

13 June 2017

Sheelagh Laguna  
Senior Planning Officer  
Department of Planning and Environment  
320 Pitt Street  
Sydney NSW 2001

Re: Comments on environmental impact statement and response to submissions report - Kurri Kurri Battery Recycling Facility (SSD 7520)

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Dear Sheelagh,

Thank you for your emails on 24 March 2017 and 24 May 2017, which provided comments on the environmental impact statement (EIS) response to submissions (RTS) report for the proposed Kurri Kurri Battery Recycling Facility (SSD 7520).

The EIS was placed on public exhibition for four weeks from 17 November to 16 December 2016. The RTS was submitted to the NSW Department of Planning and Environment (DPE) on 24 February 2017.

As noted in the EIS and RTS, Pymore Recyclers International Pty Ltd (the proponent) proposes to construct and operate a battery recycling facility in Kurri Kurri (the project). The project would recycle up to approximately 60,000 tonnes per annum (tpa) of used lead-acid batteries (ULABs) and would convert ULABs into materials which can be recycled for use in new products. The project represents a significant investment in the Hunter region, with a capital investment value of approximately \$39.8 million, and would provide direct employment for up to approximately 60 people.

Within your email on 24 March 2017, you included comments from the following agencies regarding the RTS:

- Cessnock City Council (CCC);
- NSW Department of Primary Industries (DPI);
- NSW Environment Protection Authority (EPA);
- NSW Office of Environment and Heritage (OEH); and
- Hunter New England Population Health (HNEPH).

Within your email, DPE also included a specific comment on odour, which read as follows:

Odour – the RTS states that a detailed odour assessment is not warranted, however does not provide details of the technical reasons why this is so. A more detailed explanation is required that references information provided in the air quality impact assessment (AQIA) and RTS.

Within your email on 24 May 2017, you included comments from Fire and Rescue NSW (FRNSW) on the EIS and RTS.

This letter responds to the comments provided by these agencies and DPE's comment on odour. Responses are provided in Table 1.

Should you have any queries regarding this letter please do not hesitate to contact me on 02 9493 9502.

Yours sincerely



Brett McLennan  
Director

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**Table 1 Council and agency comments and responses**

Comment provided	Response
<p><b>Cessnock City Council</b></p> <p><i>Car parking</i></p> <p>In respect to car parking, Council considers that the development has implications that may outstrip the life of the proposed use. Car parking should be provided to cater, not only for the current development, but also for future intensification of the development.</p> <p>Furthermore, in recognition of the expanding scope for exempt and complying development, car parking contingencies should be made to enable the adaptation of the building for other future uses. Council has previously recommended the Cessnock DCP car parking provisions are applied, I note that the applicant does not favour the application of Council's car parking rates. It should be noted that Council's car parking recommendations are designed to determine a normative value for future industrial car parking demand. If Council's DCP provisions are not applied some other measure should be used for the provision of car parking such as the RTA Traffic Generating Guidelines, to ensure that on-site parking is adequate for not only the current proposal but for future uses of the buildings.</p>	<p>The higher Council car parking requirement for the facility based on building floor area from Council's development control plan (DCP), is acknowledged in the EIS.</p> <p>The Roads and Traffic Authority's (RTA) (now Roads and Maritime Services (RMS)) <i>Guide to Traffic Generating Developments</i> (the guide) provides recommendations for parking requirements for a range of land uses, including industry. For industry, recommendations are provided for factories, warehouses, plant nurseries and business parks.</p> <p>The proposed battery recycling facility essentially has two main components, a factory where the batteries are recycled (ie production building/crystallizer building) and a warehouse component where ULABs are stored (ie ULAB warehouse).</p> <p>For factories, the guide states that the provision of 1.3 spaces per 100 square metres (m<sup>2</sup>) of gross floor area (GFA) is recommended. This rate is similar to Council's rate of 1 space per 75 m<sup>2</sup> of GFA. However, the guide also states that variations to the recommended rate must be considered in the context of both current and potential users. It further states that parking provision can be reduced where employee parking demand is substantially less than the recommended rate.</p> <p>For warehouses, the guide states that one space per 300 m<sup>2</sup> of GFA is recommended. However, again it also states that variations must be considered in the context of current and potential users. It also states that where a reduced parking rate is provided, provision must be made for future users by setting aside (but not necessarily surfacing), space for additional car parking.</p> <p>As described in the EIS, car parking has been provided based on actual employee demand (ie a maximum of 60 full-time operational staff and 13 contractors at full production operating over three shifts, with a maximum of 40 employees and contractors on site during any one shift (up to ten administration and managerial staff, 23 factory and warehouse staff and seven contractors). Therefore, based on the assumption that every employee and contractor drives to the site, the maximum demand for car parking by employees and contractors would be 40 parking spaces, allowing six spaces for visitors.</p> <p>The justification for the lower on site car parking provision for the development, based on the actual employee car parking demand is considered to be reasonable and appropriate considering the provisions of the guide, which allows for provision of reduced rates where actual employee parking demand is substantially less than the recommended rate.</p> <p>If, in the future, a new type of industrial use with a higher workforce utilises the building, then additional areas of the</p>

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<i>Intersection operation</i>	site (including an area immediately to the north of the proposed car parking area) can be converted for future car parking use (if required).
<p>Council disagrees with the applicant's contention that the Hart Road intersection is operating safely and efficiently due to its designation as a B-Double route. Council is mindful that design standards change over time and for this reason the design of the intersections along the haulage routes should be reassessed and if the design is found not to meet current standards, upgraded to current standards. This matter is one that will need to be dealt with through the assessment of the application and there should be conditions to require appropriate upgrades.</p>	<p>The future truck turning movements at the Hart Road intersection, including movements for B-Double truck access, were not specifically assessed in the EIS. It was assumed as the route is an approved B-Double route, and the route has been upgraded recently as one of the two primary access routes to the Hunter Expressway in the Kurri Kurri area, the current intersection standard was suitable for B-Double access. In addition, observations of the intersection made during the preparation of the traffic assessment indicated that it was operating safely and efficiently.</p> <p>If there is a deficiency in the current B-Double access provision for access to the Hunter Expressway via Hart Road from Kurri Kurri, this deficiency should be retrospectively rectified as part of the Hunter Expressway project works, to ensure that the Hunter Expressway access in the Kurri Kurri area is 'fit for purpose'.</p> <p>Potentially, a large (30 m or greater diameter) roundabout could be a suitable intersection treatment for the anticipated future combination of traffic movements at this location. However, based on the daily truck traffic usage, only a small proportion (approximately 5-10%) of the need for these works could be attributed to project-related traffic when operating at full capacity.</p>
<i>Intersection design</i>	<p>The site access intersection design meets the preferred Austroads intersection design for a 'right-left' stagger where there are two minor road intersections close together on a major road.</p> <p>As such, it is submitted that the plans are suitable.</p>
<i>Secondary access</i>	<p>During the preparation of the EIS, a secondary access point south-east of the proposed car park which would connect the car park to an unnamed road running parallel with the South Maitland railway line was being investigated for access by light vehicles only. However, the EIS was clear that it was only being investigated.</p> <p>Section 3.4.5 of the EIS states:</p> <p><i>A secondary access point is being investigated to the south-east of the employee car park. This access is to the unnamed road that connects lots immediately east of the site with Mitchell Avenue. The site frontage with this</i></p>

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	<p><i>road is not wide enough for vehicles, so investigations are currently being undertaken with adjoining landowners to enter into an agreement for vehicle access to the site. This secondary access would only be accessed by light vehicles.</i></p> <p>Section 3.1 of the traffic assessment states:</p> <p><i>The proposed site car parking area has 46 car parking spaces. The car park may also connect to another potential future site vehicle access easement in the south-east corner, which may provide additional access for the site car park traffic in the future.</i></p> <p>Further, section 3.3 of the traffic assessment states:</p> <p><i>The site car park design which is shown in Appendix A may also connect to another potential vehicle access easement which is in the south-east corner of the site.</i></p> <p><i>This additional access to the site car park (which is not yet confirmed) would enable the future site vehicular access to be fully separated for the truck access (where all vehicles would be travelling via the weighbridge on the main site access road) and the car park and site visitor access would use a separate access route via the south-east corner of the site.</i></p> <p>The proposal does not include a secondary access point at this point in time. Pymore has engaged in discussions with the neighbouring landholder to confirm the availability of this access point for emergency site access only (should it be required).</p>
<p><i>Voluntary planning agreement (VPA)</i></p> <p>Council would like the developer to make reasonable financial contributions to be utilised in public domain works in either Kurri Kurri or Weston. Unfortunately, negotiations to date indicate that there is a significant divide in expectations. Not merely in respect to the value of the planning agreement offer but of more concern, in respect of the composition of works involved in the offer. Works that would normally be required to be undertaken by way of conditions of consent, such as Mitchell Ave and Government Road intersection works, have been put to Council as works to be funded by a VPA. Council is concerned that negotiations are designed to ultimately benefit the applicant only rather than a good will gesture as promoted to the community.</p>	<p>In response to Council’s request to discuss appropriate developer contributions for the project, Pymore met with Council on 1 February 2017. Based on that meeting and subsequent discussions on 17 February 2017, EMM, on behalf of Pymore, wrote to Council on 20 February 2017 offering the following essential terms of a proposed VPA:</p> <ol style="list-style-type: none"> <li>1. <i>Upon taking a final decision to proceed with the construction of the proposed battery recycling facility, Pymore will enter into a VPA with Cessnock City Council (the Council) before the commencement of construction;</i></li> <li>2. <i>Within one month of the commencement of operations with the first furnace, an amount of \$50,000 for allocation towards road infrastructure projects on either Mitchell Avenue, Government Road and Hart Road; and</i></li> <li>3. <i>Within one month of the installation of the second furnace, an amount of \$50,000 for allocation towards</i></li> </ol>

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Comment provided	Response
	<p style="text-align: center;"><i>road infrastructure projects on either Mitchell Avenue, Government Road and Hart Road.</i></p> <p>This offer to Council was subject to a formal offer to enter into a VPA in accordance with the NSW <i>Environmental Planning and Assessment Act 1979</i> (EP&amp;A Act), Ministerial directions and relevant VPA Practice Notes.</p> <p>A copy of the Pymore proposal to Council on 20 February 2017 is attached (see Attachment A).</p> <p>Following Council's review of Pymore's offer, a second meeting was held between Council and Pymore on 7 April 2017. At that meeting, a revised offer was discussed and agreed in principle. This offer was formalised in a letter from Pymore to Council dated 12 April 2017. The letter stated:</p> <ol style="list-style-type: none"> <li>1. <i>Subject to receiving a Development Approval from the Department of Planning on suitable terms, and a decision to proceed with construction of the proposed battery recycling facility, Pymore will enter a VPA with Council on the following terms:</i> <ol style="list-style-type: none"> <li>(a) <i>Within one month of the commencement of operations of the first furnace, an amount of \$50,000 be paid to Council;</i></li> <li>(b) <i>Within one month of the commencement of operations of the second furnace, an amount of \$50,000 be paid to Council; and</i></li> <li>(c) <i>Upon the annual anniversary of the commencement of operation of the second furnace a further \$50,000 be paid to Council.</i></li> </ol> </li> <li>2. <i>Pymore agrees that the VPA contribution in (1) be dedicated to public domain works in Kurri Kurri and Weston as identified by Council in its forward works programme.</i></li> <li>3. <i>Expenditure of Pymore's VPA contribution be at the sole discretion of Council following consultation with Pymore on the proposed public domain works.</i></li> <li>4. <i>Pymore and Council note that the proposed development is not subject to a S.94 plan.</i></li> <li>5. <i>This offer to be formalised in a VPA agreement in accordance with Council's VPA template, Ministerial Directions and VPA Practice Note.</i></li> </ol> <p>A copy of Pymore's revised offer to Council on 12 April 2017 is attached (see Attachment B).</p> <p>Upon receipt of the revised offer, EMM understands that Council confirmed its acceptance of the offer via email to DPE.</p> <p>It should be noted that it was also agreed at the meeting on 7 April 2017 that Council would discuss aspects of their submission with DPE regarding making additional provision for future use of the land and future (unknown) road</p>

