

Singleton Council

Planning Agreement Policy

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Prepared by:

Marsdens Law Group

Level 1
49 Dumaresq Street
CAMPBELLTOWN NSW 2560

Tel: 02 4626 5077

Fax: 02 4626 4826

DX: 5107 Campbelltown



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Planning Agreements Policy

1 Background

1.1 Name of Policy and commencement

- (1) This policy sets out Singleton Council's (**Council**) policy and procedures relating to planning agreements under the *Environmental Planning and Assessment Act 1979* (NSW) (**EPA Act**) entered into by Council.
- (2) This policy was adopted by resolution of Council on 17 May 2021 (Min No. 80/21).

1.2 Introduction

Council has adopted this policy in order to provide developers and the community with an understanding of the objectives, principles and procedures applying to the preparation of, and entry into, planning agreements.

1.3 Objectives

The objectives of this policy are:

- (1) to establish an efficient, fair, transparent and accountable framework governing the development and use of planning agreements by Council;
- (2) to set out the Council's specific policies and procedures relating to the use of planning agreements;
- (3) to allow the community to gain an understanding of the benefits of appropriate planning agreements for the provision of public facilities, services and programs;
- (4) to facilitate greater flexibility in the provision of development contributions within Council's local government area through the use of planning agreements;
- (5) to provide a framework within which all stakeholders in development are provided with a greater opportunity for involvement in determining the type, standard and location of public facilities, services, programs and other public benefits; and
- (6) to set out procedures relating to the use of planning agreements within Council's Local Government Area.

1.4 What does this Policy set out?

This policy sets out Council's approach to the use of planning agreements through negotiation. Such Planning Agreements may be entered into with respect to rezoning of land, development applications, other developments with respect to which Council is not the approval authority within the Singleton Local Government area, or in any other circumstances permitted under the Act.

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In particular:

- (1) the circumstances in which the Council would ordinarily consider entering into a planning agreement;
- (2) the matters ordinarily covered by a planning agreement;
- (3) the form of development contributions ordinarily sought under a planning agreement;
- (4) the kinds of public benefits ordinarily acceptable to Council and whether they involve a planning benefit;
- (5) the procedures for negotiating and entering into planning agreements; and
- (6) the Council's policies on other matters relating to planning agreements.

1.5 Nature of a planning agreement

- (1) A planning agreement is a voluntary agreement entered into under Subdivision 2 of Division 7.1 of Part 7 of the EPA Act between Council and a person:
 - (a) who has sought a change to an environmental planning instrument;
 - (b) who has made, or proposes to make, a development application; or
 - (c) who has entered into an agreement with, or is otherwise associated with, a person to whom paragraph (a) or (b) applies,under which the person is required to dedicate land free of cost, pay a monetary contribution, or provide any other material public benefit, or any combination of them, to be used for or applied towards a public purpose.
- (2) For the purpose of a planning agreement, a public purpose includes (without limitation) any of the following:
 - (a) the provision of (or the recoupment of the cost of providing) public amenities, public services, affordable housing, and transport or other infrastructure relating to land;
 - (b) the funding of recurrent expenditure relating to the provision of public amenities or public services, affordable housing or transport or other infrastructure;
 - (c) the monitoring of the planning impacts of development;
 - (d) the conservation or enhancement of the natural environment; and
 - (e) any other public purposes set out in section 7.4(2) of the EPA Act, as amended from time to time.

1.6 Circumstances in which planning agreement may be negotiated

- (1) Council may negotiate a planning agreement with a person in connection with:

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- (a) a change that person has sought to an environmental planning instrument; or
 - (b) any application for development consent by that person, or by someone associated with the person,
- relating to any land within Council's Local Government Area.
- (2) Council is under no obligation to:
 - (a) enter into negotiations with any person with respect to a planning agreement; or
 - (b) to enter into a planning agreement offered by a proponent.

1.7 Not legally binding

- (1) By their very nature, planning agreements are flexible arrangements which can vary greatly depending on the nature and extent of the proposed development, and/or the nature and extent of the public benefits being provided.
- (2) Accordingly, Council needs to ensure that its procedure with respect to the negotiation and formation of planning agreements is flexible.
- (3) In order to ensure that flexibility, this policy is not legally binding and Council is not bound to strictly apply this policy for every planning agreement entered into by Council. However, Council will generally seek to apply this policy, as far as reasonably practicable, in relation to planning agreements.

