

Deed of Variation

Voluntary Planning Agreement – Mount Owen Continued Operations Project

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Deed of Variation
Voluntary Planning Agreement
Mount Owen Continued Operations Project

Parties

Council	Name	Singleton Council
	Address	PO Box 314 Singleton NSW 2330
	ABN	52 877 492 396
Developer	Name	Mt Owen Pty Limited
	Address	PO Box 320 Singleton NSW 2330
	ABN	83 003 827 361

Background

- A** Council and the Developer previously entered into a Voluntary Planning Agreement for the Mount Owen Continued Operations Project (**VPA**).
- B** Pursuant to clause 9 of the VPA, Council and the Developer wish to amend the VPA on the terms set out in this document.

Operative Provisions

1 Definitions & Interpretation

1.1 Defined Terms

In this document, words that are defined in clause 1.1 the VPA have the meaning ascribed to them in the VPA.

1.2 Interpretation

The interpretational rules contained in clause 1.2 of the VPA apply in the interpretation of this document.

2 Agreement

The agreement of the parties is:

- (1) made in consideration of, amongst other things, the mutual promises contained in this document; and
- (2) set out in these Operative Provisions.

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3 Amendments

On and from the date of this document, the VPA is varied as set out in **Annexure 1** with the variations being marked as shown in the Annexure such that:

- (1) text marked in colour and underlined is inserted; and
- (2) text with a line through it is deleted.

4 Acknowledgement

The parties acknowledge that prior to the date of this document and pursuant to the terms of the VPA, the Developer has already paid an amount of:

- (1) \$235,000 to the Singleton Community and Economic Development Fund; and
- (2) \$20,000.00 to the Softcogs/Singleton Rotary community sponsorship program,

which will form part of, and be deducted from, the total amount of the initial Development Contributions set out in Schedule 3 of the table in Schedule 1 of the VPA (as amended by this document).

5 Notice

On the date of this document, Council gives to the Developer notice in accordance with the VPA (as amended by this document) with respect to the requirement for the Developer to:

- (1) pay the initial Development Contributions set out in Schedule 3 of the table in Schedule 1 of the VPA; and
- (2) provide Council with the Bank Guarantee.

6 Affirmation

Except as amended by the terms of this document, the parties affirm that the VPA remains, in all other respects, valid and effective.

7 Costs

The Developer must pay the reasonable costs of Council incurred with respect to this document and the variation of the Planning Agreement set out in it.

8 Administrative provisions

8.1 Entire agreement

This document is the entire agreement of the parties on the specific subject matter addressed in this document. All representations, communications and prior agreements in relation to the subject matter are merged in and superseded by this document.

8.2 Waiver

The non-exercise of or delay in exercising any power or right of a party does not operate as a waiver of that power or right, nor does any single exercise of a power or right preclude any other or further exercise of it or the exercise of any other power or right. A power or right may only be waived in writing, signed by the parties to be bound by the waiver.

8.3 Cooperation

Each party must sign, execute and deliver all deeds, documents, instruments and act reasonably and effectively to carry out and give full effect to this document and the rights and obligations of the parties under it.

8.4 Counterparts

This document may be executed in any number of counterparts and all of those counterparts taken together constitute one and the same instrument.

8.5 Amendment

This document may only be amended or supplemented in writing signed by the parties.

8.6 Unenforceability

Any provision of this document which is invalid or unenforceable in any jurisdiction is to be read down for the purposes of that jurisdiction, if possible, so as to be valid or enforceable, and is otherwise capable of being severed to the extent of the invalidity or enforceability, without affecting the remaining provisions of this document or affecting the validity or enforceability of that provision in any other jurisdiction.

8.7 Governing law

The law in force in the State of New South Wales governs this document. The parties submit to the non-exclusive jurisdiction of the courts of New South Wales and any courts that may hear appeal from those courts in respect of any proceedings in connection with this document.