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	<p>standards as being uncertain and therefore not able to be imposed as a valid condition of consent.</p> <p>On 30 May 2017, Council provided Pymore with a copy of the draft VPA (see Attachment C) for comment. On 6 June 2017, EMM, on behalf of Pymore, stated that they were comfortable with the draft VPA.</p>
<i>Visual impacts</i>	<p>EMM reiterates its response to Council's submission on the EIS regarding visual impacts. That is, that the design of proposed buildings is considered appropriate for an industrial complex and the intended use, particularly in an area zoned IN3 Heavy Industrial.</p> <p>It should also be noted that the buildings on the site will largely be screened by vegetation and an industrial building between the bulk of the site and Mitchell Avenue.</p> <p>As such, it is EMM's view that further improvements to reduce the visual bulk of the development are not warranted, nor are conditions restricting colours and finishes.</p>
<b>NSW Department of Primary Industries</b>	
<i>Water management plan</i>	
<p>It is noted that the proponent intends to prepare a water management plan (WMP), and it is recommended that this plan be prepared in consultation with DPI Water.</p>	<p>The WMP for the project will be prepared in consultation with DPI Water. Pymore are happy to accept a condition to that effect.</p>
<p>The proponent does not appear to have addressed the recommendation that a Trigger Action Response Plan be developed in relation to storm water management, and it is recommended this be addressed in the WMP.</p>	<p>As noted above, the WMP for the project will be prepared in consultation with DPI Water. As part of this consultation, the proponent will seek advice from DPI Water on the development of an appropriate trigger action response plan for the management of stormwater within the site boundary. Until there is certainty that the project will receive approval, the project's WMP and, subsequently, the Trigger Action Response Plan will not be developed.</p> <p>Pymore is happy to accept a condition to that a trigger action response plan form part of the WMP.</p>
<i>Groundwater monitoring network</i>	
<p>The proponent has indicated that they do not intend to establish a groundwater monitoring network. DPI does not consider the RTS to sufficiently justify the absence of a groundwater monitoring network. It is</p>	<p>A groundwater monitoring plan will be established in consultation with DPI Water. This will include the installation of a groundwater monitoring network prior to construction to ensure pre-operation baseline information is available.</p> <p>Pymore is happy to accept a condition requiring the preparation of a groundwater monitoring plan, including the</p>

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Comment provided	Response
<p>recommended that the proponent establish a groundwater monitoring plan in consultation with DPI Water. This is important due to the potential risk of contamination from contaminants, including lead (Pb). It is recommended that the groundwater monitoring network be established prior to construction to ensure there is some pre-operation baseline information.</p>	<p>installation of a groundwater monitoring network prior to construction to ensure availability of pre-operation baseline information.</p>
<p><i>Works on waterfront land</i></p>	
<p>Works on waterfront land should be undertaken in accordance with the <i>Guidelines for Controlled Activities on Waterfront Land</i> (DPI 2012), including the preparation of a vegetation management plan for riparian revegetation to offset works within the riparian corridor.</p>	<p>No response required.</p>
<p><b>NSW Office of Environment and Heritage</b></p>	
<p><i>Aboriginal cultural heritage assessment</i></p>	
<p>OEH has no additional concerns with respect to the Aboriginal cultural heritage matters for this project.</p>	<p>No response required.</p>
<p>Revised Aboriginal cultural heritage requirements (received 25 January 2017 from Peter Saad) for the project are detailed below:</p>	<p>A response was received from Kerrie Brauer, Director Awabakal and Guringai Native Title Claimants Group, on 23 February 2017 stating that they do not accept the document in its current form as it contains incorrect information regarding the cultural perspectives relating to the region. Further, the Awabakal and Guringai Native Title Claimants Group did not consider the 28-day period as appropriate consultation and they raised concerns about the matter as the consultation was seen to be causing the claimants high levels of distress and long term intergenerational adverse impacts on their families and cultural heritage values.</p>
<p>OEH acknowledge that the project area has historically been utilised for heavy industry and is disturbed in ways that remain clear and observable. It is also acknowledged that the likelihood of harm to Aboriginal objects within the project area has been assessed as low. OEH therefore has no further requirements in regard to the scientific/archaeological evaluation of the project area.</p>	<p>In response to this letter, a site meeting was arranged between the project archaeologist and representatives from the Awabakal and Guringai Native Title Claimants Group on 3 April 2017. During the site meeting, the project archaeologist and representatives discussed the project and had a walk over of the site. The representatives confirmed that there were no archaeological issues due to the level of disturbance on the site. The cultural concern raised during the site meeting was that Awabakal and Guringai want to be assured that they are given the opportunity to comment on projects on Country. This concern was addressed during the discussions that took place during the site meeting.</p>

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Comment provided	Response
<i>Flooding and flood plain management</i>	Following the site meeting, the project archaeologist provided the representatives with a link to the EIS on 4 April 2017 and invited them to provide any additional commentary on the cultural information used to describe the site and surrounds. A follow-up email was sent to the representatives on 12 April 2017. No response was received. Subsequently, the document was finalised without further input from the representatives of Awabakal and Guringai.
OEH has recommended six conditions of consent in relation to flooding and floodplain management issues if this project is approved. These conditions of consent include:	Pymore is happy to accept conditions as recommended by OEH.
1. The flood impact assessment must be revised following detailed design of the battery recycling facility to ensure that there is no significant impact outside of property boundaries as a result of the development.	
2. The structural design of the material preparation area, slag room and warehouse must ensure that the building is able to resist loads imposed by floods up to and including the probable maximum flood (PMF). This must include any proposed weir gates on doors of the facility. The structural design must be certification by a structural engineer. Periodic inspections/operation of the weir gates should form part of the facilities operating procedures.	
3. The proposed retaining wall must be designed to resist flood loads and flood actions including scour up to and including the PMF flood. The retaining wall must be certified by a structural engineer. Periodic inspections for structural integrity of the major retaining walls should form part of the facilities operating procedures.	
4. Procedures must be put in place to ensure that the first layer slots in proposed racking in the facility remain vacant for the first 1.5m and are subject to regular audit. Alternatively, permanent barriers may be installed to preclude the use of this racking. These measures are to ensure consistency with undertakings given in the risk assessment (Table 8.2) of the <i>Preliminary Hazard Analysis</i> prepared by Sherpa Consulting.	
5. Suitable energy dissipation devices must be designed and installed at headwalls discharging to the creek to minimise the risk of bank erosion.	

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Comment provided	Response
<p>6. The facility owner accepts full responsibility for damage which may occur to the on-site detention facility located within the flood plain. The design for the facility must include appropriate scour protection and vegetation cover to minimise damage to the stormwater detention basin in the event of a flood. An operation and maintenance manual must be prepared which includes inspection and rectification requirements of the stormwater detention basin following a flood event.</p>	
<p><i>Threatened species</i></p>	<p>Pymore is happy to accept a condition as recommended by OEH.</p>
<p>OEH has recommended a condition of consent for threatened biodiversity if this project is approved. This condition of consent is:</p>	
<p>1. That the proponent provides an adequate and appropriate offset in accordance with NSW government biodiversity offsetting policy. Where any variation to offset rules for ecosystem credits, or supplementary measures are proposed then these must be described and justified as required by current offsetting policy.</p>	
<p><b>NSW Environment Protection Authority</b></p>	
<p><i>Air quality</i></p>	
<p>1. Assessment scenarios may not reflect approvals being sort or potential worst case emissions.</p>	<p>Refer to Attachment D.</p>
<p>Recommendation: Provide supporting manufacturer’s specifications, calculations or emission guarantees to demonstrate the assessment has been based on potential worst case emissions.</p>	
<p>2. Supporting information for emissions estimations have not been provided.</p>	<p>Refer to Attachment D.</p>
<p>Recommendation: Provide the manufactures specifications, calculations or guarantees that the assessed discharge concentrations of sulphur dioxide are the maximum concentrations for peak 1 hour averaging and</p>	

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Comment provided	Response
batch averaging periods.	
<p>3. Emissions of sulfur dioxide (SO<sub>2</sub>) has the potential to be variable.</p> <p>Recommendation: Provide the manufactures specifications, calculations or guarantees that the assessed discharge concentrations of sulphur dioxide are the maximum concentrations for a 1 hour and batch averaging period.</p>	Refer to Attachment D.
<p>4. Emission estimates for arsenic have not been robustly justified.</p> <p>Recommendation: Provide the detailed supporting calculations on the assessment of arsenic, and provide clarification to justify why predicted impacts have not significantly changed, however emission rates have changed by 2 orders of magnitude.</p>	Refer to Attachment D.
<p>5. The mitigation and management measures have not been benchmarked against Best Management Practice principles.</p> <p>Recommendation: A condition of consent that prior to construction and operation of the proposal, a detailed Best Management Practice report that demonstrates the management and mitigation measures are in line with the European Commission’s Integrated Pollution Prevention and Control (IPPC) documentation, titled, <i>Best Available Technique Conclusion</i> (IPPC 2016).</p>	Pymore agrees to the adoption of this condition of consent and commits to the undertaking of a Best Management Practice report should the project be approved.
<b>Hunter New England Population Health</b>	
<i>Air quality</i>	
<p>The Air Quality Impact Assessment (AQIA) determined that the Battery Recycling Facility has the potential to emit a range of air pollutants including dust, particulate matter (PM10 and PM 2.5), lead, nitrogen dioxide, sulphur dioxide, sulphur trioxide and sulphuric acid mist, volatile organic compounds, arsenic, dioxins and furans. The EPA has expressed concerns regarding the estimation of emissions as described in the EIS. The EPA has detailed these concerns in comments to the response to</p>	As part of the preparation of this response, the author of the air quality impact assessment (AQIA) for the project has engaged with representatives of the EPA’s Air Technical Advisory Services Unit (ATASU) to adequately address each of the five issues raised in their submission on the RTS for the project. Formal responses to each of these issues have been included in Attachment D.

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Comment provided	Response
<p>submissions. Until these issues are resolved to the satisfaction of the EPA, we are unable to use the EIS to assess potential health impacts due to air emissions. Since values for several emissions may increase this may necessitate a revision of the human health risk assessment. HNEPH will be happy to review the air quality impacts after EPA is satisfied that methodological issues have been resolved. Please keep HNEPH informed on progress so that we can liaise with EPA to expedite our review.</p>	
<p>In terms of incremental air quality impact on the surrounding community it will be important to consider potential emissions from the proposed Thermal Waste Processing Facility at Weston Aluminium and continue with efforts to decrease the emissions to air.</p>	<p>Within the AQIA, the emissions adopted in the cumulative modelling of Weston Aluminium Pty Ltd’s Aluminium Facility accounted for the proposed Medical and Other Thermal Waste Processing Facility.</p>
<p>During the construction phase, low level dust emissions to the surrounding community could occur, dust management strategies should be implemented to minimise impact.</p>	<p>Should the project be approved, dust management and mitigation measures will be detailed within the project’s construction environmental management plan to minimise low level dust emissions during the construction phase of the project.</p>
<p><i>Noise</i></p>	
<p>Environmental noise can have negative impacts on human health and well-being. Receivers in the locality surrounding the industrial area are primarily residential and commercial. During construction of the ULAB Recycling Facility, noise modelling indicates there is unlikely to be significant exceedances. Once the Facility is built, noise emissions from the site are not anticipated to significantly exceed guideline levels. Noise management measures as identified in the EIS such as the enclosed acoustic chamber in the crushing plant are to be utilised to ensure there are no exceedances.</p>	<p>No response required.</p>
<p>In order to reduce sleep disturbance, truck movements to and from the site should be limited to between the hours of 7am to 10pm, since sections of the vehicle route are still proximal to residences. The operator using the adjacent site, Weston Aluminium has agreed to limit truck movements to these hours. The EIS did not give detailed consideration to the impact of trucks using the route along Hart and Government Road during the night which passes closely to residences as does the other</p>	<p>As presented in the noise assessment report, the project satisfied all the relevant road traffic noise criteria as per the <i>NSW Road Noise Policy</i>. Further, all proposed transport routes are used by existing heavy vehicle traffic. Increases in heavy vehicle traffic volumes as a result of the project will generally be approximately 2-4%, with an increase of up to 13.6% on Government Road, north of Mitchell Avenue.</p> <p>A large majority of the site generated heavy vehicle movements will occur between the hours of 7 am and 7 pm. The remaining heavy vehicle movements (approximately five movements) would typically occur between 5 am and 7 am;</p>

