Voluntary Planning Agreement – United Wambo Project

Singleton Council (**Council**)

United Collieries Pty Ltd (as manager of the United Wambo Joint Venture) (**Developer**)

Voluntary Planning Agreement

Details 4

Agreed terms 5

1. **Definitions & Interpretation** 5
2. **Planning agreement under the Act** 7
3. **Application of this Agreement** 7
4. **Operation of this Agreement** 7
5. **Provision of Development Contributions** 7
6. **Application of s7.11 and s7.12 of the Act** 8
7. **Registration of this Agreement** 8
8. **Review of this Agreement** 9
9. **Dispute Resolution** 9
10. **Breach of this Agreement** 10
11. **Position of Council** 11
12. **GST** 11
13. **Notices** 12
14. **Approvals and consent** 13
15. **Costs** 13
16. **Entire agreement** 13
17. **Further acts** 13
18. **Governing law and jurisdiction** 13
19. **Representations and warranties** 13
20. **Severability** 13
21. **Waiver** 14

22. Counterparts 14

Schedule 1 – Contributions Schedule 15

Schedule 2 – United Wambo Open Cut Coal Mine Project Land 17

Schedule 3 - Land for Registration of this Agreement 18

Signing page 19

16

Details

Date

Parties

Name	**Singleton Council**
ABN	52 877 492 396
Short form name	**Council**
Notice details	Singleton Council PO Box 314 SINGLETON, NSW, 2330

Name	**United Collieries Pty Ltd (as manager of the United Wambo Joint Venture)**
ABN	67 001 990 209
Short form name	**Developer**
Notice details	United Collieries Pty Ltd PMB 13 SINGLETON, NSW, 2330

Background

A. The Developer is the proponent of the United Wambo Open Cut Coal Mine Project (**the Project**), which is comprised of the existing open cut mining operations at Wambo and a proposed new open cut mine at United.

B. On 29 August 2019, the Developer was granted approval for the Project **Development Consent**) by way of development consent (SSD 7142) under section 4.38 of the *Environmental Planning and Assessment Act 1979* (**Act**).

C. Condition A18 of the Development Consent requires the Developer to enter into a Planning Agreement with the Singleton Council to provide Development Contributions in accordance with Division 7.1 of Part 7 of the Act.

D. The Developer has agreed to provide the Development Contributions, subject to the conditions outlined in this Agreement, in performance of the conditions of the Development Consent.

Agreed terms

1. Definitions & Interpretation

1.1 In this Agreement the following definitions apply:

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

(b) **Business Day** means a day that is not a Saturday, Sunday, public holiday or bank holiday in New South Wales, Australia.

(c) **CPI** means the published Consumer Price Index (Sydney – All Groups), or if that index is no longer published, then any other index which, in the reasonable opinion of the Developer, is an equivalent index.

(d) **Commencement Date** means the date the Agreement is executed by both parties.

(e) **Development** means the development permitted to be carried out under the Development Consent.

(f) **Development Consent** means development consent SSD 7142 granted in respect of the United Wambo Open Cut Coal Mine Project on 29 August 2019 in respect of the Land.

(g) **Development Contributions** means the monetary contributions identified in column 3 of Schedule 1.

(h) **GST** has the same meaning as in GST Law.

(i) **GST Act** means *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and any other Act or regulation relating to the imposition or administration of the GST.

(j) **GST Law** has the meaning given to that term in the GST Act.

(k) **Insolvency Event** means the happening of any of the following events:

(i) Application which is not withdrawn or dismissed within fourteen (14) days is made to a court for an order or an order is made that a body corporate be wound up.

(ii) An application which is not withdrawn or dismissed within fourteen (14) days is made to a court for an order appointing a liquidator or provisional liquidator in respect of a body corporate or one of them is appointed, whether or not under an order.