2 Legal and policy context

2.1 Framework

- (1) Council's current legal and procedural framework for planning agreements consist of:
 - (a) Part 7, Division 7.1, Subdivision 2 of the EPA Act;
 - (b) Part 4, Division 1A of the *Environmental Planning and Assessment Regulation 2000* (NSW) (**Regulation**);
 - (c) the *Singleton Local Environmental Plan 2013*;
 - (d) the *Singleton Development Contributions Plan 2008*; and
 - (e) this policy,(each as amended from time to time).
- (2) Council will also be guided by the Practice Note entitled "*Planning Agreements Practice Note – Exhibition Draft*" (April 2020) issued by the NSW Department of Planning, Industry and Environment (**Practice Note**) for the purposes of clause 25B of the Regulation. If there is any inconsistency between that Practice Note and this policy, then Council will be guided by this policy to the extent of that inconsistency.

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2.2 Mandatory requirements of a planning agreement

Section 7.4(3) of the EPA Act requires planning agreements to provide for those matters set out in Part 1 of **Schedule 1** of this policy.

2.3 Template Planning Agreement

- (1) A template planning agreement is attached as **Annexure 1**. This template will be used by Council as the basis of any proposed planning agreement to be entered into between Council and a Developer (unless Council decides otherwise).
- (2) Council does not require the mandatory use of its template planning agreement, however:
 - (a) use of that template is anticipated to make the negotiation of any planning agreement more efficient; and
 - (b) any departure from Council's template will need to be justified by the relevant proponent having regard to the circumstances of the relevant matter.

2.4 Restrictions on the content of planning agreements

- (1) Section 7.4(9) of the EPA Act precludes a planning agreement from imposing an obligation on Council to:
 - (a) grant development consent; or
 - (b) exercise a function under the EPA Act in relation to a change to an environmental planning instrument.
- (2) Section 7.4(10) of the EPA Act provides that a planning agreement is void to the extent to which it authorised anything to be done in breach of the EPA Act, an environmental planning instrument or a development consent to the land to which the agreement applies.
- (3) However, except as provided by law, the EPA Act does not preclude a planning agreement containing other provisions that may be necessary or desirable in particular cases.

2.5 The use of an Explanatory Note

- (1) Clause 25E(1) of the Regulation requires Council to prepare, in conjunction with the other parties to the planning agreement, an Explanatory Note which must then be exhibited with the copy of the proposed planning agreement when that agreement is made available for inspection by the public in accordance with the Act.
- (2) An explanatory note must:
 - (a) summarises the objectives, nature and effect of the proposed planning agreement; and
 - (b) contains an assessment of the merits of the proposed planning agreement including the impact (positive or negative) on the public or any relevant section of the public.

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- (3) Further details of the matters that must to be addressed in an Explanatory Note are set out in Part 2 of **Schedule 1**.
- (4) A template Explanatory Note is attached as **Annexure 2**. This template will be used by Council in relation to any proposed planning agreement exhibited by Council.

3 Principles for planning agreements

3.1 Principles

- (1) Council's use of planning agreements will be governed by the following fundamental principles:
 - (a) Planning agreements are not a mechanism through which planning decisions can be 'bought or sold'. In particular a planning agreement will not be accepted by Council as a means of permitting development that is not acceptable on planning grounds.
 - (b) Council will never allow planning agreements to improperly fetter the exercise of its statutory functions under the EPA Act, the Regulation, the *Roads Act 1993* (NSW), the *Local Government Act 1993* (NSW) or any other Act or law.
 - (c) Council will only use planning agreements for a proper planning purpose.
 - (d) Council will generally only accept benefits under a planning agreement that are related to the development to which the planning agreement applies, however it has a discretion to accept other benefits after considering the matters set out in this policy, and in particular in clause 3.2.
 - (e) When considering:
 - (i) a change to an environmental planning instrument; or
 - (ii) a development application,to which a proposed planning agreement relates, Council will not:
 - (iii) take into consideration public benefits proposed to be provided in a planning agreement that are wholly unrelated to the proposed development; or
 - (iv) give disproportionate weight to a proposed planning agreement.
 - (f) Council will give primary consideration to the public interest when considering a planning agreement and will not allow that interest to be outweighed by the interests of individuals or interest groups.
 - (g) Council will not improperly rely on its statutory position in order to extract unreasonable public benefits from proponents under a planning agreement.
 - (h) Planning agreements will not be allowed to be used for any purpose other than for a planning purpose.

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- (i) Council will not enter into any planning agreement that is unrelated to a particular development or planning proposal.
 - (j) Council will not give any preferential treatment to proponents with development applications or planning proposals that require planning agreements.
- (2) Council may also apply the following acceptability tests (as set out in the Practice Note) in making an assessment as to whether planning obligations are appropriate and to ensure that a planning agreement:
 - (a) is directed towards proper or legitimate planning purposes, ordinarily ascertainable from the statutory planning controls and other adopted planning policies applying to development;
 - (b) provide for the delivery of infrastructure, services, programs or public benefits not wholly unrelated to the development;
 - (c) produces outcomes that meet the general values and expectations of the community and protect the overall public interest;
 - (d) provides for a reasonable means of achieving the relevant purposes and outcomes and securing the benefits; and
 - (e) protects the community against planning harm.