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Comment provided	Response
<p>approach through Kurri Kurri. Since storage capacity for ULAB's and products exists on site HNEPH does not anticipate that limiting truck movements to between 7 am and 10 pm will affect operations significantly.</p>	<p>ie during the night-time period. Existing night-time heavy vehicle movements on Government Road, north of Mitchell Avenue have been estimated to be in the range of 21 vehicle movements. Notwithstanding, the proponent has committed to limit compression braking between the site and the Hunter Expressway for all heavy vehicle movements during the night-time period.</p> <p>Based on the results of operator-attended noise surveys adjacent to Mitchell Road, noise emanating from a B-double truck passby is expected to result in internal noise levels in the order of <math>L_{Amax}</math> 59 dB at the nearest residences on the Government Road/Hart Road transport route. The RNP states that 'one or two events per night with maximum internal noise levels of 65-70 dB(A) are not likely to affect health and well-being significantly...' and '...as a rule for planning for short-term or transient noise events, for good sleep over 8 hours the indoor sound pressure level measured as a maximum instantaneous value should not exceed approximately 45 dB(A) <math>L_{A(Max)}</math> more than 10 or 15 times per night'.</p>
<p><i>Surface water</i></p>	<p>No response required.</p>
<p>The operator should ensure there is minimal impact from the proposed development on the water quality of surrounding natural waterways, particularly from stormwater runoff. All wash down water and water collected in sumps is to be separated from the stormwater system. The stormwater control system should be monitored for potential contaminants. HNEPH notes in the Response to Submissions that the proponent intends to undertake quarterly surface water monitoring. HNEPH is of the understanding that concerns from other government agencies over potential flooding in the storm water detention basin have been sufficiently addressed by the proponent.</p>	<p>No response required.</p>
<p><i>Soil and groundwater</i></p>	<p>No response required.</p>
<p>Soil contamination with ULAB materials could occur as a result of failure of containment processes such as spills and stormwater ingress. Containment and spill response planning noted in the EIS should be included in the site management and emergency response plan.</p>	<p>No response required.</p>
<p><i>Lead</i></p>	<p>No response required.</p>

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Comment provided	Response
<p>Battery processing will result in significant lead dust levels. Compliance measures and engineering controls as identified in the EIS should be strictly adhered to so that the risk of lead exposure to employees and their close household contacts is minimised.</p>	<p>No response required.</p>
<p><i>Community consultation</i></p>	
<p>HNEPH recommends community engagement as part of the implementation of this project and notes the SEAR'S requirements for effective, genuine community consultation and to proactively respond to the community's concerns. Meetings with Cessnock Council and other agencies have occurred, to date one community meeting has been held. Ongoing liaison with community should occur to ensure the community is informed of the project and potential impacts.</p>	<p>Chapter 5 of the EIS for the project provided details of the community consultation the proponent engaged in during the preparation of the EIS and technical assessments.</p> <p>As part of this consultation, a community information session was held at the Hunter Region Business Hub (Barton Street, Kurri Kurri) on 13 October 2016 to engage with the wider community. During the information session, community members were able to engage with members of the project team, learn more about the project and voice their concerns about the project and its potential impacts.</p> <p>A number of interested community members (including landholders within close proximity of the site) attended the session and raised concerns about potential air quality impacts (namely emissions), potential traffic impacts (namely concerns about truck movements to and from the site) and potential impacts on surface water (namely the possibility of hazardous materials getting washed into Swamp Creek). In addition, a number of community members wanted to find out more about the proponent's employment plans and the construction schedule for the project.</p> <p>It is our view that the questions and concerns raised by community members were allayed at the information session. Further, these concerns were addressed as part of the impact assessment and technical assessments produced as part of the EIS</p> <p>Following submission to DPE for assessment, the EIS was placed on public exhibition from 17 November 2016 to 16 December 2016. During this period, only one submission was made by a community member, indicating that sufficient consultation with the community had already taken place and that any concerns identified during the information session had been adequately addressed. The submission raised concerns about air quality, noise and traffic, which were subsequently addressed as part of the RTS report submitted to DPE on 24 February 2017. The submission also requested vigorous assessment of the project by DPE.</p> <p>If the project is approved, the proponent will ascertain how best to continue to involve the community during the construction and operational stages of the project.</p>
<p><i>Other matters</i></p>	

**Table 1 Council and agency comments and responses**

Comment provided	Response
<p>In addition to this development proposal, HNEPH notes there are multiple development proposals for the Mitchell Avenue Industrial Area at Kurri Kurri with a focus on recycling/waste processing/resource recovery including Weston Aluminium. A development by development approach to consultation is unlikely to address the perceptions and needs of a community concerned with cumulative impacts. Waste management developments are often a trigger for heightened community concern so it will be important to anticipate concerns about the cumulative impact of such developments.</p> <p>The SEARS for both the Pymore Battery Recycling Facility and Weston Aluminium developments prioritise community consultation, but it will be important to have an overarching consultative process regarding this emerging industrial concentration.</p>	<p>Cumulative impacts of the project and Weston Aluminium Pty Ltd’s proposed Medical and Other Thermal Waste Processing Facility were considered in the noise and air quality assessments conducted as part of the preparation of the EIS for the project.</p> <p>It is not the proponent or an individual’s responsibility to consider the cumulative impacts of multiple developments within an appropriately zoned area, such as the site and surrounds, which are zoned for heavy industrial uses. As noted within the EIS, it is considered that the site for the project is suitable for this type of development. Principally the project would facilitate the recovery and recycling of valuable resources and would be undertaken on privately-owned land, which has been zoned to facilitate heavy industrial uses and is compatible with surrounding land uses.</p> <p>The project provides for the orderly and economic development of vacant industrially zoned land. The project’s planning and design has taken into account all potential impacts and incorporates measures to avoid and minimise these impacts. Further, the results of the technical assessments prepared as part of the EIS, demonstrate that the project can operate within relevant criteria and regulations.</p> <p>The determining authority and/or local government should ultimately be responsible for informing the community of industrial developments and activities occurring concurrently within an appropriately zoned area.</p>
<p><b>Fire and Rescue NSW</b></p>	<p>The EIS was prepared in accordance with the Secretary’s environmental assessment requirements (SEARs) which required:</p> <ul style="list-style-type: none"> <li>• <i>Fire and Incident Management - including information on the equipment to be installed on the premises such as spill clean-up equipment and bushfire/fire management (including asset protection zones) and containment measures.</i></li> </ul> <p>These measures were provided in section 7.12 and Appendix M of the EIS.</p> <p>Detailed design will be carried out in accordance with the relevant clauses of the NCC and relevant Australian Standards. Pymore will consult with FRNSW during the detailed design stage to ensure that the proposed fire hydrant system for the facility satisfies their operational requirements.</p> <p>Accordingly, Pymore is happy to accept a condition to that effect.</p>
<p>Although listed as a fire prevention control measure within the EIS and PHA, adequate information has not been provided relating to the fire hydrant system to enable FRNSW to undertake a thorough assessment. Detailed drawings KKBR-0003 - Rev 2 and KKBR-0015 - Rev 1 provides some system information in relation to the proposed fire hydrant system for the facility. However, further information is required to enable FRNSW to ensure the system design provides the required hydrant system performance to manage an incident of fire at the proposed development. Also, limited site fire hydrant system information has been provided within sections 3.4.6, 7.12.1 and 7.12.2 of the EIS.</p> <p>The fire hydrant system will be an essential fire safety measure for FRNSW to utilise in undertaking our statutory duty for the extinguishment of fires and protecting life and property, in case of fire at the facility.</p> <p>In the event of the development proposal being approved, while taking the high fire load potential of the development into account, FRNSW recommends that any conditions of consent include a requirement that</p>	

**Table 1 Council and agency comments and responses**

Comment provided	Response
<p>the development comply with Clause E1.10 of the National Construction Code (NCC). In particular, the fire hydrant system's performance, with respect to minimum flow rates, should be specifically addressed. Additionally, FRNSW would not automatically consider Table 2.1 of AS 2419.1 - 2005 to be an appropriate methodology to determine the fire hydrant system's minimum flow rates without sufficient justification.</p> <p>FRNSW recommends that the fire hydrant system for the proposed development is required to meet the requirements of E1.10 of the NCC and the final design is to the satisfaction of FRNSW.</p>	<p>Detailed design will be carried out in accordance with the relevant clauses of the NCC and relevant Australian Standards.</p> <p>Pymore will consult with FRNSW during the detailed design stage to ensure that the smoke hazard management measures and/or installed sprinkler system for the facility satisfy the operational requirements of FRNSW.</p> <p>Accordingly, Pymore is happy to accept a condition to that effect.</p>
<p>In the event of the development proposal being approved, while taking the high fire load potential of the development into account, FRNSW recommends that any conditions of consent include a requirement that the development comply with Clause E2.3 of the NCC. This recommendation is specifically related to building's 4, 5, 6, 7 and 8 as shown on detailed drawing KKBR-0030 - Rev O.</p>	<p>Detailed design will be carried out in accordance with the relevant clauses of the NCC and relevant Australian Standards.</p> <p>Pymore will consult with FRNSW during the detailed design stage to ensure that the smoke hazard management measures and/or installed sprinkler system for the facility satisfy the operational requirements of FRNSW.</p> <p>Accordingly, Pymore is happy to accept a condition to that effect.</p>
<p>Alternatively, FRNSW would also be supportive of the proponent incorporating sprinkler protection within the buildings throughout the facility in lieu of the additional smoke hazard management measures required to comply with Clause E2.3 of the NCC. Incorporating fire sprinkler systems throughout the proposed facility provides a fixed suppression system which is designed to reduce the impacts associated with a fire within the protected building.</p>	<p>Detailed design will be carried out in accordance with the relevant clauses of the NCC and relevant Australian Standards.</p> <p>Pymore will consult with FRNSW during the detailed design stage to ensure that the smoke hazard management measures and/or installed sprinkler system for the facility satisfy the operational requirements of FRNSW.</p> <p>Accordingly, Pymore is happy to accept a condition to that effect.</p>
<p>The early suppression of a fire within the facility via an installed sprinkler system would not only benefit the facility itself, it would also assist in reducing the risks associated with harmful contaminants from affecting the nearby built environment and natural environment within the surrounding area. Minimising any possible fire in size will assist to limit the associated damage and assist in greatly reducing toxic smoke that is produced as a result of such an incident.</p>	<p>Detailed design will be carried out in accordance with the relevant clauses of the NCC and relevant Australian Standards.</p> <p>Pymore will consult with FRNSW during the detailed design stage to ensure that the smoke hazard management measures and/or installed sprinkler system for the facility satisfy the operational requirements of FRNSW.</p> <p>Accordingly, Pymore is happy to accept a condition to that effect.</p>
<p>FRNSW recommends that smoke hazard management measures and/or installed sprinkler system for the proposed development as detailed above, be incorporated into the final facility design to the satisfaction of</p>	<p>Detailed design will be carried out in accordance with the relevant clauses of the NCC and relevant Australian Standards.</p> <p>Pymore will consult with FRNSW during the detailed design stage to ensure that the smoke hazard management measures and/or installed sprinkler system for the facility satisfy the operational requirements of FRNSW.</p> <p>Accordingly, Pymore is happy to accept a condition to that effect.</p>

