under construction and are to be constructed;
 - (iii) a forecast in relation to the anticipated progression and completion of the Development;
 - (iv) when the Developer expects to lodge the next Planning Application;
 - (v) following the Remediation Works Completion Date, an assessment of the performance of the Containment Cell including whether it is performing satisfactorily; and
 - (vi) during the Remediation Works for the Development, a statement from the Site Auditor appointed for the Development stating that the Site Auditor has been appropriately briefed on the status of the Remediation Works and is satisfied that the remediation goals as set out in the RAP remain achievable.
- (b) Upon the Secretary's request, the Developer must deliver to the Secretary all documents and other information which, in the reasonable opinion of the Secretary, are necessary for the Secretary to assess the status of the Development and the Developer's compliance with this deed.

13. General Provisions

13.1 Entire deed

This deed constitutes the entire agreement between the parties regarding the matters set out in it and supersedes any prior representations, understandings or arrangements made between the parties, whether orally or in writing.

13.2 Variation

This deed must not be varied except by a later written document executed by all parties.

13.3 Waiver

A right created by this deed cannot be waived except in writing signed by the party entitled to that right. Delay by a party in exercising a right does not constitute a waiver of that right, nor will a waiver (either wholly or in part) by a party of a right operate as a subsequent waiver of the same right or of any other right of that party.

13.4 Further assurances

Each party must promptly execute all documents and do everything necessary or desirable to give full effect to the arrangements contained in this deed.

13.5 Time for doing acts

(a) If:

- (i) the time for doing any act or thing required to be done; or
- (ii) a notice period specified in this deed,

expires on a day other than a Business Day, the time for doing that act or thing or the expiration of that notice period is extended until the following Business Day.

- (b) If any act or thing required to be done is done after 5 pm on the specified day, it is taken to have been done on the following Business Day.

13.6 Governing law and jurisdiction

- (a) The laws applicable in New South Wales govern this deed.
- (b) The parties submit to the non-exclusive jurisdiction of the courts of New South Wales and any courts competent to hear appeals from those courts.

13.7 Severance

If any clause or part of any clause is in any way unenforceable, invalid or illegal, it is to be read down so as to be enforceable, valid and legal. If this is not possible, the clause (or where possible, the offending part) is to be severed from this deed without affecting the enforceability, validity or legality of the remaining clauses (or parts of those clauses) which will continue in full force and effect.

13.8 Preservation of existing rights

The expiration or termination of this deed does not affect any right that has accrued to a party before the expiration or termination date.

13.9 No merger

Any right or obligation of any party that is expressed to operate or have effect on or after the completion, expiration or termination of this deed for any reason, does not merge on the occurrence of that event but remains in full force and effect.

13.10 Counterparts

This deed may be executed in any number of counterparts. All counterparts taken together constitute one instrument.

13.11 Relationship of parties

Unless otherwise stated:

- (a) nothing in this deed creates a joint venture, partnership, or the relationship of principal and agent, or employee and employer between the parties; and
- (b) no party has the authority to bind any other party by any representation, declaration or admission, or to make any contract or commitment on behalf of any other party or to pledge any other party's credit.

13.12 Good faith

Each party must act in good faith towards all other parties and use its best endeavours to comply with the spirit and intention of this deed.

13.13 No fetter

Nothing in this deed is to be construed as requiring the Minister to do anything that would cause the Minister to breach any of the Minister's obligations at law and without limitation, nothing in this deed shall be construed as limiting or fettering in any way the discretion of the Minister in exercising any of the Minister's statutory functions, powers, authorities or duties.

13.14 Explanatory note

The Explanatory Note must not be used to assist in construing this deed.

13.15 Expenses and stamp duty

- (a) The Developer must pay its own and the Minister's reasonable legal costs and disbursements in connection with the negotiation, preparation, execution and carrying into effect of this deed and the Independent Engineer's Deed.
- (b) The Developer must pay for all reasonable costs and expenses associated with the giving of public notice of this deed and the Explanatory Note in accordance with the Regulation.
- (c) The Developer must pay all Taxes assessed on or in respect of this deed and any instrument or transaction required or contemplated by or necessary to give effect to this deed (including stamp duty and registration fees, if applicable).
- (d) The Developer must provide the Minister with bank cheques, or an alternative method of payment if agreed with the Minister, in respect of the Minister's costs pursuant to clauses 13.15(a) and (b):
 - (i) where the Minister has provided the Developer with written notice of the sum of such costs prior to execution, on the date of execution of this deed; or

- (ii) where the Minister has not provided the Developer with prior written notice of the sum of such costs prior to execution, within 30 Business Days of demand by the Minister for payment.

13.16 Notices

- (a) Any notice, demand, consent, approval, request or other communication (**Notice**) to be given under this deed must be in writing and must be given to the recipient at its Address for Service (including as applicable the Landowner and Developer's Legal Advisor) by being:
 - (i) hand delivered; or
 - (ii) sent by facsimile transmission; or
 - (iii) sent by prepaid ordinary mail within Australia; or
 - (iv) in the case of a Notice to be given by the Developer, Minister or Secretary, sent by email.
- (b) A Notice is given if:
 - (i) hand delivered, on the date of delivery but if delivery occurs after 5pm New South Wales time or a day that is not a Business Day, is taken to be given on the next Business Day;
 - (ii) sent by facsimile and the sending party's facsimile machine reports that the facsimile has been successfully transmitted;
 - (A) before 5pm on a Business Day, on that day;
 - (B) after 5pm on a Business Day, on the next Business Day after it is sent; or
 - (C) on a day that is not a Business Day, on the next Business Day after it is sent; or
 - (iii) sent by prepaid ordinary mail within Australia, on the date that is 2 Business Days after the date of posting; or
 - (iv) sent by email:
 - (A) before 5pm on a Business Day, on that Day;
 - (B) after 5pm on a Business Day, on the next Business Day after it is sent; or
 - (C) on a day that it is not a Business Day, on the next Business Day after it is sent, and the sender does not receive a delivery failure notice.

Schedule 1

Table 1 - Requirements under section 7.4 of the Act (clause 2.2)

The parties acknowledge and agree that the table set out below provides for certain terms, conditions and procedures for the purpose of the deed complying with the Act.

Requirement under the Act	This deed
Planning instrument and/or development application – (section 7.4(2)) The Developer has: <ul style="list-style-type: none"> (a) sought a change to an environmental planning instrument. (b) made, or proposes to make, a Development Application. (c) entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies. 	<ul style="list-style-type: none"> (a) No (b) Yes (c) No
Description of land to which this deed applies – (section 7.4(3)(a))	See Schedule 3
Description of development to which this deed applies – (section 7.4(3)(b))	See definition of Development in clause 1.1
Description of change to the environmental planning instrument to which this deed applies – (section 7.4(3)(b))	N/A
The scope, timing and manner of delivery of contribution required by this deed – (section 7.4(3)(c))	See Schedule 4 and Schedule 6
Applicability of sections 7.11 and 7.12 of the Act – (section 7.4(3)(d))	The application of sections 7.11 and 7.12 of the Act is excluded in respect of the Development.
Applicability of section 7.24 of the Act – (section 7.4(3)(d))	The application of section 7.24 of the Act is excluded in respect of the Development.
Consideration of benefits under this deed if section 7.11 applies – (section 7.4(3)(e))	N/A
Mechanism for Dispute Resolution – (section 7.4(3)(f))	See clause 8
Enforcement of this deed – (section 7.4(3)(g))	See clause 6 and clause 7
No obligation to grant consent or exercise functions – (section 7.4(10))	See clause 13.13

Table 2 – Other matters

Requirement under the Act	This deed
Registration of the Planning Agreement – (section 7.6 of the Act)	Yes (see clause 7)
Whether the Planning Agreement specifies that certain requirements of the agreement must be complied with before a Construction Certificate is issued – (clause 25E(2)(g) of the Regulation)	No
Whether the Planning Agreement specifies that certain requirements of the agreement must be complied with before an Occupation Certificate is issued – (clause 25E(2)(g) of the Regulation)	No
Whether the Planning Agreement specifies that certain requirements of the agreement must be complied with before a Subdivision Certificate is issued – (clause 25E(2)(g) of the Regulation)	No

Schedule 2 Address for Service

(clause 1.1)

Minister

Contact: The Secretary

Address: Department of Planning, Industry and Environment
4 Parramatta Square
12 Darcy Street
PARRAMATTA NSW 2150

Facsimile No: Not applicable

Email: planningagreements@planning.nsw.gov.au

Landowner and Developer Hydro Aluminium Kurri Kurri Pty Ltd (ABN 55 093 266 221)

Contact: The Directors

Address: Hart Road, Loxford NSW 2326

Facsimile No: Not applicable

Email: kurri@hydro.com

Landowner and Developer's Legal Adviser

Gilbert + Tobin

Contact: Practice Group Leader, Real Estate + Projects Group

Address: Level 35, Tower 2, International Towers Sydney
200 Barangaroo Avenue, Barangaroo NSW 2000

Facsimile No: (02) 9263 4111

Email: info@gtlaw.com.au

Schedule 3 Land

(clause 1.1)

Lot	Deposited Plan	Folio Identifier	Landowner
Lot 3	456769	3/456769	Hydro Aluminium Kurri Kurri Pty Ltd
16	1082775	16/1082775	Hydro Aluminium Kurri Kurri Pty Ltd
318	755231	318/755231	Hydro Aluminium Kurri Kurri Pty Ltd
319	755231	319/755231	Hydro Aluminium Kurri Kurri Pty Ltd
411	755231	411/755231	Hydro Aluminium Kurri Kurri Pty Ltd
412	755231	412/755231	Hydro Aluminium Kurri Kurri Pty Ltd
413	755231	413/755231	Hydro Aluminium Kurri Kurri Pty Ltd
414	755231	414/755231	Hydro Aluminium Kurri Kurri Pty Ltd
420	755231	420/755231	Hydro Aluminium Kurri Kurri Pty Ltd
769	755231	769/755231	Hydro Aluminium Kurri Kurri Pty Ltd
1	456769	1/456769	Hydro Aluminium Kurri Kurri Pty Ltd
2	456769	2/456769	Hydro Aluminium Kurri Kurri Pty Ltd

Schedule 4 Development Contributions

(clause 4)

1. Development Contributions

- (a) The Developer undertakes to provide the Development Contributions to the Minister in the manner set out in the table below:

Development Contribution	Timing	Value
Monetary Contribution	In accordance with clause 2 of this Schedule 4	\$6,500,000
Containment Cell Contribution	In accordance with clause 3 of this Schedule 4	N/A
Remediation Works Contribution	In accordance with clause 3 of this Schedule 4	N/A

2. Monetary Contribution

- (a) The Developer must pay the Monetary Contribution to the Minister no later than 14 days from the Remediation Works Completion Date.
- (b) The Monetary Contribution will be an amount equal to the sum represented by "X" in the following formula:
- (i) $X = \$6,500,000 \times (\text{Current CPI} / \text{Base CPI})$
- (c) To avoid doubt on each CPI Adjustment Date, the value of X in clause 2(b) will be adjusted by multiplying \$6,500,000 by an amount equal to the Current CPI divided by the Base CPI.
- (d) The parties agree that:
- (i) the Monetary Contribution is to be not less than \$6,500,000; and
- (ii) If the Monetary Contribution as adjusted in accordance with clause 2(b) is less than the amount of that contribution for the preceding 12 month period, then the Monetary Contribution continues to be the amount for that preceding 12 month period.

3. Remediation Works and Containment Cell Contribution

3.1 Developer's obligations

- (a) The Developer must:
- (i) undertake the Remediation Works to the Minister's satisfaction and in accordance with the Remediation Consent and Schedule 6 of this deed;
- (ii) maintain, manage and monitor the Containment Cell up to and during the Management Period in accordance with the LTEMP;

- (iii) provide the Access Road; and
- (iv) transfer the Containment Cell Land to the Minister free of cost, in accordance with clause 3.6 of this Schedule 4 of this deed.

3.2 Remediation Works Completion Date

- (a) The parties agree that for the purposes of this deed, the Remediation Works Completion Date is the date on which the Minister provides the Developer with a notice in accordance with clause 3.2(f).
- (b) Upon completion of the Remediation Works, the Developer must provide the Minister with a Remediation Validation Report.
- (c) The Remediation Validation Report must:
 - (i) be prepared in accordance with the Remediation Consent;
 - (ii) be addressed to the Minister or the Minister's nominee;
 - (iii) not identify any further works required in order for the Remediation Works to be achieved; and
 - (iv) otherwise be on terms satisfactory to the Minister or Minister's nominee (acting reasonably).
- (d) If the Remediation Validation Report states that:
 - (i) the remediation criteria set out in the RAP have not been achieved; and
 - (ii) additional site work is required to achieve these criteria (**Additional Work**),
 the Developer must promptly undertake the Additional Work.
- (e) If the Developer considers that the Additional Work has been completed, the Developer will provide the Minister with a notice stating that the Additional Work has been completed, together with evidence that the Validation Consultant has confirmed that the Additional Work has been completed to the Validation Consultant's satisfaction (**Validation Notice**).
- (f) Upon receipt of a:
 - (i) Remediation Validation Report prepared in accordance with clause 3.2(c); or
 - (ii) Validation Notice,

the Minister will provide the Developer with a notice that the Remediation Works Completion Date has been achieved.

3.3 Management of the Containment Cell

- (a) The Developer must manage and maintain the Containment Cell up to and during the Management Period in accordance with the requirements of the LTEMP.
- (b) As soon as reasonably practicable after the date which is 5 years from the Remediation Works Completion Date, the Developer must, at its cost:
 - (i) obtain and provide to the Minister the Containment Cell Condition Report prepared by a Suitably Qualified Consultant which:

- (A) identifies whether any issues have arisen in relation to the Containment Cell during the Management Period which may present a risk to human health, safety or the environment; and
 - (B) outlines any works which are to be undertaken in respect of the Containment Cell for the purposes of addressing any risks to human health, safety or the environment (**Rectification Works**).
- (c) The Developer must promptly undertake the Rectification Works if required and provide the Minister with a notice which states that the Rectification Works have been completed together with evidence to the reasonable satisfaction of the Minister that the Rectification Works have been attended to (**Rectification Works Notice**).
- (d) The Minister must within a reasonable period of receipt of:
 - (i) a Containment Cell Condition Report which does not identify any Rectification Works, provide a written notice to the Developer which states that the Minister is satisfied with the Containment Cell Condition Report (acting reasonably); or
 - (ii) the Rectification Works Notice, provide a written notice to the Developer that:
 - (A) the Rectification Works have been completed to the Minister's satisfaction (acting reasonably); or
 - (B) the Rectification Works have not been completed to the Minister's satisfaction (acting reasonably).
- (e) Upon receipt of a notice under clause 3.3(d)(ii)(B), the Developer must provide evidence to the reasonable satisfaction of the Minister that the matters raised have been attended to and the provisions of clause 3.3(d)(ii) will again apply .
- (f) For the avoidance of doubt:
 - (i) any failure by the Minister to provide a notice in accordance with this clause 3.3(d) does not affect the Developer's obligation to transfer the Containment Cell Land to the Minister in accordance with clause 3.6 of Schedule 4 of this deed; however
 - (ii) if the Developer does not comply with the requirements of this clause 3.3, the Minister may refuse to accept the transfer of the Containment Cell Land.

3.4 Access Road

- (a) The Developer must provide the Access Road to the Containment Cell Land which provides the Minister with full and unfettered access over that Access Road from the nearest Public Road, being Hart Road, on and from the Containment Cell Land Transfer Date.
- (b) The Developer may, at any time prior to the Minister's approval of the Access Road Plan pursuant to clause 3.4(g) of this Schedule 4, notify the Minister in writing that it wishes to amend the Access Road Concept Plan.
- (c) The notice for the purposes of clause 3.4(b) must contain an amended Access Road Concept Plan, together with reasons why the Developer considers any such amendments are reasonably necessary to facilitate the redevelopment of the Land, and will not impede the Developer from complying with its overriding obligation under clause 3.4(a) of this Schedule 4, to provide the Access Road to the Containment Cell Land.