3.2 Matters that Council may consider

The criteria that Council may take into account when considering whether or not to negotiate a planning agreement with a developer includes but is not limited to the following:

- (1) Whether planning benefits for the wider community accrue from the planning agreement.
- (2) Whether the public benefits proposed to be provided under the planning agreement meet:
 - (a) the demands created by the development for new public infrastructure, amenities, services; and
 - (b) the planning objectives of Council.
- (3) Whether an existing deficiency in the provision of public facilities, services, and programs in the Council's local government area is rectified through the planning agreement.
- (4) Whether compensation is required for the loss of, or damage to, a public amenity, service, resource or asset caused by the development through its replacement, substitution, repair or regeneration.
- (5) The financial impost on Council arising as a result of the provision of the public benefits under the planning agreement, including but not limited to:
 - (a) the financial burden on Council with respect to the management and maintenance of any land and facilities provided; and
 - (b) whether recurrent funding of those facilities is required or provided.

- (6) The extent to which Council needs to monitor the planning impacts of development.

3.3 Form of development contributions

- (1) The form of development contributions to be provided under a planning agreement will be determined on a case by case basis depending on:
 - (a) the particulars of the proposed change to the environmental planning instrument or development application to which the proposed planning agreement relates; and
 - (b) the identified need for further public benefits.
- (2) Development contributions under a planning agreement will generally take one (1) of the following forms:
 - (a) Payment of a monetary contribution.
 - (b) The dedication of land.
 - (c) The provision of public works or infrastructure.

3.4 Mining operations

- (1) For any planning agreement which relates to mining operations, Council will generally require the payment of a monetary contribution which may be used by Council as part of the Singleton Community and Economic Development Fund adopted by Council at its meeting on 16 December 2019 (**SCEDF**).
- (2) The purpose for which any such monetary contribution may be applied by Council under paragraph (1) will include, but not be limited to, 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 EPA Act. This includes any such purpose which proactively manages the impacts of mining to secure a prosperous and enjoyable future for residents of the Singleton LGA in accordance with the Policies of the SCEDF, which in turn includes (but is not limited to) the following purposes:
 - (a) Fostering business and job creation.
 - (b) Education and training.
 - (c) Sports and recreation.
 - (d) Homelessness and mental health.
 - (e) Infrastructure.
 - (f) Environmental Sustainability.
- (3) Ultimately the public benefits for which any such contribution are used will be determined by Council.
- (4) In terms of the value of the material public benefits that Council will agree to accept in a Planning Agreement which relates to mining operations, Council may adopt separate policies, or pass separate resolutions, from time to time.

- (5) As at the date of this Policy:
 - (a) the Resolution of Council passed on 20 November 2017 (as amended or replaced from time to time) is relevant to Council's consideration of benefits offered in a Planning Agreement; and
 - (b) it is Council's policy to calculate any relevant capital investment value having regard to PS10-008 or PS13-002 (as the case may be).

3.5 Methodology for value of public benefits

- (1) The valuation of the public benefits to be provided under a planning agreement are an important component of any such agreement.
- (2) There are numerous methods of determining such values and the methodologies for valuing the public benefits set out in this section are to be used as a general guide only. Accordingly Council is not bound to follow such methodologies but may elect to do so on a case by case basis.
- (3) Where a public benefit to be provided under a planning agreement is the dedication of land for a public purpose by the developer, Council may seek to value the benefit on the basis of the estimated amount of compensation to which the developer would be entitled under the *Land Acquisition (Just Terms Compensation) Act 1991* (NSW) upon the compulsory acquisition of the land or by engaging an independent valuer.
- (4) Where a public benefit to be provided under a planning agreement is the carrying out of works for a public purpose, Council will generally seek to value the benefit on the basis of the estimated value of the completed works determined using the method that would be ordinarily adopted by a quantity surveyor.
- (5) Where a public benefit to be provided under a planning agreement is the provision of a material public benefit other than the carrying out of works, Council and the developer will negotiate the most appropriate manner by which the benefit is to be valued for the purposes of the agreement.
- (6) Council will generally adopt the following approach to valuation of benefits in connection with any planning agreement:
 - (a) the value of a benefit must be provided by the developer at an appropriate time, together with a written verification of that valuation by an appropriately qualified independent expert; and
 - (b) Council may review the valuation, including by engaging an independent expert and Council's costs incurred in connection with such review may also need to be borne by the developer.
- (7) Council will generally seek to ensure that monetary contributions required to be paid under a planning agreement are increased by reference to an appropriate index (such as the consumer price index) from the time of the formation of the planning agreement until the relevant monetary contribution is paid.