(iii) Except to reconstruct or amalgamate while solvent, a body corporate enters into, or resolves to enter into, a scheme of arrangement, agreement of company arrangement or composition with, or assignment for the benefit of, all or any class of its creditors, or it proposes a reorganisation, moratorium or other administration involving any of them.

(iv) A body corporate resolves to wind itself up, or otherwise dissolve itself, or gives notice of intention to do so, except to reconstruct or amalgamate while solvent or is otherwise wound up or dissolved.

(v) A body corporate is or states that it is insolvent.

(vi) As a result of the operation of section 459F(1) of the *Corporations Act 2001* (Cth) (**Corporations Act**), a body corporate is taken to have failed to comply with a statutory demand;

(vii) A body corporate is or makes a statement from which it may be reasonably deduced that the body corporate is, the subject of an event described in section 459C(2)(b) or section 585 of the Corporations Act.

(viii) A body corporate takes any step to obtain protection or is granted protection from its creditors, under any applicable legislation or an administrator is appointed to a body corporate.

(ix) A person becomes an insolvent under administration as defined in section 9 of the Corporations Act or action is taken which could result in that event.

(x) A receiver, manager or receiver and manager is appointed to the Company.

(xi) A claim is filed in a court against a person that is not defended, released or otherwise settled within twenty eight (28) days of the date of its filing at the court.

(xii) Anything analogous or having a substantially similar effect to any of the events specified above happens under the law of any applicable jurisdiction.

(l) **Land** means the land contained within the area identified as "SSD-7542 Project Area" in the plan set out in Schedule 2 titled 'United Wambo Open Cut Coal Mine Project Land'.

(m) **Law** means any constitution or provision, statute, Act, regulation, rule, ordinance, proclamation, subordinate legislation, delegated legislation, by-law, judgment, rule of common law or equity, rule, approval, consent or condition of approval or consent imposed by a competent entity exercising statutory jurisdiction in the relevant matter.

(n) **Planning Legislation means** the Act, the *Local Government Act 1993* (NSW) and the *Roads Act 1993* (NSW).

(o) **Registration Land** means the folio identifiers for that part of the Land set out in Schedule 3.

(p) **Singleton Community and Economic Development Fund (SCED)** means the fund adopted by Council at its meeting 16th December 2019

(q) **Tax Invoice** has the meaning given to that term in the GST Act.

1.2 In the interpretation of this Agreement, the following provisions apply unless the context otherwise requires:

(a) Headings are inserted for convenience only and do not affect the interpretation of this Agreement.

(b) If the day on which the any act, matter or thing is to be done under this Agreement is not a Business Day, the act, matter or thing must be done on the next Business Day.

(c) A reference in this Agreement to dollars or $ means Australian dollars and all amounts payable under this Agreement are payable in Australian dollars

(d) A reference in this Agreement to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.

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16

(e) A reference in this Agreement to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced.

(f) A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Agreement.

(g) An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.

(h) Where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.

(i) A word which denotes the singular denotes the plural, a word which denotes the plural denotes the singular, and a reference to any gender denotes the other genders.

(j) References to the word 'include' or 'including' are to be construed without limitation.

(k) A reference to this Agreement includes the agreement recorded in this Agreement.

(l) A reference to a party to this Agreement includes a reference to the servants, agents, and contractors of the party, and the party's successors and assigns.

(m) Any schedules and attachments form part of this Agreement.

2. Planning agreement under the Act

This Agreement is a planning agreement:

(a) within the meaning set out in s7.4 of the Act; and

(b) governed by Subdivision 2 of Part 7 of the Act.

3. Application of this Agreement

This Agreement applies to the Development and to the Land.

4. Operation of this Agreement

The Agreement takes effect on and from the Commencement Date.

5. Provision of Development Contributions

5.1 The Development Contributions

Subject to this Agreement, the Developer must pay to Council the Development Contributions.

