

Deed of Variation to Planning Agreement

Hydro Aluminium Kurri Kurri Pty Ltd Planning Agreement

Parties

Minister for Planning and Public Spaces

(ABN 20 770 707 468)

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

DocuSigned by:

Leanne Gai Pringle

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Signed by:

Richard Brown

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Date

Parties **Minister for Planning and Public Spaces** (ABN 20 770 707 468) c/-NSW Department of Planning, Housing and Infrastructure of 4 Parramatta Square, 12 Darcy Street, Parramatta, NSW 2150.

(Minister)

AND

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

(Developer)

Introduction

- A. The Minister and the Developer entered into the Planning Agreement on 21 May 2021.
- B. Under the Planning Agreement, the Developer is required to:
- make the Development Contributions to the Minister, and
 - provide Security in the form of Bank Guarantees in favour of the Minister and the Department of Planning, Industry and Environment (re-named the Department of Planning, Housing and Infrastructure) (the **Department**), including Bank Guarantees to secure the performance of the Remediation Works.
- C. The Bank Guarantees for the Remediation Works are provided for each of the four Stages of the Remediation Works, with a Bank Guarantee in the amount of \$8,000,000 for construction of the Containment Cell Stage 1 as outlined in the Scope of Works (referred to as SP2 Part 2 in the Scope of Works).
- D. The completion of the Engineered Containment Cell Perimeter Road (being part of the Construction Remediation Works) was originally identified in SP2 Part 2. These works will now be completed in the fourth stage, being SP2 Part 4.
- E. The Developer acknowledges that the certification required by clause 6 of Schedule 6 to the Planning Agreement in relation to the completion of certain Temporary Works (as referred to in SP2 Part 2 in the Scope of Works) has not been provided to the Minister. The Remaining Temporary Works will now be completed in a further stage, being SP2 Part 4.
- F. The Minister has agreed to the proposed change to the SP2 Part 2 and SP2 Part 4 Scope of Works, and to reflect the change the Developer has offered to amend the Deed as contemplated by clause 2(d) of Schedule 6 to the Planning Agreement.
- G. The Developer offered to provide an additional bank guarantee for the amount of \$250,000, to secure the completion of the Engineered Containment Cell Perimeter Road and to secure the completion of the Remaining Temporary Works, on the return of the Bank Guarantee for \$8,000,000.
- H. On 15 December 2023, the Developer executed the Deed Poll under which the Developer agreed to provide the Containment Cell Roads Bank Guarantee for \$250,000. The Minister currently holds that bank guarantee and has returned the Bank Guarantee of \$8,000,000 for SP2 Part 2 (being the Remediation Works Bank Guarantee 2).
- I. The Department, on behalf of the Minister, and the Developer have agreed, in principle, that the Remediation Works Bank Guarantee 4 is sufficient to cover the estimated costs of completing the Engineered Containment Cell Perimeter Road and to amend the Planning

Agreement to reflect the change in the Scope of Works that the Remediation Works Bank Guarantee 4 will secure.

- J. Accordingly, the parties have agreed to amend the Planning Agreement as set out in this Deed to reflect the above changes and to make other consequential amendments.

It is agreed:

1 Definitions and interpretation

1.1 Definitions

In this Deed:

- (a) **Containment Cell Roads Bank Guarantee** means the bank guarantee provided to the Minister, in accordance with the Deed Poll, for \$250,000 to secure the Developer's obligation in relation to the Engineered Containment Cell Perimeter Road and the Remaining Temporary Works.
- (b) **Deed** means this Deed including any schedules, annexures and appendices to this Deed. A reference to this Deed includes the agreement recorded in this Deed.
- (c) **Deed Poll** means the deed poll executed by the Developer and dated 15 December 2023 in favour of the Minister for Planning and Public Spaces under which the Containment Cell Roads Bank Guarantee was provided.
- (d) **Engineered Containment Cell Perimeter Road** means the engineered containment cell perimeter road, being part of the Construction Remediation Works referred to in the Scope of Works as ECC Perimeter Road, and the proposed part of the road designated with an "E" on the plan in Annexure B to the Planning Agreement (and called "ECC Access Road" in the Scope of Works in Schedule 7 of the Planning Agreement when that agreement commenced) that connects the Access Road shown on the plan in Annexure C to the agreement with the site of the Containment Cell.
- (e) **Planning Agreement** means the planning agreement between the Minister and the Developer dated 21 May 2021.
- (f) **Remaining Temporary Works** means those Temporary Works which have not been completed as at the date of this Deed.
- (g) **Remediation Works Bank Guarantee 4** means the bank guarantee in the amount of \$5,000,000 and referred to as the "Remediation Works Bank Guarantee 4" required to be provided by the Developer in accordance with clause 4 of Schedule 6 to the Planning Agreement.
- (h) **Temporary Works** means the temporary works forming part of the Construction Remediation Works and as referred to in SP2 Part 2 of the Scope of Works.

