



11 December 2020

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

Copies

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

Dear Minister

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

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

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

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

Yours faithfully,  
for Hydro Aluminium Kurri Kurri Pty Limited

A handwritten signature in dark ink, appearing to read 'Richard Brown', with a long horizontal flourish extending to the right.

Richard Brown  
Managing Director  
richard.brown@hydro.com

**Encl.**

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Australia

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**HOLDING REDLICH**

**Dated**

**2020**

## **Planning Agreement**

### **Environmental Planning and Assessment Act 1979**

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

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

**Sydney . Melbourne . Brisbane . Cairns**

**[www.holdingredlich.com](http://www.holdingredlich.com)**

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This Planning Agreement is dated

2020

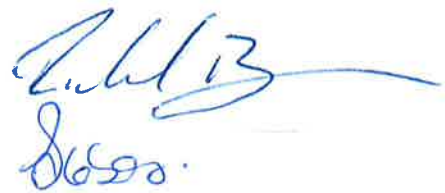
**Parties:**

**Minister**

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

**Developer**

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



**Introduction:**

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

**It is agreed:**

**1. Definitions and interpretation**

**1.1 Definitions**

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

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

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

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

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

**Access Road Land** means:

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

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

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

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

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

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

**Bank Guarantee** means an irrevocable and unconditional undertaking:

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

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

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

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

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

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

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

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

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

**Construction Certificate** has the same meaning as in the Act.

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

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

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

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

**Containment Cell Contribution** means the:

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

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

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

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

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

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

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

**Contamination** has the same meaning as in the CLM Act.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**NSW EPA** means the NSW Environment Protection Authority.

**Planning Application** means:

- (a) a Development Application; or



(b) any other application required under the Act.

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

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

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

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

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

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

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

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

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

**Remediation Consent** means any Development Consent granted for the Development.

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

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

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

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

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

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

**Secretary** means the Secretary of the Department.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## 1.2 Interpretation

In this deed unless the context clearly indicates otherwise:

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

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

## 2. Operation and application of this deed

### 2.1 Operation

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

## **2.2 Planning agreement under the Act**

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

## **2.3 Application**

This deed applies to:

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

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

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

## **4. Development Contributions**

### **4.1 Developer to provide Development Contributions**

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

### **4.2 Acknowledgement**

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

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

## **5. Interest**

### **5.1 Interest for late payment**

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

## **6. Enforcement**

### **6.1 Compulsory Acquisition**

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

### **6.2 Developer to provide Security**

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

## **7. Registration**

### **7.1 Registration of deed**

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

### **7.2 Evidence of registration**

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

### **7.3 Release and discharge of deed**

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

### **7.4 Developer's interest in Land**

The Developer represents and warrants that it is:

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

## **8. Dispute Resolution**

### **8.1 Not commence**

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

### **8.2 Written notice of dispute**

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

### **8.3 Attempt to resolve**

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

#### **8.4 Mediation**

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

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

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

#### **8.5 Court proceedings**

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

#### **8.6 Not use information**

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

#### **8.7 No prejudice**

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

### **9. GST**

#### **9.1 Definitions**

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

#### **9.2 Intention of the parties**

The parties intend that:

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

#### **9.3 Reimbursement**

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

#### 9.4 Consideration GST exclusive

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

#### 9.5 Additional Amounts for GST

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

#### 9.6 Non monetary consideration

Clause 9.5 applies to non-monetary consideration.

#### 9.7 Assumptions

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

#### 9.8 No merger

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

### 10. Assignment and transfer

#### 10.1 Right to assign or novate

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



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

## **10.2 Right to transfer Land**

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

## **10.3 Replacement Security**

Provided that:

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

the Minister will promptly return the Security to the Developer.

## **11. Capacity**

### **11.1 General warranties**

Each party warrants to each other party that:

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

### **11.2 Power of attorney**

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

## **12. Reporting requirement**

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

### **13. General Provisions**

#### **13.1 Entire deed**

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

#### **13.2 Variation**

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

#### **13.3 Waiver**

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

#### **13.4 Further assurances**

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

#### **13.5 Time for doing acts**

(a) If:

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

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

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

#### **13.6 Governing law and jurisdiction**

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

#### **13.7 Severance**

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

#### **13.8 Preservation of existing rights**

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

### **13.9 No merger**

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

### **13.10 Counterparts**

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

### **13.11 Relationship of parties**

Unless otherwise stated:

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

### **13.12 Good faith**

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

### **13.13 No fetter**

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

### **13.14 Explanatory note**

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

### **13.15 Expenses and stamp duty**

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

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

### 13.16 Notices

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

## Schedule 1

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

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

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

**Table 2 – Other matters**

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

## Schedule 2 Address for Service

(clause 1.1)

**Minister**

**Contact:** The Secretary

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

**Facsimile No:** Not applicable

**Email:** [planningagreements@planning.nsw.gov.au](mailto:planningagreements@planning.nsw.gov.au)

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

**Contact:** The Directors

**Address:** Hart Road, Loxford NSW 2326

**Facsimile No:** Not applicable

**Email:** [kurri@hydro.com](mailto:kurri@hydro.com)

**Landowner and Developer's Legal Adviser**

Gilbert + Tobin

**Contact:** Practice Group Leader, Real Estate + Projects Group

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

**Facsimile No:** (02) 9263 4111

**Email:** [info@gtlaw.com.au](mailto:info@gtlaw.com.au)



### Schedule 3 Land

(clause 1.1)