5.2 Form of Development Contributions

The Development Contributions must be made:

(a) for the purpose in column 1 of the tables in Schedule 1;

(b) in the total amount referred to in column 3 of the tables in Schedule 1; and

(c) at the times referred to in column 2 of the tables in Schedule 1.

5.3 Payment of Development Contributions

A Development Contribution is made for the purposes of this Agreement when cleared funds are deposited by the Developer by means of electronic transfer into a bank account nominated

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by Council, or a bank cheque made payable to Council (or its nominee) is provided for the required amount.

5.4 Requirement for invoices

(a) Council must provide the Developer with a Tax Invoice for the amount of the contribution that the Developer proposes to pay.

(b) The Developer:

(i) is not required to pay a Development Contribution; and

(ii) will not be in breach of this Agreement if it fails to pay a Development Contribution at the time required by this Agreement,

if Council fails to provide the Developer with a Tax Invoice for the amount proposed to be paid by the Developer.

5.5 Effect of making the Development Contributions

(a) The parties agree that once funds for each of the Development Contributions set out in Schedule 1 have been transferred to Council by the Developer in accordance with clause 5.4 for an amount equalling the amount in column 3 of the table in Schedule 1, then no further funds are required to be transferred by the Developer to Council for the relevant purpose.

(b) The parties agree that upon the payment of the total amount of the Development Contributions to Council, no further monetary contributions are payable under this Agreement.

5.6 Use of Development Contributions

Council may only use the funds paid by the Developer to Council as Development Contributions for the purposes outlined in column 1 of the tables in Schedule 1, or as otherwise agreed by the Developer in writing.

6. Application of s7.11 and s7.12 of the Act

This Agreement does not exclude the operation of sections 7.11 and 7.12 of the Act with respect to the Development Consent.

7. Registration of this Agreement

7.1 Registration of this Agreement

The Developer acknowledges and agrees that:

(a) this Agreement must be registered on the title to the Registration Land pursuant to section 7.6 of the Act; and

(b) subject to clause 7.2, Council will undertake that registration at the cost of the Developer.

7.2 Obligations of Developer

(a) The Developer, at its own expense, will promptly after the Commencement Date, take all practical steps, and otherwise do anything that the Council reasonably requires, to procure:

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(i) the consent of each person who:

(A) has an estate or interest in the Registration Land; or

(B) is seized or possessed of an estate or interest in the Registration Land;

(ii) the execution of any agreements; and

(iii) the production of the relevant certificates of title,

to enable the registration of this Agreement in accordance with clause 7.1.

(b) The Developer, at its own expense, will take all practical steps, and otherwise do anything that the Council reasonably requires:

(i) to allow the lodgement of this Agreement with the Registrar-General as soon as reasonably practicable after the Commencement Date comes into operation but in any event, no later than sixty (60) business days after that date; and

(ii) to allow the registration of this Agreement by the Registrar-General in the relevant folios of the Register for the Registration Land as soon as reasonably practicable after this Agreement is lodged for registration.

7.3 Discharge from the Register

The Council will provide a release and discharge of this Agreement so that it may be removed from the folios of the Register for the Registration Land (or any part of it) when:

(a) the obligations under this Agreement have been satisfied; or

(b) if this Agreement is terminated or rescinded.

8. Review of this Agreement

This Agreement may be varied or amended only by the express written approval of all the parties and in compliance with the Act.

9. Dispute Resolution

9.1 Application

Any dispute or difference between the parties arising under or in connection with this Agreement, including any dispute or difference as to the formation, validity, existence or termination of this Agreement (**Dispute**) must be resolved as set out in this clause 9. A party must not commence any court proceedings relating to a dispute unless it complies with this clause 9.

9.2 Notification

A party claiming a Dispute has arisen must give the other parties to the Dispute notice setting out details of the Dispute.

9.3 Parties to resolve Dispute

Within 14 days of the party receiving the notice referred to in clause 9.2 the parties (or those parties the subject of the Dispute) must meet to attempt in good faith to resolve the Dispute.