**Table 1 Council and agency comments and responses**

Comment provided	Response
<p>FRNSW.</p> <p>NOTE: Any sprinkler design would be required to take into consideration areas within the facility where there is a risk of water causing an adverse reaction with the stored sulphuric acid or any other product/element used or produced within the process.</p> <p>As a result of the hazardous materials which are to be processed and stored at the facility, the nature of this particular development will require FRNSW personnel to pro-actively manage an incident of fire and the subsequent containment of polluted fire water runoff during/after the incident. (N.b. a specific function imposed upon the Commissioner of FRNSW by virtue of Section 10A of the Fire Brigades Act 1989).</p> <p>FRNSW recommends that the site's surface and storm water management systems be designed to provide automatic containment functionality. Due to the risks associated with a fire within the facility and the additional risk of fire water which is potentially contaminated with lead, temporary bunding for large spills as captured within Table 8.1 of the EIS, may represent an unacceptable health risk to FRNSW personnel. Clarification on temporary bunding was not provided within the EIS.</p> <p>The design of the site bunding capacities are recommended to take into account the possibility of the concurrent operation of a possible sprinkler system (as detailed above in FRNSW Recommendation No.2) and fire hydrant system to extinguish a worst case fire scenario at the facility.</p> <p>Due to the importance of the Scrubber System's functionality to prevent any kind of fugitive emission from internal processes and tanks to ambient air, FRNSW recommends that the facility process is immediately tripped/shut down (in its entirety) in the event of a Scrubber System failure. A facility process shut down would also include a failure to any integrated systems which are proposed to collect polluted air via a closed duct system as described within section 3.4.10 of the EIS, prior to venting to the atmosphere.</p>	<p>During the detailed design stage, the surface and stormwater management system will be designed to provide automatic containment functionality.</p> <p>In addition, site bunding capacities will account for the possibility of the concurrent operation of a sprinkler system (if warranted) and fire hydrant system to extinguish a worst-case fire scenario.</p> <p>Accordingly, Pymore is happy to accept a condition to that effect.</p> <p>Correspondence between FRNSW and DPE (dated 23 May 2017) confirmed that this recommendation had been adequately addressed within the mitigation measures proposed within Table 2.1 of the RTS submitted to DPE on 24 February 2017.</p>
<p>FRNSW is unclear on the purpose or function of the Fire Indicator Panel</p>	<p>The Fire Indicator Panel (FIP) will act as a fire alarm or notification system within the proposed facility. Throughout the</p>

**Table 1 Council and agency comments and responses**

Comment provided	Response
<p>(FIP) within the proposed facility (N.b. as listed within Part 7.12.2 of the EIS). Details relating to the purpose of the FIP should be clarified to enable FRNSW to provide an assessment of its functionality within the fire system controls.</p>	<p>facility, a number of environmental sensors will be installed. These sensors will redirect information to the FIP, including environmental changes that could indicate the presence of a fire within the facility. Once a fire is detected, the panel will produce audible and visual alarms to warn staff of impending danger. The FIP could also be used to alert staff to potential issues with plant and equipment that could lead to a fire.</p>
<p>In addition to the above recommendations, FRNSW recommend that the proponent and/or their representatives undertake consultation with FRNSW in relation to the proposed fire safety measures for the development. Early consultation with FRNSW during the preliminary design stage aims to ensure that the fire safety measures and system designs/strategies provided at the proposed facility are adequate for the development and will meet the operational requirements of FRNSW.</p>	<p>The preliminary design stage has been completed. Pymore will consult with FRNSW regarding the proposed fire safety measures for the facility during the detailed design stage to ensure that the proposed fire safety measures satisfy the operational requirements of FRNSW.</p> <p>Further, Pymore would welcome the opportunity to consult with FRNSW on any conditions of consent related to the proposed fire safety measures for the project prior to the finalisation of the project approval and distribution of the terms of the consent.</p> <p>Accordingly, Pymore is happy to accept a condition to that effect.</p>
<p><b>Department of Planning and Environment</b></p>	
<p><i>Odour</i></p>	
<p>The RTS states that a detailed odour assessment is not warranted, however does not provide details of the technical reasons why this is so. A more detailed explanation is required that references information provided in the air quality impact assessment (AQIA) and RTS.</p>	<p>The engineer engaged by Pymore to design and construct the battery recycling facility, Engitec Technologies SpA, has reiterated the statements made in the RTS that there will be no odorous substances emitted from the facility. Traces of hydrogen sulphide (H<sub>2</sub>S) from the final treatment process will be directed to the wet scrubber system where they will be combined with caustic soda, thereby neutralising the H<sub>2</sub>S by converting it to sodium sulphide. The sodium sulphide is then converted to sodium sulphate (associated emissions through U-421/PK-420). Further, the building is operated under negative pressure to avoid fugitive emissions from within the building to ambient air. Subsequently, there will be no odour emissions from the routine operations of the facility.</p> <p>In the event of a system shutdown, Engitec Technologies SpA indicated that there will be remnant H<sub>2</sub>S within the stack (ie C-720 and C-720A). If this was to occur for a period of up to 30 seconds, a concentration of 1-3 parts per million (ppm) of H<sub>2</sub>S could occur in the stack. This concentration of H<sub>2</sub>S is assumed to occur following the end of the final treatment process.</p> <p>These emissions are classified as ‘upset emissions’ and are not typically assessed as part of an AQIA.</p> <p>To address DPE’s comments, modelling of an upset emission release was performed. This model assumed:</p> <ul style="list-style-type: none"> <li>• 30 seconds of H<sub>2</sub>S emissions at a concentration of 3 ppm released from stacks C-720 and C-720A;</li> <li>• a flow rate of 0.5 m<sup>3</sup>/second (equating to an exit velocity of 0.3 m/second for C-720 and 0.6 m/s for C-720A); and</li> <li>• ambient air temperature for the exhaust parameters to simulate near-fugitive stack releases.</li> </ul>

**Table 1** Council and agency comments and responses

Comment provided	Response
	The predicted ground level H <sub>2</sub> S concentrations at all surrounding receptors were less than 0.01 µg/m <sup>3</sup> at all receptor locations relative to a criteria of 1.38 µg/m <sup>3</sup> . This would suggest that even during upset emissions (ie failure of the scrubber system), there is limited potential for odour impacts from the facility.

Attachment A  
Pymore's proposal to Council dated 20 February 2017

20 February 2017

Wonona Fuzzard  
Principal Strategic Land Use Planner  
Cessnock City Council  
62-78 Vincent Street  
Cessnock NSW 2325

Re: Proposed voluntary planning agreement for proposed battery recycling facility at 129 Mitchell Avenue, Kurri Kurri

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Dear Wonona,

I refer to our meeting on 1 February 2017 on the above matter and subsequent discussions on Friday 17 February 2017. Based on the discussions I confirm that our client, Pymore Recyclers International Pty Ltd (Pymore), has consented to the following essential terms of the proposed voluntary planning agreement (VPA) to be made pursuant to section 93F of the NSW *Environmental Planning and Assessment Act 1979* (EP&A Act):

1. Upon taking a final decision to proceed with the construction of the proposed battery recycling facility, Pymore will enter into a VPA with Cessnock City Council (the Council) before the commencement of construction;
2. Within one month of the commencement of operations with the first furnace, an amount of \$50,000 for allocation towards road infrastructure projects on either Mitchell Avenue, Government Road and Hart Road; and
3. Within one month of the installation of the second furnace, an amount of \$50,000 for allocation towards road infrastructure projects on either Mitchell Avenue, Government Road and Hart Road.

This offer to Council is subject to a formal offer to enter into a VPA in accordance with the EP&A Act, Ministerial directions and relevant VPA Practice Notes.

It is envisaged that should the NSW Department of Planning and Environment, as delegate to the NSW Minister for Planning, grant development consent to the proposed battery recycling facility, a condition will be imposed on the consent requiring that Pymore to enter into a VPA with the Council before the commencement of construction in accordance with the above terms.

Please do not hesitate to contact me on 02 9493 9500 should you have any queries regarding this matter.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Brett McLennan'.

Brett McLennan  
Director  
[bmclennan@emmconsulting.com.au](mailto:bmclennan@emmconsulting.com.au)

Attachment B  
Pymore's revised offer to Council dated 12 April 2017



**PYMORE  
RECYCLERS  
INTERNATIONAL  
PTY LTD**

ACN 610 544 235

Pymore Recyclers International Pty Ltd  
Gov. Macquarie Tower, Level 40  
1 Farrer Place, Sydney NSW 2000

+61 2 9840 2804

12 April 2017

**WONONA FUZZARD**

Principal Strategic Land Use Planner

Cessnock City Council

62-78 Vincent St

CESSNOCK NSW 2325

**RE: VOLUNTARY PLANNING AGREEMENT (VPA) FINAL OFFER FOR PYMORE RECYCLERS  
INTERNATIONAL PROPOSED BATTERY RECYCLING FACILITY – KURRI KURRI**

Dear Ms Fuzzard,

I refer to our meeting on April 7, 2017 between representatives of Cessnock City Council (Council) and Pymore Recyclers International Pty Ltd (Pymore) to discuss finalising a VPA offer. This follows correspondence from EMM Consulting of 20 February 2017 and Council's submission to the Department of Planning on the EIS.

1. Subject to receiving a Development Approval from the Department of Planning on suitable terms, and a decision to proceed with construction of the proposed battery recycling facility, Pymore will enter a VPA with Council on the following terms:
  - (a) Within one month of the commencement of operations of the first furnace, an amount of \$50,000 be paid to Council;
  - (b) Within one month of the commencement of operations of the second furnace, an amount of \$50,000 be paid to Council;
  - (c) Upon the annual anniversary of the commencement of operation of the second furnace a further \$50,000 be paid to Council.
  
2. Pymore agrees that the VPA contribution in (1) be dedicated to public domain works in Kurri Kurri and Weston as identified by Council in its forward works programme.

3. Expenditure of Pymore's VPA contribution be at the sole discretion of Council following consultation with Pymore on the proposed public domain works.
4. Pymore and Council note that the proposed development is not subject to a S.94 plan.
5. This offer will be formalised in a VPA agreement in accordance with Council's VPA template, Ministerial Directions and VPA Practice Note.

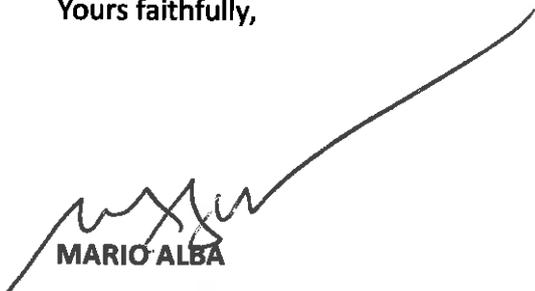
Should the above be acceptable, please forward Council's VPA agreement template to ensure we can meet the May target date for formal Council approval and exhibition.

As also canvassed, it was agreed that Council would discuss aspects of the Councils' submission with the Department of Planning regarding the making additional provision for future use of the land and future (unknown) road standards as being uncertain and not able to be imposed as a valid condition of consent.

Let me reiterate my appreciation for the professionalism and support Council has given to the project as we plan to immediately commence construction once the Development Consent is granted.

Any assistance which the Council could provide in encouraging expedition of the project approval with the Department of Planning would be appreciated.