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Annexure 1: Tracked VPA

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Voluntary Planning Agreement

Singleton Council (**Council**)

Mt Owen Pty Limited (**Developer**)


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Voluntary Planning Agreement

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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 **Mt Owen Pty Limited**
ABN 83 003 827 361
Short form name **Developer**
Notice details Mt Owen Mine
C/O Mt Owen Pty Limited
PO Box 320
SINGLETON, NSW, 2330

Background

- A. Mt Owen Pty Ltd is the proponent of the Mount Owen Continued Operations Project (**the Project**).
- B. The Project is the continuation of the currently approved open cut mining operations at Mt Owen and Ravensworth East mines located between the townships of Singleton and Muswellbrook in New South Wales (~~NSW~~). ~~A plan showing the Mount Owen Continued Operations Project, as at the date of this agreement, is set out in Schedule 2.~~
- ~~B.~~ On 3 November 2016, Mt Owen Pty Ltd was granted approval for the Mt Owen Continued Operations Project (**Project Approval**) by way of development consent (SSD 5850) under section 89E of the ~~Environmental Planning and Assessment Act 1979 (Act)~~.
- C. ~~Schedule 2 Condition 15 of the~~ The Project Approval requires the Developer to ~~enter into a Planning Agreement with the Singleton Council to provide development contributions in accordance with Division 6 of Part 4 of the Act.~~
- ~~D.~~ The Developer has agreed to ~~provide~~make the Development Contributions ~~described in Schedule 1 of this Agreement, subject to the conditions outlined in this Agreement, in performance of the conditions of the Project Approval to Council.~~
- D. The parties enter into this Agreement to set out the terms upon which the Developer has agreed to make the Development Contributions to Council.


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 Project Approval.
- ~~(e)(f)~~ **Development Contributions** means the monetary contributions identified in column 3 of Schedule 1.
- ~~(f)~~ **End of Mining Operations** means the date on which the Developer ceases to extract coal from the mining pit shell as shown in the Project Approval.
- ~~(g)~~ **Event of Default** has the meaning ascribed to it in clause 11.2.
- ~~(g)(h)~~ **GST** has the same meaning as in GST Law.
- ~~(h)(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.
- ~~(i)(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.
- ~~(j)~~(l) **Land** means those lots within the area identified as "~~Project Area~~" in SSD-5850 Modification Consent Boundary" in the plan attached in Part A of Schedule 2.
- ~~(k)~~(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) **Operational Plan** ~~MIA Land~~ means ~~an operational plan approved by Council under section 405~~ those lots which are identified in Part B of Schedule 2, on which are located the Mining Infrastructure Area and the Coal Handling and Preparation Plant for the Mt Owen Mine.
- ~~(h)~~(o) **Planning Legislation** means the ~~Act~~, the *Local Government Act 1993* (NSW) and the *Roads Act 1993* (NSW).
- (p) **Project Approval** means the project approval for SSD 5850-Mod-2 granted to Mt Owen Pty ~~limited~~Limited for the Mount Owen Continued Operations Project on 3 November 2016 4 September 2019 over the ~~project area set out in Schedule 2~~ Land.
- ~~(m)~~(q) **Singleton Community and Economic Development Fund (SCED)** means the fund adopted by Council at its meeting on 16th December 2019.
- ~~(n)~~(r) **Tax Invoice** has the meaning given to that term in the GST Act.


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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.
- (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

The Parties agree that this Agreement is a planning agreement governed by Subdivision 2 of Division 6 of Part 4 of the Act.

3. Application of this Agreement

This Agreement ~~is made in respect of the development the subject of the Project Approval and~~ 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

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5.1 The Development Contributions

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

5.2 Form of Development Contributions

The Development Contributions are to be made:

- (a) for the purpose in column 1 of the tables in Schedule 1;
- (b) in the total amount referred to in column 43 of the tables in Schedule 1; and
- (c) at the times referred to in column 32 of the tables in Schedule 1. ~~Council and the Developer will agree upon an indicative schedule for the execution of the works contemplated by column 1 of the table Schedule 1 as necessary.~~

5.3 Adjustment for CPI

The amount of the Development Contributions in ~~Part A~~column 3 of the table in Schedule 1 are ~~not~~ subject to adjustment ~~for changes in CPI.~~

~~The Development Contributions in Part B of Schedule 1 are to be adjusted~~ for changes in CPI as follows:

$$DCP = \frac{DC \times A}{B}$$

where:

- DCP = the actual Development Contribution payment amount payable at the time the particular payment is made;
- DC = the particular Development Contribution payment amount required to be paid as per column 23 of the table in ~~Part B of~~ Schedule 1;
- A = the most recent CPI (Index Number) published by the ABS prior to the date the payment is due to be made; and
- B = the most recent CPI (Index Number) published by the ABS prior to the date of this Agreement.