9.4 Arbitration

(a) If within 21 days of receiving notification under clause 9.2, or such further time as agreed in writing by the parties, the Dispute is not resolved, either party will have the right to refer the Dispute to binding arbitration pursuant to the *Commercial Arbitration Act 1984* (NSW) by issuing a written notice requiring the matter to be referred.

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(b) The arbitration shall be conducted in accordance with the Institute of Arbitrators and Mediator's Australia Rules for the conduct of Commercial Arbitrations.

(c) A party must not commence arbitration proceedings in respect of a Dispute unless it has complied with clause 9.2 and 9.3.

(d) The arbitrator will be appointed by the President of the Institute of Arbitrators and Mediators Australia.

(e) The seat or legal place of arbitration shall be in Sydney, NSW.

(f) Parties to the arbitration shall be entitled to legal representation.

(g) The laws relating to evidence will apply to the arbitration.

9.5 Confidentiality

Any information or documents disclosed by a party under this clause:

(a) must be kept confidential; and

(b) may only be used to attempt to resolve the Dispute.

9.6 Breach of this clause

If a party to a Dispute breaches clauses 9.1 to 9.5, the other parties to the Dispute do not have to comply with those clauses in relation to the Dispute.

9.7 Court Proceedings

If the dispute is not resolved within 60 days after notice is given under clause 9.2, then any party which has complied with the provisions of this clause 10, may in writing terminate any dispute resolution process undertaken under clause 10 and may commence court proceedings in relation to the dispute.

9.8 No prejudice

This clause 9 does not prejudice the right of any party to institute court proceedings for urgent injunctive or declaratory relief in any matter arising out of or relating to this Agreement.

10. Breach of this Agreement

10.1 Breach Notice

If the Developer breaches this Agreement, Council may serve a notice on the Developer (**Breach Notice**) specifying:

(a) the nature and extent of the alleged breach;

(b) if:

(i) the breach is capable of being rectified other than by the payment of compensation, what Council requires the Developer to do in order to rectify the breach; or

(ii) the breach is not capable of being rectified other than by payment of compensation, the amount of compensation Council requires the Developer to pay in order to rectify the breach, and

(c) the time within which Council requires the breach to be rectified, which must be a reasonable time of not less than fifteen (15) business days.

10.2 Event of Default

The Developer commits an **Event of Default** if it:

(a) fails to comply with a Breach Notice; or

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16

(b) becomes subject to an Insolvency Event.

10.3 Consequences of Events of default

Where the Developer commits an Event of Default, Council may exercise any rights available to it under this Agreement and at Law with respect to the Event of Default.

11. Position of Council

11.1 Consent authority

The parties acknowledge that Council is a consent authority with statutory rights and obligations pursuant to the terms of the Planning Legislation.

11.2 Agreement does not fetter discretion

This Agreement is not intended to operate to fetter, in any unlawful manner:

(a) the power of Council to make any law; or

(b) the exercise by Council of any statutory power or discretion,

(**Discretion**).

11.3 Severance of provisions

(a) No provision of this Agreement is intended to, or does, constitute any unlawful fetter on any Discretion. If, contrary to the operation of this clause, any provision of this Agreement is held by a court of competent jurisdiction to constitute an unlawful fetter on any Discretion, the parties agree:

(i) they will take all practical steps, including the execution of any further documents, to ensure the objective of this clause 11 is substantially satisfied; and

(ii) in the event that paragraph (1)(i) cannot be achieved without giving rise to an unlawful fetter on a Discretion, the relevant provision is to be severed and the remainder of this Agreement has full force and effect; and

(iii) to endeavour to satisfy the common objectives of the parties on relation to the provision of this Agreement which is held to be an unlawful fetter to the extent that it is possible having regard to the relevant court judgment.

(b) Where the law permits Council to contract out of a provision of that law or gives Council power to exercise a Discretion, then if Council has in this Agreement contracted out of a provision or exercised a Discretion under this Agreement, then to that extent this Agreement is not to be taken to be inconsistent with the law.