- (d) The Minister must, acting reasonably and within a reasonable period of receipt of a notice pursuant to clause 3.4(b) of this Schedule 4, provide a written notice to the Developer that it:
 - (i) approves the amended Access Road Concept Plan (**Amended Access Road Concept Plan**) in which case the Amended Access Road Concept Plan will become the Access Road Concept Plan for the purposes of this deed; or
 - (ii) does not approve the amended Access Road Concept Plan, together with the reasons why the amended Access Road Concept Plan is not approved.
- (e) Following the approval of the Amended Access Road Concept Plan in accordance with clause 3.4(d)(i) of this Schedule 4:
 - (i) the Minister agrees to do all things reasonably required by the Developer to release and discharge this deed with respect to any part of the Land that no longer forms part of the Access Road Land as a result of any Amended Access Road Concept Plan approved by the Minister pursuant to clause 3.4(d)(i) of this Schedule 4, subject to the requirements of clause 7.3 of this deed; and
 - (ii) the Developer must ensure that this deed is registered on that part of the Land which forms the Access Road Land as shown on the Amended Access Road Concept Plan approved by the Minister pursuant to clause 3.4(d)(i) of this Schedule 4 and in accordance with the requirements of clauses 7.1 and 7.2 of this deed.
- (f) Prior to the transfer of the Containment Cell Land and within 2 years of the Remediation Works Completion Date, the Developer must submit to the Minister for approval:
 - (i) a plan showing the proposed location of the Access Road; and
 - (ii) details of whether the Access Road is to be a Public Road or a Private Road, (**Access Road Plans**).
- (g) The Minister must, acting reasonably and within a reasonable period of receipt of the Access Road Plans provide a written notice that he or she:
 - (i) approves the Access Road Plans; or
 - (ii) does not approve the Access Road Plans, together with the reasons why the Access Road Plans are not approved.
- (h) Upon receipt of a notice under clause 3.4(g)(ii), the Developer must provide evidence to the reasonable satisfaction of the Minister that the matters raised have been attended to and provide to the Minister (as appropriate) revised Access Road Plans.
- (i) The Minister agrees to do all things reasonably required by the Developer to release and discharge this deed with respect to any part of the Land that no longer forms part of the Access Road Land as a result of any Access Road Plan approved by the Minister pursuant to clause 3.4(g)(i) of this Schedule 4, subject to the requirements of clause 7.3 of this deed.
- (j) The Developer must ensure that this deed is registered on that part of the Land which forms the Access Road Land as a result of any Access Road Plan approved by the Minister pursuant to 3.4(g)(i) of this Schedule 4 and in accordance with the requirements of clauses 7.1 and 7.2 of this deed.
- (k) The Developer must, at its cost:

- (i) obtain all Approvals necessary for the construction of the Access Road; and
- (ii) construct the Access Road in accordance with:
 - (A) the Access Road Plans approved by the Minister under clauses 3.4(g) and (h);
 - (B) any Approvals for the Access Road;
 - (C) any relevant requirements of the Roads Authority;
 - (D) all applicable laws and standards; and
 - (E) good industry practice.
- (l) If the Developer considers that the Access Road has been completed, the Developer will forward to the Minister a written notice stating that Practical Completion has been achieved, together with:
 - (i) a copy of all Approvals for the Access Road;
 - (ii) to the extent that the Access Road is a Public Road, evidence:
 - (A) that the Access Road has been completed to the satisfaction of the Roads Authority and in accordance with clause 3.4(k)(ii); and
 - (B) that the Access Road has been dedicated to the Roads Authority; and/or
 - (iii) to the extent that the Access Road is a Private Road:
 - (A) an Access Road Certificate of Compliance; and
 - (B) a copy of the proposed dealing for the Access Easement (**Proposed Dealing**), (**Road Works Completion Notice**).
- (m) The Minister must within a reasonable period of receipt of the Road Works Completion Notice, provide a written notice that states that the Minister is:
 - (i) satisfied (acting reasonably) that the Developer has complied with the applicable requirements of clause 3.4(l); or
 - (ii) not satisfied (acting reasonably) that the Developer has complied with the applicable requirements of clause 3.4(l).
- (n) As soon as reasonably practicable following receipt of a notice under clause 3.4(m)(ii), the Developer must provide evidence to the reasonable satisfaction of the Minister that the matters raised have been attended to and provide to the Minister (as appropriate) revised Road Works Completion Notice.
- (o) If the Developer does not comply with this clause 3.4, the Minister may:
 - (i) refuse to accept the transfer of the Containment Cell Land until such time that the Developer does comply with this clause 3.4; and
 - (ii) without limiting the Developer's obligations under clause 3.4(a), require that the Developer undertake works, at the Developer's cost and within a timeframe determined by the Minister (acting reasonably), so as to ensure that the Minister is provided with the Access Road.

3.5 Subdivision of the Containment Cell Land

- (a) In order to give effect to the transfer of the Containment Cell Land to the Minister in accordance with clause 3.6 of this Schedule 4:
 - (i) there must be a subdivision of the Land to create the parcel(s) of land that will comprise the Containment Cell Land; and
 - (ii) to the extent that the Access Road is a Private Road, the Access Easement must be registered on the Access Road Land.
- (b) The Developer must (at its cost) and prior to the Containment Cell Land Transfer Date, provide the Minister with a copy of the Containment Cell Land Subdivision Plan for approval (such approval not to be unreasonably withheld or delayed).
- (c) The Minister will provide written notice to the Developer stating whether the Containment Cell Subdivision Plan is approved within 20 Business Days of receipt of the Containment Cell Subdivision Plan. If a notice under this clause:
 - (i) states that the Containment Cell Subdivision Plan is approved, then it will be taken to be the approved Containment Cell Subdivision Plan; or
 - (ii) states that the Containment Cell Subdivision Plan is not approved and gives reasons why it is not approved or requests reasonable changes in order for the Containment Cell Subdivision Plan to be approved, the Developer must, within 20 Business Days of the Minister's notification under this clause, provide a revised Containment Cell Subdivision Plan in which case the provisions of clauses 3.5(a) to (c) of this Schedule 4 will continue to apply until the Containment Cell Subdivision Plan is approved by the Minister in accordance with clause 3.5(c)(i) of this Schedule 4.
- (d) Following the receipt of a notice from the Minister in accordance with clause 3.5(c)(i), the Developer must:
 - (i) use all reasonable efforts to obtain Development Consent (if any is required) and any other approvals necessary to create a separate lot for the Containment Cell Land in accordance with the approved Containment Cell Subdivision Plan; and
 - (ii) in accordance with the applicable Development Consent (if any) and any other necessary approvals, register the Containment Cell Subdivision Plan to create a separate lot for the Containment Cell Land; and
 - (iii) attend to all steps necessary to register the Proposed Dealing, including:
 - (A) arrange for the Proposed Dealing to be signed by all required parties, including but not limited to the registered proprietor, mortgagee, chargee and/or covenant chargee of the burdened lot;
 - (B) obtain written consents to the registration of the Proposed Dealing from all required parties, including but not limited to any caveator, lessee and judgement creditor under any writ of the burdened lot; and
 - (C) lodge the Proposed Dealing for registration at the Land Registry Services NSW, and respond to and settle any requisitions raised.

3.6 Transfer of the Containment Cell Land

- (a) On a date that is:

- (i) 3 months after the later of either:
 - (A) receipt by the Developer of a notice in accordance with clause 3.3(d)(i) of this Schedule 4; or
 - (B) receipt by the Developer of a notice from the Minister in accordance with clause 3.3(d)(ii)(A) of this Schedule 4; or

(ii) within 3 months of receipt of a written request from the Minister,

the Developer agrees to deliver to the Minister:

- (iii) a form of transfer in respect of that part of the Land comprising the Containment Cell Land executed by the Developer and in registrable form;
- (iv) the certificates of title for the Containment Cell Land; and
- (v) if required, evidence that the Access Easement has been registered over the Access Road,

and must take any other necessary action to give effect to the transfer of the title of the Containment Cell Land to the Minister free of all encumbrances and affectations (including any charge or liability for rates, taxes and charges).

- (b) Upon transfer, the Containment Cell Land will be free from any encumbrances other than service easements or such other encumbrances as agreed with the Minister and such agreement by the Minister must not be unreasonably withheld or delayed.
- (c) The Developer must promptly comply, or procure compliance with, any requisitions raised by the Registrar-General in relation to the transfer of the Containment Cell Land which are within its power to comply with. The Minister must promptly comply with, or procure compliance with, any requisitions raised by the Registrar-General in relation to the transfer of the Containment Cell Land which are within the Minister's power to comply with.
- (d) The Developer will pay all rates and taxes owing in respect of the Containment Cell Land up to and including the date that the Developer delivers the form of transfer and certificates of title for the Containment Cell Land pursuant to clause 3.6(a) of this Schedule 4, after which time the Minister will be responsible for all rates and taxes in relation to the Containment Cell Land.
- (e) The Developer must, from the Commencement Date, not undertake any action or activity, prior to the Transfer being registered that will have a detrimental effect on the Containment Cell Land except where the Developer is:
 - (i) complying with the terms of this deed;
 - (ii) directed to undertake such action or activity by another government agency or instrumentality (such as the Rural Fire Service);
 - (iii) maintaining existing access and existing tracks; or
 - (iv) otherwise required by law to undertake such an action or activity including in order to comply with any conditions of a Development Consent or any order made under the Act in respect of the Land.
- (f) The Developer must, from the Containment Cell Land Transfer Date, assign any available warranties related to the construction, design, quality assurance, and liner materials with

respect to the Containment Cell to the Minister or (if the Developer is requested to do so by the Minister) the Minister's nominee, and provide all documentation relating to the design, construction and operation of, and material encapsulated in, the Containment Cell.

- (g) The Minister agrees, on and from the Containment Cell Land Transfer Date, to manage the Containment Cell Land in accordance with the requirements of the LTEMP.
- (h) The Developer indemnifies and agrees to keep indemnified the Minister against all Claims made against the Minister arising from or in connection with Contamination on, in or under or emanating from the Containment Cell Land, but only in relation to Contamination that existed on or before the Containment Cell Land Transfer Date.

3.7 Insurance

- (a) The Developer must take out and maintain, with a reputable insurer, insurances between the Remediation Works Completion Date and the Containment Cell Land Transfer Date (**Containment Cell Insurance**).
- (b) The Containment Cell Insurance must:
 - (i) cover the following items:
 - (A) failure of or damage to the Containment Cell;
 - (B) repair of the Containment Cell in the event of severe damage to or failure of the Containment Cell; and
 - (C) the costs of remedying any Contamination caused by the failure of or damage to the Containment Cell;
 - (ii) provide minimum coverage of \$10,000,000;
 - (iii) be on an occurrence, not claims made, basis;
 - (iv) name the "Minister for Planning and Public Spaces" and the "Department of Planning, Industry and Environment ABN 20 770 707 468" as an insured party, and the Minister's nominee if requested to do so by the Minister; and
 - (v) otherwise be on terms satisfactory to the Minister (acting reasonably).
- (c) On:
 - (i) or before the Remediation Works Completion Date, the Developer must provide to the Minister, a copy of a certificate of currency for the Containment Cell Insurance;
 - (ii) or before each anniversary of the Remediation Works Completion Date, the Developer must provide the Minister with a replacement certificate of currency for the Containment Cell Insurance to ensure that, at all times, until the Containment Cell Land Transfer Date, the Developer is in possession of the Containment Cell Insurance; and
 - (iii) for a period of 10 years immediately following the Containment Cell Land Transfer Date, the Developer must procure and fund the Containment Cell Insurance which must name the Minister and the Minister's nominee as an insured party.
- (d) The Developer must notify the Minister if:
 - (i) an insurance policy required by this clause 3.7 is cancelled;

- (ii) an event occurs which may give rise to a claim under, or which may affect rights under, an insurance policy in connection with the Containment Cell; or
- (iii) if the Developer becomes aware that the insurer is or may be insolvent.

3.8 Compulsory Acquisition

- (a) If the Developer does not transfer the Containment Cell Land in accordance with this deed, then without limiting any other rights or remedies which the Minister may have under this deed or otherwise, the Minister may elect that the Minister's nominee may compulsorily acquire the whole or any part of the Containment Cell Land in accordance with the *Land Acquisition (Just Terms Compensation) Act 1991* (NSW) (**Acquisition Act**), for the amount of \$1.
- (b) The Developer agrees that:
 - (i) this clause 3.8 is an agreement between the Developer and the Minister's nominee, for the purposes of section 30 of the Acquisition Act;
 - (ii) in this clause 3.8, the Developer has agreed on all relevant matters concerning the compulsory acquisition and the compensation to be paid for the acquisition by the Minister's nominee.
- (c) If the Minister's nominee must pay compensation under Part 3 of the Acquisition Act to any person, other than the Developer, in accordance with the compulsory acquisition arrangements under this clause 3.8, the Developer:
 - (i) must reimburse the amount of that compensation to the Minister's nominee on request; and
 - (ii) indemnifies and agrees to keep indemnified the Minister's nominee against all claims made against the nominee pursuant to the Acquisition Act as a result of any acquisition by the nominee of the whole or any part of the Containment Cell Land under this clause 3.8.
- (d) The Developer must pay the Minister and the Minister's nominee, promptly on demand, an amount equal to all costs, charges or expenses incurred by the Minister and the nominee in relation to the acquisition of the whole or any part of the Containment Cell Land as contemplated by this clause 3.8.
- (e) The Minister agrees to manage the Containment Cell Land in accordance with the requirements of the LTEMP on and from the date the Minister acquires the Containment Cell Land in accordance with this clause 3.8.
- (f) The Developer indemnifies and agrees to keep indemnified the Minister's nominee against all Claims made against the nominee as a result of any Contamination that is required to be remediated by an Authority but only in relation to Contamination that existed on, in or under the Containment Cell Land on or before the date that the Containment Cell Land is acquired by the nominee whether under this clause 3.8 or any other clause of this Schedule 4.
- (g) The Developer acknowledges and agrees that this clause 3.8 operates as a deed poll in favour of the Minister's nominee.

Schedule 5 Security terms

(clause 6.2)

1. Developer to provide Security

- (a) In order to secure the payment or performance of the Development Contribution (other than the Remediation Works Contribution), the Developer has agreed to provide the Security in the form of Bank Guarantees as set out in the table below.
- (b) Each Bank Guarantee must:
 - (i) name the "Minister for Planning and Public Spaces" and the "Department of Planning, Industry and Environment ABN 20 770 707 468" as the relevant beneficiaries;
 - (ii) be in the amount as set out in the table below;
 - (iii) be as security for the Secured Obligation as set out in the table below; and
 - (iv) not have an expiry date.

Bank Guarantee	Bank Guarantee Amount	Secured Obligation	Timing for provision of Security
Monetary Contribution Bank Guarantee	\$6,500,000	The requirement to provide the Monetary Contribution	On the Commencement Date
Initial Period Bank Guarantee	\$1,000,000	The requirements imposed on the Developer pursuant to clause 3 of Schedule 4 (other than with respect to the Remediation Works Contribution)	On the date that the Monetary Contribution Bank Guarantee is returned to the Developer

2. Claims under Bank Guarantees

- (a) The Minister may:
 - (i) call upon the relevant Security provided in accordance with this deed where the Developer:
 - (A) has failed to provide the Monetary Contribution on or before the date for payment under this deed; or
 - (B) has failed to comply with its obligations pursuant to clause 3 of Schedule 4; and
 - (ii) retain and apply such monies towards the Development Contribution and any costs and expenses incurred by the Minister in rectifying any default by the Developer under this deed.

(b) Prior to calling upon the Security, the Minister must give the Developer not less than 10 Business Days written notice of his or her intention to call upon the Security and if the Developer remedies the breach or non-compliance to the Minister's satisfaction within that period the Minister will not call upon the Security.

(c) If:

- (i) the Minister calls upon a Security; and
- (ii) applies all or part of such monies towards the Development Contribution and any costs and expenses incurred by the Minister in rectifying any default by the Developer under this deed; and
- (iii) has notified the Developer of the call upon the Security in accordance with clause 2(b) of this Schedule 5,

then the Developer must provide the Minister with a replacement Security to ensure that, at all times, until the date the Security is released in accordance with clause 3 of this Schedule 5, the Minister is in possession of Security for a face value equivalent to the relevant Security required to be provided in accordance with clause 1 of this Schedule 5.

3. Release of Security

3.1 Release of the Monetary Contribution Bank Guarantee

If:

- (a) the Developer has paid the Monetary Contribution and satisfied all of its obligations under this deed with regards to the Secured Obligation for the Monetary Contribution Bank Guarantee;
- (b) the whole of the Monetary Contribution Bank Guarantee has not been expended; and
- (c) the Developer has provided the Initial Period Bank Guarantee,

then the Minister will promptly return the Monetary Contribution Bank Guarantee (less, if applicable, any amounts properly claimed by the Minister from the Monetary Contribution Bank Guarantee under this deed) to the Developer.

3.2 Release of the Initial Period Bank Guarantee

If:

- (a) the Developer has satisfied all of its obligations under this deed with regards to the Secured Obligation for the Initial Period Bank Guarantee; and
- (b) the whole of the Initial Period Bank Guarantee has not been expended,

then the Minister will on the Containment Cell Land Transfer Date promptly return the Initial Period Bank Guarantee (less, if applicable, any amounts properly claimed by the Minister from the Initial Period Bank Guarantee under this deed) to the Developer.

Schedule 6 Remediation Works

1. Remediation Works

- (a) The Developer must undertake (or cause to be undertaken on its behalf) the Remediation Works:
 - (i) in accordance with this deed;
 - (ii) in accordance with the Remediation Consent;
 - (iii) in accordance with the Scope of Works and so as to achieve the objectives of the RAP;
 - (iv) so that that the Remediation Works are Fit for Purpose;
 - (v) so that the Remediation Works Completion Date occurs on or before the Date for Completion;
 - (vi) in compliance with all applicable laws and standards; and
 - (vii) in accordance with good industry practice.

2. Scope of Works

- (a) The parties agree that at the Commencement Date, the Scope of Works is the document attached at Schedule 7. The Developer is solely responsible for ensuring the Scope of Works meets the objectives of the RAP and satisfies the requirements of this deed.
- (b) The Developer must develop and execute the Scope of Works so that the Remediation Works:
 - (i) achieves the objectives of the RAP; and
 - (ii) otherwise complies with this deed.
- (c) As the Developer updates and amends the Scope of Works it must:
 - (i) to the extent reasonably practicable not alter the staging of the Remediation Works set out in the Scope of Works attached to this deed; and
 - (ii) provide the updated Scope of Works document to the Minister.
- (d) Should it be necessary to alter the staging of the Remediation Works the Developer must put a written proposal to do so to the Minister setting out the proposed changes and the reasons and the parties must negotiate in good faith to agree any required changes to the Security consequent upon the proposed changes. The Developer agrees that under no circumstances will the total amount of Security be reduced pursuant to the process under this clause 2(d).
- (e) If the Minister provides any comments on the Scope of Works the Developer must give due consideration to those comments.