1.2 Interpretation

- (a) In this Deed, unless the contrary intention appears:
 - (i) capitalised words and phrases used but not defined in this Deed have the same meanings they have in the Planning Agreement; and

- (ii) clause 1.2 of the Planning Agreement will apply to the interpretation and construction of this Deed.
- (b) The parties agree that the Explanatory Note is not to be used to assist in construing this Deed.

2 Status of this Deed

This Deed is an amendment to the Planning Agreement as referred to in section 203(5) of the *Environmental Planning and Assessment Regulation 2021*.

3 Commencement

This Deed commences operation on the date it is signed by all parties (**Commencement Date**).

4 Return of Containment Cell Roads Bank Guarantee

The Minister must return the Containment Cell Roads Bank Guarantee to the Developer on the Commencement Date (or as soon as reasonably practicable thereafter).

5 Warranties and representations

The parties represent and warrant that they have power to enter into this Deed and comply with their obligations under this Deed and that entry into this Deed will not result in the breach of any law.

6 Variation to Planning Agreement

- 6.1 On and from the Commencement Date, the Planning Agreement is amended as set out in Schedule 1 – Amendments to Planning Agreement.
- 6.2 The amendments to the Planning Agreement under this Deed do not affect the validity or enforceability of the Planning Agreement as amended.
- 6.3 Nothing in this Deed:
 - (a) prejudices or adversely affects any right, power, authority, discretion or remedy arising under the Planning Agreement before the date of this Deed; or
 - (b) discharges, releases or otherwise affects any liability or obligation arising under the Planning Agreement before the date of this Deed.

7 Registration of this Deed

- 7.1 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:
 - (a) the consent of each person, as required by the Registrar-General, who:

- (i) has an estate or interest in the Land registered under the Real Property Act;
or
 - (ii) 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;
and
 - (b) the execution of any documents; and
 - (c) the electronic lodgement of this Deed in a registrable form through an ELNO 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.
- 7.2 The Developer will take all practical steps and otherwise do anything 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.
- 7.3 The Developer must provide the Minister with evidence of the lodgement of this Deed pursuant to this clause 7 within 10 Business Days of such lodgement.
- 7.4 The Developer will provide the Minister with a copy of the relevant folios of the Register for the Land and a copy of the registered dealing containing this Deed within 10 Business Days of registration of this Deed.
- 7.5 This clause does not apply to any part of the Land where the notation of the Planning Agreement on the relevant folio of the Register was removed before the Commencement Date.

8 Expenses

- 8.1 The Developer must pay its own legal costs and disbursements, and the Minister's reasonable legal costs and disbursements, in connection with the negotiation, preparation, execution and carrying into effect of this Deed.
- 8.2 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 *Environmental Planning and Assessment Regulation 2021*, and the review of any submissions received during the public notice period.
- 8.3 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).
- 8.4 The Developer must provide the Minister with bank cheques or deposit the funds by means of electronic funds transfer into a bank account nominated by the Minister in respect of the Minister's costs pursuant to clauses 8.1 and 8.2:
- (a) where the Minister has provided the Developer with a written notice of the sum of such costs prior to execution, on the date of execution of this Deed; or

- (b) where the Minister has not provided the Developer with a written notice of the sum of such costs prior to execution, within 10 business days of demand by the Minister for payment.

9 GST

Clause 9 of the Planning Agreement applies as if it forms part of this Deed, with any necessary changes.

10 Confirmation

Upon execution of this Deed by both parties, each Party is bound by the Planning Agreement as amended by this Deed.

11 Notices

Any notice, consent, information, application or request that must or may be given or made to a Party under this Deed is only given or made if it is in writing and sent in the manner required by clause 13.16 of the Planning Agreement.

12 General

12.1 Entire agreement

This Deed constitutes the entire agreement between the Parties regarding the variation of the Planning Agreement, including with respect to those matters set out in clauses 1 to 12 (inclusive) of this Deed, and supersedes any prior representations, understandings or arrangements between the Parties, whether orally or in writing.

12.2 Incorporation of provisions of Planning Agreement

Clauses 13.2 to 13.14 of the Planning Agreement are incorporated in this Deed as if they were set out in full in this Deed and references to the Planning Agreement were references to this Deed.

12.3 Assignment and dealings

None of the Parties to this Deed may assign or otherwise deal with its rights under this Deed or allow any interest in them to arise or be varied in each case unless stated otherwise in this Deed.