3.6 Recurrent charges

- (1) Planning agreements may require a developer to make contributions towards the recurrent cost of public facilities, services or programs.

- (2) The nature and extent of any recurrent charges will be determined on a case by case basis, however the following general principles will apply:
 - (a) Where the public facility primarily serves the development to which the planning agreement relates, or neighbouring development, the arrangement for recurrent funding may be in perpetuity.
 - (b) Where the public benefit is intended to serve the wider community, the planning agreement may require the developer to make contributions towards the recurrent costs of the facility for a set period only which will be negotiated according to the assessed impact of the development.

3.7 Pooling of monetary contributions

- (1) Pooling of monetary contributions paid under different planning agreements may be appropriate to allow public benefits, particularly essential infrastructure and ongoing services, to be provided in a fair and equitable way.
- (2) A planning agreement may therefore provide for the payment of monetary contributions to be provided by the developer with the intention that those contributions be pooled with others received by Council.
- (3) In such an instance, Council may seek to include a provision in the planning agreement which permits:
 - (a) money paid under the planning agreement to be pooled with money paid under other planning agreements; and
 - (b) for that money to be applied progressively and for different purposes under those agreements.
- (4) If significant pooling is required Council may consider if a s7.11 of the EPA Act infrastructure contributions plan would be appropriate.

3.8 Other development contributions

- (1) A planning agreement may or may not exclude the operation of s7.11, s7.12 and/or s7.24 of the Act with respect to the development to which the planning agreement relates.
- (2) Council has no general policy on whether a planning agreement should exclude the application of s7.11 or s7.12 of the EPA Act with respect to the development to which the planning agreement relates.
- (3) Council will negotiate any such exclusion as part of the negotiation of the planning agreement generally having regard to the particular circumstances of the proposed change to an environmental planning instrument or the proposed development.
- (4) Where the application of s7.11 of the EPA Act is not excluded, Council will generally not permit any material public benefits provided under the planning agreement to be:
 - (a) taken into consideration when imposing a development contribution to be imposed under s7.11 of the EPA Act; or

- (b) used to off set any contribution imposed under s7.11 of the EPA Act, unless the relevant material public benefit provided under the planning agreement is agreed by Council in the planning agreement to satisfy any such contribution.
- (5) Council will not agree to a planning agreement excluding the operation of s7.24 of the EPA Act unless the Minister or the appropriate development corporation approves that exclusion.

3.9 Legal costs of negotiating planning agreements

- (1) As a general rule, a proponent will need to pay Council's legal costs and disbursements incurred in relation to the drafting, negotiation, execution and registration (if applicable) of the planning agreement.
- (2) A planning agreement may also be needed to make provision for Council's costs for the monitoring and enforcing of the planning agreement to be borne by the developer. This may include an obligation on the proponent to provide security to the Council for those costs.

3.10 Refunds and credits

Council generally will not agree to:

- (1) making a refund of, or providing any credits with respect to, any contributions provided under;
- (2) a planning agreement providing for the surplus value of the public benefits provided under a planning agreement to be refunded to the developer; or
- (3) a planning agreement providing for the surplus value of the public benefits provided under a planning agreement to be offset against development contributions required to be made by the developer in respect of any further development,

including in circumstances where the value of the material public benefits provided under a planning agreement exceed the value of the contributions that would otherwise have been required to be paid under the relevant s94 Contributions Plan.

3.11 Contributions Plan

- (1) The *Singleton Development Contributions Plan 2008* is the current contributions plan adopted by Council.
- (2) This document could be a starting point for developers to understand the types of facilities that could be negotiated under a planning agreement.
- (3) It is also recognised that the planning benefits proposed for any development may differ from those identified in the Contributions Plan.
- (4) Negotiations for each planning agreement will reflect the circumstances of each individual case.

4 Negotiation procedures and probity

4.1 Introduction

- (1) Council's negotiation system for planning agreements aims to be efficient, predictable, transparent and accountable.
- (2) In this regard, the process set out in this policy is based on principles of fairness, co-operation, full disclosure, early warning and agreed working practices and timetables.

4.2 Timing of negotiations

- (1) Council will seek to ensure that the final negotiation of planning agreements runs in parallel with:
 - (a) the making of the relevant change to an environmental planning instrument; or
 - (b) the consideration of the relevant development application,so as not to unduly delay the relevant matter.
- (2) A summary of the steps generally involved with respect to the negotiation process is set out in **Schedule 2** of this policy. Council will ensure that all negotiations with a proponent and their consultants are sufficiently separated and documented.
- (3) Council's preference is therefore to have the planning agreement negotiated and documented before it is publicly notified as required by the EPA Act and the Regulations.
- (4) No planning agreement will become binding until it is approved by a resolution of Council and entered into in accordance with the EPA Act and the Regulations.