5.4 Payment of Development Contributions

- (a) 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 by Council.
- (b) Before making any Development Contribution, the Developer must give Council not less than two Business Days' written notice of:
 - (i) its intention to make a Development Contribution; and
 - (ii) the amount proposed to be paid.

~~(c) The Developer must give a notice to Council pursuant to clause 5.4(b) within 14 days after:~~

- (i) ~~in respect of the Development Contributions set out in Schedule 1, receipt from Council of a valid Operational Plan pertaining to the relevant Development Contribution; and~~
- (ii) ~~in respect of the Development Contributions set out in Schedule 1, the date for payment of the Development Contribution as set out in column 3 of the table in Schedule 1.~~

5.5 Valid Operational Plan

For the purposes of clause 5.4(c)(i) and column 3 of the table in Schedule 1, a valid Operational Plan is a plan that:

- (a) ~~identifies forecasted expenditure by Council for a purpose and amount that accords with column 1 and 4 of the table in Schedule 1 (or such portion remaining that hasn't already been released to Council) for that relevant portion of the Development Contributions; or~~
- (b) ~~identifies forecasted expenditure for a public purpose in lieu of a purpose identified in Schedule 1 column 1 and for an amount that accords with column 4 of the table in Schedule 1 (or such portion remaining that hasn't been released to Council) and the Developer has agreed in writing (prior to the preparation by Council of the Operational Plan) to the use of the Development Contributions for the alternative public purpose.~~

5.65.5 Requirement for invoices

- (a) Upon receiving a notice from the Developer pursuant to clause 5.4(b), 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.

5.75.6 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 43 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) ~~If on the date that is 20 years after the Commencement Date the Council has failed to provide the Developer with an Operational Plan satisfying clause 5.4(a) for some or all of the Development Contributions set out in Schedule 1, the Developer must transfer the funds corresponding to the remaining Development Contributions set out in Schedule 1 to Council in satisfaction of the Developer's obligations under this Agreement.~~

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~~(c)(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.

5.85.7 Use of Development Contributions

Council ~~shall~~may only use the funds transferred 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. Enforcement and guarantee

- (a) The Developer irrevocably and unconditionally guarantees to the Council that the Developer will pay the Development Contributions required under this Agreement on time.
- (b) A demand under this clause may be made by the Council at any time and from time to time. A demand must specify the amount owing and how that amount is calculated.
- (c) The guarantee provided under this clause:
 - (i) extends to the present and future balance of the Development Contributions;
 - (ii) is wholly or partially discharged by the whole or partial payment of the Development Contributions;
 - (iii) continues until all of the Development Contributions have been paid in full; and
 - (iv) is a principal and independent obligation and is not ancillary, collateral or limited by reference to any other obligation.
- (d) Despite anything else in this Agreement, the maximum amount which the Developer may be required to pay under this Agreement is an amount equal to \$1,024,250,000 (before adjustment for CPI in accordance with clause 5.3).
- (e) The Developer acknowledges entering this document in return for Council agreeing to this Agreement as required under the conditions of the Project Approval.

7. Application of s94 and s94A of the Act

This Agreement does not exclude the operation of sections 94.7.11 and 94A.7.2 of the Act to the Project Approval.

8. Registration of this Agreement

8.1 This Registration of this Agreement is to

The Developer acknowledges and agrees that:

- (a) this Agreement must be registered ~~under~~ on the title to the MIA Land pursuant to section 93H.7.6 of the Act, but only; and

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- (b) subject to clause 8.2, Council may elect to undertake that registration in respect of these lots listed the MIA Land at the cost of the Developer.

8.2 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:
- (i) the consent of each person who:
 - (A) has an estate or interest in Part B of Schedule 2, the MIA Land; or
 - (B) is seized or possessed of an estate or interest in the MIA 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 8.1.
- (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 MIA Land as soon as reasonably practicable after this Agreement is lodged for registration.