11.4 No Obligations

Nothing in this Agreement will be deemed to impose any obligation on Council to exercise any of its functions under the Planning Legislation with respect to the Land or the Development in a certain manner.

12. GST

12.1 Defined GST terms

Defined terms used in this clause 12 have the meaning ascribed to them in the GST Law.

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12.2 GST to be added to amounts payable

If GST is payable on a taxable supply made under, by reference to or in connection with this Agreement, the party providing the Consideration for that Taxable Supply must also pay the GST Amount as additional Consideration. This clause does not apply to the extent that the Consideration for the Taxable Supply is expressly agreed to be GST inclusive, unless otherwise expressly stated, prices or other sums payable or Consideration to be provided under or in accordance with this Agreement are exclusive of GST.

12.3 Tax invoice

If a party is liable for GST on any payments made under this Agreement, the other party must issue a tax invoice (or an adjustment note) to the liable party for any GST payable under this agreement within seven days of a written request. The tax invoice (or adjustment note) must include the particulars required by the GST Law to obtain an input tax credit for that GST.

12.4 GST obligations to survive termination

This clause 12 will continue to apply after expiration of termination of this Agreement.

13. Notices

13.1 Any notice, consent, information, application or request that must or may be given or made to a party this Agreement is only given or made if it is in writing and sent in one of the following ways:

(a) Delivered or posted to that party at its address set out below

(b) Emailed to that party at its email address set out below

Council

Attention:	Jason Linnane
Address:	Singleton Council PO Box 314 Singleton, NSW, 2330
Email:	jlinnane@singleton.nsw.gov.au

Developer

Attention:	Gary Wills
Address:	United Wambo Joint Venture C/O United Collieries Pty Ltd PMB 13 SINGLETON, NSW, 2330
Mobile Number:	0429 900 814
Email:	Gary.Wills@glencore.com.au

13.2 If a party gives the other party three (3) Business Days' notice of a change of its address or fax number, any notice, consent, information, application or request is only given or made by that party if it is delivered, posted or faxed to the latest address or fax number.

13.3 Any notice, consent, information, application or request is to be treated as given or made at the following time:

(a) If it is delivered, when it is left at the relevant address;

(b) If it is sent by post, two (2) Business Days after it is posted;

(c) If it is sent by fax, as soon as the sender receives from the sender's fax machine a report of an error free transmission to the correct fax number.

13.4 If any notice, consent, information, application or request is delivered, or an error free transmission report in relation to it is received, on a day that is not a Business Day, or if on a Business Day, after 5pm on that day in the place of the party to whom it is sent, it is to be treated as having been given or made at the beginning of the next Business Day.

14. Approvals and consent

Except as otherwise set out in this Agreement, and subject to any statutory obligation, a party may give or withhold an approval or consent to be given under this Agreement in that party's absolute discretion and subject to any conditions determined by the party. A party is not obliged to give reasons for giving or withholding consent or for giving consent subject to conditions.

15. Costs

The Developer agrees to:

(a) pay or reimburse the reasonable legal costs and disbursements of Council of the negotiation, preparation, execution, and stamping of this Agreement;

(b) pay the reasonable legal costs and disbursements referred to in paragraph (a) within ten (10) business days of receipt of a Tax Invoice from Council; and

(c) pay or reimburse the legal costs and disbursements of Council arising from the ongoing administration and enforcement of this Agreement including any breach or default by the Developer of it obligations under this Agreement.

16. Entire agreement

This Agreement contains everything to which the Parties have agreed in relation to the matters it deals with. No party can rely on an earlier document, or anything said or done by another party, or by a director, officer, agent or employee of that party, before this Agreement was executed, except as permitted by law.

17. Further acts

Each party must promptly execute all documents and do all things that another party from time to time reasonably requests to affect, perfect or complete this Agreement and all transactions incidental to it.