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

## Schedule 4 Development Contributions

(clause 4)

### 1. Development Contributions

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

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

### 2. Monetary Contribution

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

### 3. Remediation Works and Containment Cell Contribution

#### 3.1 Developer's obligations

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

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

### 3.2 Remediation Works Completion Date

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

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

### 3.3 Management of the Containment Cell

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

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

### 3.4 Access Road

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

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

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

### 3.5 Subdivision of the Containment Cell Land

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

### 3.6 Transfer of the Containment Cell Land

- (a) On a date that is:

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

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

the Developer agrees to deliver to the Minister:

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

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

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



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

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

### 3.7 Insurance

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

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

### 3.8 Compulsory Acquisition

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

## Schedule 5 Security terms

(clause 6.2)

### 1. Developer to provide Security

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

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

### 2. Claims under Bank Guarantees

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

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

(c) If:

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

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

### **3. Release of Security**

#### **3.1 Release of the Monetary Contribution Bank Guarantee**

If:

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

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

#### **3.2 Release of the Initial Period Bank Guarantee**

If:

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

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

## **Schedule 6 Remediation Works**

### **1. Remediation Works**

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

### **2. Scope of Works**

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

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

### 3. Independent Engineer

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

### 4. Developer to provide Security

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

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

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

## 5. Extension of the Date for Completion

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

## 6. Certification and Completion of the Remediation Works

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

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

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

## 7. Claims under Bank Guarantees

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



(f) If:

- (i) the Minister calls upon a Security; and
- (ii) applies all or part of such monies towards the costs and expenses incurred by the Minister in rectifying any default by the Developer under this deed; and
- (iii) has notified the Developer of the call upon the Security in accordance with clause 7(e) of this Schedule 6,

then the Developer must provide the Minister with a replacement Security to ensure that, at all times, until the date the Security is released in accordance with clause 8 of this Schedule 6, the Minister is in possession of Security for a face value equivalent to the relevant Security required to be provided in accordance with clause 4 of this Schedule 6.

(g) Regardless of whether a dispute exists regarding the circumstances in which a demand on a Bank Guarantee can be made, the Developer must not take any steps to prevent or restrain:

- (i) the Minister making a demand on the Bank Guarantees;
- (ii) the issuer of a Bank Guarantee from making a payment under the Bank Guarantee; or
- (iii) the Minister using any proceeds of any demand on a Bank Guarantee.

(h) Where the Minister has converted a Bank Guarantee into money, any interest earned on such monies shall be retained by the Minister.

(i) The Minister is not obliged to hold amounts realised on the demand on a Bank Guarantee in any definable account.

(j) The Minister does not hold amounts realised on the demand on a Bank Guarantee on trust for the Developer and the Developer does not have ownership of, or any proprietary interest in, such amounts.

## **8. Release of Security**

### **8.1 Release of the Remediation Works Bank Guarantee 1**

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

### **8.2 Release of the Remediation Works Bank Guarantee 2**

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

### **8.3 Release of the Remediation Works Bank Guarantee 3**

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

### **8.4 Release of the Remediation Construction Works Bank Guarantee 4**

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

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

## **9. Right of entry**

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

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

## Schedule 7 Scope of Works

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(ABN 55 093 266 221)  
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Facsimile: +61 2 4937 4595  
Web: [www.hydro.com](http://www.hydro.com)

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Project:

## **HAKK Demolition and Remediation Project**

Package:

## **Containment Cell Construction & Site Remediation**

## **CONTRACT SR2018-001 Annexure Part H**

Document:

## **Scope of Work Section 1 of 6 Overview**

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12<sup>th</sup> September 2019

Revision 0

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

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## Acronyms and Glossary

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



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

## A. USING THE SCOPE OF WORK DOCUMENTS

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

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

- References to the Contract will be taken to mean the Contract to which the Scope of Work is attached.
- To the extent there is any inconsistency between the Scope of Work and the General Conditions of the Contract, the General Conditions of the Contract will prevail.
- Terms used in the Scope of Work, which are defined in the General Conditions of the Contract, will have the meaning given to them in the General Conditions of the Contract. Terms which are used in the Scope of Work, which are not defined in the General Conditions of the Contract, but which are defined in any part of the Scope of Work, will have the meaning given to them in the Scope of Work.
- Unless the Scope of Work expressly states that an activity, task, item or obligation is to be supplied or carried out by the Principal, all activities, tasks, items and obligations are to be supplied or carried out by the Contractor at its own cost.
- The Scope of Work will be read and interpreted in accordance with the rules of interpretation set out in clauses 1 and 2 of the General Conditions of the Contract and, to the extent the following is not inconsistent with clauses 1 and 2 of the General Conditions of the Contract:
  - Where measurements or quantities are stated, the measurements and quantities shall be interpreted as approximate only and are not exact unless expressly stated as being 'exact'. The Contractor shall make all allowances considering the approximate nature of measurements and quantities.
  - For the majority of materials' volumetric quantities, in metric cubic metres (m<sup>3</sup>), the quantities given are from in-situ measurements and volumes are calculated from these measurements. The quantities used in this Scope of Works, prior to their movement from their stored location, is "Bank Cubic Metre", being a cubic metre of material in-situ and before being moved. The acronym "BCM" is used and not m<sup>3</sup>.
  - The quantities used in this Scope of Works, following their placement and compaction in the Engineered Containment Cell, is "Compacted Cubic Metre", being a cubic metre of material placed and compacted in its final location. The acronym "CCM" is used and not m<sup>3</sup>.
  - For materials' weight quantities, in metric tonnes, an estimate of 1.8 tonne per BCM has been used and is an estimate only. In-situ materials may be more or less than 1.8 tonnes per BCM.
  - The Contractor shall calculate their own volumes and tonnage for the purposes of materials handling (Loose Cubic Metres), and for adding Gypsum (Loose tonnes).
- The words 'include', 'includes' and 'including' shall not be limiting.
- 'Section', 'Appendix', and 'Attachment' refers to a section, appendix or attachment of this suite of Scope documents.
- Where the Scope of Work document (including its attachments) contains representations, the Contractor must not rely upon those representations and must