- (f) No act of omission on the part of the Minister in respect of the Scope of Works will derogate from the Developer's responsibility under clause 2(a).

3. Independent Engineer

- (a) Prior to the commencement Stage 1B Works and no later than 2 months from the commencement of the Remediation Works (**Required Date**), the Developer must, at its cost:
- (i) engage an Independent Engineer to inspect and certify the Construction Remediation Works as being in accordance with:
 - (A) this deed;
 - (B) the Remediation Consent;
 - (C) all applicable laws and standards; and
 - (ii) cause the Independent Engineer to enter into the Independent Engineer's Deed.
- (b) The Developer acknowledges and agrees that if an Independent Engineer has not entered into the Independent Engineer's Deed by the Required Date, then the Remediation Works must cease and cannot be recommenced until such time as an Independent Engineer has entered into the Independent Engineer's Deed.
- (c) The Developer must perform (or procure the performance of) the Remediation Works such that the Independent Engineer can properly issue the certifications in clause 6 of this Schedule 6.

4. Developer to provide Security

- (a) In order to secure the performance of the Remediation Works the Developer has agreed to provide the Security in the form of Bank Guarantees as set out in the table below.
- (b) Each Bank Guarantee must:
- (i) name the "Minister for Planning and Public Spaces" and the "Department of Planning, Industry and Environment ABN 20 770 707 468" as the relevant beneficiaries;
 - (ii) be in the amount as set out in the table below;
 - (iii) be as security for the Secured Obligation as set out in the table below; and
 - (iv) not have an expiry date.

Bank Guarantee	Bank Guarantee Amount	Secured Obligation	Timing for provision of Security
Remediation Works Bank Guarantee 1	\$4,000,000	Construction of Project Infrastructure as outlined in the Scope of Works (SP2 Part 1 Works)	On the Commencement Date

Remediation Works Bank Guarantee 2	\$8,000,000	Construction of the Containment Cell Stage 1 as outlined in the Scope of Works (SP2 Part 2 Works).	On the Commencement Date
Remediation Works Bank Guarantee 3	\$13,000,000	Performance of the Site Remediation & Material Transfer as outlined in the Scope of Works (SP2 Part 3 Works).	On the Commencement Date
Remediation Works Bank Guarantee 4	\$5,000,000	Construction of the Containment Cell Stage 2 & Completion as outlined in the Scope of Works (SP2 Part 4 Works) and compliance with Schedule 4.	On the Commencement Date

5. Extension of the Date for Completion

- (a) The Developer must proceed with the Remediation Works with due expedition and without unreasonable delay.
- (b) If the Developer is delayed in performance of the Remediation Works for reasons outside of its control, subject to the Developer's compliance with clause 5(a), the Minister may in his or her sole and unfettered discretion extend the Date for Completion by written notice to the Developer.

6. Certification and Completion of the Remediation Works

- (a) Each Stage of the Remediation Works will achieve Stage Completion when:
 - (i) the relevant Remediation Works are complete save for minor defects which:
 - (A) in no way impact the next Stage of works;
 - (B) do not prevent certification (or require some qualification on certification) of the relevant works; and
 - (C) are capable of being rectified during a subsequent Stage of works;
 - (ii) the documents indicated for the relevant stage in the table in clause 6(b) below have been provided to the Minister; and
 - (iii) any other document, record or thing reasonably required by the Minister has been provided to the Minister.
- (b) The certification and reporting documents required pursuant to clause 6(a)(ii) for each stage are as follows:

Stage No	Stage Description	Certification	Certification provided by
SP2 Part 1	Stage 1A Works	Stage 1A Certificate of Compliance	Validation Consultant
SP2 Part 1	Stage 1B Works	Certification in accordance with the Independent Engineer's Deed	Independent Engineer

SP2 Part 2	Containment Cell Stage 1 – Containment Cell Base	Certification in accordance with the Independent Engineer's Deed	Independent Engineer
SP2 Part 3	Site Remediation & Material Transfer	Interim Statement	Site Auditor
SP2 Part 4	Containment Cell Stage 2 – Containment Cell Capping and Completion	Certification in accordance with the Independent Engineer's Deed Site Audit Statement and Site Audit Report	Independent Engineer Site Auditor

7. Claims under Bank Guarantees

- (a) The parties acknowledge and agree that the Bank Guarantees are provided by the Developer as security for the Developer's performance of its obligations under this deed.
- (b) The Minister may call upon any or all of the Bank Guarantees (as may be remaining in the Minister's possession at the time) if the Remediation Works Completion Date has not occurred by the Date for Completion.
- (c) The Minister may retain and apply such monies towards any costs and expenses incurred by the Minister in rectifying any default by the Developer under this deed.
- (d) Without limiting clause 7(b), regardless of whether a dispute exists regarding the circumstances in which a demand on the Bank Guarantees can be made, the Minister may make demand upon any Bank Guarantee provided pursuant to this deed and use the proceeds of such demand:
 - (i) to recover any damage, loss, liability or cost (of any description) suffered or incurred by the Minister, or which the Minister reasonably considers he or she will suffer or incur, under or in connection with this deed for which the Developer is, or will be, liable under or in connection with this deed;
 - (ii) to recover any moneys or debt due from the Developer to the Minister;
 - (iii) in respect of any bona fide claim made by the Minister against the Developer under or in connection with the relevant Secured Obligation;
 - (iv) where this deed is terminated by the Minister due to the default of the Developer; or
 - (v) where the Developer is insolvent, being wound up (voluntarily or otherwise) or experiencing financial distress.
- (e) Prior to calling upon the Security, the Minister must give the Developer not less than 10 Business Days written notice of his or her intention to call upon the Security and if the Developer remedies the breach or non-compliance to the Minister's satisfaction within that period the Minister will not call upon the Security.

- (f) If:
- (i) the Minister calls upon a Security; and
 - (ii) applies all or part of such monies towards the costs and expenses incurred by the Minister in rectifying any default by the Developer under this deed; and
 - (iii) has notified the Developer of the call upon the Security in accordance with clause 7(e) of this Schedule 6,
- then the Developer must provide the Minister with a replacement Security to ensure that, at all times, until the date the Security is released in accordance with clause 8 of this Schedule 6, the Minister is in possession of Security for a face value equivalent to the relevant Security required to be provided in accordance with clause 4 of this Schedule 6.
- (g) Regardless of whether a dispute exists regarding the circumstances in which a demand on a Bank Guarantee can be made, the Developer must not take any steps to prevent or restrain:
- (i) the Minister making a demand on the Bank Guarantees;
 - (ii) the issuer of a Bank Guarantee from making a payment under the Bank Guarantee; or
 - (iii) the Minister using any proceeds of any demand on a Bank Guarantee.
- (h) Where the Minister has converted a Bank Guarantee into money, any interest earned on such monies shall be retained by the Minister.
- (i) The Minister is not obliged to hold amounts realised on the demand on a Bank Guarantee in any definable account.
- (j) The Minister does not hold amounts realised on the demand on a Bank Guarantee on trust for the Developer and the Developer does not have ownership of, or any proprietary interest in, such amounts.

8. Release of Security

8.1 Release of the Remediation Works Bank Guarantee 1

Unless the whole of the Remediation Works Bank Guarantee 1 has been expended, the Minister must promptly return the Remediation Works Bank Guarantee 1 after the SP2 Part 1 Works reach Stage Completion.

8.2 Release of the Remediation Works Bank Guarantee 2

Unless the whole of the Remediation Works Bank Guarantee 2 has been expended, the Minister must promptly return the Remediation Works Bank Guarantee 2 after the SP2 Part 2 Works reach Stage Completion.

8.3 Release of the Remediation Works Bank Guarantee 3

Unless the whole of the Remediation Works Bank Guarantee 3 has been expended, the Minister must promptly return the Remediation Works Bank Guarantee 3 after the SP2 Part 3 Works reach Stage Completion.

8.4 Release of the Remediation Construction Works Bank Guarantee 4

Unless the whole of the Remediation Works Bank Guarantee 4 has been expended, the Minister must promptly return the Remediation Works Bank Guarantee 4 after the:

- (a) requirements for completion of the Remediation Works set out in the Remediation Consent have been met to the reasonable satisfaction of the Minister; and
- (b) Developer has complied with the requirements of clause 3.3 and clause 3.4 of Schedule 4.

9. Right of entry

- (a) If the Developer is in breach of any of its obligations under Schedule 4, Schedule 5 or Schedule 6 of this deed, and has failed to rectify any such breach within a reasonable period of time:
 - (i) the Minister may, at any time, in its absolute discretion:
 - (A) take exclusive or non-exclusive possession of the whole or part of the Land, at no fee; and
 - (B) elect any person including but not limited to a contractor, agent or employee of the Minister to carry out any work in connection with the Remediation Works or any other works relating to the Land that the Minister determines are required (acting reasonably), on the Developer's behalf, including, for the avoidance of doubt, any works during the Management Period. Without limiting the Minister's right to call on the Securities referred to in Schedule 5 and Schedule 6, the Developer must promptly reimburse the Minister for all additional costs incurred in respect of this clause 9(a)(i)(B) if the Security is not sufficient to cover the costs incurred by the Minister, or costs the Minister reasonably expects to incur;
 - (ii) the Developer indemnifies the Minister against any liability and costs arising from or incurred in connection with the Minister exercising its rights to enter and undertake the Remediation Works or any other works required to be undertaken under clause 9(a)(i)(B) of this Schedule (including legal costs and expenses on a full indemnity basis or solicitor and own client basis, whichever is the higher);
 - (iii) for the purposes of clause 9(a)(i), the Developer must provide to the Minister all keys and other security related devices to allow the Minister (or any person appointed by the Minister) to access the Land;
 - (iv) the parties agree and acknowledge that the Minister may provide any third party with a copy of this clause 9 or this deed as evidence of the Minister's right to occupy and carry out activities on the Land; and
 - (v) upon the Minister's request, the Developer must provide to the Minister copies of any material or information to which the Developer has access and which the Minister may reasonably require, including but not limited to:
 - (A) applications made or Approvals obtained by the Developer relating to the Remediation Works;
 - (B) any contamination and environmental reports prepared by or for the Developer in respect of the Remediation Works; and

- (C) notices from Authorities, neighbouring owners or other parties relating in any way to the Land.
- (b) For the avoidance of doubt, the Minister is not obliged to comply with the requirements imposed on the Developer under Schedule 4, Schedule 5 or Schedule 6 (such as taking out the Containment Cell Insurance or engaging an Independent Engineer).
- (c) The parties acknowledge and agree that any rights exercised by the Minister under clauses 7 and 9 of this Schedule 6 do not in any way reduce or limit the Developer's liability in respect of any breach of its obligations under Schedule 4, Schedule 5 or Schedule 6 of this deed.

Schedule 7 Scope of Works

Hydro Aluminium Kurri Kurri Pty Ltd
(ABN 55 093 266 221)
Hart Rd, Loxford
New South Wales 2327 Australia
Telephone: +61 2 4937 1555
Facsimile: +61 2 4937 4595
Web: www.hydro.com

Project:

HAKK Demolition and Remediation Project

Package:

Containment Cell Construction & Site Remediation

CONTRACT SR2018-001 Annexure Part H

Document:

Scope of Work Section 1 of 6 Overview

12th September 2019

Revision 0

DOCUMENT CONTROL						
Signatures:						
0	12.09.2019	IFC	FOR CONTRACT	NH	AW	LP
Rev No	Date	Status	Revision Details	Originator	Verifier	Approver

1. This document and the information contained herein are strictly confidential.
2. This document is not suitable and/or approved for use unless signed above by the Approver.
3. A person must not use, retain and/or reproduce this document unless authorised to do so by Hydro Aluminium Kurri Kurri Pty Ltd ("HAKK") and, if so authorised, must only use the document for the purpose that such authorisation was given.
4. A person using this document, including any information, data and/or documents contained or referenced herein, accepts the risk of:
 - a. using the documents, information and/or data in electronic form without requesting and checking them for accuracy against the original hard copy version; and
 - b. using the documents, information and/or data for any purpose not agreed to in writing by HAKK.

Table of Contents

A. USING THE SCOPE OF WORK DOCUMENTS	6
1. INTRODUCTION	8
2. SITE AND LOCATION	8
3. GENERAL	9
4. DETERMINATION OF ALL MATERIAL QUANTITY	9
5. METHODS OF MEASUREMENT OF QUANTITIES	10
6. TIMING OF THE PROJECT APPROVAL CONDITIONS	10
7. HIERARCHY OF APPROVALS	10
8. THE WORKS OVERALL	11
9. ENVIRONMENTAL CONTROLS	15
10. HOURS OF WORK	15
11. QUALITY ASSURANCE REQUIREMENTS	15
11.1. SUPERINTENDENT'S CONSTRUCTION QUALITY ASSURANCE ENGINEER	16
11.2. CONTRACTOR'S QUALITY ASSURANCE REPRESENTATIVE	16
11.3. CONTRACTOR'S INDEPENDENT TESTING ORGANISATION	16
11.4. WORK AS-EXECUTED (WAE) DRAWINGS – CONTRACT DRAWINGS	16
11.5. WORKS AS-EXECUTED (WAE) DOCUMENTS	17
12. SURVEY & SET OUT OF THE WORKS	17
13. EXISTING SERVICES	18
14. MATERIAL AND RESOURCES TO BE SUPPLIED BY THE PRINCIPAL	18
15. WORKS EXCLUDED	18

Acronyms and Glossary

Acronym	Term or Phrase	Definition
This list is to be read in conjunction with the documents that form the Contract and are in addition to and not a substitution of glossaries provided in other published documents, which include the General Conditions of Contract, the Remedial Action Plans and the Technical Specification. Where any conflict exists, a clarification shall be sought from and provided by the Superintendent.		
AEC	Area of Environmental Concern	Refer to Remedial Action Plans, Appendix 3 - Areas of the Site that require surface soil and sediment remediation
BCM	Bank Cubic Metres	The volume of material in its preserved, in-situ and undisturbed condition
CCM	Compacted Cubic Metres	The volume of material following the placement and compaction of that material in its specified location
RWEMP	Remediation Works Environment Management Plan	The plan that provides the methods and means of the protection of the environment during the remediation and construction works
CQA	Construction Quality Assurance	Quality assurance relating to the construction works
CWS	Capped Waste Stockpile	The stockpile of waste material located at the Site designated as AEC1 in the Remedial Action Plan AS130349
ECC	Engineered Containment Cell	The structure designed for the containment of materials
EPA	Environment Protection Authority	Government authority relating to the protection of the environment
ITF	Independent Testing Firm	A company engaged for the performance of testing and inspections that has no commercial connection to or interest in the Works or any Suppliers, subcontractors or Contractors participating in the Works
PAEC	Potential Area of Environmental Concern	Refer to Remedial Action Plans, Appendix 3 - Areas of the Site that may require surface soil and sediment remediation
RAP	Remedial Action Plan	Document attached to the Scope of Works at Appendix 3 - Remediation strategy for soils at the Site published by Ramboll Australia
RFI	Request for Information	A formal question to the Superintendent from the Contractor, as described at Section 4 of Separable Portion SP1
SAS	Site Audit Statement	The statement written by the Site Auditor in relation to the Authorities' Consent Conditions
	Additive Material	Material that is contained in, on or under the Capped Waste Stockpile that is required to have Gypsum added prior to its placement in the ECC
	Approval Conditions Conditions of Consent Project Consent Conditions	The explicit conditions upon which the Project Approval is reliant and the characteristics that the Works must exhibit as a condition of their acceptance by the Authorities
	Authorities	Organisations that provide laws, ordinances, regulations, by-laws, and statutory powers that govern the Works
	Base Liner	The layers that are designed to be constructed underneath the ECC upon which material is to be placed
	Capping	The layers that are designed to be placed on top of the material placed within the ECC
	Contract	As defined in the General Conditions of Contract Clause 2 Interpretation
	Contract Documents	The documents that combine to represent the entire agreement between the parties and describe the Works

	CQA Engineer	Organisation appointed by the Superintendent as his representative to carry out Quality Assurance tasks
	Development Consent	The details of the approval of the works by the Authorities
	Footprint	The area underneath a stockpile or area containing material that is required to be relocated or removed
	Impacted Material	Material on or under the Capped Waste Stockpile that is in direct contact with the waste material stored within the Capped Waste Stockpile
	Jagged Material	Material exhibiting characteristics that present a risk of damage to the ECC Liner
	Leachate Leachate Liquid	The fluid that is generated by water coming into contact with or percolating through Fluoride contaminated waste material
	Miscellaneous Contaminated Materials	Material at the Site that is contaminated and specified to be placed in the ECC
	Principal's Environment Management Plan	The published Hydro Aluminium Kurri Kurri Environment Management Plan, attached at Appendix 5 to the Scope of Works and as amended
	Project	The Works described by the SR2018-001 Contract
	Project Approval	The formal approval by the Authorities allowing the Works to be undertaken
	Project Data Report	The document that provides formal evidence of compliance of the Works with the Contract and the Project Consent Conditions
	Scope Scope of Work	The documents that combine to describe the Works that are to be carried out and completed in accordance with the Contract
	Sidewall Liner	The layers that are designed to be constructed around the sides of the ECC upon which material is to be placed
	Site Auditor	A person authorised by the Department of Planning & Environment to audit the Site to ascertain the Project's alignment with Project Consent Conditions
	Special Material	Material classification for materials used in the construction of the ECC, that includes specific types as listed at Scope of Work Section 2 of 6, Section 7.3.3
	Specification Technical Specification	The Containment Cell Design Technical Specification, reference 22/18015, attached as Appendix 2 to the Scope of Works and as amended
	Temporary Accessway	An existing or new road, track or path used to gain access to areas of the Works during the period of the Works
	Temporary Stockpile	An area allocated by the Superintendent for the storage of items and materials during the period of the Works and for their duration

A. USING THE SCOPE OF WORK DOCUMENTS

The Scope of Work comprises the documents listed in the table set out in this section A.

