

Explanatory Note
Minister for Planning and Public Spaces (ABN 20 770 707 468)
and
Hydro Aluminium Kurri Kurri Pty Ltd (ABN 55 093 266 221)
Draft Planning Agreement

Introduction

The purpose of this explanatory note is to provide a plain English summary to support the notification of the draft planning agreement (the **Planning Agreement**) prepared under Subdivision 2 of Division 7.1 of Part 7 of the *Environmental Planning and Assessment Act 1979* (the **Act**).

This explanatory note has been prepared jointly by the parties as required by clause 25E of the *Environmental Planning and Assessment Regulation 2000* (the **Regulation**).

Parties to the Planning Agreement

The parties to the Planning Agreement are the Minister for Planning and Public Spaces (ABN 20 770 707 468) (**Minister**) and Hydro Aluminium Kurri Kurri Pty Ltd (ABN 55 093 266 221) (the **Developer**).

Description of the Subject Land

The Planning Agreement applies to Lot 3 in Deposited Plan 456769, Lot 16 in Deposited Plan 1082775, Lots 318, 319, 411, 412, 413, 414, 420, and 769 in Deposited Plan 755231, and Lots 1 and 2 in Deposited Plan 456769.

Description of the Development

The Developer proposes to develop the Land to remediate the former Hydro Kurri Kurri Aluminium smelter site including excavation of onsite contaminated areas, excavation and treatment of capped waste stockpile (**CWS**) material, construction of a purpose built containment cell, placement of contaminated materials in the containment cell, treatment of CWS leachate and the contaminated groundwater plume beneath the CWS and ongoing management of the containment cell in perpetuity, generally in accordance with State Significant Development Application No. SSD 6666 lodged with the Department of Planning, Industry and Environment (**Development**).

As part of the Development, the Developer proposes to construct a containment cell (**Containment Cell**).

The Developer has made an offer to the Minister to enter into the Planning Agreement in connection with the Development and to provide and secure development contributions in order to facilitate the remediation of the Land.

Summary of Objectives, Nature and Effect of the Planning Agreement

The Planning Agreement provides that the Developer will make a development contribution by providing:

- a Monetary Contribution of \$6,500,000 for the purpose of ensuring environmental protection measures for the perpetual care of the Containment Cell and associated infrastructure on the land on which the Containment Cell is to be constructed (**Containment Cell Land**). The Monetary Contribution is payable no later than 14 days from the “Remediation Works Completion Date”.
- a Containment Cell Contribution, which involves:
 - management and maintenance by the Developer of the Containment Cell up to and during the Management Period (being not less than 5 years from the date of completion of the remediation works) in accordance with the Long Term Environmental Management Plan; and
 - construction of the Access Road (from the Containment Cell Land to the nearest public road),
- a Remediation Works Construction Contribution, which consists of the Developer undertaking the Remediation Works on the Land (which includes the construction of the Containment Cell) within 4 years from the date of the Remediation Consent.

The Developer is required to transfer the Containment Cell Land to the Minister free of cost at the end of the Management Period. The Developer is required to engage an independent engineer to inspect and certify that certain aspects of the Remediation Works (principally the construction of the Containment Cell) is in accordance with the Planning Agreement, the Remediation Consent and all applicable laws and standards.

The Developer is required to provide security in the form of a Monetary Contribution Bank Guarantee for \$6,500,000, an Initial Period Bank Guarantee for \$1,000,000 and a series of staged bank guarantees for the Remediation Works in the respective sums of \$4,000,000, \$8,000,000, \$13,000,000 and \$5,000,000. The Developer is also required to register the Planning Agreement on the title of the Land in accordance with section 7.6 of the Act.

The Developer is required to procure, fund and maintain insurance in relation to the Containment Cell for a period of 10 years following the transfer of the Containment Cell Land to the Minister.

The objective of the Planning Agreement is to secure the Developer’s delivery of the Development Contribution.

No relevant capital works program by the Minister is associated with this agreement.

Assessment of Merits of Planning Agreement

The Planning Purpose of the Planning Agreement

In accordance with section 7.4(2) of the Act, the Planning Agreement is for the public purpose of the provision of (or the recoupment of the cost of providing) public amenities or public services and the conservation and enhancement of the natural environment.

The Minister and the Developer have assessed the Planning Agreement and both hold the view that the provisions of the Planning Agreement provide a reasonable means of achieving the public purpose set out above. This is because it will ensure that the Developer makes the Development Contribution.

How the Planning Agreement Promotes the Public Interest

The Planning Agreement promotes the public interest by ensuring that the environment is protected by facilitating the on-going and long term management of the Containment Cell and the carrying out of the Remediation Works in a timely manner.

The effective long term management of the Containment Cell and Remediation Works will provide a platform to facilitate the rezoning and redevelopment of the Land and its vicinity for a variety of purposes, including employment-generating industrial development.

How the Planning Agreement Promotes the Objects of the Act

The Planning Agreement promotes the objects of the Act by:

- (i) section 1.3(a) – to "promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources";
- (ii) section 1.3(c) – to "promote the orderly and economic use and development of land"; and
- (iii) section 1.3(e) – to "protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats"

Requirements relating to Construction, Occupation and Subdivision Certificates

The Planning Agreement does not contain any restrictions on the issue of a Construction Certificate, Occupation Certificate or Subdivision Certificate.