4.3 Council's representative

- (1) A Council officer or officers with appropriate delegated authority will negotiate a planning agreement on behalf of the Council. Council may involve an independent person(s) or expert to facilitate or otherwise participate in the negotiations or aspects of it, particularly where this will lead to a better planning outcome.
- (2) Councillors will not be involved in the face to face negotiation of a planning agreement but will ultimately be responsible for the approval or rejection of the agreement as part of their duties as councillors.

4.4 Separation of commercial and planning assessment roles

In the negotiation of a Planning Agreement, Council will take appropriate steps to ensure that it avoids a conflict of interest between its role as a planning authority and its commercial interest in the development.

4.5 Probity

- (1) Probity is important to Council and it will therefore ensure that the negotiation of any planning agreement is fair and transparent and is directed at achieving public benefits in an appropriate manner.
- (2) Council will:
 - (a) inform any applicant about Council values and business ethics – specifically, about ethical behaviour appropriate to business dealings;
 - (b) endeavour to ensure that the system and the Council's role in relation to planning agreements is well understood;
 - (c) notify and exhibit planning agreements to ensure they are open and transparent;
 - (d) ensure appropriate delegations and separation of responsibilities in considering development applications that involve planning agreements;
 - (e) ensure that modifications to approved development, where appropriate, are subject to the same scrutiny as the original development application; and
 - (f) take steps to ensure that conflicts of interest are ameliorated to the greatest extent possible.

5 Public notice

5.1 Public notification

- (1) Section 7.5(1) of the EPA Act precludes a planning agreement from being entered into, amended or revoked unless public notice is given of the proposed agreement, amendment or revocation.
- (2) A planning agreement must be publicly exhibited and available for public exhibition in accordance with the Regulations.
- (3) Further details of the notification process are set out in **Schedule 3** of this policy.

5.2 Submissions by the public

Any person may make a written submission on the draft planning agreement. Council encourages written submissions on draft planning agreements so Council can better understand the needs, desires and/or concerns of the community with respect to the proposed planning agreement.

5.3 Re-notification

- (1) Council will publicly re-notify and make available for public inspection a proposed planning agreement and the application to which it relates if, in the Council's opinion, a material change is made to the terms of the agreement or the application after it has been previously publicly notified and inspected.
- (2) Such a change may arise as a consequence of public submissions made in respect of the previous public notification, or for any other reason.

5.4 Minister to be notified

If the Minister is not a party to a planning agreement, Council will provide to the Minister a copy of the planning agreement within fourteen (14) days after the agreement (including any amendment or revocation of that agreement) is entered into.

6 Other procedures

6.1 Entry into planning agreement

- (1) A planning agreement is entered into when it is signed by all of the parties to it.
- (2) A planning agreement can be entered into at any time after the agreement is publicly notified in accordance with the EPA Act and Regulation.
- (3) However Council will usually require a planning agreement to be entered into as a condition of the development consent for the development to which the planning agreement relates.

6.2 Provision of security under planning agreement

- (1) Council will require every planning agreement entered into by it to contain appropriate provisions which allow for the enforcement of the planning agreement by suitable means in the event of a breach of the planning agreement by the proponent.
- (2) In this regard and subject to section 6.3 of this Policy, Council may require a planning agreement to contain a provision requiring the developer to:
 - (a) undertake the registration of the agreement on the land to which it applies pursuant to s7.6 of the EPA Act; and/or
 - (b) provide security in the form of a bank guarantee or bond for some or all of the obligations of the proponent under the planning agreement.
- (3) The nature and extent of the enforcement provisions in the planning agreement will be a matter for negotiation between Council and the developer having regard to the particular circumstances of the planning agreement.

6.3 Provision of security under planning agreements which relate to mining operations

Where a planning agreement relates to mining operations, Council may require the developer to:

- (1) undertake the registration of the planning agreement on land which is crucial to the operation of the relevant mine pursuant to s7.6 of the EPA Act (rather than on the land to which the planning agreement applies as a whole);
- (2) pay monetary contribution upon execution of the planning agreement so as to alleviate the need for any additional security to be provided by the developer; and/or
- (3) provide security in the form of a bank guarantee or bond for some or all of the obligations of the proponent under the planning agreement (in particular

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where payment of monetary contributions are proposed on a staged basis rather than upfront under paragraph (2)).

6.4 Planning agreement register

- (1) Council is required to keep a register of planning agreements (including the related explanatory notes) applying to land within its local government area. The planning agreement register will indicate:
 - (a) the date in which the planning agreement was entered into; and
 - (b) a brief description of the planning agreement itself.
- (2) The planning agreement register will be available for public inspection (free of charge) at Council's Customer Service Centre, during normal office hours.