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

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

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

## 1. INTRODUCTION

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

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

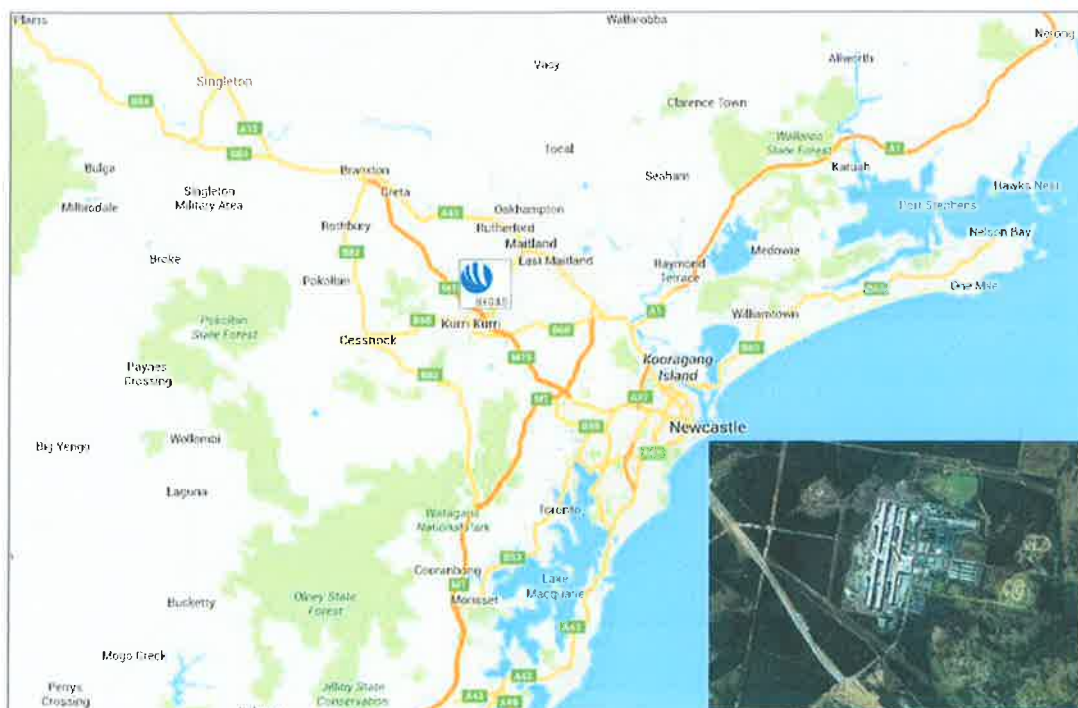
It is the Principal’s strategic vision for the Hydro land to play a key role in allowing the Hunter Region to achieve the economic, employment and environmental objectives identified in the NSW Government NSW State Plan 2021 and the Hunter Regional Plan 2036. Hydro aims to achieve this strategic vision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

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

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

## 2. Site and Location

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



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



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

Key roads in the vicinity of the Site are:

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

### 3. General

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

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

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

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

### 4. Determination of all Material Quantity

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

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

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## 5. METHODS OF MEASUREMENT OF QUANTITIES

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

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

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

## 6. Timing of the Project Approval Conditions

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

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

The Works will comprise 2 distinct Separable Portions, being:

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

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

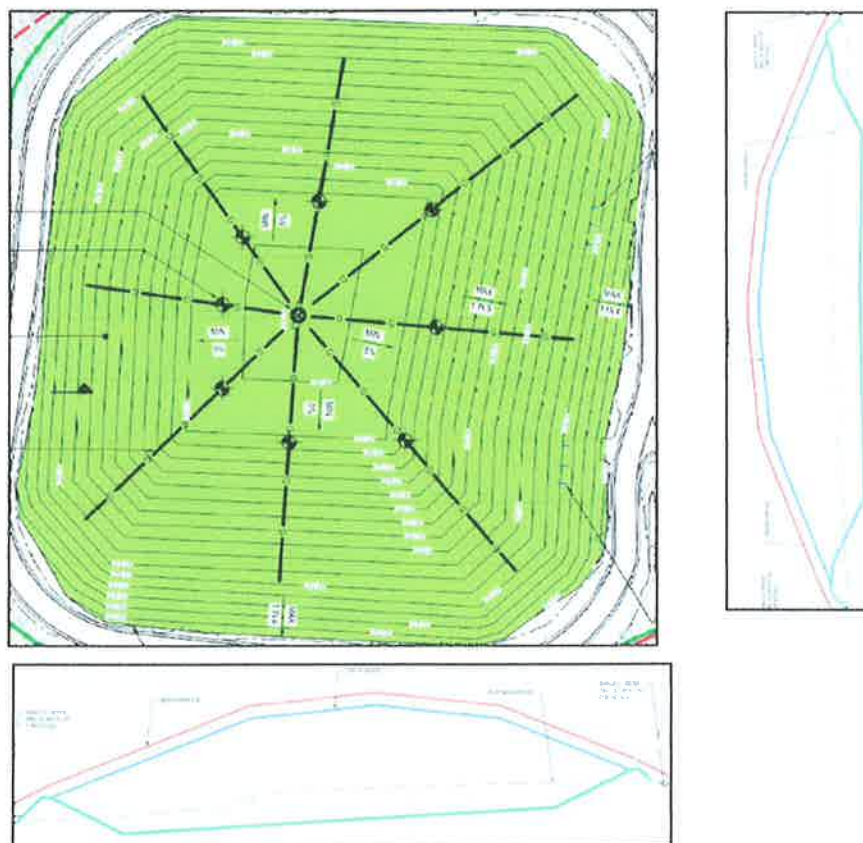
## 7. Hierarchy of Approvals

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

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

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

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



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

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

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

- **Separable Portion 1 (SP1) Preliminaries, Approvals & Temporary Works**
  - the preparation, issue and approval of management plans for the Works;
  - the preparation, issue and approval of a construction program for the Works, incorporating the approved management plans in so far as they affect the planned progress of the Works;
  - the completion of pre-qualification submissions for the materials specified for incorporation into the Works;
  - the submission of requests for approval of suppliers for specified materials;
  - the submission of requests for the approval for the engagement of subcontractors for the Works, including liner installation and liner integrity testing;
  - the completion of detailed Works Method Statements for the ECC and for each specific element of the Works. The Superintendent's approval of these plans shall be provided in support of the Contractor's approved program;
  - the provision of Site access by the Principal for the Contractor's inspection and planning for their temporary facilities;
  - the creation of Temporary Stockpile areas for the collection of 'clean' materials, provided these areas do not require removal of native vegetation or disturbance of Aboriginal heritage items;
  - the creation of accessways to all Temporary Stockpiles and waste material stockpiles within the Smelter footprint, provided that no 'new' roads are included;
  - the relocation of existing stockpiles to new Temporary Stockpiles for later use;
  - the installation of a temporary truck-weighing facility, at or near the Capped Waste Stockpile (CWS), for the weighing of project vehicles and the determination of material transported to the ECC, and the determination of Gypsum Additive quantities required; and
  - the completion of temporary soil and water management infrastructure, including environmental controls, around the Site excluding the area surrounding the ECC.
  
- **Separable Portion 2 (SP2) Cell Construction and Remediation Works**, following the procurement of the relevant approvals from the Superintendent from Separable Portion 1, these Separable Portion 2 works includes the construction and remediation works for the project including but not necessarily limited to, the following:
  - **SP2 Part 1 Project Infrastructure** including:
    - the setting up of the Contractor's temporary project facilities;
    - the creation of the main east-west haul road;
    - the installation of temporary fencing around all works' areas;
    - the installation of Soil and Water Management infrastructure, including environmental protection provisions, at the ECC area;
    - the clearing and excavation of the clay borrow pit area of the Site for ECC construction;



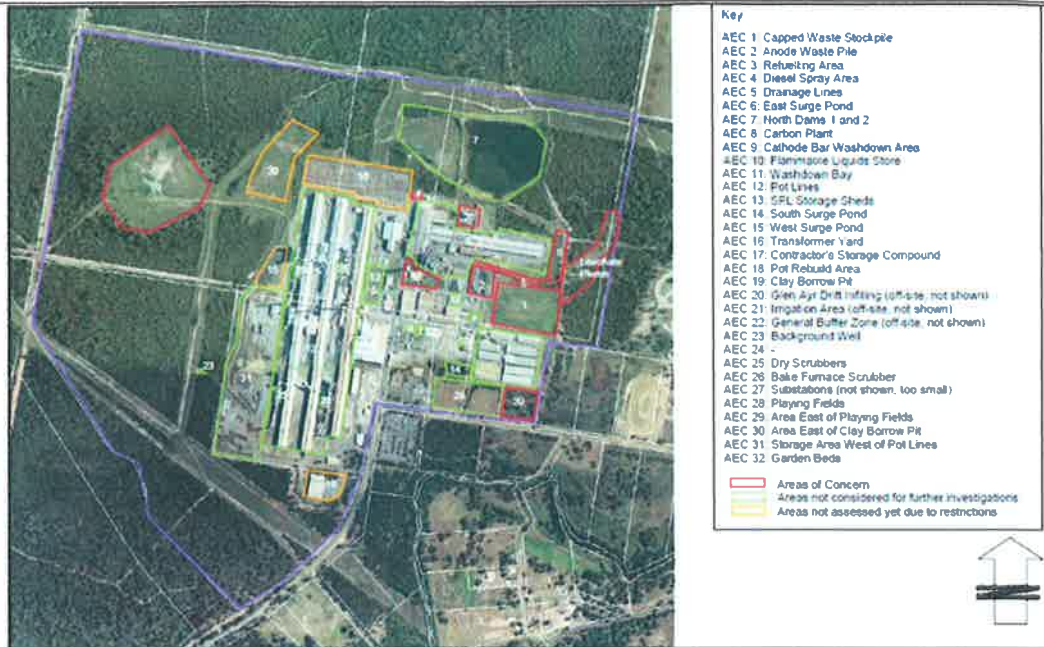
- the construction of a permanent creek crossing using culverts;
- the construction of 5 dams - 1 Leachate dams and 3 sediment basins at the ECC Site and 1 Leachate Dam near the CWS;
- the stockpiling of excavated materials to Temporary Stockpiles for later use;

