

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

**Introduction**

The purpose of this explanatory note is to provide a plain English summary to support the notification of a Deed of Variation to Planning Agreement SVPA2021-5 dated 21 May 2021 in relation to Hart Road Loxford (the **Planning Agreement**) prepared under Subdivision 2 of Division 7.1 of Part 7 of the *Environmental Planning and Assessment Act 1979* (the **Act**).

This explanatory note has been prepared in accordance with s 205 of the *Environmental Planning and Assessment Regulation 2021* (NSW) (the **Regulation**).

Words which are capitalized in this explanatory note but are not defined take on the meaning given to those words in the Planning Agreement and the Deed of Variation.

**Parties to the Deed of Variation**

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

**Description of the Subject Land**

The Planning Agreement as varied by the Deed of Variation applies to the same land to which the Planning Agreement currently applies, being Lot 318 in Deposited Plan 755231 (part of Auto Consol 11442-243), Lot 3 in Deposited Plan 1286098, Lot 411 in Deposited Plan 755231 (part of Auto Consol 11442-243), Lot 412 in Deposited Plan 755231 (part of Auto Consol 11442-243), Lot 413 in Deposited Plan 755231 (part of Auto Consol 11442-243), Lot 414 in Deposited Plan 755231 (part of Auto Consol 11442-243), and Lot 2 in Deposited Plan 456769 (part of Auto Consol 11442-243).

**Description of the Development**

The proposed development was defined in the Planning Agreement as meaning the development of the Land generally in accordance with SSD 6666, comprising remediation of the former Hydro Kurri Kurri Aluminum 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.

**Summary of Objectives, Nature and Effect of the Planning Agreement as varied by the Deed of Variation**

The Deed of Variation varies the Planning Agreement to:

- amend the Scope of Works in respect of the staging of aspects of the Remediation Works (being the completion of the Engineered Containment Cell Perimeter Road and certain Temporary Works) which are now to be completed in SP2 Part 4;

- specify that the Remediation Works Bank Guarantee 4 required under Schedule 6 of the Planning Agreement secures the completion of these works; and
- to make it clear that the Minister may call upon any Bank Guarantee provided in accordance with Schedule 6 to rectify any default by the Developer regardless of whether the default relates to the Secured Obligation for which the Bank Guarantee was provided.

## **Assessment of Merits of Planning Agreement as amended by the Deed of Variation**

### **The Public Purpose of the Planning Agreement as varied by the Deed of Variation**

In accordance with section 7.4(2) of the Act, the Planning Agreement as varied by the Deed of Variation has the following public purpose: the conservation and enhancement of the natural environment.

The Minister and the Developer have assessed the Planning Agreement as varied by the Deed of Variation and both hold the view that the Deed of Variation does not change the means of achieving the public purpose of the Planning Agreement. This is because the Planning Agreement as amended by the Deed of Variation will continue to ensure that the Developer makes the Development Contribution.

### **How the Planning Agreement as varied by the Deed of Variation Promotes the Public Interest**

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

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

### **Requirements relating to Construction, Occupation and Subdivision Certificates**

The Planning Agreement as varied by the Deed of Variation, does not specify requirements that must be complied with prior to the issue of a construction certificate, occupation certificate or a subdivision certificate.