6.5 Changes in law

The procedures, requirements and other matters addressed within this policy may be subject to change as a result of changes in the law.

REVOKED

Schedule 1: Mandatory requirements of a planning agreement

Part 1: Planning Agreements

Section 7.4(3) of the EPA Act requires planning agreements to include provisions containing the matters set out in the table below:

Requirements under the EPA Act for Planning Agreements
<input type="checkbox"/> A description of the land to which the agreement applies.
<input type="checkbox"/> A description of: (1) the change to the environmental planning instrument to which the agreement applies, or (2) the development to which the agreement applies.
<input type="checkbox"/> The nature and extent of the provision to be made by the developer under the agreement, the time or times by which the provision is to be made and the manner by which the provision is to be made.
<input type="checkbox"/> In the case of development, whether the agreement excludes (wholly or in part) or does not exclude the application of section 7.11 or 7.12 to the development.
<input type="checkbox"/> If the agreement does not exclude the application of section 7.11 to the development, whether benefits under the agreement are or are not to be taken into consideration in determining a development contribution under section 7.11.
<input type="checkbox"/> A mechanism for the resolution of disputes under the agreement.
<input type="checkbox"/> The enforcement of the agreement by a suitable means, such as the provision of a bond or guarantee, in the event of a breach of the agreement by the developer.

Part 2: Explanatory Note

Clause 25E(2) of the Regulation requires explanatory notes to include provisions containing the matters set out in the table below:

Requirements under the Regulation for Explanatory Notes
<input type="checkbox"/> Identify how the planning agreement promotes the public interest and one or more of the objects of the Act.
<input type="checkbox"/> Summary of the objectives, nature and effect of the proposed planning agreement.
<input type="checkbox"/> An assessment of the merits of the proposed planning agreement including the impact (positive or negative) on the public or any relevant section of the public.
<input type="checkbox"/> Identify how the planning agreement promotes one or more of Council's Guiding Principles as set out in the <i>Local Government Act 1993</i> (NSW).
<input type="checkbox"/> Identify a planning purpose or purposes served by the planning agreement and contain an assessment of whether the agreement provides for a reasonable means of achieving

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that purpose.
<input type="checkbox"/> Identify whether the planning agreement conforms with Council's capital works program (if any).
<input type="checkbox"/> State whether the agreement, amendment or revocation specifies that certain requirements of the agreement must be complied with before a construction certificate, occupation certificate or subdivision certificate is issued.

REVOKED

Schedule 2: Summary of negotiation process

The negotiation of a planning agreement other than with respect to State significant development will generally involve the following key steps: The process with respect to Planning Agreements entered into with respect to State significant development will follow the below if possible, but will be dictated by the relevant process required by the Department of Planning, Industry and Environment.

- (1) Planning agreement negotiations should commence early in the planning application process. As part of application pre-lodgement discussions, the parties will decide whether to commence negotiation of a planning agreement and if so, the general scope and content of the planning agreement.
- (2) The parties to a planning agreement will include Council and the developer and, if the developer is not the owner of the land the subject of the planning agreement, the land owner. The parties may also include another planning authority.
- (3) The parties will each appoint a person(s) to represent them in the negotiations. Another person will be appointed to record minutes of all negotiations. The parties will decide if an independent facilitator should be appointed to conduct or assist in negotiations. Minutes of all negotiation meetings will be distributed to all parties.
- (4) Council's negotiations will be led by an officer given delegated authority by the elected Council. Other Council officers may also be involved in the negotiation process.
- (5) The participants will identify the issues for negotiation and undertake the negotiations. If the planning agreement relates to mining operations, then the template provisions within the VPA which relate to mining operations should be relied upon, and any sections of this Policy relating to the SCEDF and mining operations should be addressed as part of the negotiations. If agreement is reached, a draft planning agreement will be prepared. The parties will decide who will prepare the agreement.
- (6) When the agreement is ready, a copy of the draft will be provided to the parties for review. Further negotiation and adjustment of the terms contained in the agreement occur at this stage. When the content of the draft agreement is agreed, the planning agreement is suitable for lodgement.
- (7) The developer should then submit the planning proposal or development application to the Council, accompanied by the planning agreement and the explanatory note. The application should state the offer by the developer to enter into the planning agreement.
- (8) The planning agreement will be publicly exhibited together with the proposed planning proposal or development application. This is in accordance with the requirements of the EPA Act and the Regulation. Any person may make a submission on the planning agreement.
- (9) The planning agreement may be subject to further negotiation between the parties to consider any issues that result from the public exhibition. This may result in the planning agreement being modified. If the modifications are considered to be significantly different to those in the original draft, the document will be publicly exhibited again.
- (10) Council will consider the planning agreement and the application to which it relates concurrently. The agreement and public submissions made in relation to that

Planning Agreement Policy

agreement will be matters for consideration in the determination of the planning proposal or development application. A determination will then be issued.