Yours faithfully,



MARIO ALBA

Director

Attachment C  
Draft VPA

## **Deed**

### **Battery Recycling Facility Kurri Kurri Planning Agreement**

Under s93F of the *Environmental Planning and Assessment Act 1979*

**Cessnock City Council**

**Pymore Recyclers International Pty Ltd**

Date:

## **Battery Recycling Facility Kurri Kurri Planning Agreement**

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**Battery Recycling Facility Planning Agreement**

**Cessnock City Council**

**Pymore Recyclers International Pty Ltd**

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## **Battery Recycling Facility Kurri Kurri Planning Agreement**

### **Summary Sheet**

#### **Council:**

**Name:** Cessnock City Council

**Address:** 62-78 Vincent Street, CESSNOCK NSW 2325

**Telephone:** (02) 4993 4100

**Facsimile:** (02) 4993 2500

**Email:** council@cessnock.nsw.gov.au

**Representative:** Stephen Glen General Manager

#### **Developer:**

**Name:** Pymore Recyclers International Pty Ltd

**Address:** Governor Macquarie Tower, Level 40 1 Farrer Place, SYDNEY NSW 2000

**Telephone:** (02) 9840 2804]

**Email:** Mario.alba@ramcar.com

**Representative:** Mario Alba Director

## Regulatory Compliance Tables

Table 1 – Provisions of Act

Act Provision	Requirement	Compliance
S93F(1)	'Planning Authority'	Council
	'Developer'	Developer
	Development Contributions	See clause 9, Part 2, and Schedule 2
S93F(1), (2)	Public Purpose	See column 2 of Schedule 2
S93F(3)(a)	Land	See Definition of 'Land' in clause 1.1
S93F(3)(b)(i)	Instrument Change	N/A
S93F(3)(b)(ii)	Development	See definition of 'Development' in clause 1.1
S93F(3)(c)	Details of Developer's Provision	See clause 9, Part 2, and Schedule 2
S93F(3)(d)	Whether s94, s94A and s94EF of the Act Apply to the Development	See clause 8
S93F(3)(e)	Whether Benefits are or are not to be Taken into Consideration in Determining a Development Contribution under s94	No
S93F(3)(f)	Mechanism for the Resolution of Disputes under the Agreement	See Part 3
S93F(3)(g)	Enforcement of the Agreement by a Suitable Means in the Event of Breach by the Developer	See clause 13 and Part 4
S93F (10)	Conformity of Agreement with Act, Environmental Planning Instruments, & Development Consents Applying to the Land	Yes
S93G	Public Notice & Public Inspection of Draft	Yes

**Battery Recycling Facility Planning Agreement****Cessnock City Council****Pymore Recyclers International Pty Ltd**

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	Agreement	
S109J(c1)	If the Development involves the subdivision of land, does this Agreement impose requirements that are required to be complied with before a subdivision certificate is issued?	No
S109H(2)	If an occupation certificate is required in respect of the Development, does the Agreement impose requirements that are required to be complied with before such a certificate is issued?	N/A

**Table 2 – Provisions of Regulation**

Regulation Provision	Requirement	Compliance
Clause 25B(1)	Form & Subject-Matter	Yes
Clause 25B(2)	Secretary's Practice Note	Yes
Clause 25D	Public Notice & Public Inspection of Draft Agreement	Yes
Clause 25E	Explanatory Note	See Appendix
Clause 146A	If the Development involves building work or subdivision work, does the Agreement specify requirements that are required to be complied with before a construction certificate for the work is issued?	N/A

## **Battery Recycling Facility Kurri Kurri Planning Agreement**

Under s93F of the *Environmental Planning and Assessment Act 1979*

### **Parties**

**Cessnock City Council** ABN 60 919 148 928 of 62-78 Vincent Street, CESSNOCK NSW 2325 (**Council**)

and

**Pymore Recyclers International Pty Ltd** ACN 610 544 235 of Governor Macquarie Tower Level 40, 1 Farrer Place SYDNEY NSW 2000 (**Developer**)

### **Background**

- A The Developer has made or proposes to make a Development Application to carry out the Development on the Land.
- B The Developer offers to make Development Contributions to the Council on the terms set out in this Deed in connection with the carrying out of Development.

### **Operative provisions**

#### **Part 1 - Preliminary**

##### **1 Interpretation**

- 1.1 In this Deed the following definitions apply:

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

**Approval** includes approval, consent, licence, permission or the like and includes, without limitation, a Development Consent and a Part 4A Certificate.

**Confidential Information** means any information and all other knowledge at any time disclosed (whether in writing or orally) by the Parties to each other, or acquired by the Parties in relation to the other's activities or services which is not already in the public domain and which:

- (a) is by its nature confidential;
- (b) is designated, or marked, or stipulated by either Party as confidential (whether in writing or otherwise);
- (c) any Party knows or ought to know is confidential; or

## Battery Recycling Facility Planning Agreement

### Cessnock City Council

### Pymore Recyclers International Pty Ltd

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- (d) is information which may reasonably be considered to be of a confidential nature.

**Contribution Item** means an item of Development Contribution specified in Schedule 2.

**Deed** means this Deed and includes any schedules, annexures and appendices to this Deed.

**Development** means the development specified or described in Item 3 of Schedule 1.

**Development Application** has the same meaning as in the Act.

**Development Consent** has the same meaning as in the Act.

**Development Contribution** means a monetary contribution, the dedication of land free of cost, the carrying out of work, or the provision of any other material public benefit, or any combination of them, to be used for, or applied towards a public purpose, but does not include any Security or other benefit provided by a Party to the Council to secure the enforcement of that Party's obligations under this Deed for the purposes of s93F(3)(g) of the Act.

**Dispute** means a dispute or difference between the Parties under or in relation to this Deed.

**Force Majeure Event** means any event or circumstance, or a combination of events or circumstances:

- (a) which arises from a cause beyond the reasonable control of a party, including:
- (i) an act of God,
  - (ii) strike, lockout, other industrial disturbance or labour difficulty,
  - (iii) war (declared or undeclared), act of public enemy, blockade, revolution, riot, insurrection, civil commotion,
  - (iv) lightning, storm, flood, fire, earthquake, explosion, epidemic, quarantine, or
  - (v) embargo, unavailability of any essential equipment or materials, unavoidable accident, lack of transportation;
- (b) which the Developer takes all reasonable precautions to protect itself against, and uses all reasonable endeavours to mitigate the consequences of (which does not require the Developer to settle a labour dispute if, in the Developer's opinion, that is not in its best interests); and
- (c) which the Developer notifies the Council of, as soon as practicable after becoming aware of the event or circumstance.

**GST** has the same meaning as in the GST Law.

**GST Law** has the same meaning as in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and any other Act or regulation relating to the imposition or administration of the GST.

**Just Terms Act** means the *Land Acquisition (Just Terms Compensation) Act 1991*.

**Land** means the land specified or shown on the map in Schedule 3.

**LEP** means the *Cessnock Local Environmental Plan 2011*.

## Battery Recycling Facility Planning Agreement

### Cessnock City Council

### Pymore Recyclers International Pty Ltd

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**Map** means the map in Schedule 3.

**Party** means a party to this Deed.

**Regulation** means the *Environmental Planning and Assessment Regulation 2000*.

- 1.2 In the interpretation of this Deed, the following provisions apply unless the context otherwise requires:
- 1.2.1 Headings are inserted for convenience only and do not affect the interpretation of this Deed.
  - 1.2.2 A reference in this Deed to a business day means a day other than a Saturday or Sunday on which banks are open for business generally in Sydney.
  - 1.2.3 If the day on which any act, matter or thing is to be done under this Deed is not a business day, the act, matter or thing must be done on the next business day.
  - 1.2.4 A reference in this Deed to dollars or \$ means Australian dollars and all amounts payable under this Deed are payable in Australian dollars.
  - 1.2.5 A reference in this Deed to a \$ value relating to a Development Contribution is a reference to the value exclusive of GST.
  - 1.2.6 A reference in this Deed to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.
  - 1.2.7 A reference in this Deed to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced.
  - 1.2.8 A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Deed.
  - 1.2.9 An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.
  - 1.2.10 Where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.
  - 1.2.11 A word which denotes the singular denotes the plural, a word which denotes the plural denotes the singular, and a reference to any gender denotes the other genders.
  - 1.2.12 References to the word '*include*' or '*including*' are to be construed without limitation.
  - 1.2.13 A reference to this Deed includes the agreement recorded in this Deed.
  - 1.2.14 A reference to a Party to this Deed includes a reference to the servants, agents and contractors of the Party, the Party's successors and assigns.
  - 1.2.15 A reference to '*dedicate*' or '*dedication*' in relation to land is a reference to dedicate or dedication free of cost.
  - 1.2.16 Any schedules, appendices and attachments form part of this Deed.

1.2.17 Notes appearing in this Deed are operative provisions of this Deed.

## **2 Status of this Deed**

2.1 This Deed is a planning agreement within the meaning of s93F(1) of the Act.

## **3 Commencement**

3.1 This Deed commences and has force and effect on and from the date when the Parties have:

3.1.1 all executed the same copy of this Deed, or

3.1.2 each executed separate counterparts of this Deed and exchanged the counterparts.

3.2 The Parties are to insert the date when this Deed commences on the front page and on the execution page.

## **4 Application of this Deed**

4.1 This Deed applies to the Land and to the Development.

## **5 Warranties**

5.1 The Parties warrant to each other that they:

5.1.1 have full capacity to enter into this Deed, and

5.1.2 are able to fully comply with their obligations under this Deed.

## **6 Further agreements**

6.1 The Parties may, at any time and from time to time, enter into agreements relating to the subject-matter of this Deed that are not inconsistent with this Deed for the purpose of implementing this Deed.

## **7 Surrender of right of appeal, etc.**

7.1 The Developer is not to commence or maintain, or to cause or procure the commencement or maintenance, of any proceedings in any court or tribunal or similar body appealing against, or questioning the validity of this Deed, or an Approval relating to the Development in so far as the subject-matter of the proceedings relates to this Deed.

## **8 Application of s94, s94A and s94EF of the Act to the Development**

- 8.1 This Deed excludes the application of s94, s94A and s94EF of the Act to the Development to the extent provided for in Items 3, 4 and 5 in Schedule 1 respectively.
- 8.2 The benefits under this Deed are to be taken into consideration in determining a Development Contribution under s94 of the Act to the Development to the extent provided for in Item 6 in Schedule 1.

## **9 Provision of Development Contributions**

- 9.1 The Developer is to make Development Contributions to the Council in accordance with Schedule 2, any other provision of this Deed relating to the making of Development Contributions and otherwise to the satisfaction of the Council.
- 9.2 The Council is to apply each Development Contribution made by the Developer under this Deed towards the public purpose for which it is made and otherwise in accordance with this Deed.
- 9.3 Despite clause 9.2, the Council may apply a Development Contribution made under this Deed towards a public purpose other than the public purpose specified in this Deed if the Council reasonably considers that the public interest would be better served by applying the Development Contribution towards that other purpose rather than the purpose so specified.

## **Part 2 – Provisions relating to monetary contributions**

### **10 Payment of monetary Development Contributions**

- 10.1 The Developer is to pay to the Council monetary Development Contributions specified in Schedule 2 in the manner and at the time or times specified in that Schedule.

## **Part 3 – Dispute Resolution**

### **11 Dispute resolution – expert determination**

- 11.1 This clause applies to a Dispute between any of the Parties to this Deed concerning a matter arising in connection with this Deed that can be determined by an appropriately qualified expert if:
- 11.1.1 the Parties to the Dispute agree that it can be so determined, or

## **Battery Recycling Facility Planning Agreement**

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- 11.1.2 the Chief Executive Officer of the professional body that represents persons who appear to have the relevant expertise to determine the Dispute gives a written opinion that the Dispute can be determined by a member of that body.
- 11.2 A Dispute to which this clause applies is taken to arise if one Party gives another Party a notice in writing specifying particulars of the Dispute.
- 11.3 If a notice is given under clause 11.2, the Parties are to meet within 14 days of the notice in an attempt to resolve the Dispute.
- 11.4 If the Dispute is not resolved within a further 28 days, the Dispute is to be referred to the President of the NSW Law Society to appoint an expert for expert determination.
- 11.5 The expert determination is binding on the Parties except in the case of fraud or misfeasance by the expert.
- 11.6 Each Party is to bear its own costs arising from or in connection with the appointment of the expert and the expert determination.
- 11.7 The Parties are to share equally the costs of the President, the expert, and the expert determination.