**SP2 Part 2 Containment Cell Stage 1** including:

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

**SP2 Part 3 Site Remediation & Material Transfer** including:

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



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

#### **SP2 Part 4 Containment Cell Stage 2 & Completion including:**

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

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

## **9. Environmental Controls**

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

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

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

## **10. Hours of Work**

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

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

## **11. Quality Assurance Requirements**

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

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

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

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

#### **11.1. Superintendent's Construction Quality Assurance Engineer**

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

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

#### **11.2. Contractor's Quality Assurance Representative**

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

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

#### **11.3. Contractor's Independent Testing Organisation**

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

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

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

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

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

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

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



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

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

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

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

#### **11.5. Works As-Executed (WAE) Documents**

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

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

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

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

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

### **12. Survey & Set Out of the Works**

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

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

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

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### **13. Existing Services**

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

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

Services that will continue to be connected include:

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

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

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

### **14. Material and Resources to be supplied by the Principal**

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

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

### **15. Works Excluded**

The following works are excluded from this scope of work:

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

**Schedule 8 Independent Engineer's Deed**



**Dated**

**2020**

## **Independent Engineer's Deed**

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

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

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



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

2020

## Parties:

### Minister

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

### Developer

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

### Independent Engineer

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

## Introduction:

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

## It is agreed:

### 1. Definitions and interpretation

#### 1.1 Definitions

In this Deed, unless the context clearly indicates otherwise:

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

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

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

**Authority** means:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**Legislative Requirements** includes:

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

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

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

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

**Project Documents** means:

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

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

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

**Remediation Consent** means any Development Consent granted for the Project;

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

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

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

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

**Termination Event** means:

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

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

## 1.2 Interpretation

In this Deed, unless the context clearly indicates otherwise:

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

### **1.3 Construction**

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

## **2. Appointment of the Independent Engineer**

### **2.1 Terms of appointment**

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

### **2.2 Standard of performance of the IE Services**

In carrying out the IE Services the Independent Engineer must:

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

### **2.3 Representations and warranties**

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

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

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

### **3. Term of appointment**

#### **3.1 Term**

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

#### **3.2 Termination**

This Deed will terminate immediately on the earlier of:

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

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

### **4. Relationship**

#### **4.1 Nature of relationship**

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



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

#### **4.2 Independence**

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

#### **4.3 No conflicts of interest**

The Independent Engineer represents and warrants that:

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

#### **5. Reliance**

The Independent Engineer acknowledges that the Minister and the Developer:

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

## 6. Certificate of Compliance

The Independent Engineer acknowledges and agrees that:

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

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

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

## 7. Representatives

### 7.1 Minister's Representative

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

### 7.2 Developer's Representative

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

### 7.3 Independent Engineer's Representative

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

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

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

## **8. Suspension of IE Services**

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

## **9. Indemnity**

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

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

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

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

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

## **10. Insurance**

### **10.1 Public liability**

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

### **10.2 Worker's compensation**

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

### **10.3 Professional indemnity insurance**

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

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

#### **10.4 Evidence of insurance**

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

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

### **11. Dispute resolution**

#### **11.1 Not commence**

A party must not commence any court proceedings relating to a dispute unless it complies with this clause 11.1.

#### **11.2 Written notice of dispute**

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

#### **11.3 Attempt to resolve**

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

#### **11.4 Mediation**

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

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

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

#### **11.5 Court proceedings**

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

#### **11.6 Not use information**

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

#### **11.7 No prejudice**

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

#### **11.8 Continued Performance**

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

### **12. Assignment and subcontracting**

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

### **13. Termination**

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

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

## **14. Confidentiality**

### **14.1 Confidential Information**

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

### **14.2 Publicity**

The Independent Engineer must:

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

## **15. Notices**

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

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

## **16. General provisions**

### **16.1 Governing law and jurisdiction**

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

### **16.2 Severance**

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

### **16.3 Indemnities**

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

### **16.4 Proportionate Liability**

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

### **16.5 Waiver**

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



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

**16.6 Survival**

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

**16.7 Amendment**

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

**16.8 Entire agreement**

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

**16.9 Counterparts**

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

**16.10 Deed poll**

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

**Execution page**

**Executed** as a deed

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

.....  
Signature of witness

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

.....  
Name of witness in full

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

.....  
Address of witness

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

.....  
Signature of Director

.....  
Signature of Director/Secretary

.....  
Name of Director

.....  
Name of Director/Secretary

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

.....  
Signature of Director

.....  
Signature of Director/Secretary

.....  
Name of Director

.....  
Name of Director/Secretary

## Schedule 1 – Deed Particulars

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

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

## Schedule 2 – Land

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

### **Schedule 3 – IE Services**

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

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

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

## Schedule 4 – Certificate

### Certificate of Compliance

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

---

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

**From:**                **[Independent Engineer]**

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

---

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

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

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



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

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

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

.....  
Signature

.....  
Name

**Execution page**

**Executed** as a deed

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

.....  
Signature of witness


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


.....  
Name of witness in full

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

.....  
Address of witness

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

  
.....  
Signature of Director

  
.....  
Signature of Director/Secretary

RICHARD BROWN  
.....  
Name of Director

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

Annexure A Containment Cell Plan

S:10585026\_2 BXW

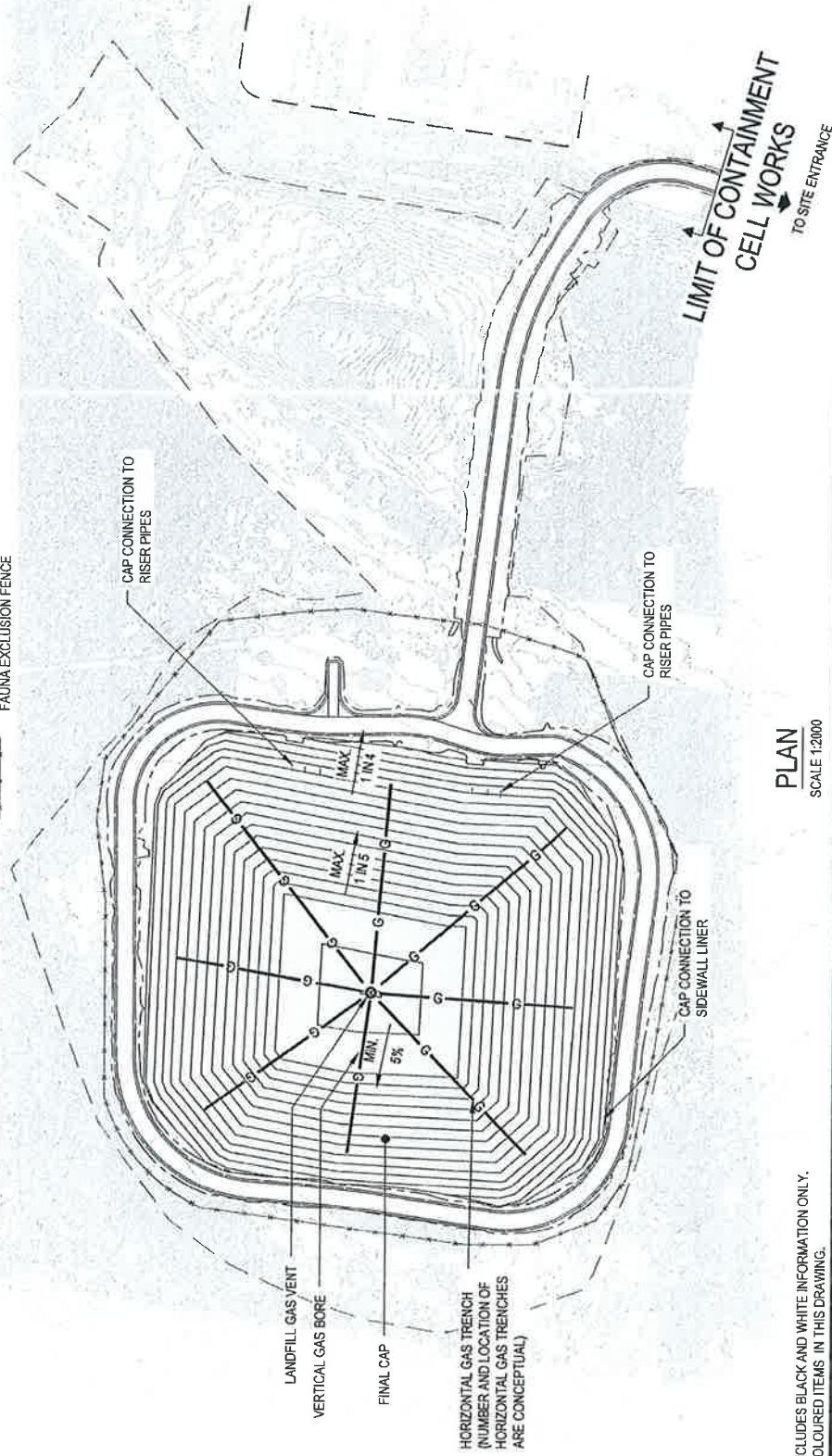
Phil B  
Stated.