- (11) Where the planning agreement relates to a development application, and the application is approved, a condition of consent will be imposed requiring the planning agreement to be entered into between the parties. Where the agreement relates to a planning proposal, the Council will resolve that the planning agreement be entered into before the relevant local environmental plan amendment is made.
 - (12) The planning agreement is entered into when it is signed by all the parties. The agreement comes into effect at the time stated in the agreement.
 - (13) Council will keep a register of all planning agreements applying to land within its area, including agreements that the council may not be a party to (for example agreements where the consent authority may be the State or Federal Government). The register will record the date and agreement was actioned and a short description of the agreement, including any subsequent amendments.
 - (14) Developments that have been approved with a planning agreement in place, may be the subject of an application to modify the development consent. If the application materially affects the terms of the agreement, a new modified planning agreement may need to be prepared. The agreement will then be publicly exhibited and considered by Council in the same way as a new planning agreement.
-

Schedule 3: Public notification process

The Regulation provides further processes to be followed by Council with respect to the public notification process. The public notice of a proposed agreement must specify the arrangements relating to inspection by the public of copies of the proposed agreement.

Development application
<p>If Council proposes to enter into a planning agreement in connection with a development application, Council is to ensure that public notice of the proposed agreement is given:</p> <ol style="list-style-type: none">(1) if practicable, as part of and contemporaneously with, and in the same manner as, any notice of the development application that is required to be given by Council for a development application under the EPA Act; or(2) if it is not practicable for notice to be given contemporaneously, as soon as possible after any notice of the development application that is required to be given by Council for a development application by or under the EPA Act.
Where change to planning instrument is involved
<p>Where Council proposes to enter into a planning agreement in connection with a proposed change to a local environmental plan, Council is to ensure that public notice of the proposed agreement is given:</p> <ol style="list-style-type: none">(1) if practicable, as part of and contemporaneously with, and in the same manner as, any public notice of the relevant planning proposal that is required under Part 3 of the EPA Act; or(2) if it is not practicable for notice to be given contemporaneously, as soon as possible after any public notice of the relevant planning proposal that is required under Part 3 of the EPA Act.

Annexure 1 - Template Planning Agreement

REVOKED

Planning Agreement

[insert details of Property]

Singleton Council (ABN 52 877 492 396) (**Council**)

[insert name of Developer (ABN insert)] (**Developer**)

Marsdens Law Group

Level 1
49 Dumaresq Street
CAMPBELLTOWN NSW 2560

Tel: 02 4626 5077

Fax: 02 4626 4826

DX: 5107 Campbelltown



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REVOKED

Planning Agreement

[MLG Note: Insert details of Property]

Parties

Council	Name	Singleton Council
	Address	Cnr Queen Street and Civic Ave, Singleton
	ABN	52 877 492 396
Developer	Name	[Insert]
	Address	[Insert]
	ABN	[Insert]

Background

- A** The Developer owns the Land.
- B** The Developer wishes to carry out the Development.
- C** The Developer has applied, or proposes to apply, for the [Development Consent/Instrument Change] [MLG Comment: adjust as applicable]
- D** The Developer has agreed to make the Development Contributions in connection with the carrying out of the Development in accordance with this document.

Operative Provisions

1 Agreement

The agreement of the parties is set out in the Operative Provisions of this document, in consideration of, among other things, the mutual promises contained in this document.

2 Definitions

2.1 Defined Terms

In this document, words beginning with a capital letter that are defined in Part 1 of **Schedule 2** have the meaning ascribed to them in that schedule.

2.2 Interpretation

The interpretational rules contained in Part 2 of **Schedule 2** apply in the interpretation of this document.

3 Application and Operation of Document

3.1 Planning Agreement

This document is a planning agreement:

-
- (1) within the meaning set out in s7.4 of the Act; and
 - (2) governed by Part 7, Division 7.1, Subdivision 2 of the Act.

3.2 Application

This document applies to both the Land and to the Development.

3.3 Operation of this Agreement

- (1) Until the Development Consent is granted, this document constitutes the Developer's offer to enter into a planning agreement with respect to the Development.
- (2) This document becomes a planning agreement for the purpose of the Act when:
 - (a) the [Development Consent is granted/Instrument Change is made] [MLG Comment: adjust as applicable];
 - (b) the Development Consent contains a condition imposed under section 7.7 of the Act requiring this planning agreement to be entered into; and
 - (c) the planning agreement is entered in accordance with clause 25C(1) of the Regulation.