18. Governing law and jurisdiction

This Agreement is governed by the law of New South Wales. The parties submit to the non-exclusive jurisdiction of its courts and courts of appeal from them. The parties will not object to the exercise of jurisdiction by those courts on any basis.

19. Representations and warranties

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

20. Severability

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If a clause or part of a clause of this Agreement can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way. If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this Agreement, but the rest of this Agreement is not affected.

21. Waiver

The fact that a party fails to do, or delays in doing, something the party is entitled to do under this Agreement, does not amount to a waiver of any obligation of, or breach of obligation by, another party. A waiver by a party is only effective if it is in writing. A written waiver by a party is only effective in relation to the particular obligation or breach in respect of which it is given. It is not to be taken as an implied waiver of any other obligations or breach or as an implied waiver of that obligation or breach in relation to any other occasion.

22. Counterparts

This Agreement may be executed in any number of counterparts.

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Schedule 1 – Contributions Schedule

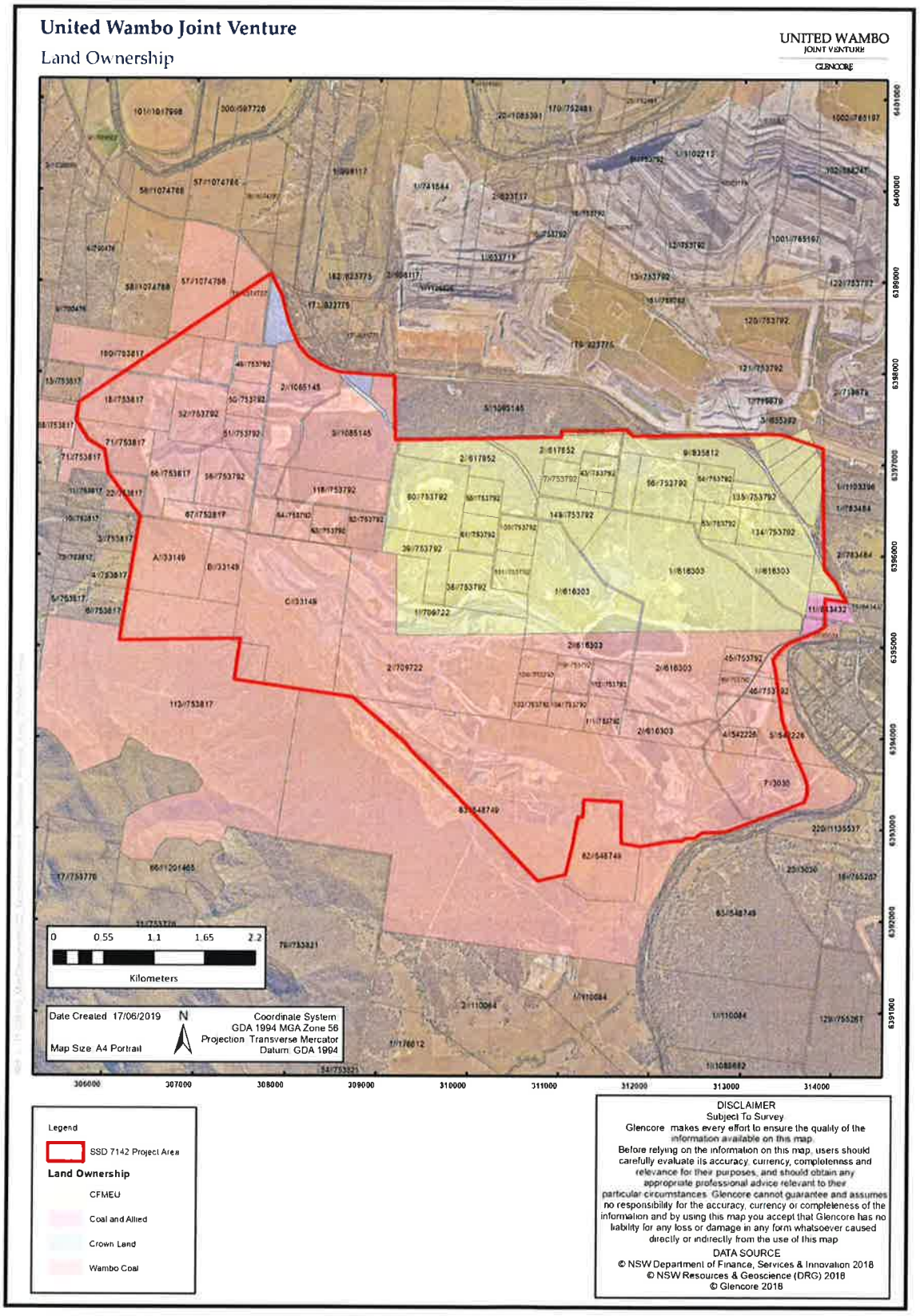
Purpose of the Development Contribution	Date for payment of Development Contribution	Amount of Development Contribution
Jerrys Plains Village Centre, Recreation Grounds and Main Street Upgrade The purpose of this contribution is to fund the implementation of gateway treatment for both approaches along the Highway to the village incorporating signage, rural fences and street trees. Improvement of the recreational grounds including rural fencing, additional trees, water feature in drainage line, seating, playground shelter, exercise equipment and Recreational Vehicle dump point. Main Street Upgrade including landscaping, construction of a cycleway and pedestrian refuge, reposition and lengthen the Recreational Vehicle/Truck parking in line with the concepts of the Jerrys Plains Village Master Plan.	No later than 6 January 2021.	$755,000
Local Projects around Warkworth and Jerrys Plains The purpose of this contribution is to fund development projects that are considered appropriate by Council in the Warkworth, Jerrys Plains and local areas that are potentially impacted by the Project.	No later than 6 January 2021.	$570,000
Singleton Community and Economic Development Fund Any purpose that benefits the public or a section of the public, including but not limited to a purpose specified in section 7.4(2) of the Act, including any such purpose which proactively manages the impacts of mining to secure a prosperous and enjoyable future for residents of the Singleton Local Government Area (LGA) in accordance with the Policies of the Singleton Community and Economic Development Fund, which in turn includes (but is not limited to) the following purposes: (a) Fostering business and job creation. (b) Education and training.	No later than 6 January 2021.	$1,325,000