## **12 Dispute Resolution - mediation**

- 12.1 This clause applies to any Dispute arising in connection with this Deed other than a Dispute to which clause 11 applies.
- 12.2 Such a Dispute is taken to arise if one Party gives another Party a notice in writing specifying particulars of the Dispute.
- 12.3 If a notice is given under clause 12.2, the Parties are to meet within 14 days of the notice in an attempt to resolve the Dispute.
- 12.4 If the Dispute is not resolved within a further 28 days, the Parties are to mediate the Dispute in accordance with the Mediation Rules of the Law Society of New South Wales published from time to time and are to request the President of the Law Society to select a mediator.
- 12.5 If the Dispute is not resolved by mediation within a further 28 days, or such longer period as may be necessary to allow any mediation process which has been commenced to be completed, then the Parties may exercise their legal rights in relation to the Dispute, including by the commencement of legal proceedings in a court of competent jurisdiction in New South Wales.
- 12.6 Each Party is to bear its own costs arising from or in connection with the appointment of a mediator and the mediation.
- 12.7 The Parties are to share equally the costs of the President, the mediator, and the mediation.

## **Part 4 - Enforcement**

### **13 Breach of obligations**

- 13.1 If the Council reasonably considers that the Developer is in breach of any obligation under this Deed, it may give a written notice to the Developer:
- 13.1.1 specifying the nature and extent of the breach,
  - 13.1.2 requiring the Developer to:
    - (a) rectify the breach if it reasonably considers it is capable of rectification,
  - 13.1.3 specifying the period within which the breach is to be rectified being a period that is reasonable in the circumstances. .
- 13.2 Nothing in this clause 13 prevents the Council from exercising any rights it may have at law or in equity in relation to a breach of this Deed by the Developer, including but not limited to seeking relief in an appropriate court.

### **14 Enforcement in a court of competent jurisdiction**

- 14.1 Subject only to clauses 11 and 12, the Parties may enforce this Deed in any court of competent jurisdiction.
- 14.2 For the avoidance of doubt, nothing in this Deed prevents:
- 14.2.1 a Party from bringing proceedings in the Land and Environment Court to enforce any aspect of this Deed or any matter to which this Deed relates, or
  - 14.2.2 the Council from exercising any function under the Act or any other Act or law relating to the enforcement of any aspect of this Deed or any matter to which this Deed relates.

## **Part 5 –Restriction on Dealings**

### **15 Restriction on dealings**

- 15.1 The Developer is not to:
- 15.1.1 sell or transfer the Land, or
  - 15.1.2 assign the Developer's rights or obligations under this Deed, or novate this Deed,
- to any person unless:
- 15.1.3 the Developer has, at no cost to the Council, first procured the execution by the person to whom the Land or part is to be sold or transferred or the Developer's rights or obligations under this Deed are to be assigned or novated, of a deed in favour of the Council on terms reasonably satisfactory to the Council, and

## **Battery Recycling Facility Planning Agreement**

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- 15.1.4 the Council has given written notice to the Developer stating that it reasonably considers that the purchaser, transferee, assignee or novatee, is reasonably capable of performing its obligations under this Deed, and
- 15.1.5 the Developer is not in breach of this Deed, and
- 15.1.6 the Council otherwise consents to the transfer, assignment or novation, such consent not to be unreasonably withheld.
- 15.2 Subject to clause 16.3, the developer acknowledges and agrees that it remains liable to fully perform its obligations under this Deed unless and until it has complied with its obligations under clause 16.1.
- 15.3 Clause 16.1 does not apply in relation to any sale or transfer of the Land if this Deed is registered on the title to the Land at the time of the sale.

## **Part 6 – Indemnities & Insurance**

### **16 Risk**

- 16.1 The Developer performs this Deed at its own risk and its own cost.

### **17 Release**

- 17.1 The Developer releases the Council from any Claim it may have against the Council arising in connection with the performance of the Developer's obligations under this Deed except if, and to the extent that, the Claim arises because of the Council's negligence or default.

### **18 Indemnity**

- 18.1 The Developer indemnifies the Council from and against all Claims that may be sustained, suffered, recovered or made against the Council arising in connection with the performance of the Developer's obligations under this Deed except if, and to the extent that, the Claim arises because of the Council's negligence or default.

## **Part 7 – Other Provisions**

### **19 Confidentiality**

- 19.1 The terms of this Deed are not confidential and this Deed may be treated as a public document and exhibited or reported without restriction by any Party.
- 19.2 The Parties acknowledge that:

## Battery Recycling Facility Planning Agreement

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- 19.2.1 Confidential Information may have been supplied to some or all of the Parties in the negotiations leading up to the making of this Deed, and
- 19.2.2 the Parties may disclose to each other further Confidential Information in connection with the subject matter of this Deed.
- 19.3 Subject to clause 20.4 and 20.5, each Party agrees:
  - 19.3.1 not to disclose any Confidential Information received before or after the commencement of this Deed to any person without the prior written consent of the Party who supplied the Confidential Information, and
  - 19.3.2 to take all reasonable steps to ensure all Confidential Information received before or after the commencement of this Deed is kept confidential and protected against unauthorised use and access.
- 19.4 A Party may disclose Confidential Information in the following circumstances:
  - 19.4.1 in order to comply with the Law, or
  - 19.4.2 to any of their employees, consultants, advisers, financiers or contractors to whom it is considered necessary to disclose the information, if the employees, consultants, advisers, financiers or contractors undertake to keep the information confidential.
- 19.5 The obligations of confidentiality under this clause do not extend to information which is public knowledge other than as a result of a breach of this clause.

## 20 Notices

- 20.1 Any notice, consent, information, application or request that is to or may be given or made to a Party under this Deed is only given or made if it is in writing and sent in one of the following ways:
  - 20.1.1 delivered or posted to that Party at its address set out in the Summary Sheet,
  - 20.1.2 faxed to that Party at its fax number set out in the Summary Sheet, or
  - 20.1.3 emailed to that Party at its email address set out in the Summary Sheet.
- 20.2 If a Party gives the other Party 3 business days' notice of a change of its address, fax number or email, any notice, consent, information, application or request is only given or made by that other Party if it is delivered, posted, faxed or emailed to the latest address or fax number.
- 20.3 Any notice, consent, information, application or request is to be treated as given or made if it is:
  - 20.3.1 delivered, when it is left at the relevant address,
  - 20.3.2 sent by post, 2 business days after it is posted,
  - 20.3.3 sent by fax, as soon as the sender receives from the sender's fax machine a report of an error free transmission to the correct fax number, or
  - 20.3.4 sent by email and the sender does not receive a delivery failure message from the sender's internet service provider within a period of 24 hours of the email being sent.

## **Battery Recycling Facility Planning Agreement**

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- 20.4 If any notice, consent, information, application or request is delivered, or an error free transmission report in relation to it is received, on a day that is not a business day, or if on a business day, after 5pm on that day in the place of the Party to whom it is sent, it is to be treated as having been given or made at the beginning of the next business day.

## **21 Entire Deed**

- 21.1 This Deed contains everything to which the Parties have agreed in relation to the matters it deals with.
- 21.2 No Party can rely on an earlier document, or anything said or done by another Party, or by a director, officer, agent or employee of that Party, before this Deed was executed, except as permitted by law.

## **22 Further Acts**

- 22.1 Each Party must promptly execute all documents and do all things that another Party from time to time reasonably requests to effect, perfect or complete this Deed and all transactions incidental to it.

## **23 Notations on section 149(2) Planning Certificates**

- 23.1 The Developer acknowledges that the Council may, in its absolute discretion, make a notation under section 149(5) of the Act regarding this Agreement on any certificate issued under section 149(2) of the Act relating to the Land, and is not to raise an objection, make any claim or demand or bring any action in that regard.

## **24 Governing Law and Jurisdiction**

- 24.1 This Deed is governed by the law of New South Wales.
- 24.2 The Parties submit to the non-exclusive jurisdiction of its courts and courts of appeal from them.
- 24.3 The Parties are not to object to the exercise of jurisdiction by those courts on any basis.

## **25 Joint and Individual Liability and Benefits**

- 25.1 Except as otherwise set out in this Deed:
- 25.1.1 any agreement, covenant, representation or warranty under this Deed by 2 or more persons binds them jointly and each of them individually, and
- 25.1.2 any benefit in favour of 2 or more persons is for the benefit of them jointly and each of them individually.

## **26 No Fetter**

- 26.1 Nothing in this Deed shall be construed as requiring Council to do anything that would cause it to be in breach of any of its obligations at law, and without limitation, nothing shall be construed as limiting or fettering in any way the exercise of any statutory discretion or duty.

## **27 Illegality**

- 27.1 If this Deed or any part of it becomes illegal, unenforceable or invalid as a result of any change to a law, the Parties are to co-operate and do all things necessary to ensure that an enforceable agreement of the same or similar effect to this Deed is entered into.

## **28 Severability**

- 28.1 If a clause or part of a clause of this Deed can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way.
- 28.2 If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this Deed, but the rest of this Deed is not affected.

## **29 Amendment**

- 29.1 No amendment of this Deed will be of any force or effect unless it is in writing and signed by the Parties to this Deed in accordance with clause 25C of the Regulation.

## **30 Waiver**

- 30.1 The fact that a Party fails to do, or delays in doing, something the Party is entitled to do under this Deed, does not amount to a waiver of any obligation of, or breach of obligation by, another Party.
- 30.2 A waiver by a Party is only effective if it:
- 30.2.1 is in writing,
  - 30.2.2 is addressed to the Party whose obligation or breach of obligation is the subject of the waiver,
  - 30.2.3 specifies the obligation or breach of obligation the subject of the waiver and the conditions, if any, of the waiver,
  - 30.2.4 is signed and dated by the Party giving the waiver.
- 30.3 Without limitation, a waiver may be expressed to be conditional on the happening of an event, including the doing of a thing by the Party to whom the waiver is given.
- 30.4 A waiver by a Party is only effective in relation to the particular obligation or breach in respect of which it is given, and is not to be taken as an implied

## Battery Recycling Facility Planning Agreement

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waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.

- 30.5 For the purposes of this Deed, an obligation or breach of obligation the subject of a waiver is taken not to have been imposed on, or required to be complied with by, the Party to whom the waiver is given.

## 31 GST

- 31.1 In this clause:

**Adjustment Note, Consideration, GST, GST Group, Margin Scheme, Money, Supply and Tax Invoice** have the meaning given by the GST Law.

**GST Amount** means in relation to a Taxable Supply the amount of GST payable in respect of the Taxable Supply.

**GST Law** has the meaning given by the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

**Input Tax Credit** has the meaning given by the GST Law and a reference to an Input Tax Credit entitlement of a party includes an Input Tax Credit for an acquisition made by that party but to which another member of the same GST Group is entitled under the GST Law.

**Taxable Supply** has the meaning given by the GST Law excluding (except where expressly agreed otherwise) a supply in respect of which the supplier chooses to apply the Margin Scheme in working out the amount of GST on that supply.

- 31.2 Subject to clause 52.4, if GST is payable on a Taxable Supply made under, by reference to or in connection with this Deed, the Party providing the Consideration for that Taxable Supply must also pay the GST Amount as additional Consideration.
- 31.3 Clause 52.2 does not apply to the extent that the Consideration for the Taxable Supply is expressly stated in this Deed to be GST inclusive.
- 31.4 No additional amount shall be payable by the Council under clause 52.2 unless, and only to the extent that, the Council (acting reasonably and in accordance with the GST Law) determines that it is entitled to an Input Tax Credit for its acquisition of the Taxable Supply giving rise to the liability to pay GST.
- 31.5 If there are Supplies for Consideration which is not Consideration expressed as an amount of Money under this Deed by one Party to the other Party that are not subject to Division 82 of the *A New Tax System (Goods and Services Tax) Act 1999*, the Parties agree:
- 31.5.1 to negotiate in good faith to agree the GST inclusive market value of those Supplies prior to issuing Tax Invoices in respect of those Supplies;
- 31.5.2 that any amounts payable by the Parties in accordance with clause 52.2 (as limited by clause 52.4) to each other in respect of those Supplies will be set off against each other to the extent that they are equivalent in amount.
- 31.6 No payment of any amount pursuant to this clause 52, and no payment of the GST Amount where the Consideration for the Taxable Supply is expressly

## **Battery Recycling Facility Planning Agreement**

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agreed to be GST inclusive, is required until the supplier has provided a Tax Invoice or Adjustment Note as the case may be to the recipient.