12.4 Electronic Execution

- (a) Each party consents to this Deed and any variations of this Deed being signed by electronic signature by the methods set out in this clause.
- (b) This clause applies regardless of the type of legal entity of the parties. If this Deed or any subsequent variations are signed on behalf of a legal entity, the persons signing warrant that they have the authority to sign.

- (c) For the purposes of this clause, the parties agree that the following methods validly identify the person signing and indicate that person's intention to sign this Deed and any variation of it:
- (i) insertion of an image (including a scanned image) of the person's own unique signature on to the deed;
 - (ii) insertion of the person's name on to the deed; or
 - (iii) use of a stylus or touch finger or a touch screen to sign the deed,
- provided that in each of the above cases, words to the effect of '*Electronic signature of me, [NAME], affixed by me on [DATE]*' are also included on the deed;
- (iv) use of a reliable electronic signature and exchange platform (such as DocuSign or AdobeSign) to sign the deed; or
 - (v) as otherwise agreed in writing (including via email) between the parties.
- (d) The parties agree that the above methods are reliable as appropriate for the purpose of signing this deed and that electronic signing of this Deed by or on behalf of a party indicates that party's intention to be bound.
- (e) A signed copy of this Deed transmitted by email or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original executed copy of this Deed for all purposes.

Schedule 1 – Amendments to Planning Agreement

The Planning Agreement is amended as follows:

1. Interpretation

Insert the following definitions in clause 1.1 in appropriate alphabetical order:

Engineered Containment Cell Perimeter Road means the engineered containment cell perimeter road, being part of the Construction Remediation Works referred to in the Scope of Works as ECC Perimeter Road and the proposed part of the road designated with an “E” on the plan in Annexure B to this deed (and called “ECC Access Road” in the Scope of Works in Schedule 7 as at the commencement of this deed) that connects the Access Road shown on the plan in Annexure C to this deed with the site of the Containment Cell.

Remaining Temporary Works means the remaining Temporary Works which have yet to be completed immediately before the insertion of clause 2(d1) into Schedule 6.

Temporary Works means the temporary works forming part of the Construction Remediation Works and as referred to in SP2 Part 2 of the Scope of Works as at the Commencement Date.

2. Schedule 6 – clause 2

Insert after clause 2(d):

- (d1) Despite clause 2(a), the parties agree that the Scope of Works is taken to be varied in respect of the staging of the Remediation Works as follows:
 - (i) the completion of the Engineered Containment Cell Perimeter Road forms part of SP2 Part 4, rather than part of SP2 Part 2; and
 - (ii) the completion of any Remaining Temporary Works forms part of SP2 Part 4, rather than SP2 Part 2.
- (d2) The Developer acknowledges that the variation to the Scope of Works as provided for in clause 2(d1) of this Schedule 6 does not affect its obligations under clauses 2(a), (b), (c), (d), (e) and (f) of this Schedule.

3. Schedule 6 – clause 4

Insert after clause 4(b):

- (c) The parties agree that Remediation Works Bank Guarantee 4 secures the performance by the Developer under this deed of the Developer’s obligations in relation to the completion of the Engineered Containment Cell Perimeter Road and the Remaining Temporary Works as well as the other Remediation Works that are included in SP2 Part 4 in the Scope of Works.

4. Schedule 6 – clause 7

Insert after clause 7(c):

- (c1) Without limiting any other provision of this clause 7, and despite clause 4(b)(iii) of this Schedule 6, the Minister may call upon any Bank Guarantee provided in accordance with this Schedule to rectify any default by the Developer regardless of whether the default relates to the Secured Obligation for which the Bank Guarantee has been provided as set out in clause 4 of this Schedule. Accordingly, despite the return of any Bank Guarantee in connection with a particular Secured Obligation, the Minister may apply any Bank Guarantee remaining in the Minister’s possession to rectify any default

by the Developer in respect of a Secured Obligation for which another Bank Guarantee was provided.

- (c2) In particular, and for the avoidance of doubt, the Remediation Works Bank Guarantee 4 referred to in the table to clause 4 of this Schedule may be called upon in relation to the completion of the Engineered Containment Cell Perimeter Road and Remaining Temporary Works.

Execution

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 authorised delegate

.....
Name of witness in full

.....
Full name of delegate

.....
Address of witness

*I have signed a counterpart of the deed,
having witnessed the signing of the deed over audio
visual link in accordance with section
14G of the *Electronic Transactions Act 2000*.

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

DocuSigned by:
Leanne Gai Pringle
.....
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Signature of Director

Leanne Gai Pringle
.....
Name of Director in full

Signed by:
Richard Brown
.....
92523A691CC144E.....

Signature of Director/Secretary

Richard Brown
.....
Name of Director/Secretary in full