When reading, interpreting and using the Scope of Work (including its attachments), the following shall apply:

- References to the Contract will be taken to mean the Contract to which the Scope of Work is attached.
- To the extent there is any inconsistency between the Scope of Work and the General Conditions of the Contract, the General Conditions of the Contract will prevail.
- Terms used in the Scope of Work, which are defined in the General Conditions of the Contract, will have the meaning given to them in the General Conditions of the Contract. Terms which are used in the Scope of Work, which are not defined in the General Conditions of the Contract, but which are defined in any part of the Scope of Work, will have the meaning given to them in the Scope of Work.
- Unless the Scope of Work expressly states that an activity, task, item or obligation is to be supplied or carried out by the Principal, all activities, tasks, items and obligations are to be supplied or carried out by the Contractor at its own cost.
- The Scope of Work will be read and interpreted in accordance with the rules of interpretation set out in clauses 1 and 2 of the General Conditions of the Contract and, to the extent the following is not inconsistent with clauses 1 and 2 of the General Conditions of the Contract:
 - Where measurements or quantities are stated, the measurements and quantities shall be interpreted as approximate only and are not exact unless expressly stated as being 'exact'. The Contractor shall make all allowances considering the approximate nature of measurements and quantities.
 - For the majority of materials' volumetric quantities, in metric cubic metres (m³), the quantities given are from in-situ measurements and volumes are calculated from these measurements. The quantities used in this Scope of Works, prior to their movement from their stored location, is "Bank Cubic Metre", being a cubic metre of material in-situ and before being moved. The acronym "BCM" is used and not m³.
 - The quantities used in this Scope of Works, following their placement and compaction in the Engineered Containment Cell, is "Compacted Cubic Metre", being a cubic metre of material placed and compacted in its final location. The acronym "CCM" is used and not m³.
 - For materials' weight quantities, in metric tonnes, an estimate of 1.8 tonne per BCM has been used and is an estimate only. In-situ materials may be more or less than 1.8 tonnes per BCM.
 - The Contractor shall calculate their own volumes and tonnage for the purposes of materials handling (Loose Cubic Metres), and for adding Gypsum (Loose tonnes).
- The words 'include', 'includes' and 'including' shall not be limiting.
- 'Section', 'Appendix', and 'Attachment' refers to a section, appendix or attachment of this suite of Scope documents.
- Where the Scope of Work document (including its attachments) contains representations, the Contractor must not rely upon those representations and must

- verify the correctness, accuracy and quality of information contained in such representations using its own knowledge, investigations and expert skill and judgement.
- Where a requirement is stated, the words used to describe that requirement shall not be interpreted as strictly limiting and the Contractor shall be responsible for carrying out all work reasonably necessary to achieve the requirement, including work that can be reasonably inferred as necessary to achieve that requirement.

This document is Section 1 of a 6-Section suite of documents that constitutes the Scope of Work, and which is included in the Contract. The documents that comprise the Scope of Work are listed below:

Order of Precedence	Scope of Work document
1	Scope of Work Section 1 of 6: Overview (this document)
2	Scope of Work Section 2 of 6: SP1 Preliminaries, Approvals & Temporary Works
3	Scope of Work Section 3 of 6: SP2 Part 1 Project Infrastructure
4	Scope of Work Section 4 of 6: SP2 Part 2 Containment Cell Stage 1
5	Scope of Work Section 5 of 6: SP2 Part 3 Site Remediation & Material Transfer
6	Scope of Work Section 6 of 6: SP2 Part 4 Containment Cell Stage 2 & Completion
7	Appendix 1 Technical Specification
8	Appendix 2 Drawings
9	Appendix 3 Remedial Action Plans
10	Appendix 4 NOT USED
11	Appendix 5 Miscellaneous Information
12	Appendix 6 Safety Data Sheets
13	Appendix 7 Site Reference Drawings
14	Appendix 8 Design Reports
15	Appendix 9 Site Remediation Area Handover Plan
16	Appendix 10 Site Photographs

1. INTRODUCTION

The Kurri Kurri Aluminium Smelter has operated at Hart Road Loxford, New South Wales since commissioning by Alcan in 1969. (“HAKK Smelter” or “Smelter” used interchangeably). The Smelter includes a plant area of approximately 60 hectares, contained within a 2,000-hectare buffer zone. Hydro Aluminium Kurri Kurri Pty Limited (“HAKK” or “Hydro” or “the Principal” used interchangeably) commenced ownership of the facility in 2002.

Smelting activities ceased at the site in September 2012, and in May 2014 the Principal formally announced the closure of the smelter.

It is the Principal’s strategic vision for the Hydro land to play a key role in allowing the Hunter Region to achieve the economic, employment and environmental objectives identified in the NSW Government NSW State Plan 2021 and the Hunter Regional Plan 2036. Hydro aims to achieve this strategic vision by facilitating the rezoning and development of the Project site for significant employment, residential, rural and biodiversity conservation purposes.

The Principal has completed a number of decommissioning activities and is now progressing with the demolition and remediation of the Smelter area.

The Principal has engaged Ramboll Australia Pty Ltd as environment consultant for the whole of the Works, and GHD Pty Ltd for the design and specification of the Engineered Containment Cell forming part of the Works (“Engineered Containment Cell”, “Containment Cell” or “ECC” used interchangeably).

2. Site and Location

The HAKK Smelter is in Loxford, NSW which is approximately 35km west of Newcastle and 150km north of Sydney.

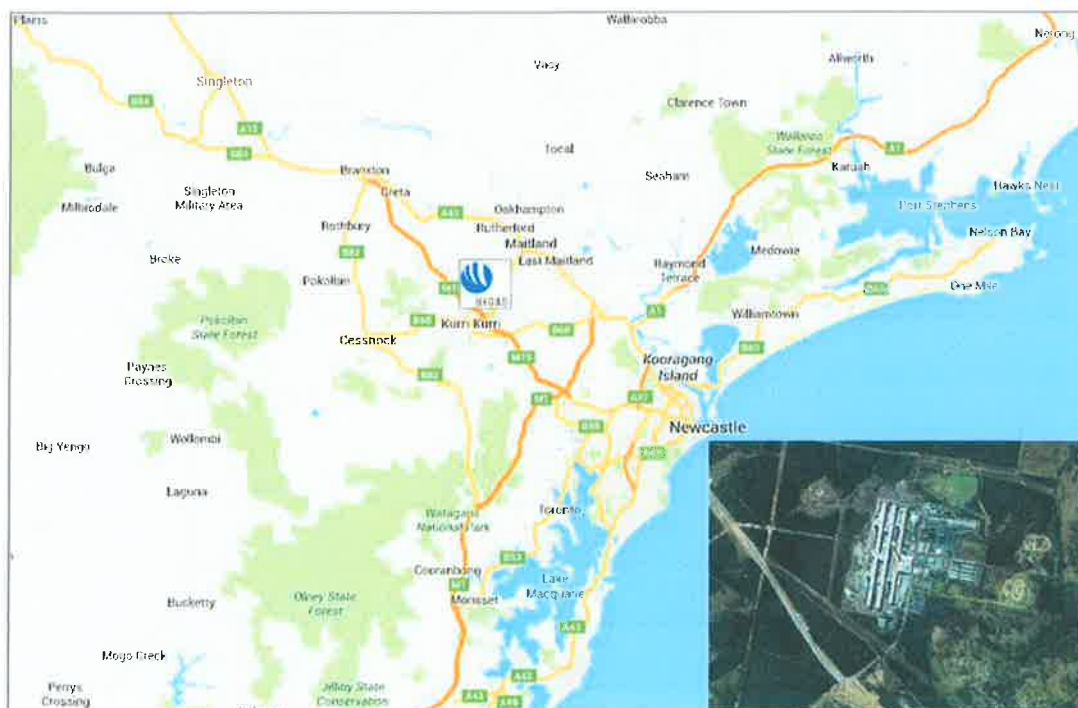


Figure 2-1: HAKK Locality plan (insert: aerial of smelter plant vicinity)

The Smelter area is located on parts of Lot 3 of Deposited Plan (DP) 456769, Lot 16 DP1082775 Pt 1, Lot 411 DP755231, Lot 412 DP755231, Lot 413 DP755231, Lot 414 DP755231, Lot 420 of DP755231, Lot 318 DP755231, Lot 769 DP755231, Lot 319 DP755231 and Lot 1 DP456769.

Key roads in the vicinity of the Site are:

- Hart Road, which is immediately adjacent to the western section of the site and connects the Site to the M15 Hunter Expressway and the townships of Weston, Kurri Kurri and Cessnock.
- Dickson Road, which intersects with Hart Road approximately 120 metres south of the site security gate and is immediately adjacent to the eastern section of the site.
- M15 Hunter Expressway, which is approximately 380 metres to the southwest of the Site and connects the site to Sydney via the M1 Expressway to the South, or to Brisbane via the M1 Expressway or the New England Highway to the North.

3. General

The purpose of the Works is to clear waste materials, including contaminated materials, or Areas of Environmental Concern ("AEC"), from the Site for the Site to be subsequently utilised for future development.

To achieve this purpose the Contract will facilitate the construction of an ECC and the collection and relocation of materials from the Site, for the long-term storage of materials in the ECC. Subsequently, the Site will be audited the Principal's Site Auditor.

The works have been divided into 6 (six) sections as follows:

SCOPE OF WORKS Sections					
1	2	3	4	5	6
Overview	SP1	SP2			
	Preliminaries Approvals & Temporary Works	Part 1 Project Infrastructure	Part 2 Containment Cell Stage 1	Part 3 Site Remediation & Material Transfer	Part 4 Containment Cell Stage 2 & Completion

4. Determination of all Material Quantity

The determination of all quantities of materials shall be by measured weight in tonnes. The Contractor shall use the Principal's Site weighbridge, or any other weighing asset provided by the Contractor that has been calibrated by an independent, NATA-certified, third party.

Payment for works based on the movement of materials shall be by weighed measurement and not dimensional survey, unless explicitly approved in writing by the Superintendent.

5. METHODS OF MEASUREMENT OF QUANTITIES

The works are predominantly characterised by the excavation, loading, haulage, and placement of bulk materials. As such the methods of measurement of the works shall be via the following means:

- A. Weight - via the Contractor's NATA certified weighing asset, or the Hydro Aluminium Weighbridge (if this is available), which will provide each truck a certified gross and tare weight.
- B. Volume - Bank Cubic Metres by in-situ survey prior to materials being removed from their undisturbed location, carried out by persons and using methods approved by the Superintendent for the performance of this work.
- C. Volume – Compacted Cubic Metres by in-situ survey following final placement and compaction of materials, in accordance with the Technical Specification, at their specified final location, carried out by persons and using methods approved by the Superintendent for the performance of this work.
- D. Time – Standby Time, Working Time and Non-Working Time as defined elsewhere in the Contract
- E. Dimension – by use of a calibrated measuring device.

All other measurements shall be provided in accordance with AS 1181-1982 Methods of Measurement of Civil Engineering Works and Associated Building Works.

6. Timing of the Project Approval Conditions

The Contractor shall note that this project, the Containment Cell Construction and Site Remediation, is awaiting approval from the Authorities and, as such, no Separable Portion 2 works may proceed in any areas until that approval has been received and directed by the Superintendent.

The Project Approval from the Authorities will include the issue of Development Consent Conditions which will affect the Works. A Draft version of the Development Consent Conditions is included within the Contract.

The Works will comprise 2 distinct Separable Portions, being:

- **Separable Portion 1 Preliminaries, Approvals and Temporary Works**, which includes the works that are required to be carried out as part of the overall project and do not require Development Consent Approval in order for them to be undertaken and completed; and
- **Separable Portion 2 The Balance of the Works**, all of which requires Development Consent Approval

Upon receipt of the Development Consent Approval the specific Development Consent Conditions will form part of the Contract for these works and will be introduced prior to the commencement of the Works the subject of Separable Portion 2.

7. Hierarchy of Approvals

The Works are subject to approvals at each step of their progress, from a Contractor's draft of a management plan to the acceptance by a third-party authority, being the Site Auditor, for the final clearance of the whole of the Works.

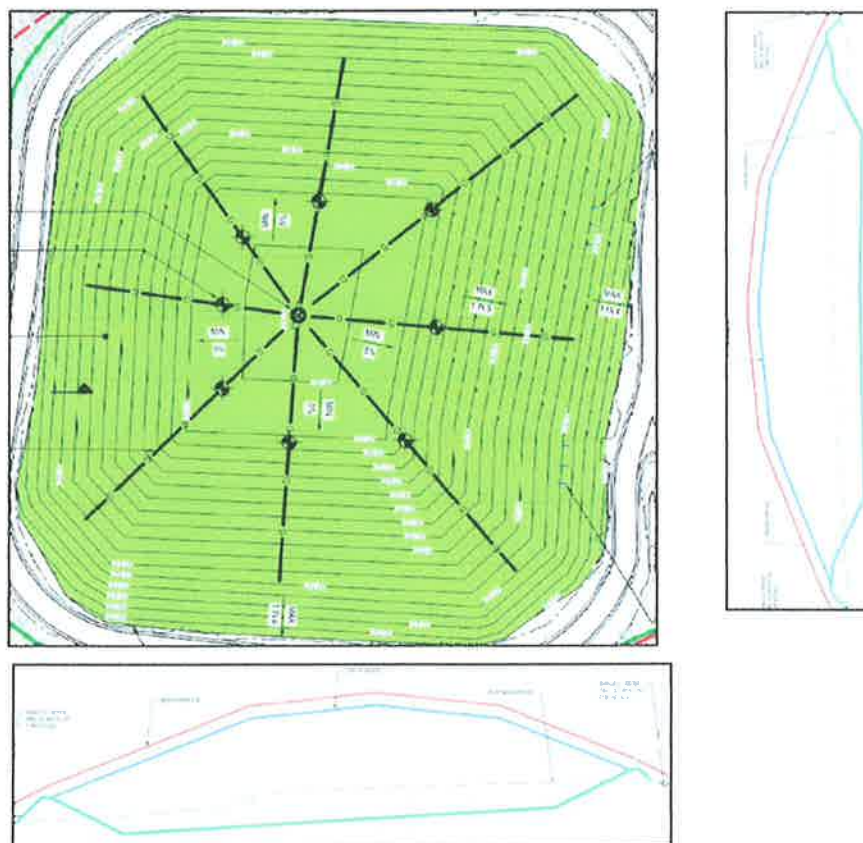
The Superintendent's approval is referenced throughout the Contract where such approval is required.

The completion of the Works, and areas of the Works, is subject to the Superintendent's approval and, in specific circumstances, to the approval by other parties. These other parties' approvals include, but are not limited to, the following:

- Principal's Environmental Consultant's Approval – Area environmental clearance certification, including asbestos clearance, who will provide a Validation Report for the Works;
- The Independent EPA-Accredited Site Auditor who will provide a Site Audit Statement ("SAS") for the Works
- Department of Planning and Environment - overall project approval following their receipt of the SAS.

8. The Works Overall

It is estimated that an amount of approximately 600,000t of material, plus (subject to Final Development Consent Conditions) approximately 27,000t of Gypsum additive, is to be placed in the ECC that is to be constructed as part of the Works.



Except to the extent that the Contract otherwise expressly provides, the Contractor shall supply everything necessary for the proper performance of the Contractor's obligations and the discharge of the Contractors' liabilities under the Contract. This shall include suitable technical resources for labour, supervision, inspection, and project management, and the

provision of all materials, plant, equipment, supplies, temporary works and consumables that are required to safely execute the works.

The Works overall, including the RAP's, the drawings, the Specification and the Appendices, are defined in two Separable Portions that are generally described as follows:

- **Separable Portion 1 (SP1) Preliminaries, Approvals & Temporary Works**
 - the preparation, issue and approval of management plans for the Works;
 - the preparation, issue and approval of a construction program for the Works, incorporating the approved management plans in so far as they affect the planned progress of the Works;
 - the completion of pre-qualification submissions for the materials specified for incorporation into the Works;
 - the submission of requests for approval of suppliers for specified materials;
 - the submission of requests for the approval for the engagement of subcontractors for the Works, including liner installation and liner integrity testing;
 - the completion of detailed Works Method Statements for the ECC and for each specific element of the Works. The Superintendent's approval of these plans shall be provided in support of the Contractor's approved program;
 - the provision of Site access by the Principal for the Contractor's inspection and planning for their temporary facilities;
 - the creation of Temporary Stockpile areas for the collection of 'clean' materials, provided these areas do not require removal of native vegetation or disturbance of Aboriginal heritage items;
 - the creation of accessways to all Temporary Stockpiles and waste material stockpiles within the Smelter footprint, provided that no 'new' roads are included;
 - the relocation of existing stockpiles to new Temporary Stockpiles for later use;
 - the installation of a temporary truck-weighing facility, at or near the Capped Waste Stockpile (CWS), for the weighing of project vehicles and the determination of material transported to the ECC, and the determination of Gypsum Additive quantities required; and
 - the completion of temporary soil and water management infrastructure, including environmental controls, around the Site excluding the area surrounding the ECC.