- 31.7 Any reference in the calculation of Consideration or of any indemnity, reimbursement or similar amount to a cost, expense or other liability incurred by a party, must exclude the amount of any Input Tax Credit entitlement of that party in relation to the relevant cost, expense or other liability.
- 31.8 This clause continues to apply after expiration or termination of this Deed.

### **32 Explanatory Note**

- 32.1 The Appendix contains the Explanatory Note relating to this Deed required by clause 25E of the Regulation.
- 32.2 Pursuant to clause 25E(7) of the Regulation, the Parties agree that the Explanatory Note is not to be used to assist in construing this Deed.

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**DRAFT**

**Battery Recycling Facility Planning Agreement**

**Cessnock City Council**

**Pymore Recyclers International Pty Ltd**

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**Schedule 1**

(Clause 1.1)

<b>Item 1</b>	<b>Land</b>	The land identified as such on the Map
<b>Item 2</b>	<b>Development</b>	The development of a Battery Recycling Facility.
<b>Item 3</b>	<b>Application of S94</b>	Section 94 of the Act is excluded for the purpose of a Battery Recycling Facility
<b>Item 4</b>	<b>Application of S94A</b>	Section 94A of the Act is excluded for the purpose of a Battery Recycling Facility
<b>Item 5</b>	<b>Application of S94EF</b>	Section 94EF of the Act is not excluded
<b>Item 6</b>	<b>Whether the Benefits under this Deed are to Taken in Consideration in determining a Development Contribution under s94</b>	No

**Schedule 2**

(Clause 9)

**Development Contributions**

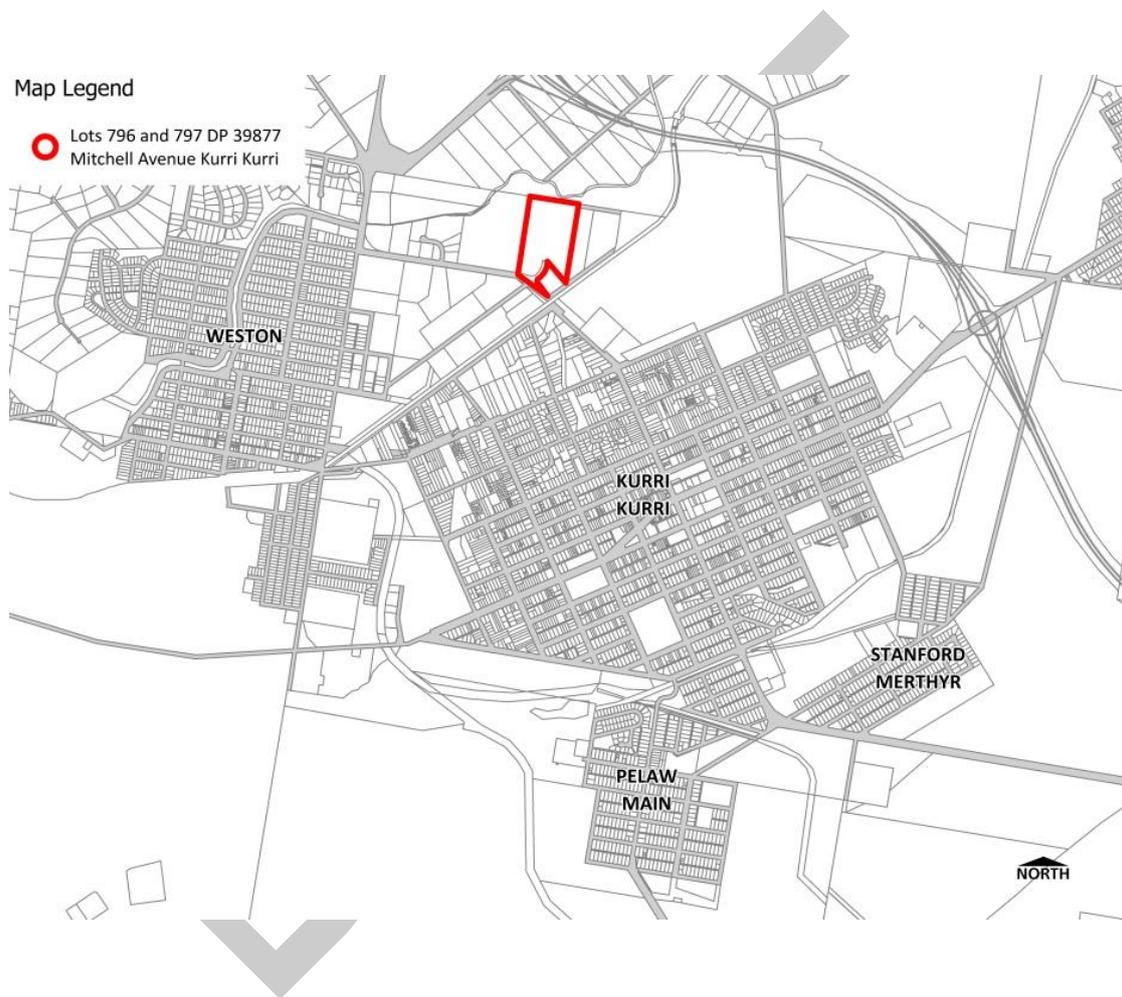
Table

<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>	<b>Column 4</b>
<b>Item</b>	<b>Public Purpose</b>	<b>Manner and Extent</b>	<b>Timing</b>
1.	Public Domain Works – Kurri Kurri/Weston Masterplans 2017	\$50,000 in a lump sum	Within one month of the commencement of operations of the first furnace
2.	Public Domain Works – Kurri Kurri/Weston Masterplans 2017	\$50,000 in a lump sum	Within one month of the commencement of operations of the second furnace
3.	Public Domain Works – Kurri Kurri/Weston Masterplans 2017	\$50,000 in a lump sum	Within one month of the first anniversary of the commencement of operations of the second furnace

## Schedule 3

(Clause 1.1)

### Map



**Battery Recycling Facility Planning Agreement**

**Cessnock City Council**

**Pymore Recyclers International Pty Ltd**

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**Execution**

**Executed as a Deed**

**Dated:**

---

**Executed on behalf of the Council**

---

**General Manager**

---

**Witness**

---

**Executed on behalf of the Developer** in accordance with s127(1) of the Corporations Act (Cth) 2001

---

**Name/Position**

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**Name/Position**

## **Appendix**

(Clause 32)

*Environmental Planning and Assessment Regulation 2000*

(Clause 25E)

## **Explanatory Note**

### **Draft Planning Agreement**

Under s93F of the *Environmental Planning and Assessment Act 1979*

### **Parties**

**Cessnock City Council** ABN 60 919 148 928 of 62-78 Vincent Street, CESSNOCK NSW 2325 (**Council**)

**Pymore Recyclers International Pty Ltd** ACN of Governor Macquarie Tower Level 40, 1 Farrer Place SYDNEY NSW 2000 (**Developer**)

### **Description of the Land to which the Planning Agreement Applies**

Lots 796 and 797 DP 39877 Mitchell Avenue Kurri Kurri

### **Description of Proposed Development**

The developer proposes to construct and operate a Battery Recycling Facility.

### **Summary of Objectives, Nature and Effect of the Draft Planning Agreement**

#### **Objectives of Draft Planning Agreement**

## Battery Recycling Facility Planning Agreement

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The objective of this Planning Agreement is to contribute funds for public domain infrastructure works in the commercial areas of Kurri Kurri and Weston in accordance with existing masterplans.

### **Nature and Effect of the Draft Planning Agreement**

The Draft Planning Agreement:

- relates to the carrying out of the Development (as defined in clause 1.1 of the Draft Planning Agreement) on the Land by the Developer,
- provides an allocation of funds based on specified timeframes for allocation towards public domain works in Kurri Kurri and Weston,
- exclude the application of s94, s94A or s94EF of the Act to the Development, and
- imposes restrictions on the Parties transferring the interest under the agreement,

### **Assessment of the Merits of the Draft Planning Agreement**

#### **The Planning Purposes Served by the Draft Planning Agreement**

The Draft Planning Agreement:

- allows the new developer to the area to provide an additional community benefit through the funding of public domain works in close proximity to the new plant ,
- provides increased opportunity for public involvement and participation in environmental planning and assessment of the Development,

#### **How the Draft Planning Agreement Promotes the Public Interest**

The draft Planning Agreement promotes the public interest by promoting the objects of the Act as set out in s5 (a) of the Act.

#### **For Planning Authorities:**

##### ***Development Corporations - How the Draft Planning Agreement Promotes its Statutory Responsibilities***

Not applicable

##### ***Other Public Authorities – How the Draft Planning Agreement Promotes the Objects (if any) of the Act under which it is Constituted***

Not applicable

##### ***Councils – How the Draft Planning Agreement Promotes the Principles for Local Government Contained in Chapter 3 of the Local Government Act 1993***

The Draft Planning Agreement promotes the principles for local government by:

**Battery Recycling Facility Planning Agreement**

**Cessnock City Council**

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- keeping the local and wider community informed about its activities,

***All Planning Authorities – Whether the Draft Planning Agreement Conforms with the Authority’s Capital Works Program***

Yes

***All Planning Authorities – Whether the Draft Planning Agreement specifies that certain requirements must be complied with before a construction certificate, occupation certificate or subdivision certificate is issued***

Not Applicable

DRAFT

Attachment D  
Response by Ramboll Environ to EPA comments

Brett McLennan  
 EMM Consulting Pty Ltd  
 PO Box 21  
 St Leonards NSW 1590

**KURRI KURRI BATTERY RECYCLING FACILITY – AIR QUALITY AND  
 GREENHOUSE GAS ASSESSMENT – RESPONSE TO NSW EPA  
 SUBMISSION COMMENTS**

Dear Brett,

This letter has been prepared in response to submission comments from NSW Environment Protection Authority Air Technical Advisory Services Unit (NSW EPA ATASU) dated 20 March 2017 (the EPA submission) relating to the air quality impact assessment (AQIA) completed by Ramboll Environ Australia Pty Ltd (Ramboll Environ) for the proposed Kurri Kurri Battery Recycling Facility (the facility).

Five issues were listed in the EPA submission requiring additional information for response.

**Issue 1, 2 and 3**

The first three issues listed by the NSW EPA ATASU in the EPA submission have the following recommendations:

*Issue 1 - Provide supporting manufacturer's specifications, calculations or emission guarantees to demonstrate the assessment has been based on potential worst case emissions.*

*Issue 2 and 3 - Provide the manufacturer's specifications, calculations or guarantees that the assessed discharge concentrations of sulphur dioxide are the maximum concentrations for peak 1 hour averaging and batch averaging periods.*

These two submissions are related and will be addressed at the same time.

The AQIA quantified air quality impacts from the proposed facility operating during Phase 2 of the project (i.e. two rotary furnaces in operation). The emission concentrations for each stack source provided by the Proponent relate to batch average emissions. Based on further information provided by the Proponent, concentrations of SO<sub>2</sub> and NO<sub>x</sub> have the potential to fluctuate throughout a batch.

The following input was provided by the engineer engaged by the proponent, Engitec Technologies SpA, relating to the fluctuation of emissions by batch:

- SO<sub>2</sub> emissions: during a 6-hour processing batch, the total weight of SO<sub>2</sub>

Date 22/05/2017

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Ref AS121999

released to the atmosphere will be:  $2.2 \times 3,600 \times 6 = 47,520\text{g}$  (Engitec guaranteed maximum emission amount). During the worst hour of the batch, the amount of  $\text{SO}_2$  released might have one or more sub-hourly peaks reaching approximately 2.5 times the 6-hour batch average of 2.2 g/s. Based on data Engitec has recorded of the process technology, the average concentration during the worst hour might range between 3.3 and 4 g/s (i.e. 1.5 to 1.8 times the batch average  $\text{SO}_2$  emission rate of 2.2g/s);

- $\text{NO}_x$  emissions:  $\text{NO}_x$  emissions during a batch have lower fluctuation than  $\text{SO}_2$ , however fluctuation will occur over the 6-hour batch period. Based on Engitec monitoring, peak 1-hour average emissions may be 30% above the batch average emission rate.