## NOTES:

1. LANDFILL GAS MANAGEMENT SYSTEM LAYOUT IS CONCEPT ONLY.

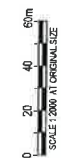
## LEGEND:

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



PLAN  
SCALE 1:2000

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



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

*Handwritten signatures in blue ink.*

**Annexure B Containment Cell Land Plan**

S:10585026\_2 BXW

*ALB*  
*Slater*

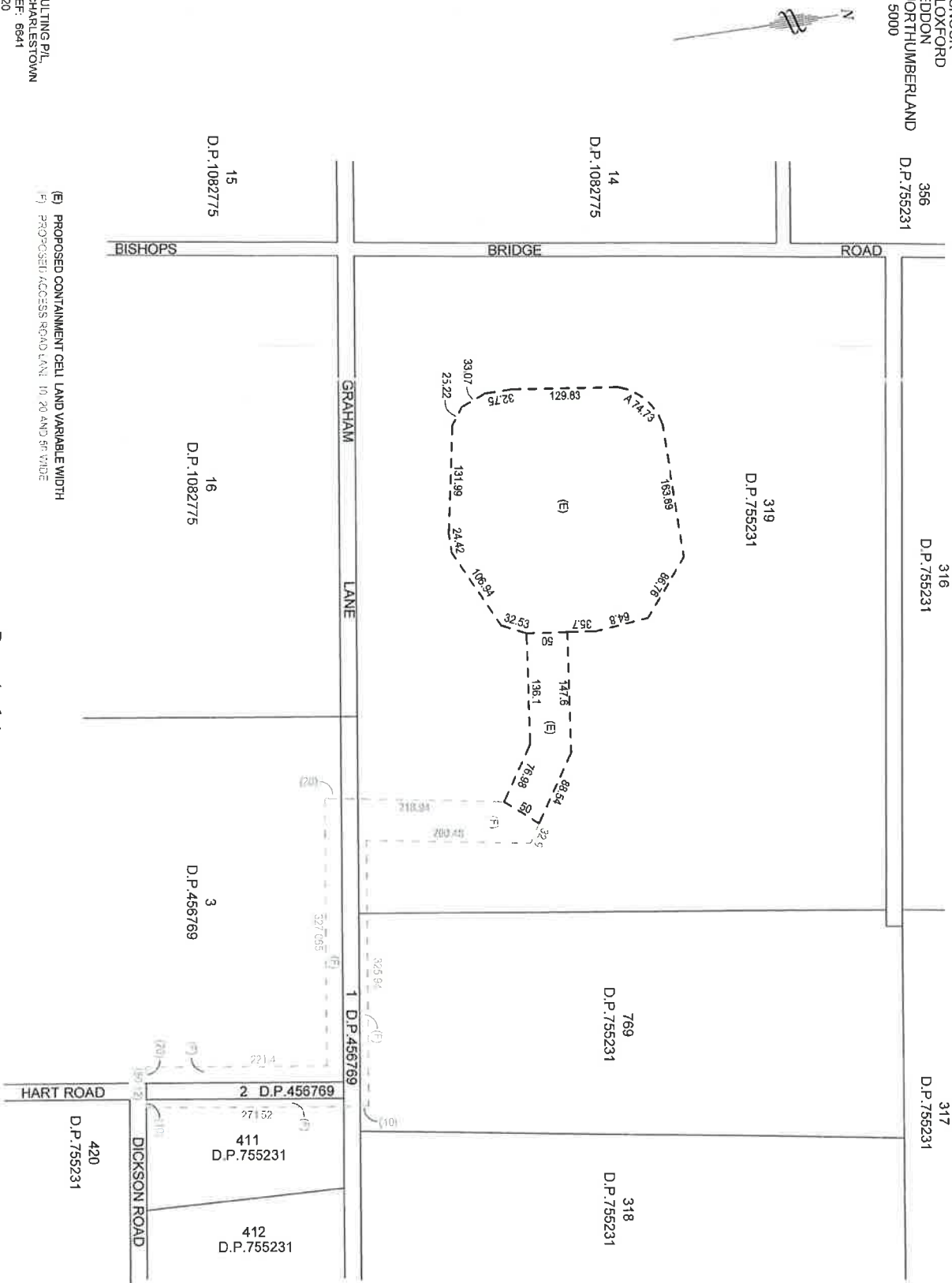
ANNEXURE "B"  
 PLAN SHOWING CONTAINMENT CELL LAND  
 WITHIN LOT 319 D.P. 755231