- **Separable Portion 2 (SP2) Cell Construction and Remediation Works**, following the procurement of the relevant approvals from the Superintendent from Separable Portion 1, these Separable Portion 2 works includes the construction and remediation works for the project including but not necessarily limited to, the following:
 - **SP2 Part 1 Project Infrastructure** including:
 - the setting up of the Contractor's temporary project facilities;
 - the creation of the main east-west haul road;
 - the installation of temporary fencing around all works' areas;
 - the installation of Soil and Water Management infrastructure, including environmental protection provisions, at the ECC area;
 - the clearing and excavation of the clay borrow pit area of the Site for ECC construction;

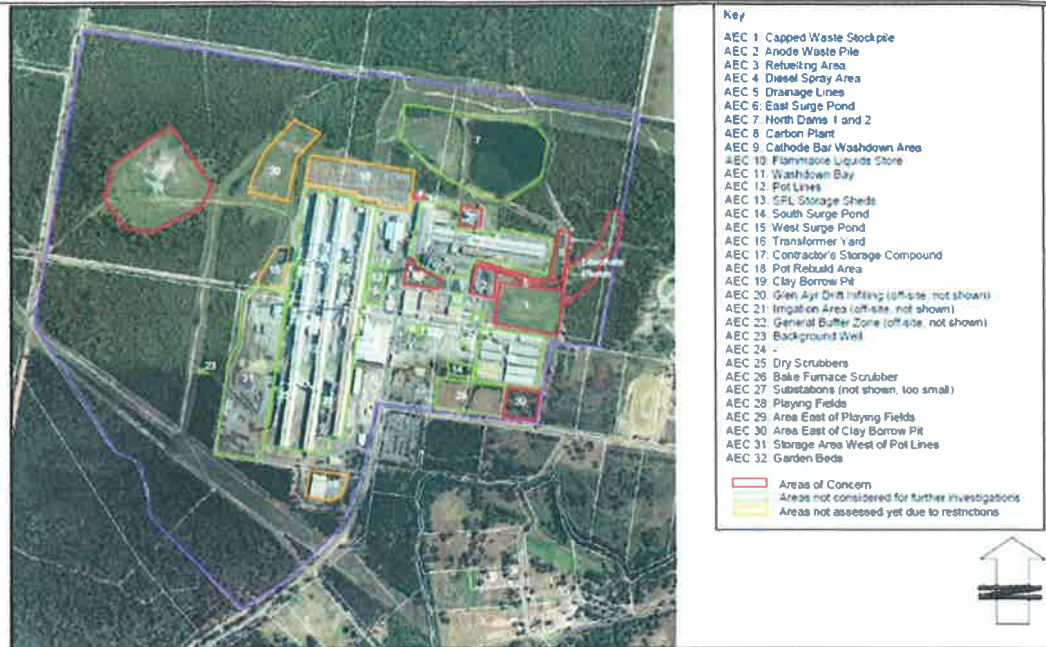
-
- the construction of a permanent creek crossing using culverts;
 - the construction of 5 dams - 1 Leachate dams and 3 sediment basins at the ECC Site and 1 Leachate Dam near the CWS;
 - the stockpiling of excavated materials to Temporary Stockpiles for later use;

SP2 Part 2 Containment Cell Stage 1 including:

- the completion of any remaining Temporary Works
- the ECC Access Road
- the ECC Perimeter Road
- the first stage of the ECC construction including:
 - the installation of pipework for the collection and distribution of Groundwater underneath the ECC
 - installation of the 'Base Liner'
 - installation of separate pipework systems, within specific layers of the Liner, for the collection and distribution of Leachate Liquid and water from the ECC
 - the construction of sub-cells and access ramps
 - installation of the water and Leachate Liquid collection sumps
 - the installation of the 'Sidewall Liner' and Anchor trenches

SP2 Part 3 Site Remediation & Material Transfer including:

- the collection and determination of the weight of each load of material, approximately 600,000 tonnes, from identified Areas of Environmental Concern ("AEC's") at various locations around the Site that are referenced in the Remedial Action Plans ("RAP"), and its loading into the ECC in a prescribed sequence. The material includes, but is not limited to, the following:
 - Dickson Road Stockpile material [AEC29]
 - Asbestos Contaminated Material ("ACM") stored on Site in stockpiles at various locations
 - Capped Waste Stockpile ("CWS") [AEC1]
 - Miscellaneous Contaminated Materials
 - Process waste material stored at the 7A Furnace building – north & south tubs
 - General waste material from the demolition works
 - Anode Waste Pile [AEC2], and East and West Surge Ponds & associated drainage lines[AEC5,6,15]
 - Carbon Plant footprint [AEC8]
 - Bake Furnace Scrubber footprint [AEC26]
 - Dickson Road South material [RAP AS130419]



- the handling and addition of Gypsum to each load of material taken from the CWS, measured by weight per tonne of each load. All loads are to be weighed by the Contractor and the respective quantity of Gypsum material added to that load. The Gypsum will be free-issued and stored in a stockpile near the CWS. The Contractor will load the Gypsum as required into each load of CWS material. It is estimated (subject to Final Development Consent Conditions) that an amount of approximately 27,000 tonnes of Gypsum is to be supplied, by the Principal, and added, by the Contractor, to 270,000T of CWS Material;
- the installation of the first part of the Gas Management System within the upper level of waste material placed within the Cell;
- the completion of the Leachate Transfer System (from Part 3);
- the procurement of Area Clearance Certificates, from Ramboll, for all areas of the Site that have been cleared of materials;
- following their certified clearance, the remediation of the various areas of the site by backfilling and resurfacing using clean fill to provide a free-draining site.

SP2 Part 4 Containment Cell Stage 2 & Completion including:

- the placement of the capping layer of the Cell;
- the completion of the Gas Management System (from Part 4);
- the completion of the vegetation layer;
- the certification of the ECC Works by the CQA Engineer;
- the removal of all Temporary Works and reinstatement of the affected landform, including Leachate storage dams
- the completion of the Works according to all statutory processes and EPA requirements such that:
 - Ramboll will provide a Validation Report to that effect; and
 - the Site Auditor will provide a Site Audit Statement to that effect;
- The provision of a Project Data Report from the Contractor containing all documents that are required to be developed, produced, provided and procured by the Contractor during and following the works as required to be provided in accordance with the Contract; and

-
- The satisfaction of all requirements for the qualification for the award of Practical Completion by the Superintendent of the whole of the Works.

9. Environmental Controls

The Works shall be under the governance of Development Consent Conditions that include specific environmental controls. These controls shall include, but will not necessarily be limited to, the following:

- Air quality impact controls
- Dust minimisation controls
- Odour minimisation controls
- Noise minimisation controls
- Erosion and sediment controls
- Surface water and groundwater controls
- Traffic controls
- Spill response
- Handling of hazardous materials
- Handling of waste materials
- Protection of flora and fauna

The Contractor shall develop their Construction Environment Management Plan as part of Separable Portion 1 Preliminaries & Approvals that shall incorporate the requirements of the RAP, the Principal's Environment Management Plan and the Development Consent Conditions.

10. Hours of Work

Subject to Final Consent Conditions, the Contractor shall only undertake works associated with the Works that may generate an audible noise at the closest residential receptor during the following hours unless under direction from a relevant authority for safety reasons or in the event of an emergency:

- 7.00 am to 6.00 pm, Monday to Friday;
- 7.00 am to 1:00 pm on Saturdays; and
- At no time on Sundays or public holidays.

11. Quality Assurance Requirements

The Technical Specification, attached at Annexure 1 ("Specification"), provides details for quality assurance for the Works, and includes details in relation to inspection, testing, certification, verification and acceptance of all elements of the works.

Table 1-3 in the Specification provides a list of Witness Points and Hold Points required to be incorporated into the Contractor's Quality Assurance Plan (Specification section 1.12 refers).

The Contractor shall incorporate the details of quality assurance activities and actions in their work method statements and shall be responsible for the complete satisfaction of the technical specification's provisions, including the provision of documentary evidence of that complete satisfaction.

The Specification includes descriptions of Acceptance Criteria, including acceptance criteria in tabular format, for all measurable elements of the ECC Works.

11.1. Superintendent's Construction Quality Assurance Engineer

The Superintendent shall appoint a Construction Quality Assurance Engineer ("CQA Engineer") to assist the Superintendent in the carrying out of checking and sign-off of quality assurance Witness Points and Hold Points for the Works.

The Contractor shall co-operate with the CQA Engineer always, including the provision of access to all areas of the Works and at any locations, at the reasonable request of the Superintendent, for testing and verifications works, both on-Site and off-Site.

11.2. Contractor's Quality Assurance Representative

The Contractor shall appoint a full-time Quality Assurance Representative for these works, which will be that person's sole and full-time responsibility on the project.

The Contractor's Quality Assurance Representative shall be delegated sufficient authority, by the Contractor, to represent the Contractor in matters of Quality Assurance and Quality Control with respect to the Works, including the authority to direct the Contractor's works.

11.3. Contractor's Independent Testing Organisation

The Contractor shall engage an Independent Testing Firm to perform the tests specified to be undertaken in the Technical Specification. Technical Specification section 1.7.2 refers to this element.

The Contractor's Independent Testing Firm ("ITF") shall not be part of the Contractor's company. The Contractor shall procure a written statement of independence from their ITF stating that the testing firm is independent and has no financial interest in the Contractor, the Geosynthetic Lining Installer or any of the manufacturers/suppliers that are providing materials for the Works.

The ITF shall represent the Contractor for the performance of all verification testing required to be undertaken in accordance with the Contract including, but not necessarily limited to, the following:

- Quality control testing of materials at a material manufacturer's plant
- Quality control testing of materials following delivery to Site
- Manufacturer's documentation, including the procurement of certificates, test results and statements of conformance
- Field testing
- Field verification

The Contractor and the ITF shall work closely with the Superintendent's Construction Quality Assurance Engineer in relation to quality assurance, inspection and testing.

11.4. Work As-Executed (WAE) Drawings – Contract Drawings

The Specification, at section 1.13, details the requirements for the Contractor for the development and issue of As-Executed Drawings ("WAE Drawings") depicting the works.

The WAE Drawings shall be generated by the Contractor and shall include:

- a complete set of the electronic version of the Contract Drawings that depict the works as they are constructed. Additions, deletions and amendments shall be marked in red on these drawings, which are to be stored and distributed in Adobe 'PDF' format.
- All of the Contract Drawings shall be marked "Work As Executed", whether or not any additions, deletions or amendments have been included thereon.
- a complete set of all of the Contractor's drawings, surveys, and plans, developed during the progress of the Works, shall be updated and marked "Work As Executed"

The WAE Drawings are to be developed during the progress of the Works and will depict the details of the whole of the Works as the Works progress to their completion.

At the conclusion of each Stage and Separable Portion of the Works, the WAE Drawings shall depict the details of that stage as it has been created, constructed, cleared or remediated and in its final form.

11.5. Works As-Executed (WAE) Documents

Note that each area of the Site that is excavated by the Contractor, to remove materials, is to be represented by a computer-generated drawing containing dimensional data showing depth, surface footprint dimensions, and location data.

These computer-generated drawings shall include plans of remediated areas that have been cleared by excavation and reinstated to a landform matching the surrounding area, which includes -

- the Capped Waste Stockpile area
- the Anode Pile area
- the Dickson Road stockpiles
- East and West Surge Ponds
- other areas, cleared by excavation, that contain Miscellaneous Contaminated Materials

These computer-generated drawings shall be attached to a Ramboll Area Clearance Certificate.

A stage of the Works cannot qualify as being at a Stage of Practical Completion unless the WAE Drawings and/or computer-generated drawings for that stage and/or area have been completed, issued to and accepted by the Superintendent as being complete

12. Survey & Set Out of the Works

The Superintendent shall provide the Contractor with the information and survey marks necessary to enable the Contractor to set out the Works.

The Contractor shall carry out survey works in accordance with Section 1.11 of the Technical Specification, including detailed surveys for the setting out and the dimensional confirmation of the Works as the Works progress. Table 1-2 in the Technical Specification provides a detailed list of survey works required to be undertaken by the Contractor.

The Contractor shall maintain documentary records of all surveys and shall issue a copy of these records, at the time of their production, to the Superintendent for information.

13. Existing Services

The Contractor will be working across the Site where underground and overhead services exist, including on Dickson Road and the clay borrow pit.

To the Principal's current knowledge, most existing site services have been isolated from supply points during the decommissioning of the plant and the demolition works. However, the Contractor shall undertake their own investigations at each area of the Works to positively identify any existing services and their active state.

Services that will continue to be connected include:

- the three 132kV feeders that are connected to the Switchyard;
- the 415V supply to 12A pump house; and
- the temporary power supply feeding Building 21A and the surrounding buildings
- any other temporary services established by other Contractors on the Site.

Services within the vicinity of the ECC are limited to the high voltage (132kV Feeder 96W) overhead powerlines. These will remain live throughout the Works.

For the Contractor's excavation works an Excavation Permit is required, as part of the Hydro WHS Management Plan. Part of this permit process requires the identification of existing services and the Contractor shall ascertain specific services information relevant to that excavation.

14. Material and Resources to be supplied by the Principal

The Principal will make available, under certain terms, the following:

- Southern weighbridge as-is and available at the Contractor's discretion, to relocate on Site for load weighing and Gypsum dosing, and other load weighing requirements.
- Recycled drainage aggregate for use in the ECC including any Temporary Works or for the filling of voids around the Site as required.
- Certification of Environmental Clearance of areas of the Site that are remediated by the Contractor.
- Gypsum material, stockpiled at a location near the CWS, that is to be added to the CWS material.

15. Works Excluded

The following works are excluded from this scope of work:

- Transport, processing or handling of spent potlining and/or any other recyclable materials either within or from the Site for recycling;
- Demolition of remaining buildings and structures.
- Final environmental validation and certification for submission to the Site Auditor and for Project approval purposes

Schedule 8 Independent Engineer's Deed



Dated

2020

Independent Engineer's Deed

Minister for Planning and Public Spaces (ABN 20 770 707 468)

Hydro Aluminium Kurri Kurri Pty Ltd (ACN 093 266 221)

[#Independent Engineer] (ACN [#insert])

Table of contents

1.	Definitions and interpretation	1
1.1	Definitions	1
1.2	Interpretation	4
1.3	Construction	5
2.	Appointment of the Independent Engineer	5
2.1	Terms of appointment	5
2.2	Standard of performance of the IE Services	5
2.3	Representations and warranties	5
3.	Term of appointment	6
3.1	Term	6
3.2	Termination	6
4.	Relationship	6
4.1	Nature of relationship	6
4.2	Independence	7
4.3	No conflicts of interest	7
5.	Reliance	7
6.	Certificate of Compliance	8
7.	Representatives	8
7.1	Minister's Representative	8
7.2	Developer's Representative	8
7.3	Independent Engineer's Representative	8
8.	Suspension of IE Services	9
9.	Indemnity	9
10.	Insurance	10
10.1	Public liability	10
10.2	Worker's compensation	10
10.3	Professional indemnity insurance	10
10.4	Evidence of insurance	11
11.	Dispute resolution	11
11.1	Not commence	11
11.2	Written notice of dispute	11
11.3	Attempt to resolve	11
11.4	Mediation	11
11.5	Court proceedings	12
11.6	Not use information	12
11.7	No prejudice	12
11.8	Continued Performance	12
12.	Assignment and subcontracting	12
13.	Termination	12

14. Confidentiality	13
14.1 Confidential Information	13
14.2 Publicity	13
15. Notices	13
16. General provisions	14
16.1 Governing law and jurisdiction	14
16.2 Severance	14
16.3 Indemnities	14
16.4 Proportionate Liability	14
16.5 Waiver	14
16.6 Survival	15
16.7 Amendment	15
16.8 Entire agreement	15
16.9 Counterparts	15
Schedule 1 – Deed Particulars	18
Schedule 2 – Land	20
Schedule 3 – IE Services	21
Schedule 4 – Certificate	22

This **Independent Engineer's Deed** is dated

2020

Parties:

Minister

Minister for Planning and Public Spaces (ABN 20 770 707 468)
of 4 Parramatta Square, 12 Darcy Street, Parramatta NSW 2150

Developer

Hydro Aluminium Kurri Kurri Pty Ltd (ACN 093 266 221)
of Hart Road, Loxford NSW 2327

Independent Engineer

[#Independent Engineer] (ACN [#insert])
of [#insert address]

Introduction:

- A** The Developer owns the Land.
- B** The Minister and the Developer have entered, or will enter, into the Voluntary Planning Agreement.
- C** The Developer has engaged, or will engage, a Remediation Contractor to carry out the Remediation Works on the Land on the terms set out in the Site Remediation Contract.
- D** The Voluntary Planning Agreement and the Site Remediation Contract contemplate that the Developer will appoint a construction quality assurance engineer to carry out services, equivalent to the IE Services.
- E** The Independent Engineer has represented that it has the experience and expertise in the carrying out of the functions, services, duties and responsibilities equivalent to the IE Services.
- F** The Independent Engineer has agreed to carry out the IE Services and its other obligations arising out of or in connection with this deed in accordance with the terms and conditions of this deed (**Deed**).