8.3 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 MIA 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.

9. 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.

10. Dispute Resolution

10.1 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 10. A party must not commence any court proceedings relating to a dispute unless it complies with this clause 10.



10.2 Notification

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

10.3 Parties to resolve Dispute

Within 14 days of the party receiving the notice referred to in clause 10.2 the parties (or those parties the subject of the Dispute) must meet to attempt in good faith to resolve the Dispute.

10.4 Arbitration

- (a) If within 21 days of receiving notification under clause 10.2, 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.
- (b) The arbitration shall be conducted in accordance with the Institute of Arbitrators and Mediators 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 10.2 and 10.3.
- (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.

10.5 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.

10.6 Breach of this clause

If a party to a Dispute breaches clauses 10.1 to 10.5, the other parties to the Dispute do not have to comply with those clauses in relation to the Dispute.

10.7 Court Proceedings

If the dispute is not resolved within 60 days after notice is given under clause 10.2, 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.

10.8 No prejudice

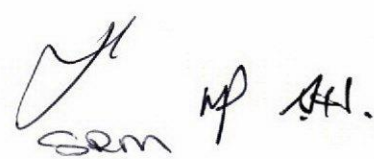
This clause 10 does not prejudice the right of any party to institute court proceedings for urgent injunctive or declaratory relief in any matter arising out of or relating to this Agreement.

11. Breach of this Agreement

11.1 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;

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(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.

11.2 Event of Default

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

- (a) fails to comply with a Breach Notice; or
- (b) becomes subject to an Insolvency Event.

11.3 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.

12. Position of Council

12.1 Consent authority

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

11.012.2 Agreement does not fetter discretion

~~Nothing in this~~ This Agreement shall be construed as requiring is not intended to operate to fetter, in any unlawful manner:

- (a) the power of Council to do anything that would cause it to be in breach of any of its obligations at law, and without limitation, nothing shall be construed as limiting or fettering in make any way law; or
- (b) the exercise by Council of any statutory power or discretion or duty,

(Discretion).

12.3 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 12 is substantially satisfied; and

(ii) in the event that paragraph (a)(ii) 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.

12.4 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.

12.13. GST

12.13.1 Defined GST terms

Defined terms used in this clause 13 have the meaning ascribed to them in the GST Law.

12.13.2 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.

12.13.3 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.

12.13.4 GST obligations to survive termination

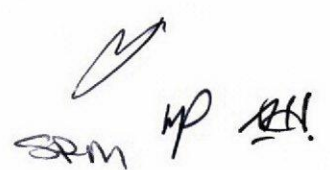
This clause 13 will continue to apply after expiration of termination of this Agreement.

13.14. Notices

~~13.14.1~~ 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: Stephen Hubert
Address: Mt Owen Mine
C/O Mt Owen Pty Limited
PO Box 320
Singleton, NSW, 2330
Mobile Number: 0429 700 650
Email: Stephen.Hubert@glencore.com.au

~~13.2~~14.2 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~~14.3 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~~14.4 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.

14.15. 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.

15.16. Costs

The costs associated with the preparation, execution, stamping and registration of the Agreement will be borne by the Developer.

Handwritten signature and initials, possibly "SM" and "AH", in the bottom right corner.

16.17. 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.

17.18. 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.

18.19. 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.

19.20. 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.

20.21. Severability

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.

21.22. 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.

22.23. Counterparts

This Agreement may be executed in any number of counterparts.

