



HOLDING REDLICH

Dated

21 May

2021 BW
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

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This Planning Agreement is dated

21 May 2021

2020

BW

Parties:

Minister

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

Developer

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

Introduction:

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

It is agreed:

1. Definitions and interpretation

1.1 Definitions

In this deed, unless the context clearly indicates otherwise:

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

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

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

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

Access Road Land means:

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

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

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

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

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

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

Bank Guarantee means an irrevocable and unconditional undertaking:

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

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

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

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

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

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

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

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

Consent Authority has the same meaning as in the Act.

Construction Certificate has the same meaning as in the Act.

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

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

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

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

Containment Cell Contribution means the:

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

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

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

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

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

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

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

Contamination has the same meaning as in the CLM Act.

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

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

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

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

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

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

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

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

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

Development Application has the same meaning as in the Act.

Development Consent has the same meaning as in the Act.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

NSW EPA means the NSW Environment Protection Authority.

Planning Application means:

- (a) a Development Application; or

(b) any other application required under the Act.

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

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

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

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

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

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

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

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

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

Remediation Consent means any Development Consent granted for the Development.

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

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

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

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

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

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

Secretary means the Secretary of the Department.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1.2 Interpretation

In this deed unless the context clearly indicates otherwise:

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

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

2. Operation and application of this deed

2.1 Operation

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

2.2 Planning agreement under the Act

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

2.3 Application

This deed applies to:

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

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

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

4. Development Contributions

4.1 Developer to provide Development Contributions

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

4.2 Acknowledgement

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

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

5. Interest

5.1 Interest for late payment

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

6. Enforcement

6.1 Compulsory Acquisition

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

6.2 Developer to provide Security

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

7. Registration

7.1 Registration of deed

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

7.2 Evidence of registration

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

7.3 Release and discharge of deed

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

7.4 Developer's interest in Land

The Developer represents and warrants that it is:

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

8. Dispute Resolution

8.1 Not commence

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

8.2 Written notice of dispute

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

8.3 Attempt to resolve

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

8.4 Mediation

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

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

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

8.5 Court proceedings

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

8.6 Not use information

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

8.7 No prejudice

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

9. GST

9.1 Definitions

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

9.2 Intention of the parties

The parties intend that:

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

9.3 Reimbursement

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

9.4 Consideration GST exclusive

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

9.5 Additional Amounts for GST

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

9.6 Non monetary consideration

Clause 9.5 applies to non-monetary consideration.

9.7 Assumptions

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

9.8 No merger

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

10. Assignment and transfer

10.1 Right to assign or novate

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

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

10.2 Right to transfer Land

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

10.3 Replacement Security

Provided that:

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

the Minister will promptly return the Security to the Developer.

11. Capacity

11.1 General warranties

Each party warrants to each other party that:

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

11.2 Power of attorney

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

12. Reporting requirement

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

13. General Provisions

13.1 Entire deed

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

13.2 Variation

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

13.3 Waiver

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

13.4 Further assurances

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

13.5 Time for doing acts

(a) If:

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

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

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

13.6 Governing law and jurisdiction

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

13.7 Severance

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

13.8 Preservation of existing rights

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

13.9 No merger

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

13.10 Counterparts

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

13.11 Relationship of parties

Unless otherwise stated:

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

13.12 Good faith

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

13.13 No fetter

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

13.14 Explanatory note

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

13.15 Expenses and stamp duty

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

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

13.16 Notices

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

Schedule 1

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

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

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

Table 2 – Other matters

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

Schedule 2 Address for Service

(clause 1.1)

Minister

Contact: The Secretary

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

Facsimile No: Not applicable

Email: planningagreements@planning.nsw.gov.au

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

Contact: The Directors

Address: Hart Road, Loxford NSW 2326

Facsimile No: Not applicable

Email: kurri@hydro.com

Landowner and Developer's Legal Adviser

Gilbert + Tobin

Contact: Practice Group Leader, Real Estate + Projects Group

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

Facsimile No: (02) 9263 4111

Email: info@gtlaw.com.au

Schedule 3 Land

(clause 1.1)

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

Schedule 4 Development Contributions

(clause 4)