It is agreed:

1. Definitions and interpretation

1.1 Definitions

In this Deed, unless the context clearly indicates otherwise:

Access Road means the road to be constructed by the Developer providing access to the Containment Cell Land;

Address for Service means the address of each party appearing in Schedule 1 or any new address notified by any party to all other parties as its new Address for Service;

Approvals means all notices, orders, decisions, registrations, rulings, requirements, consents, permits, permissions, authorisations, certificates, licences, approvals and the like required from or given by an Authority or under any Legislative Requirement to carry out all or any part of the Remediation Works;

Authority means:

- (a) any governmental or semi-governmental or local government authority, administrative or judicial body or tribunal, department, commission, public authority, agency, Minister, statutory corporation or instrumentality; and
- (b) any other entity or person authorised by any of the above or by law to carry out or assist in the discharge of its functions in respect of Approvals;

Business Day means any day that is not a Saturday, Sunday, gazetted public holiday or bank holiday in Sydney, and concludes at 5 pm on that day;

Certificate of Compliance means the certificate (substantially in the form set out in Schedule 4 of this Deed) to be provided to the Minister and the Developer by the Independent Engineer, which provides that the Remediation Works or relevant parts thereof:

- (a) have been constructed, installed and completed in accordance with the Project Documents; and
- (b) comply with the applicable Legislative requirements;

Claim means any claim, demand, remedy, injury, damage, cost, loss, expense, liability, suit, action, proceeding, verdict, judgement, right of action or debt whether arising at law, in equity, under statute or otherwise;

Construction Remediation Works means so much of the Remediation Works as relates to:

- (a) the construction of the Containment Cell, including all design and temporary works, the construction of infrastructure associated with the Containment Cell (such as the installation of pipework for collection of groundwater, collection stumps for leachate and 'anchor' trenches) and the construction of the access road to the Containment Cell and the perimeter road, as described in State Significant Development Application SSD 6666; and
- (b) all works and activities referred to in Stage 1B.

Containment Cell means the containment cell proposed to be constructed by the Developer on Land in accordance with the Project Documents;

Containment Cell Land means that part of the Land to be transferred to the Minister, including the land on which the Containment Cell is located;

Corporations Act means the *Corporations Act 2001* (Cth);

Developer is the party referred to in Item 2 of Schedule 1 of this Deed. A reference to the 'Landowner' in any Project Document is a reference to the Developer unless the context otherwise requires;

Development Consent has the same meaning as in the EPA Act;

EPA Act means the *Environmental Planning and Assessment Act 1979* (NSW);

Independent Engineer is the party referred to in Item 3 of Schedule 1 of this Deed;

IE Services means those services listed in **Error! Reference source not found.** of this Deed and such other services as the Independent Engineer may be required to perform and provide under this Deed or the Project Documents;

Land means the land described in Schedule 2 of this Deed;

Legislative Requirements includes:

- (a) Acts, Ordinances, regulations, by-laws, orders, awards and proclamations of the jurisdiction where the Remediation Works or the particular part thereof is being carried out as amended or re-enacted from time to time including any such Act, Ordinance, regulations, by-laws, orders awards and proclamations made in replacement thereof;
- (b) certificates, licences, consents, permits, Approvals and requirements of organisations having jurisdiction in connection with the carrying out of the Remediation Works; and
- (c) fees and charges payable in connection with the foregoing;

Mediation Program means the Mediation Program of the Law Society of New South Wales as published on its website and as varied from time to time;

Minister is the party referred to in Item 1 of Schedule 1 of this Deed and includes, where relevant, the Minister's nominee;

Project means the development of the Land generally in accordance with State Significant Development Application SSD 6666, comprising (among other things) the remediation of the former Hydro Kurri Kurri Aluminium smelter site;

Project Documents means:

- (a) the Remediation Consent;
- (b) the Voluntary Planning Agreement;
- (c) the Site Remediation Contract and any other documents between the Developer and the Remediation Contractor in relation to the Remediation Works (including any scope of works, technical specification and remedial action plan); and
- (d) any other documents the Minister and the Developer acknowledge in writing to be a Project Document;

Remediation Contractor means the contractor appointed by the Developer under the Site Remediation Contract to perform the Remediation Works;

Remediation Works means the works as defined in the Site Remediation Contract and includes, without limitation, the Construction Remediation Works;

Remediation Consent means any Development Consent granted for the Project;

Site means the Land and any other lands and places made available to the Independent Engineer for the purpose of performing the IE Services;

Site Remediation Contract means the contract between the Developer and the Remediation Contractor for the performance of the Remediation Works;

Stage 1B Works means the following works and activities forming part of stage SP2 Part 1 of the Remediation Works:

- (a) creation of main East-West Haul Road;
- (b) creation of permanent creek crossing (culverts); and
- (c) construction of 5 dams – 1 leachate dam, 3 sediment basins at containment cell site and 1 leachate dam at the capped waste stockpile.

Termination Event means:

- (a) a failure, refusal or inability of the Independent Engineer to perform all or any part of its obligations, duties and functions under this Deed, including within the time required under this Deed; or
- (b) a material breach by the Independent Engineer of any of its obligations, duties and functions under this Deed which:
 - (i) is not capable of remedy; or
 - (ii) is capable of remedy and the Independent Engineer fails promptly to rectify such breach within the period specified in a written notice issued jointly from the Minister and the Developer requesting the Independent Engineer to remedy the breach; and

Voluntary Planning Agreement means the agreement between the Minister and the Developer for the provision of development contributions by the Developer in connection with the Project.

1.2 Interpretation

In this Deed, unless the context clearly indicates otherwise:

- (a) a reference to **this Deed** or another document means this Deed or that other document and any document which varies, supplements, replaces, assigns or novates this Deed or that other document;
- (b) a reference to **legislation** or a **legislative provision** includes any statutory modification or substitution of that legislation or legislative provision and any subordinate legislation issued under that legislation or legislative provision;
- (c) a reference to the **introduction**, a **clause**, **schedule** or **annexure** is a reference to the introduction, a clause, a schedule or an annexure to or of this Deed;
- (d) **clause headings** and the **table of contents** are inserted for convenience only and do not form part of this Deed;
- (e) the **introduction**, **schedules** (if any) and **annexures** (if any) form part of this Deed;
- (f) **related** or **subsidiary** in respect of a corporation has the same meaning given to that term in the Corporations Act;
- (g) **including** and **includes** are not words of limitation;
- (h) the singular includes the plural and vice-versa; and
- (i) words importing one gender include all other genders.

1.3 Construction

Neither this Deed nor any part of it is to be construed against a party on the basis that the party or its lawyers were responsible for its drafting.

2. Appointment of the Independent Engineer

2.1 Terms of appointment

- (a) The Developer has engaged the Independent Engineer to perform the IE Services pursuant to a separate agreement between the Developer and the Independent Engineer.
- (b) Each of the Minister and the Developer appoints the Independent Engineer to perform the IE Services for the purposes of the Voluntary Planning Agreement.
- (c) The Independent Engineer's appointment commences on the date of this Deed and terminates on the date determined pursuant to subclause 3.2.
- (d) The Independent Engineer accepts such appointment under subclause 2.1(a) and agrees to perform the IE Services in accordance with this Deed.

2.2 Standard of performance of the IE Services

In carrying out the IE Services the Independent Engineer must:

- (a) at all times act:
 - (i) in good faith, impartially, honestly and independently (without regard for the benefit of one party to the Deed over the other);
 - (ii) diligently and with a high degree of professional care, knowledge, experience and skill which may be reasonably expected of and in accordance with the standards applicable to a construction quality assurance engineer experienced in the performance of the same or similar services to the IE Services;
 - (iii) reasonably, fairly, professionally and honestly;
 - (iv) in a timely manner; and
 - (v) in accordance with this Deed and the Project Documents;
- (b) not waive or vary any requirements in the Project Documents;
- (c) not discharge or release a party from any of its obligations arising out of any Project Document;
- (d) comply with all Legislative Requirements; and
- (e) exercise all reasonable skill, care and diligence expected of a properly qualified and competent professional rendering services of an equivalent nature to the IE Services and experienced in projects of a similar size, scope and complexity as the Project.

2.3 Representations and warranties

The Independent Engineer represents and warrants to the Minister and the Developer that:

- (a) it has the capability, expertise, skill, experience and ability to perform the IE Services;

- (b) it holds the appropriate qualifications, licences and registrations in accordance with the requirements of any Legislative Requirement necessary for the performance of the IE Services;
- (c) it has the power and has taken all corporate and other action required to enter into and authorise the execution of this Deed and the performance of the IE Services under this Deed;
- (d) no representation, warranty or information provided by it contains any untrue statement of material fact or omits to state a material fact necessary to make such representation and warranty not misleading in light of the circumstances under which it was made;
- (e) this Deed constitutes a valid and legally binding obligation on it in accordance with its terms except to the extent of discretions of courts regarding the availability of equitable remedies and laws affecting creditors' rights generally; and
- (f) the execution, delivery and performance of this Deed does not violate any existing law or any document or agreement to which it is a party or which is binding on it or any of its assets.

3. Term of appointment

3.1 Term

The appointment of the Independent Engineer under subclause 2.1(b) of this Deed commences on the date of this Deed and, unless terminated earlier under subclause 3.2, continues until the Independent Engineer has completed and discharged all of its duties and functions under this Deed.

3.2 Termination

This Deed will terminate immediately on the earlier of:

- (a) the termination of the Voluntary Planning Agreement (in which case this Deed terminates automatically); or
- (b) termination of this Deed in accordance with clause 13,

save in relation to any matter which remains outstanding and in progress as at the date of termination.

4. Relationship

4.1 Nature of relationship

- (a) The Independent Engineer is an independent contractor and is not an employee or agent of either the Minister or the Developer.
- (b) The Independent Engineer's employees, consultants and agents are not the employees, consultants or agents of the Minister or the Developer.
- (c) The Independent Engineer assumes full responsibility for the acts and omissions of each of its employees and agents.

- (d) The Minister and the Developer are not liable for, nor will they be taken to have a liability for, or to have assumed or become (on enforcement of any of its powers or otherwise) liable for, the performance of any obligation of the Independent Engineer under this Deed or any associated document.

4.2 Independence

Without limiting or derogating from subclause 2.2(a), the parties agree that the Independent Engineer will act independently of all parties in connection with the performance of the IE Services.

4.3 No conflicts of interest

The Independent Engineer represents and warrants that:

- (a) it owes a duty of care and professional responsibility to each of the Minister and the Developer in connection with the performance of the IE Services;
- (b) it has disclosed to the Minister the contractual relationship it has with the Developer and, to the extent practicable, if a conflict of interest arises between the terms of this Deed and the separate agreement between the Developer and the Independent Engineer, the terms of this Deed will prevail;
- (c) subject to subclause 4.3(b) above, at the date of signing this Deed, no conflict of interest exists or is likely to arise in connection with the performance of the IE Services and the discharge of its duties and functions under this Deed; and
- (d) if, during the term of this Deed, any such conflict or risk of conflict of interest arises, the Independent Engineer will notify the Minister and the Developer immediately in writing of that conflict or risk of conflict and:
 - (i) take such steps as may be required by the Minister and the Developer to avoid or mitigate that conflict or risk; and
 - (ii) comply with all reasonable requests or directions of the Minister and the Developer in relation to such conflict or risk of conflict.

5. Reliance

The Independent Engineer acknowledges that the Minister and the Developer:

- (a) have entered into this Deed in reliance on, and are entitled to, and will, rely on:
 - (i) the independence of the Independent Engineer;
 - (ii) the particular skill, experience and ability of the Independent Engineer to perform all of the IE Services and otherwise comply with all obligations required by this Deed;
 - (iii) all Certificates of Compliance issued by it to the Minister and Developer in accordance with clause 6 of this Deed; and
- (b) may suffer loss if the Independent Engineer does not perform the IE Services in accordance with this Deed.

6. Certificate of Compliance

The Independent Engineer acknowledges and agrees that:

- (a) As at the date of this Deed, the Remediation Works are divided into the following stages:

Stage No	Description
SP2 Part 1 (comprising Stage 1A and Stage 1B Works)	Construction of the Project infrastructure
SP2 Part 2	Construction of the containment cell stage 1 - base
SP2 Part 3	Performance of the site remediation and material transfer
SP2 Part 4	Construction of the containment cell stage 2 - capping, completion and compliance

- (b) In order to secure performance of the Remediation Works, the Developer has provided to the Minister security in the form of bank guarantees for each of the stages identified in subclause 6(a) above.
- (c) It is a condition precedent to the release of the bank guarantee for stages SP2 Part 1, 2 and 4 that the Independent Engineer issue to the Minister and the Developer a duly executed Certificate of Compliance in respect of SP2 Part 1 (Stage 1B Works), SP2 Part 2 and SP2 Part 4.

7. Representatives

7.1 Minister's Representative

- (a) The Minister must appoint for the term of this Deed a Minister's Representative with authority to act on behalf of the Minister for the purposes of this Deed. At the date of this Deed, the Minister's Representative is specified in Item 6 of Schedule 1 of this Deed.
- (b) The Minister may replace or substitute the person appointed as the Minister's Representative by written notice to the other parties.

7.2 Developer's Representative

- (a) The Developer must appoint for the term of this Deed a Developer's Representative with authority to act on behalf of the Developer for the purposes of this Deed. At the date of this Deed, the Developer's Representative is specified in Item 7 of Schedule 1 of this Deed.
- (b) The Developer may replace or substitute the person appointed as the Developer's Representative by written notice to the other parties.

7.3 Independent Engineer's Representative

- (a) The Independent Engineer must appoint for the term of this Deed an Independent Engineer's Representative with authority to act on behalf of the Independent Engineer for the purposes of this Deed and the Project Documents. At the date of this Deed, the

Independent Engineer's Representative is the person named in Item 8 of Schedule 1 of this Deed.

- (b) The Independent Engineer may replace or substitute the person appointed as the Independent Engineer's Representative by written notice to the other parties.

8. Suspension of IE Services

- (a) The Minister and the Developer may give the Independent Engineer a notice jointly instructing the Independent Engineer to suspend its performance of any or all of the IE Services under this Deed and the Project Documents until the Minister and the Developer give the Independent Engineer a notice jointly instructing the Independent Engineer to recommence performing the IE Services.
- (b) The Independent Engineer cannot make any Claim against the Minister or the Developer if any or all of the IE Services under the Deed and the Project Documents are suspended under this clause 8.

9. Indemnity

- (a) The Independent Engineer agrees to indemnify, keep indemnified and hold harmless the Minister from and against all Claims that the Minister suffers incurs, becomes liable for, or may suffer, incur or become liable for arising out of or in connection with:
 - (i) loss or damage to property, or personal injury or death arising out of or as a consequence of any act or omission of the Independent Engineer or its employees, officers, contractors or agents; or
 - (ii) the negligence or wilful default of the Independent Engineer or its employees, officers, contractors or agents.

The Independent Engineer's liability to indemnify the Minister will be reduced proportionally to the extent that any act or omission of the Minister, or the respective employees, officers, contractors or agents of the Minister, caused or contributed to the relevant Claim.

- (b) The Independent Engineer agrees to indemnify, keep indemnified and hold harmless the Developer from and against all Claims that the Developer suffers, incurs, becomes liable for, or may suffer, incur or become liable for arising out of or in connection with:
 - (i) loss or damage to property, or personal injury or death arising out of or as a consequence of any act or omission of the Independent Engineer or its employees, officers, contractors or agents; or
 - (ii) the negligence or wilful default of the Independent Engineer or its employees, officers, contractors or agents.

The Independent Engineer's liability to indemnify the Developer will be reduced proportionally to the extent that any act or omission of the Developer, or the respective employees, officers, contractors or agents of the Developer, caused or contributed to the relevant Claim.

- (c) This clause 9 shall survive the termination of this Deed and the completion of the Independent Engineer's duties and functions under this Deed.

10. Insurance

10.1 Public liability

- (a) On or before the date of this Deed or any earlier access to the Site for the purposes of performing the IE Services including any preliminary inspections of the Site (whichever happens earliest), the Independent Engineer must effect and maintain (or otherwise be insured under) a public liability insurance policy written on an occurrence basis with a limit of indemnity of not less than the amount stated in Item 9 of Schedule 1 for each and every occurrence, which covers the:
 - (i) Independent Engineer and its employees, officers, and agents (including for liability to each other); and
 - (ii) Minister and Developer for any vicarious liability that they may have for the acts or omissions of the Independent Engineer and its employees, officers, and agents,
 for their respective liabilities for any:
 - (iii) loss of, or damage to, or loss of use of, any tangible property (including property of the Minister or the Developer in the care, custody or control of the Independent Engineer for a sub-limit of not less than Item 10 of Schedule 1 for each occurrence and in the aggregate for all occurrences in any 12 month policy period); and
 - (iv) death of or bodily injury to any person including disease or illness to any person, (other than liability which is required by law to be insured under a workers compensation policy of insurance),
 caused by, arising out of, or in connection with the negligent performance of any obligation or the exercise of any right under this Deed.
- (b) The public liability policy must:
 - (i) be maintained until expiry of the defects liability period of the last separable portion to reach completion under the Site Remediation Contract; and
 - (ii) include cover for the insureds for liabilities assumed by them under the provisions of subclause 16.4 of this Deed.

10.2 Worker's compensation

The Independent Engineer must effect and maintain workers' compensation insurance as required by law.