Schedule 1 - Contributions Schedule

Part A - Not Subject to CPI Adjustments

Purpose of the Development Contribution	Date for payment of Development Contribution	Amount of Development Contribution
<p><u>Singleton Community & Economic Development Initiatives</u> <u>-Riverfront Beautification Fund</u></p> <p>TheAny purpose that benefits the public or a section of this contribution is the public, including but not limited to contribute towards the cost a purpose specified in section 7.4(2) of undertaking a significant economic development project within 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. Council will propose the details of the project for approval by the Developer. Once approved by the Developer, the project will be implemented (LGA) in accordance with an Operational Plan the Policies of the Singleton Community and Economic Development Fund, which in turn includes (but is not limited to) the following purposes:</p> <p>(a) <u>Fostering business and job creation.</u></p> <p>(b) <u>Education and training.</u></p> <p>(c) <u>Sports and recreation.</u></p> <p>(d) <u>Homelessness and mental health.</u></p> <p>(e) <u>Infrastructure.</u></p>	<p>10-yr term - \$50 Within fourteen (14) days of receiving a written request from Council to do so, an initial contribution of \$466,000 per annum must be made to SSC for Council by the first five years Developer with \$3076,000 per annum thereafter for to be paid by the Developer to Council on each anniversary of the of that date for the remaining five nine years.</p>	<p>\$400 <u>1,150,000</u></p>


 W
 A.H.

(a)(f) Environmental Sustainability.

Completion of the All Abilities Playground at Rose Point Park

Stage 8—Climbing Challenge

Stage 9—Graduated balancing challenges

Stage 10—Spinning, balancing and rocking including new accessible equipment

Stage 11—Sensory trail

Extension of junior cycleway

Extension of boundary fence to include third shelter

Landscaping and seating

Contributions made in line with the SC project plan approved by Mt Owen and whilst ever coal mining operations are undertaken on site.

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		ution for bounda ry fence & shelter.	
Five year sponsorship of the community groups (Softeogs / Singleton Rotary) Proposed establishment and annual conduct of a national signature tourism / healthy lifestyle cycle event from Singleton to Lake St Clair to build on Glencore's support of Lake St Clair's facility improvement.	Whilst ever coal mining operations are undertaken on site and while ever the event is held and not to exceed the term nominated. \$20,000 per annum to be paid by the Developer to Council with the first payment to be within fourteen (14) days of receiving a written request from Council to do so, and each consecutive payment to be made on each anniversary of that date until paid in full.	5-year term —\$20,000 per annum to SSC.	\$100,000
Support for Aboriginal Cultural Events Annual Aboriginal Art Award	Whilst ever coal mining operations are undertaken on site and while ever the event is held and not to exceed the term nominated.	3-year term —\$8,000 per annum for funding of art award show.	\$24,000
Mt Owen VPA Total			\$1,024,000

Part B—Subject to CPI Adjustments

Nil

SRM up 124.

Schedule 2 – Lands

PART A - PLAN OF THE MOUNT OWEN CONTINUED OPERATIONS PROJECT

– Project Approval



Handwritten signature and initials: MP AH.


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W. H. A.

PART B – LAND FOR REGISTRATION OF THIS AGREEMENT

Lot	DP	Owner
1	1072124	Mine Owned Glencore
1	135026	Mine Owned Glencore
1	137381	Mine Owned Glencore
1	137382	Mine Owned Glencore
1	151176	Mine Owned Glencore
1	159786	Mine Owned Glencore
1	380676	Mine Owned Glencore
1	48490	Government Authority
1	745486	Mine Owned Glencore
1	793886	Government Authority
1	804150	Mine Owned Glencore
1	823167	Mine Owned Glencore
1	865784	Mine Owned Glencore
1	925901	Mine Owned Glencore
1	940619	Mine Owned Glencore
2	1072124	Mine Owned Glencore
2	233019	Australian Rail Track Corporation
2	38725	Mine Owned Glencore
2	549723	Mine Owned Glencore
2	6842	Mine Owned Glencore
2	730978	Mine Owned Glencore
2	804150	Mine Owned Glencore
2	823167	Mine Owned Glencore
2	829977	Government Authority
2	859544	Mine Owned Glencore
2	865784	Mine Owned Glencore
3	38725	Mine Owned Glencore
3	195598	Mine Owned Glencore
3	662944	Mine Owned Glencore
3	1072124	Mine Owned Glencore
3	823167	Mine Owned Glencore
3	859544	Mine Owned Glencore
4	1072124	Mine Owned Glencore
4	255403	Mine Owned Glencore
4	38725	Mine Owned Glencore
4	823167	Mine Owned Glencore
4	859544	Mine Owned Glencore