Therefore, the emissions assessed in the AQIA do not equate to worst case 1-hour emissions. In order to assess worst-case 1-hour impacts from the proposed facility, the  $\text{SO}_2$  and  $\text{NO}_x$  emission rates from the rotary furnace sources (source C-720 and C-720A) have been increased by a factor of 1.8 for  $\text{SO}_2$  and 1.3 for  $\text{NO}_x$ . This equates to the following emission rates:

- $\text{SO}_2$ : 3.91 g/s (C-720) and 4.04 g/s (C-720A); and
- $\text{NO}_x$ : 4.58 g/s (C-720) and 4.74 g/s (C-720A).

A guarantee of the peak 1-hour emission rates from Engitec is provided in Appendix 1. It is reminded that the above increased emission rates include the separately quantified natural gas combustion emissions and are therefore higher than the Engitec guarantee. Consequently, the revised modelling results should be viewed as conservatively high.

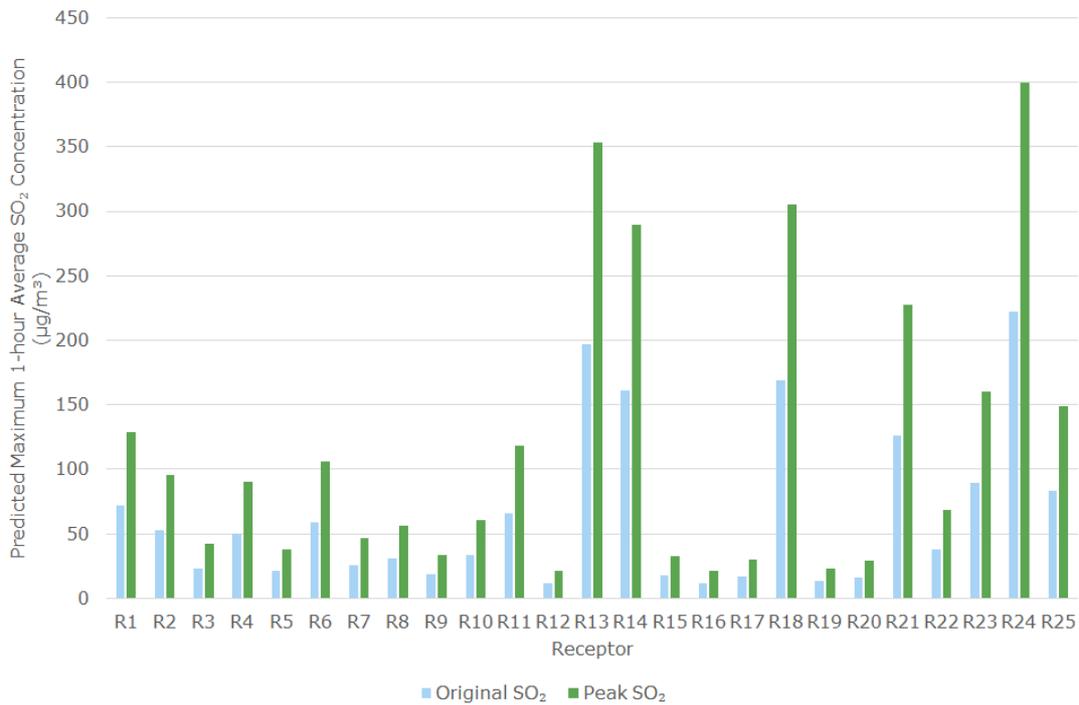
Using the increased emission rates, the dispersion modelling conducted for the AQIA has been revised to predict maximum incremental and cumulative  $\text{SO}_2$  and  $\text{NO}_2$  concentrations associated with the proposed facility. Consistent with the AQIA, concentrations of  $\text{NO}_2$  were derived from predicted  $\text{NO}_x$  concentrations through the application of the OLM for  $\text{NO}_x$  to  $\text{NO}_2$  conversion.

The results of the modelling for  $\text{SO}_2$  and  $\text{NO}_2$  are presented in **Table 1**. The results presented are for project-only increment and cumulative, accounting for emissions from the adjacent Weston Aluminium facility and ambient background concentrations.

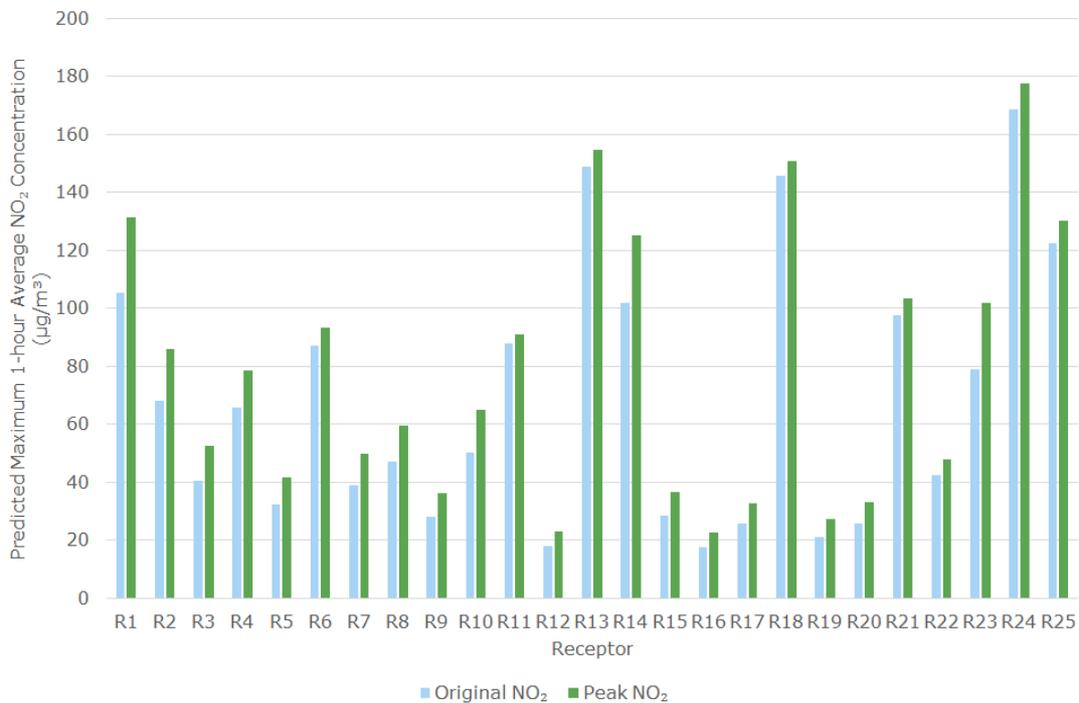
It can be seen from the results presented in **Table 1** that even with worst case 1-hour average emission rates applied, resultant ground level concentrations of  $\text{NO}_2$  and  $\text{SO}_2$  are below applicable ambient air quality criteria at all surrounding receptors.

The difference in predicted  $\text{SO}_2$  and  $\text{NO}_2$  concentrations from the original AQIA and the peak 1-hour emission modelling are presented in **Figure 1** and **Figure 2** respectively. It is noted that difference for  $\text{NO}_2$  concentrations is less than the 1.3 rate increase at some receptors. This is attributable to the OLM  $\text{NO}_x$  to  $\text{NO}_2$  conversion approach applied.

<b>Table 1: Predicted facility-only increment concentrations and deposition rates</b>				
<b>Assessment location</b>	<b>Predicted maximum 1-hour average concentrations (<math>\mu\text{g}/\text{m}^3</math>) – peak hourly emissions</b>			
	<b>SO<sub>2</sub> - Project only</b>	<b>SO<sub>2</sub> Cumulative</b>	<b>NO<sub>2</sub> - Project only</b>	<b>NO<sub>2</sub> Cumulative</b>
R1	129.0	217.7	131.6	167.4
R2	95.5	263.8	86.0	129.5
R3	42.1	218.6	52.5	114.9
R4	90.3	225.2	78.7	124.8
R5	37.6	219.7	41.9	101.3
R6	106.3	272.4	93.3	145.5
R7	46.7	237.8	49.7	100.8
R8	56.2	246.7	59.5	113.0
R9	33.7	227.7	36.3	132.9
R10	60.9	242.6	65.0	159.7
R11	118.5	289.8	91.2	173.1
R12	21.5	215.9	22.9	97.1
R13	353.6	372.0	154.8	226.1
R14	289.6	303.8	125.3	191.7
R15	32.7	216.7	36.7	100.3
R16	21.3	215.8	22.8	97.0
R17	29.7	216.6	32.9	101.3
R18	304.9	325.9	150.7	213.2
R19	23.4	216.8	27.4	100.0
R20	28.9	216.2	33.0	102.2
R21	227.2	229.9	103.6	133.7
R22	68.6	216.1	47.9	102.9
R23	160.5	216.4	102.0	152.3
R24	400.0	418.4	177.7	222.9
<b>Criteria</b>	<b>570</b>		<b>246</b>	



**Figure 1: Comparison of predicted maximum project-only increment 1-hour average SO<sub>2</sub> concentrations - original AQIA modelling vs revised peak-hourly emissions scenario**



**Figure 2: Comparison of predicted maximum project-only increment 1-hour average NO<sub>2</sub> concentrations (with OLM conversion) - original AQIA modelling vs revised peak-hourly emissions scenario**

**Issue 4**

*Provide the detailed supporting calculations on the assessment of arsenic, and provide clarification to justify why predicted impacts have not significantly changed, however emission rates have changed by 2 orders of magnitude.*

As per the Response to Submissions, the emissions of arsenic were increased for sources C-720 and C-720A to correct an error in the AQIA. As noted by NSW EPA ATASU, while the emissions of arsenic increased by two orders of magnitude, the predicted arsenic impacts do not change significantly. To investigate this occurrence in detail, Ramboll Environ reviewed the individual source contribution to ground level concentrations and identified that the key emission source for arsenic impacts was C-530, accounting for approximately 99% of ground level concentrations at the worst case affected receptor (R24). The emissions from this dominant source remained unchanged from the previous modelling and therefore concentrations did not significantly change despite the revision to emissions from C-720 and C-720A. It is considered that the higher exit temperature and release velocity of sources C-720 and C-720A are a key factor in these results.

Further, Engitec have advised that the flue dust of a similar Canadian-based facility was recently tested and showed an arsenic concentration of 260ug/g, or 0.026%. The dispersion modelling was originally conducted using an arsenic content of 0.2% (Section 6.1 of the AQIA). Consequently, the arsenic emissions and resultant ground level concentrations presented in the AQIA should be viewed as highly conservative.

**Issue 5**

*A condition of consent that prior to construction and operation of the proposal, a detailed Best Management Practice report that demonstrates the management and mitigation measures are in line with IPPC (2016).*

The Proponent agrees to the adoption of this condition of consent and commits to the undertaking of a Best Management Practice report should the project be approved.

Yours sincerely



**Scott Fishwick**

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**APPENDIX 1 – Emission guarantee from Engitec Technologies SpA**



**Engitec Technologies S.p.A.**

Via Borsellino e Falcone 31  
20026 Novate Milanese (MI) • Italy

To all concerned:

With regards the battery recycling equipment and process which EGT will install at the Pymore Recycling International factory in Kurri-Kurri, the following emission data are expected. These are based on our design parameters and studies conducted on similar equipment.

SO <sub>2</sub> average emission on 6 hours batch	:	2.2g/sec
SO <sub>2</sub> peak emission on one hour basis	:	4g/sec
NO <sub>x</sub> average emission on 6 hrs basis	:	3g/sec
NO <sub>x</sub> peak emission on one hour basis	:	4g/sec

Adherence to proper operating procedures and compliance to design protocol will ensure emission data not exceeding the above.

*May 10, 2017*

Kind Regards



**Engitec Technologies S.p.A.**

Massimo Sbrosi

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