10.3 Professional indemnity insurance

- (a) Before commencing the carrying out of the IE Services, the Independent Engineer must effect and maintain (or otherwise be insured under) a professional indemnity insurance policy in a form and with an insurer acceptable to the Minister and the Developer with a limit of indemnity of not less than the amount stated in Item 11 of Schedule 1 for any one claim and in the aggregate for all claims in any 12 month policy period.
- (b) The professional indemnity policy must:
 - (i) cover the liability of the Independent Engineer at general law arising from a negligent breach of duty owed in a professional capacity, by reason of any act or omission of the Independent Engineer, its officers, employers, agents or subcontractors;

- (ii) have a definition of professional services broad enough to include all professional services, activities and duties to be provided or performed by the Independent Engineer, its officers, employers, agents or subcontractors under this Deed; and
 - (iii) extend to cover claims for unintentional breaches of intellectual property rights;
 - (iv) extend to cover claims for unintentional breaches of consumer laws;
 - (v) have a retroactive date of no later than the earlier of the commencement of the work under this Deed or any preparatory work by the Independent Engineer, its officers, employees, agents or subcontractors;
 - (vi) have worldwide territorial and jurisdictional limits; and
 - (vii) include cover for the insureds for liabilities assumed by them under the provisions of clause 16.4 of this Deed.
- (c) The Independent Engineer must maintain the insurance policy required to be effected under clause 10.3(a) from the date of this Deed until the date that is 7 years after completion of the IE Services under this Deed.

10.4 Evidence of insurance

The Independent Engineer must provide to the Minister and the Developer:

- (a) certificates of currency which contain sufficient detail to enable the Minister and the Developer to confirm that the insurances required to be effected by this clause 10 have been effected and are being maintained in accordance with this Deed; and
- (b) copies of all policies (except statutory insurances) and provided that, in relation to commercially sensitive insurance policies only, for the purposes of complying with this clause 10.4(b).

11. Dispute resolution

11.1 Not commence

A party must not commence any court proceedings relating to a dispute unless it complies with this clause 11.

11.2 Written notice of dispute

A party claiming that a dispute has arisen under or in relation to this Deed must give written notice to the other parties specifying the nature of the dispute.

11.3 Attempt to resolve

On receipt of notice under clause 11.2, the parties must endeavour in good faith to resolve the dispute expeditiously using informal dispute resolution processes such as mediation, expert evaluation or other methods agreed by them.

11.4 Mediation

If the parties do not agree within 21 Business Days of receipt of notice under clause 11.2 (or any further period agreed in writing by them) as to:

- (a) the dispute resolution technique and procedures to be adopted;

- (b) the timetable for all steps in those procedures; or
 - (c) the selection and compensation of the independent person required for such technique,
- the parties must mediate the dispute in accordance with the Mediation Program. The parties must request the president of the Law Society of NSW or the president's nominee to select the mediator and determine the mediator's remuneration.

11.5 Court proceedings

If the dispute is not resolved within 60 Business Days after notice is given under clause 11.2 then any party which has complied with the provisions of this clause 11 may in writing terminate any dispute resolution process undertaken under this clause and may then commence court proceedings in relation to the dispute.

11.6 Not use information

The parties acknowledge the purpose of any exchange of information or documents or the making of any offer of settlement under this clause 11 is to attempt to settle the dispute. No party may use any information or documents obtained through any dispute resolution process undertaken under this clause 11 for any purpose other than in an attempt to settle the dispute.

11.7 No prejudice

This clause 11 does not prejudice the right of a party to institute court proceedings for urgent injunctive or declaratory relief in relation to any matter arising out of or relating to this Deed.

11.8 Continued Performance

Despite the existence of a dispute, the parties must continue to perform their obligations under this Deed.

12. Assignment and subcontracting

- (a) The Independent Engineer must not assign this Deed or subcontract any part of the IE Services without the prior written consent of the Minister and the Developer, which may be given or withheld in their absolute discretion, and if given, on such terms as the relevant consenting parties think fit in their absolute discretion.
- (b) Notwithstanding any other clause of this Deed, the Independent Engineer shall be liable to the Minister and the Developer for the acts, defaults and omissions of the subcontractors, subconsultants and employees and agents of the subcontractors and subconsultants as if they were acts, defaults or omissions of the Independent Engineer.

13. Termination

- (a) The Minister and the Developer may terminate this Deed:
 - (i) immediately by written notice to the Independent Engineer if a Termination Event occurs;
 - (ii) for convenience upon 15 Business Days' written notice to the Independent Engineer;
 or

- (iii) if the Minister and the Developer reasonably consider that a conflict of interest has arisen or is perceived to have arisen in connection with the Independent Engineer in relation to the Project.
- (b) Termination of this Deed does not affect any accrued rights or remedies of any party.
- (c) If the Deed is terminated, the Independent Engineer and the Developer shall hold the Minister free and harmless against any liability and all claims in connection with the termination of this Deed.

14. Confidentiality

14.1 Confidential Information

- (a) The Independent Engineer must not disclose any proprietary or confidential information relating to the IE Services, the Voluntary Planning Agreement, the Site Remediation Contract, or the Project without the prior written consent of the Minister and the Developer, except as required by law.
- (b) This clause 14 shall survive the termination of this Deed and the completion of the Independent Engineer's IE Services and functions under this Deed.

14.2 Publicity

The Independent Engineer must:

- (a) not issue any information, document, advertisement or article in respect of the Project for publication in any media (including any form of social media);
- (b) not erect or make an advertisement on or in respect of the Project without the prior written consent of the Minister and the Developer; and
- (c) refer enquiries from the media concerning the Project to the Minister and the Developer.

15. Notices

- (a) Any notice, demand, consent, approval, request or other communication (**Notice**) to be given under this Deed must be in writing and must be given to the recipient at its Address for Service (including as applicable the Developer's Legal Advisor) by being:
 - (i) hand delivered; or
 - (ii) sent by facsimile transmission; or
 - (iii) sent by prepaid ordinary mail within Australia; or
 - (iv) in the case of a Notice to be given by the Developer or the Minister, sent by email.
- (b) A Notice is given if:
 - (i) hand delivered, on the date of delivery but if delivery occurs after 5pm New South Wales time or a day that is not a Business Day, is taken to be given on the next Business Day;
 - (ii) sent by facsimile and the sending party's facsimile machine reports that the facsimile has been successfully transmitted;

- (A) before 5pm on a Business Day, on that day;
- (B) after 5pm on a Business Day, on the next Business Day after it is sent; or
- (C) on a day that is not a Business Day, on the next Business Day after it is sent; or
- (iii) sent by prepaid ordinary mail within Australia, on the date that is 2 Business Days after the date of posting; or
- (iv) sent by email:
 - (A) before 5pm on a Business Day, on that Day;
 - (B) after 5pm on a Business Day, on the next Business Day after it is sent; or
 - (C) on a day that it is not a Business Day, on the next Business Day after it is sent, and the sender does not receive a delivery failure notice.

16. General provisions

16.1 Governing law and jurisdiction

- (a) The laws applicable in New South Wales govern this Deed.
- (b) The parties submit to the non-exclusive jurisdiction of the courts of New South Wales and any courts competent to hear appeals from those courts.

16.2 Severance

If any clause or part of any clause is in any way unenforceable, invalid or illegal, it is to be read down so as to be enforceable, valid and legal. If this is not possible, the clause (or where possible, the offending part) is to be severed from this Deed without affecting the enforceability, validity or legality of the remaining clauses (or parts of those clauses) which will continue in full force and effect.

16.3 Indemnities

- (a) Each indemnity in this Deed is a continuing obligation, separate and independent from the other obligations of the parties, and survives termination, completion or expiration of this Deed.
- (b) It is not necessary for a party to incur expense or to make any payment before enforcing a right of indemnity conferred by this Deed.

16.4 Proportionate Liability

- (a) The parties agree that Part 4 of the *Civil Liability Act 2002* (NSW) does not apply.
- (b) The parties agree that their rights, obligations and liabilities will be those which would exist if Part 4 of the *Civil Liability Act 2002* (NSW) did not apply.

16.5 Waiver

A right created by this Deed cannot be waived except in writing signed by the party entitled to that right. Delay by a party in exercising a right does not constitute a waiver of that right, nor will

a waiver (either wholly or in part) by a party of a right operate as a subsequent waiver of the same right or of any other right of that party.

16.6 Survival

This subclause 16.6 and clauses 2, 4, 5, 9, 14, 15 and 16.1 survive the termination or repudiation of this Deed.

16.7 Amendment

This Deed may only be varied or replaced in writing signed by each party.

16.8 Entire agreement

This Deed contains the entire agreement between the parties concerning its subject matter and supersedes all prior agreements and understandings between the parties in connection with that subject matter.

16.9 Counterparts

This Deed may be executed in any number of counterparts. All counterparts taken together constitute one instrument.

16.10 Deed poll

To the extent relevant, this Deed operates as a deed poll in favour of the Minister's nominee.

Execution page

Executed as a deed

Signed, sealed and delivered for and on behalf
of the **Minister for Planning and Public Spaces**
(ABN 20 770 707 468), in the presence of:

.....
Signature of witness

.....
Signature of the Minister for Planning and Public
Spaces or delegate

.....
Name of witness in full

.....
Name of the Minister for Planning and Public
Spaces or delegate

.....
Address of witness

**Executed by Hydro Aluminium Kurri Kurri Pty
Ltd** (ACN 093 266 221) in accordance with
section 127 of the *Corporations Act* by being
signed by those persons who are authorised to
execute documents on behalf of the company:

.....
Signature of Director

.....
Signature of Director/Secretary

.....
Name of Director

.....
Name of Director/Secretary

Executed by [**#Independent Engineer**] (ACN
[**#insert**]) in accordance with section 127 of the
Corporations Act by being signed by those
persons who are authorised to execute
documents on behalf of the company:

.....
Signature of Director

.....
Signature of Director/Secretary

.....
Name of Director

.....
Name of Director/Secretary

Schedule 1 – Deed Particulars

Item	Description	Details
1.	Minister: (subclause 1.1)	Department of Planning Industry and Environment
	Address for Service:	4 Parramatta Square, 12 Darcy Street, Parramatta NSW 2150
	Fax no:	[insert]
	Email:	[insert]
	Contact	The Secretary
2.	Developer: (subclause 1.1)	Hydro Aluminium Kurri Kurri Pty Ltd
	Address for Service:	Hart Road, Loxford NSW 2326
	Fax no:	[insert]
	Email:	[insert]
	Contact	The Directors
2A	Developer's Legal Advisor (subclause 15(a))	Gilbert + Tobin
	Address:	Level 35, Tower 2, International Towers Sydney 200 Barangaroo Avenue, Barangaroo NSW 2000
	Fax no:	(02) 9263 4111
	Email:	info@gtlaw.com.au
	Contact	Practice Group Leader, Real Estate + Projects Group
3.	Independent Engineer: (subclause 1.1)	[insert]
	Address for Services:	[insert]
	Fax no:	[insert]
	Email:	[insert]
	Contact	[insert]
4.	Minister's Representative: (subclause 7.1)	[insert]
5.	Developer's Representative: (subclause 7.2)	[insert]
6.	Independent Engineer's Representative: (subclause 7.3)	[insert]

Item	Description	Details
7.	Public Liability Insurance: (subclause 10.1)	\$20,000,000
8.	The sublimit of public liability insurance for damage to property in the care, custody or control of the Independent Certifier must not be less than: (subclause 10.1(a)(iii))	\$20,000,000
9.	Professional Indemnity Insurance: (subclause 10.3)	\$20,000,000

Schedule 2 – Land

Lot	Deposited Plan	Folio Identifier
Lot 3	456769	3/456769
16	1082775	16/1082775
318	755231	318/755231
319	755231	319/755231
411	755231	411/755231
412	755231	412/755231
413	755231	413/755231
414	755231	414/755231
420	755231	420/755231
769	755231	769/755231
1	456769	1/456769
2	456769	2/456769

Schedule 3 – IE Services

The Independent Engineer must discharge the functions, obligations, duties and services which this Deed and the Project Documents (including the scope of works and the technical specification which form part of the Site Remediation Contract) contemplate will be discharged by the Independent Engineer, including, without limitation, the following:

1. Conduct inspections and verifications of the Construction Remediation Works as is necessary to be satisfied that they have been constructed in accordance with the requirements of the Project Documents.
2. Observe, monitor, review and assess the quality of the Construction Remediation Works.
3. Report:
 - (a) any construction issues likely to have an adverse effect on the quality of the Construction Remediation Works; and
 - (b) any act, matter or thing which has or is likely to have a material adverse effect on the progress and provision of the IE Services (including the issue of the Certificate of Compliance required by clause 6 of this Deed), together with detailed particulars on how the Independent Engineer is dealing or proposes to deal with any such act, manner or thing.
4. Independently verify that:
 - (a) the Containment Cell as constructed; and
 - (b) the quality of the Construction Remediation Works,
 complies with the requirements of the Project Documents; and
5. Exercise discretion when carrying out independent quality checks on elements and specific issues of the Construction Remediation Works to satisfy the Independent Engineer that the quality of the Construction Remediation Works meets or exceeds the requirements of the Project Documents.
6. Monitor the construction activities on Site and identify, raise and document observations, which indicate non-compliance with the requirements of the Project Documents.
7. Satisfy itself that all activities in the process including methods of work, sequence of activities, inspections and tests comply fully with the requirements of the Project Documents.
8. At the times required by this Deed, execute and issue a certificate of compliance substantially in the form set out in Schedule 4 of this Deed.

Without limiting any of the above, all other services and tasks not described in this Deed or the Project Documents if those services and tasks are necessary for the carrying out of the IE Services.

Schedule 4 – Certificate

Certificate of Compliance

Issued as a prerequisite to the release of the Developer's bank guarantees

To: **[Minister]**
[Developer]

From: **[Independent Engineer]**

Date of Certificate: **[Insert date]**

The terms used in this Certificate (unless otherwise defined) have the same meaning as in the Deed.

We warrant and certify to the Minister and to the Developer that:

- (a) As at the date of this Certificate, we have carried out all periodic inspections and tests relevant to our obligations under the Deed and the Project Documents.
- (b) The Construction Remediation Works completed by the Remediation Contractor to the date of this Certificate:
 - (i) reflect the intent and standards of quality of, and are constructed in accordance with, those elements set out in the Project Documents;
 - (ii) comply with the Project Documents and all Approvals (including those conditions of the Remediation Consent) which are applicable to the Construction Remediation Works;
 - (iii) are fit for any purpose and function expressly stated or implied in the Project Documents;
 - (iv) are suitable, appropriate and adequate for the purposes of the Project as stated in the Project Documents;
 - (v) comply with all applicable Legislative Requirements and Australian codes and standards as well as the requirements of all relevant Authorities; and
 - (vi) do not include any changes, except as a result of variations, as noted in subparagraph (c) below.
- (c) The Construction Remediation Works periodically inspected by us from the date of the Deed to the date of this Certificate, substantially comply, to the best of our knowledge and belief based on our periodic inspections, except as noted below, with the requirements of the Project Documents:
[List any variations, departures, defects or non-conformances].
- (d) The Remediation Contractor has (where relevant):
 - (i) complied with and satisfied the requirements in the Project Documents in respect of the quality of the Containment Cell; and

- (ii) has constructed the Containment Cell in accordance with the Project Documents.
- (e) The IE Services, as performed by us to the date of this Certificate, have been completed to the extent required by the Deed and the Project Documents, and comply with the Deed and the Project Documents.

We acknowledge that the Minister and the Developer are relying on this Certificate.

Signed for and on behalf of [#Independent Engineer]:

.....
Signature

.....
Name

Execution page

Executed as a deed

Signed, sealed and delivered by the **Minister for Planning and Public Spaces (ABN 20 770 707 468)**, in the presence of:

.....
Signature of witness


.....
Signature of the Minister for Planning and Public Spaces or delegate


.....
Name of witness in full

.....
Name of Minister for Planning and Public Spaces or delegate

.....
Address of witness

Executed by Hydro Aluminium Kurri Kurri Pty Ltd (ABN 55 093 266 221) in accordance with section 127 of the Corporations Act:


.....
Signature of Director


.....
Signature of Director/Secretary

RICHARD BROWN
.....
Name of Director

STEPHEN JAMES ROBERTS
.....
Name of Director/Secretary

Annexure A Containment Cell Plan

S:10585026_2 BXW

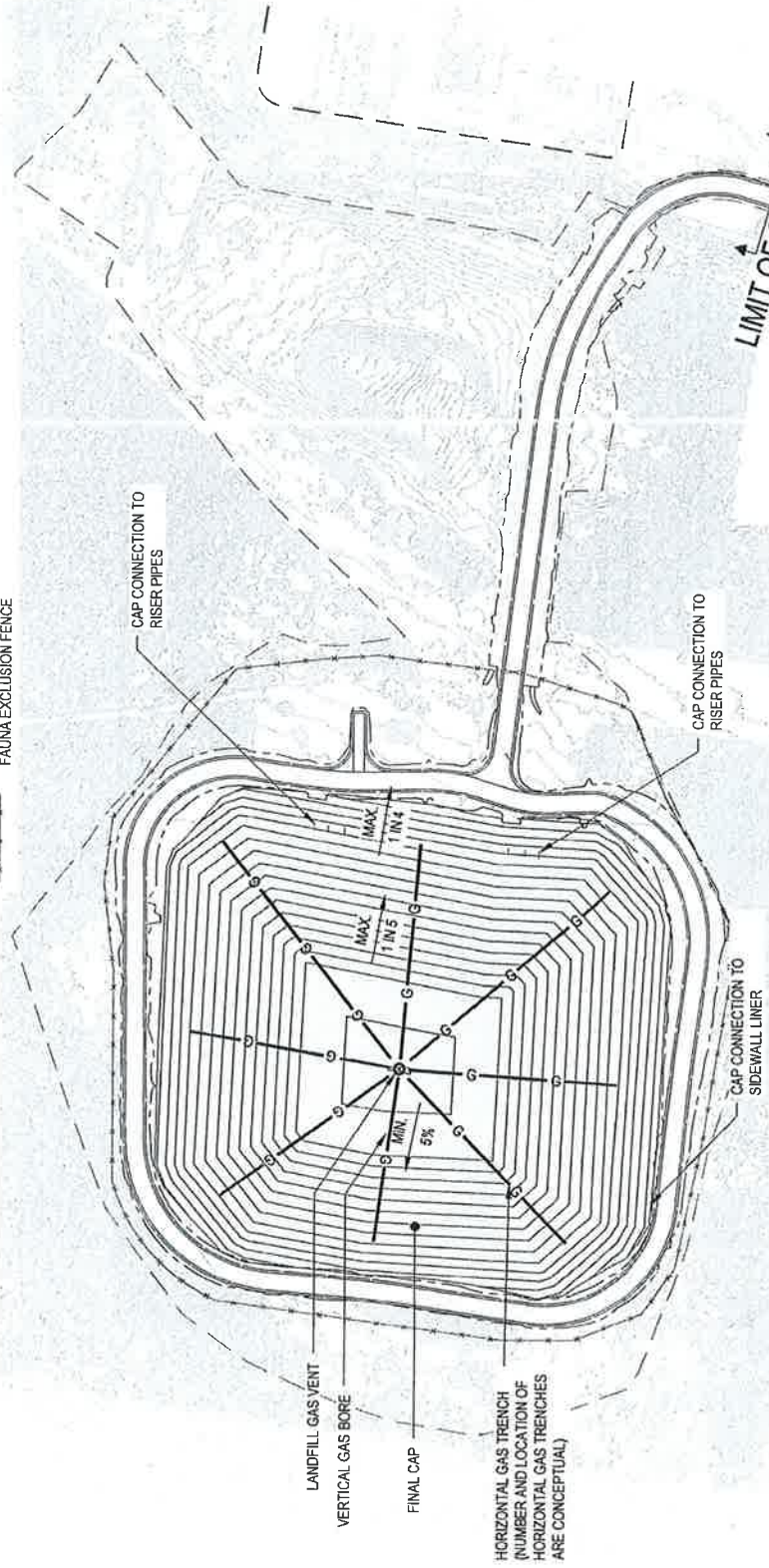
Phil B
Stated.