1. Development Contributions

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

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

2. Monetary Contribution

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

3. Remediation Works and Containment Cell Contribution

3.1 Developer's obligations

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

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

3.2 Remediation Works Completion Date

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

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

3.3 Management of the Containment Cell

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

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

3.4 Access Road

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

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

(Access Road Plans).
- (g) The Minister must, acting reasonably and within a reasonable period of receipt of the Access Road Plans provide a written notice that he or she:
 - (i) approves the Access Road Plans; or
 - (ii) does not approve the Access Road Plans, together with the reasons why the Access Road Plans are not approved.
- (h) Upon receipt of a notice under clause 3.4(g)(ii), the Developer must provide evidence to the reasonable satisfaction of the Minister that the matters raised have been attended to and provide to the Minister (as appropriate) revised Access Road Plans.
- (i) The Minister agrees to do all things reasonably required by the Developer to release and discharge this deed with respect to any part of the Land that no longer forms part of the Access Road Land as a result of any Access Road Plan approved by the Minister pursuant to clause 3.4(g)(i) of this Schedule 4, subject to the requirements of clause 7.3 of this deed.
- (j) The Developer must ensure that this deed is registered on that part of the Land which forms the Access Road Land as a result of any Access Road Plan approved by the Minister pursuant to 3.4(g)(i) of this Schedule 4 and in accordance with the requirements of clauses 7.1 and 7.2 of this deed.
- (k) The Developer must, at its cost:

- (i) obtain all Approvals necessary for the construction of the Access Road; and
- (ii) construct the Access Road in accordance with:
 - (A) the Access Road Plans approved by the Minister under clauses 3.4(g) and (h);
 - (B) any Approvals for the Access Road;
 - (C) any relevant requirements of the Roads Authority;
 - (D) all applicable laws and standards; and
 - (E) good industry practice.
- (l) If the Developer considers that the Access Road has been completed, the Developer will forward to the Minister a written notice stating that Practical Completion has been achieved, together with:
 - (i) a copy of all Approvals for the Access Road;
 - (ii) to the extent that the Access Road is a Public Road, evidence:
 - (A) that the Access Road has been completed to the satisfaction of the Roads Authority and in accordance with clause 3.4(k)(ii); and
 - (B) that the Access Road has been dedicated to the Roads Authority; and/or
 - (iii) to the extent that the Access Road is a Private Road:
 - (A) an Access Road Certificate of Compliance; and
 - (B) a copy of the proposed dealing for the Access Easement (**Proposed Dealing**),

(Road Works Completion Notice).
- (m) The Minister must within a reasonable period of receipt of the Road Works Completion Notice, provide a written notice that states that the Minister is:
 - (i) satisfied (acting reasonably) that the Developer has complied with the applicable requirements of clause 3.4(l); or
 - (ii) not satisfied (acting reasonably) that the Developer has complied with the applicable requirements of clause 3.4(l).
- (n) As soon as reasonably practicable following receipt of a notice under clause 3.4(m)(ii), the Developer must provide evidence to the reasonable satisfaction of the Minister that the matters raised have been attended to and provide to the Minister (as appropriate) revised Road Works Completion Notice.
- (o) If the Developer does not comply with this clause 3.4, the Minister may:
 - (i) refuse to accept the transfer of the Containment Cell Land until such time that the Developer does comply with this clause 3.4; and
 - (ii) without limiting the Developer's obligations under clause 3.4(a), require that the Developer undertake works, at the Developer's cost and within a timeframe determined by the Minister (acting reasonably), so as to ensure that the Minister is provided with the Access Road.

3.5 Subdivision of the Containment Cell Land

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

3.6 Transfer of the Containment Cell Land

- (a) On a date that is:

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

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

the Developer agrees to deliver to the Minister:

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

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

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

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

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

3.7 Insurance

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

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

3.8 Compulsory Acquisition

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

Schedule 5 Security terms

(clause 6.2)

1. Developer to provide Security

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

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

2. Claims under Bank Guarantees

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

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

(c) If:

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

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

3. Release of Security

3.1 Release of the Monetary Contribution Bank Guarantee

If:

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

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

3.2 Release of the Initial Period Bank Guarantee

If:

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

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

Schedule 6 Remediation Works

1. Remediation Works

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

2. Scope of Works

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

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

3. Independent Engineer

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

4. Developer to provide Security

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

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

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

5. Extension of the Date for Completion

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

6. Certification and Completion of the Remediation Works

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

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

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

7. Claims under Bank Guarantees

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

(f) If:

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

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

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

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

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

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

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

8. Release of Security

8.1 Release of the Remediation Works Bank Guarantee 1

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

8.2 Release of the Remediation Works Bank Guarantee 2

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

8.3 Release of the Remediation Works Bank Guarantee 3

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

8.4 Release of the Remediation Construction Works Bank Guarantee 4

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

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

9. Right of entry

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

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

Schedule 7 Scope of Works