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

356 D.P. 755231  
 316 D.P. 755231  
 317 D.P. 755231

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

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



*[Handwritten signature]*  
*[Handwritten signature]*

## Annexure C Access Road Concept Plan

S:10585026\_2 BXW

*Paul B*  
*Storad*

# ANNEXURE "C"

## PLAN SHOWING ACCESS ROAD LAND WITHIN LOTS

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

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

356  
D.P.755231

316  
D.P.755231

317  
D.P.755231

14  
D.P.1082775

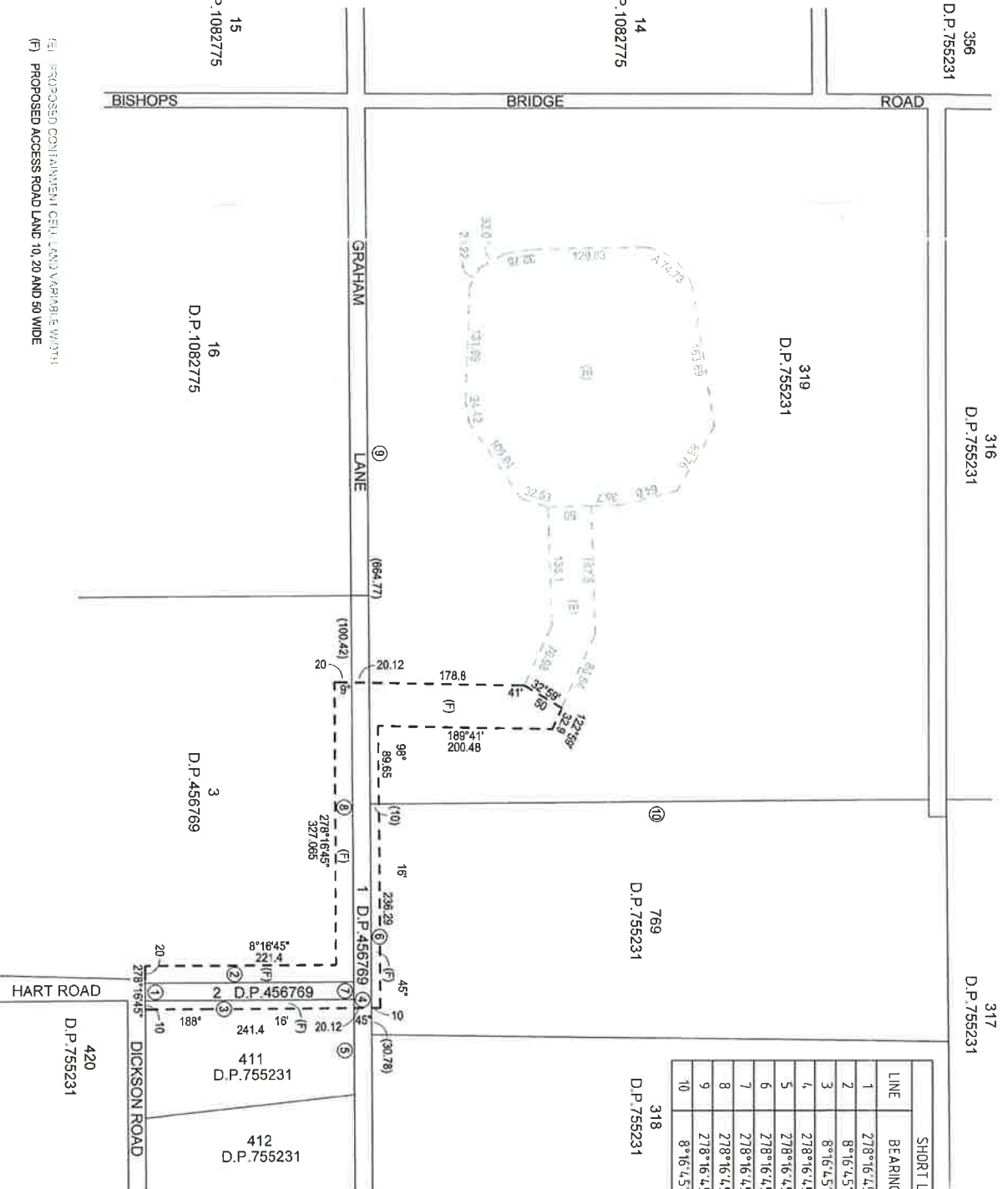
15  
D.P.1082775

16  
D.P.1082775

3  
D.P.456769

420  
D.P.755231

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



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

*Rich B*

*Stosor*



**Annexure D Access Road Certificate of Compliance**

S:10585026\_2 BXW



## Access Road Certificate of Compliance

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

---

**Issued to:** Minister for Planning and Public Spaces

**From:** [#insert name of engineer]

**Date of Certificate:** [#insert date]

---

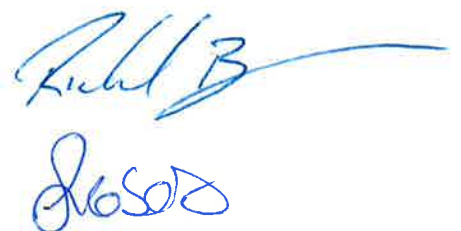
The terms used in this Certificate have the same meaning as in the Voluntary Planning Agreement between the Minister for Planning and Public Spaces (**Minister**) and Hydro Aluminium Kurri Kurri Pty Ltd (**Developer**) dated [#insert date] (**Voluntary Planning Agreement**).

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

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

.....  
**Signature**

.....  
**Name**



**Annexure E Stage 1A Works Certificate of Compliance**

S:10585026\_2 BXW

*R. H. B.*  
*dosos*

## Stage 1A Works Certificate of Compliance

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

---

**Issued to:** Minister for Planning and Public Spaces

**From:** [#insert name of Validation Consultant]

**Date of Certificate:** [#insert date]

---

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

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


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

**(If an individual)**

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

.....  
Signature of Witness

.....  
Signature

.....  
Name of Witness

.....  
Name of signatory

**(if a corporation)**

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

.....  
Signature of Director

.....  
Signature of Director/Secretary

.....  
Name of Director

.....  
Name of Director/Secretary