 SPM MP GA

Lot	DP	Owner
5	1077004	Mine Owned Glencore
5	38725	Mine Owned Glencore
5	823167	Mine Owned Glencore
5	859544	Mine Owned Glencore
6	1077004	Mine Owned Glencore
6	255403	Mine Owned Glencore
6	38725	Mine Owned Glencore
6	859544	Mine Owned Glencore
7	38725	Mine Owned Glencore
7	859544	Mine Owned Glencore
8	6830	Mine Owned Glencore
8	38725	Mine Owned Glencore
8	859544	Mine Owned Glencore
8	1077004	Government Authority
9	6842	Mine Owned Glencore
9	38725	Mine Owned Glencore
10	38725	Mine Owned Glencore
11	6830	Mine Owned Glencore
11	6842	Mine Owned Glencore
11	38725	Mine Owned Glencore
11	825904	Mine Owned Glencore
11	873459	Mine Owned Glencore
12	38725	Mine Owned Glencore
12	825904	Mine Owned Glencore
12	873459	State Forest
12	1017435	Mine Owned Glencore
13	38725	Mine Owned Glencore
13	665120	Mine Owned Glencore
13	825904	Mine Owned Glencore
14	38725	Mine Owned Glencore
14	825904	Mine Owned Glencore
15	38725	Mine Owned Glencore
15	873459	Mine Owned Glencore
16	38725	Mine Owned Glencore
17	6830	Mine Owned Glencore
19	38725	Mine Owned Glencore
20	38725	Mine Owned Glencore
21	6830	Mine Owned Glencore
21	38725	Mine Owned Glencore
21	841165	Mine Owned Glencore



SRM MP AH.

Lot	DP	Owner
22	841165	Mine Owned Glencore
23	6842	Mine Owned Glencore
23	841165	Mine Owned Glencore
24	6830	Mine Owned Glencore
24	841165	Mine Owned Glencore
25	6830	Mine Owned Glencore
25	841160	Mine Owned Glencore
26	6830	Mine Owned Glencore
26	841160	AusGrid
27	6830	Mine Owned Glencore
30 23	752462	Mine Owned Glencore
32	535087	Mine Owned Glencore
32	545601	Mine Owned Glencore
37	752462	Mine Owned Glencore
58	752462	Mine Owned Glencore
60	752462	Mine Owned Glencore
71	625171	Mine Owned Glencore

 SRM MP AH.

Signing page

EXECUTED as an agreement.

Dated: _____

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 **Mt Owen Pty Limited**
ABCN 83 003 827 361

Signature of Director

Stephen Hubert

Name

Signature of Director

Mark Klasen

Name

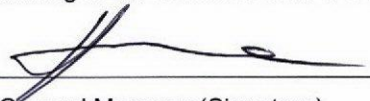
SRM  J.H.

Execution Page

Executed as a Deed.

Dated:

Signed, sealed and delivered by Singleton Council by its General Manager and Mayor by the affixing of the Common Seal of Council in accordance with resolution dated




General Manager (Signature)



Mayor (Signature)

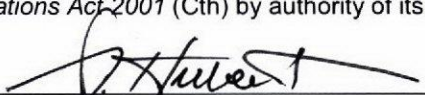


Name of General Manager (Print Name)



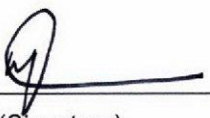
Name of Mayor (Print Name)

Signed, sealed and delivered by Mt Owen Pty Limited in accordance with section 127(1) of the Corporations Act 2001 (Cth) by authority of its directors.



Director/~~Secretary~~ (Signature)
Stephen Hubert

Name of Director/ ~~Secretary~~ (Print Name)



Director (Signature)
Michael Pajkovic

Name of Director (Print Name)

Explanatory Note

Deed of Variation to Original Planning Agreement

Mount Owen Mine, Singleton NSW 2330

1 Purpose

The purpose of this Explanatory Note is to provide a plain English summary to support the notification of the Deed of Variation under s7.4 of the *Environmental Planning and Assessment Act 1979* (NSW) (**Act**).

This Explanatory Note has been prepared jointly between the parties as required by clause 25E of the *Environmental Planning and Assessment Regulation 2000* (**Regulations**).

This Explanatory Note is not to be used to assist in construing the Deed of Variation.