NOTES:

1. LANDFILL GAS MANAGEMENT SYSTEM LAYOUT IS CONCEPT ONLY.

LEGEND:

--- G ---	CONTAINMENT CELL WORKS AREA	— G —	HORIZONTAL GAS TRENCH
---	DESIGN CONTOURS	⊙	VERTICAL GAS BORE
---	EXISTING CONTOURS	⊙	CENTRAL GAS VENT
---	GROUNDWATER LEAK DETECTION AND LEACHATE RISER PIPEWORK	---	FAUNA EXCLUSION GATE
---	FINAL CAP		
---	FAUNA EXCLUSION FENCE		



PLAN

SCALE 1:2000

THIS DRAWING INCLUDES BLACK AND WHITE INFORMATION ONLY.
THERE ARE NO COLOURED ITEMS IN THIS DRAWING.



HYDRO ALUMINIUM KURRI KURRI PTY LTD
CONTAINMENT CELL DETAILED DESIGN
GENERAL ARRANGEMENT
Job Number | 22-18015
Revision | A
Date | NOV 2020
Figure 01

Handwritten signatures in blue ink.

Annexure B Containment Cell Land Plan

S:10585026_2 BXW

ALB
Slater

ANNEXURE "B"
 PLAN SHOWING CONTAINMENT CELL LAND
 WITHIN LOT 319 D.P.755231

L.G.A. : CESSNOCK
 LOCALITY : LOXFORD
 PARISH : HEDDON
 COUNTY : NORTHUMBERLAND
 SCALE : 1:5000

356
 D.P.755231

316
 D.P.755231

317
 D.P.755231

14
 D.P.1082775

15
 D.P.1082775

16
 D.P.1082775

319
 D.P.755231

769
 D.P.755231

318
 D.P.755231

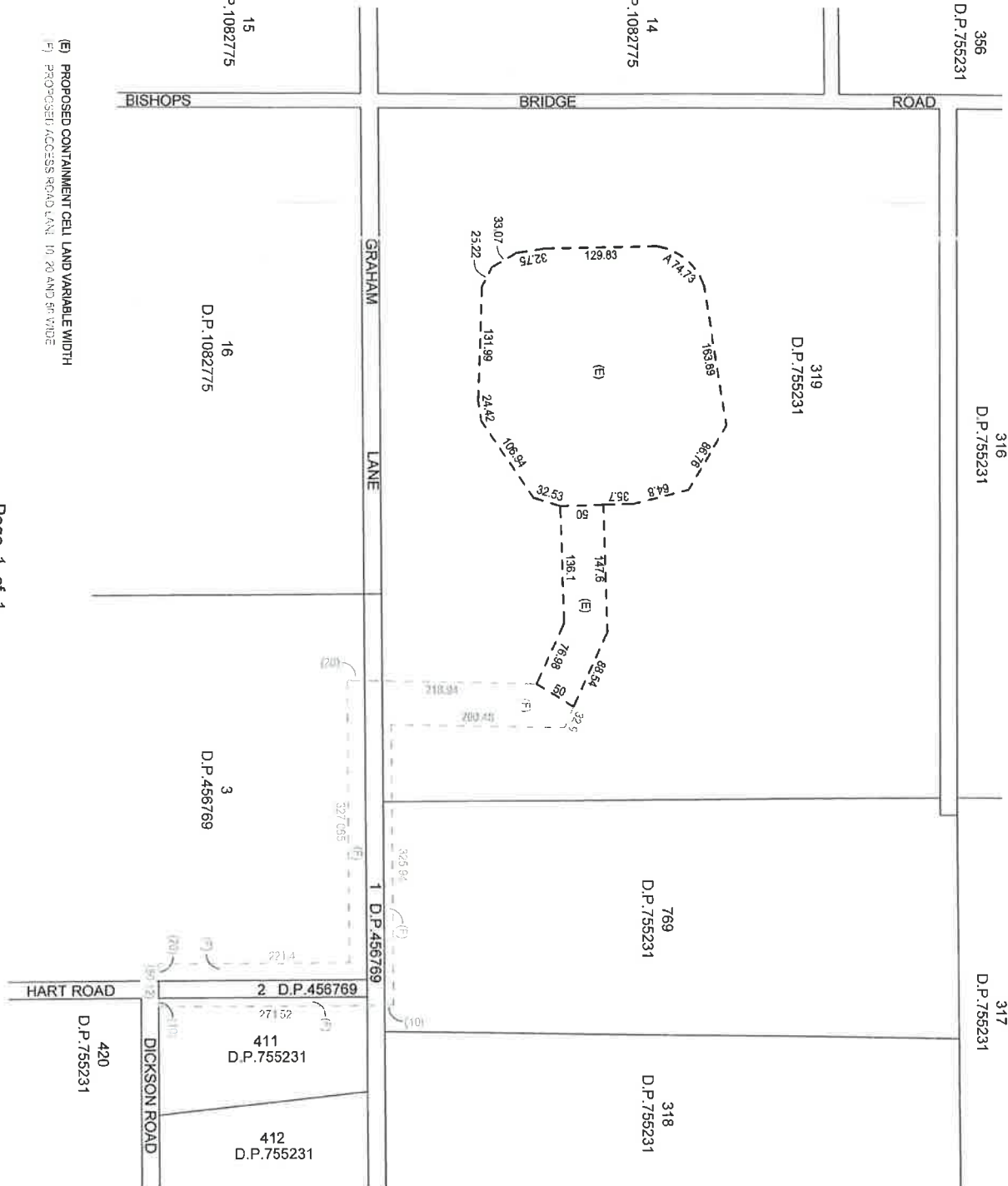
3
 D.P.456769

411
 D.P.755231

412
 D.P.755231

DE WITT CONSULTING P/L
 P.O. BOX 850, CHARLESTOWN
 SURVEYORS REF: 6841
 DATE: 12.11.2020

(E) PROPOSED CONTAINMENT CELL LAND VARIABLE WIDTH
 (F) PROPOSED ACCESS ROAD LANE 10.20 AND 5M WIDE



Handwritten signatures and initials in blue ink.

Annexure C Access Road Concept Plan

S:10585026_2 BXW

Paul B
Storad

ANNEXURE "C"

PLAN SHOWING ACCESS ROAD LAND WITHIN LOTS

319, 411 & 769 D.P.755231 AND LOT 1 & 3 D.P.456769

L.G.A. : CESSNOCK
LOCALITY : LOXFORD
PARISH : HEDDON
COUNTY : NORTHUMBERLAND
SCALE : 1 : 5000

386
D.P.755231

316
D.P.755231

317
D.P.755231

14
D.P.1082775

15
D.P.1082775

16
D.P.1082775

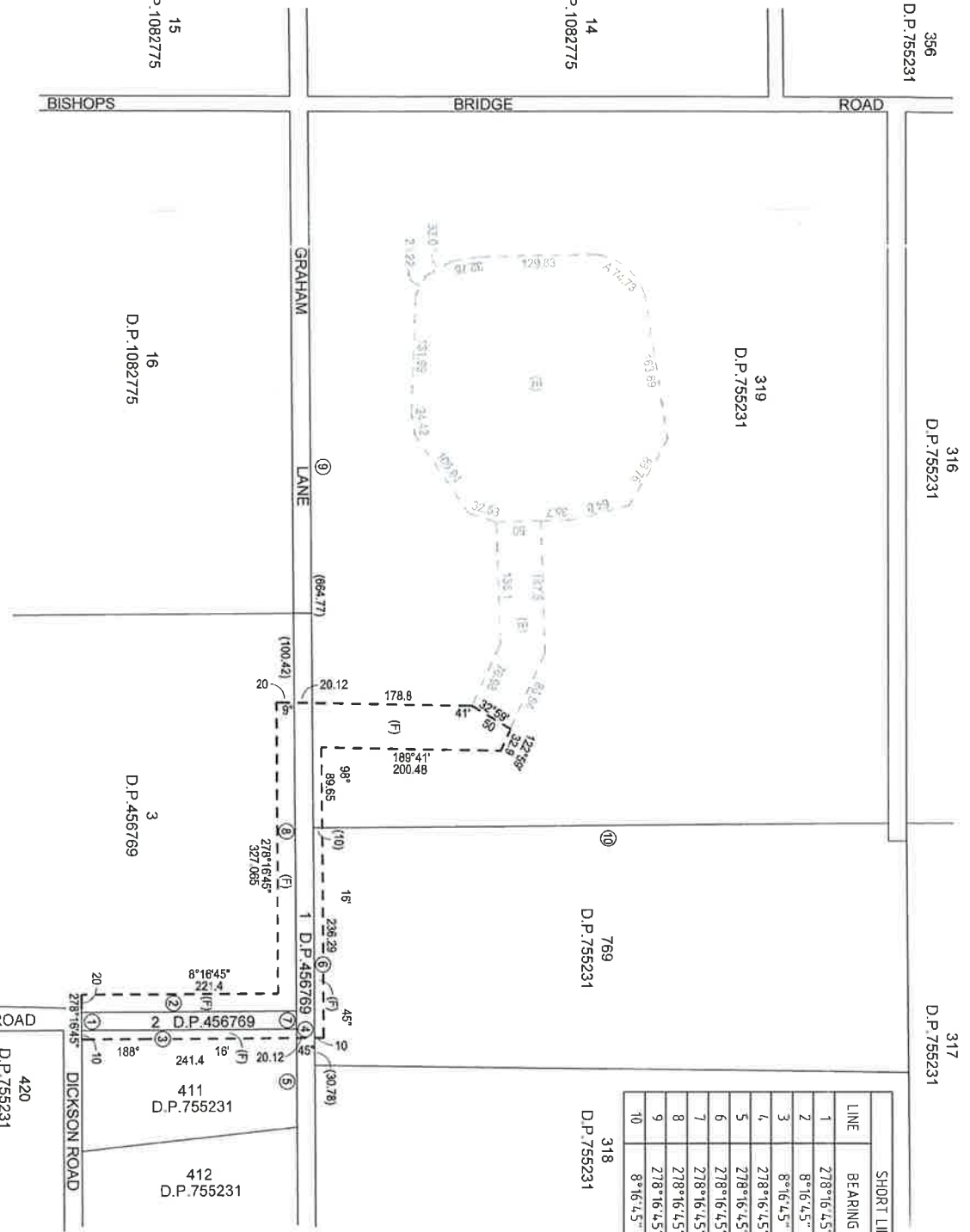
319
D.P.755231

769
D.P.755231

318
D.P.755231

3
D.P.456769

411
D.P.755231
412
D.P.755231



SHORT LINE TABLE		
LINE	BEARING	P.O. DISTANCE
1	278°16'4.5"	20.12
2	8°16'4.5"	24.14
3	8°16'4.5"	24.14
4	278°16'4.5"	(10)
5	278°16'4.5"	110.64
6	278°16'4.5"	267.07
7	278°16'4.5"	20.12
8	278°16'4.5"	4.47
9	278°16'4.5"	804.67
10	8°16'4.5"	644.14

DE WITT CONSULTING PT.
P.O. BOX 850, CHARLESTOWN
SURVEYORS REF: 6641
DATE: 30.11.2020

(E) PROPOSED CONTAINMENT CUM LAND VARIABLE WIDTH
(F) PROPOSED ACCESS ROAD LAND 10.20 AND 50 WIDE

Rich B
Stosor

Annexure D Access Road Certificate of Compliance

S:10585026_2 BXW



Access Road Certificate of Compliance

Issued pursuant to clause 3.4(k)(iii)(A) of Schedule 4 of the Voluntary Planning Agreement

Issued to: Minister for Planning and Public Spaces

From: [#insert name of engineer]

Date of Certificate: [#insert date]

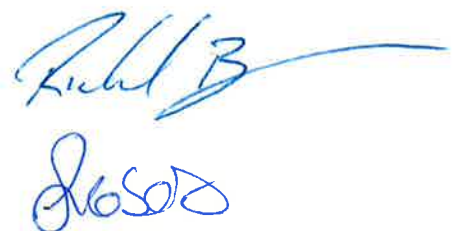
The terms used in this Certificate have the same meaning as in the Voluntary Planning Agreement between the Minister for Planning and Public Spaces (**Minister**) and Hydro Aluminium Kurri Kurri Pty Ltd (**Developer**) dated [#insert date] (**Voluntary Planning Agreement**).

1. This certificate is issued in relation to the Access Road constructed by the Developer as required by the Voluntary Planning Agreement.
2. We warrant and certify to the Minister that:
 - (a) We hold the required skills, experience and knowledge to issue this Certificate.
 - (b) We have carried out inspections of the Access Road in accordance with our obligations under [#insert the document setting out the engineer's obligations to inspect the access road].
 - (c) The Access Road completed by the Developer has been constructed in accordance with, and complies with the requirements of:
 - (i) the Access Road Plans approved by the Minister under clauses 3.4(c) and (d) of the Voluntary Planning Agreement;
 - (ii) the relevant Approvals for the Access Road;
 - (iii) all relevant requirements of the Roads Authority;
 - (iv) all applicable laws and standards; and
 - (v) good industry practice.
3. We acknowledge that the Minister is relying on this Certificate.

Signed for and on behalf of [#insert name of engineer]:

.....
Signature

.....
Name



Annexure E Stage 1A Works Certificate of Compliance

S:10585026_2 BXW

R. H. B.
dosos

Stage 1A Works Certificate of Compliance

Issued pursuant to clause 6(b) of Schedule 6 of the Voluntary Planning Agreement



Issued to: Minister for Planning and Public Spaces

From: [#insert name of Validation Consultant]

Date of Certificate: [#insert date]

The terms used in this Certificate have the same meaning as in the Voluntary Planning Agreement between the Minister for Planning and Public Spaces (**Minister**) and Hydro Aluminium Kurri Kurri Pty Ltd (**Developer**) dated [#insert date] (**Voluntary Planning Agreement**).

1. This certificate is issued in relation to the Stage 1A Works constructed by the Developer as required by the Voluntary Planning Agreement.
2. We warrant and certify to the Minister that:
 - (a) We hold the required skills, experience and knowledge to issue this Certificate.
 - (b) We have carried out inspections of the Stage 1A Works in accordance with our obligations under [#insert the document setting out the Validation Consultant's obligations to inspect the Stage 1A Works].
 - (c) The Stage 1A Works completed by the Developer:
 - (i) have been constructed in accordance with, and complies with the requirements of:
 - (A) the Voluntary Planning Agreement;
 - (B) the Remediation Consent;
 - (C) the Scope of Works and so as to achieve the objectives of the RAP;
 - (ii) are Fit for Purpose;
 - (iii) are in compliance with all applicable laws and standards; and
 - (iv) are in accordance with good industry practice.
3. We acknowledge that the Minister is relying on this Certificate.
4. This Certificate operates as a deed poll in favour of the Minister.

Executed as a deed poll in favour of the Minister for Planning and Public Spaces

(If an individual)

Signed sealed and delivered
by [insert name] in the presence of:

.....
Signature of Witness

.....
Signature

.....
Name of Witness

.....
Name of signatory

(if a corporation)

Executed by [##] Pty Ltd ACN [##] in
accordance with section 127 of the
Corporations Act:

.....
Signature of Director

.....
Signature of Director/Secretary

.....
Name of Director

.....
Name of Director/Secretary