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(c) Sports and recreation. (d) Homelessness and mental health. (e) Infrastructure. (f) Environmental Sustainability.		
	United Wambo VPA Total	**$2,650,000**

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Schedule 2 – United Wambo Open Cut Coal Mine Project Land



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Schedule 3 - Land for Registration of this Agreement

LOT	DP	OWNERSHIP
2	300990	Anthony John Maher and Grahame Patrick Kelly (as joint tenants) as authorised representatives of Construction, Forestry, Mining and Energy Union (CFMEU)
2	617852	Anthony John Maher and Grahame Patrick Kelly (as joint tenants) as authorised representatives of Construction, Forestry, Mining and Energy Union (CFMEU)
43	753792	Anthony John Maher and Grahame Patrick Kelly (as joint tenants) as authorised representatives of Construction, Forestry, Mining and Energy Union (CFMEU)

Signing page

EXECUTED as an agreement.

Dated: 16 December 2020

SIGNED by the **Singleton Council**, in accordance with a resolution passed on:

Signature of authorised person

JUSTIN FITZPATRICK-BARR

Name/Office held DIRECTOR INFRASTRUCTURE & PLANNING

Signature of General Manager

Jason Linnane

Name

EXECUTED by **United Collieries Pty Ltd (as manager of the United Wambo Joint Venture)** ABN 67 001 990 209

Signature of Director

Michael Carrucan

Name

Signature of Director

Ian Gough

Name

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