2 Parties to the Deed of Variation

The parties to both the Original Planning Agreement (as specified in the Deed of Variation) and Deed of Variation are:

- (1) Singleton Council (ABN 52 877 492 396) (**Council**); and
- (2) Mt Owen Pty Ltd (ABN 83 003 827 361) (**Developer**).

3 Description of the Land to which the Deed of Variation applies

The Deed of Variation applies to the land contained in the folio identifiers in Schedule 2 of the VPA and in Annexure A of this document situated at Mount Owen Mine, Singleton NSW 2330 (**Land**).

4 Description of the Development to which the Deed of Variation applies

The development to which the Deed of Variation applies is the development contained in Development Application No. SSD 5850 approved by Council and modified by SSD 5850-Mod 2 on 4 September 2019.

5 Summary of Contributions, Objectives, Nature and Effect of the Deed of Variation

The Deed of Variation amends the terms of the Original Planning Agreement by, amongst other things, requiring the Developer to pay a monetary contribution to Council in an amount of **\$1,250,000.00** broken down as follows:

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- (1) **\$466,000.00** to be paid by the Developer to Council within fourteen (14) days after receiving a written request from Council (**Initial General Payment**).
 - (2) **\$76,000.00** to be paid by the Developer to Council on each anniversary date of the Initial General Payment for nine (9) years.
 - (3) **\$20,000.00** to be paid by the Developer to Council for a national signature tourism and healthy lifestyle cycle event from Singleton to Lake St Clair to be paid by the Developer to Council within fourteen (14) days of receiving a written request from Council (**Initial Event Payment**).
 - (4) **\$20,000.00** to be paid by the Developer to Council for a national signature tourism and healthy lifestyle cycle event from Singleton to Lake St Clair on each anniversary date of the Initial Event Payment for four (4) years.

(Collectively referred to as the **Monetary Contributions**).

The Deed of Variation acknowledges that under the terms of the Original Planning Agreement, the Developer has already paid to Council the following monetary contributions:

- (1) **\$235,000.00** to the Singleton Community and Economic Development Fund as part of the Initial General Payment.
- (2) The Initial Event Payment.

These amounts are to be deducted from the total amount of the Monetary Contributions which means the following initial payments will need to be made by the Developer to Council as a replacement amount for the Initial General Payment and Initial Event Payment:

- (1) A revised amount of **\$231,000.00** for the Initial General Payment.
- (2) A revised amount of **\$0.00** for the Initial Event Payment.

The **objective** of the Deed of Variation is to require the Developer to provide the Monetary Contributions.

The **nature** of the Deed of Variation is a contractual relationship between the Council and the Developer for providing the Monetary Contributions.

The **effect** of the Deed of Variation is that the Developer will provide the Monetary Contributions in the manner provided for by the Deed of Variation (as applicable).

6 Assessment of planning purposes and impact of the Deed of Variation on the Public

The planning purposes served by the Deed of Variation are the same as those set out in the Planning Agreement.

SPM *[Signature]* *MP* *SH*

The Deed of Variation promotes:

- (1) the public interests; and
- (2) the Objects of the Act,

in the same manner set out in the Original Planning Agreement.

7 Identification of how the Deed of Variation promotes the public interest

The Deed of Variation supports the public interest in the same manner set out in the Original Planning Agreement.

8 How the Deed of Variation promotes the Guiding Principles for Councils

The Deed of Variation promotes a number of the Guiding Principles for Councils under section 8A of the *Local Government Act 1993* (NSW), as follows:

- (1) To plan strategically, using the integrated planning and reporting framework, for the provision of effective and efficient services and regulation to meet the diverse needs of the local community.
 - (2) To act fairly, ethically and without bias in the interests of the local community
 - (3) To recognise diverse local community needs and interests.
 - (4) To have regard to the long term and cumulative effects of its decisions on future generations.
 - (5) To bear in mind that it is the custodian and trustee of public assets and to effectively plan for, account for and manage the assets for which it is responsible.
 - (6) To engage in long-term strategic planning on behalf of the local community.
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SPM MP SH.

Annexure A – Land

Lot	DP	Owner
4	823167	Mine Owned Glencore
24	6830	Mine Owned Glencore
123	752462	Mine Owned Glencore


MP AH.