4 Application of s7.11 & s7.12

4.1 Application

This document [does/does not/partly] exclude[s] the application of section 7.11 or section 7.12 of the Act to the Development.

[MLG Drafting Note: Section 7.4(3) of the Act allows a planning agreement to exclude the application of section 7.11 and 7.12 in whole or in part. The drafting of this clause will depend on the extent to which those contributions are excluded. If the document partly excludes the operation of section 7.11 then detailed provisions need to be inserted in the document setting out exactly which parts are excluded]

4.2 Consideration of Benefits

Section 7.11(6) of the Act [does/does not] apply to the Contributions that are to be carried out or provided pursuant to this document.

[MLG Drafting Note: If section 7.11(6) applies, Council must take into account the land, money or other material public benefit that the Developer has provided under this document when imposing contributions under s 7.11 for developments in the area, or adjacent to the area of the Development. This clause is only required if the Document does not include the application of section 7.11 to the Development]

4.3 Section 7.24

This document does not exclude the application of s7.24 of the Act to the Development.

5 Provision of Contributions

5.1 Designated Land [Optional – to be used where land is to be dedicated]

- (1) The Developer must dedicate the Designated Land to Council free of any trusts, estates, interests, covenants and Encumbrances by the time specified in **Schedule 3**.

-
- (2) The Developer must meet all costs associated with the dedication of the Designated Land in accordance with paragraph (1), including any costs incurred by Council in relation to that dedication.
 - (3) For the purpose of this document, Designated Land is dedicated to Council:
 - (a) if the relevant land is dedicated in a plan registered at the Land & Property Information Office of NSW, when that plan is so registered; or
 - (b) otherwise when the Developer delivers to Council:
 - (i) a transfer of the relevant land in registrable form;
 - (ii) the original Certificate of Title for the relevant land; and
 - (iii) any document in registrable form which, when registered, will remove any Encumbrances registered on the title of that land.

5.2 Works [Optional – to be used where works are to be carried out]

The Developer, at its cost, must:

- (1) obtain any consent or approval from an Authority required for the construction and use of the Works;
- (2) carry out and complete the Works to the satisfaction of the Council by the time specified in **Schedule 4**;
- (3) carry out and complete the Works:
 - (a) in accordance with the specification referred to in **Schedule 4** for the relevant item of Work;
 - (b) in accordance with the requirements of, or consents issued by, any Authority;
 - (c) ensuring that:
 - (i) all necessary measures are taken to protect people, property, and the environment;
 - (ii) unnecessary interference with the passage of people and vehicles is avoided;
 - (iii) nuisances and unreasonable noise and disturbances are prevented; and
 - (iv) all relevant laws and regulations with respect to water, air, noise and land pollution (including 'pollution incidents') as defined under the *Protection of the Environment Operations Act 1997* (NSW);
 - (d) in accordance with any Australian Standards applicable to works of the same nature as each aspect of the Works; and
 - (e) in a proper and workmanlike manner complying with current industry practice and standards relating to each aspect of the Works.

5.3 Contribution Value

If the Developer's actual cost of carrying out the Works, including any costs incurred pursuant to this document differs from the relevant Contribution Value, neither party is entitled to claim credit or reimbursement, as the case may be, for the difference.

5.4 Access to the Land and location of Works

The Developer is to permit Council, its officers, employees, agents and contractors to enter the Land at any time, upon giving reasonable prior notice, in order to inspect, examine or test any of the Works.

5.5 Monetary Contributions [Optional – to be included if monetary contributions are required to be provided]

- (1) Subject to clause 5.6 the Developer must pay the Monetary Contributions by the time specified in **Schedule 5**.
- (2) The Monetary Contributions are to be applied for the purpose set out in **Schedule 5** (if any).

5.6 Indexation of Contribution Values

The Contribution Values are to be increased (with the calculation to be made as from the date any such amount is due to be paid under this document) in accordance with the following formula:

$$A = B \times \frac{C}{D}$$

where:

- A** = the indexed amount;
- B** = the relevant amount as set out in this document;
- C** = the Index most recently published before the date that the relevant payment or the calculation with respect to the relevant amount is to be made; and
- D** = the Index most recently published before the commencement date of this document.

If **A** is less than **B**, then the amount of the relevant Contribution Value will not change.

6 Design and specification of Works

6.1 Developer must submit design

- (1) Before commencing construction of an item of Work, the Developer must submit to Council for its approval, the detailed design and specification for the relevant item of Work.
- (2) The design and specification for the item of Work must be prepared by the Developer having specific regard to:
 - (a) the description of the item of Work contained in this document; and
 - (b) the Contribution Value of that item of Work.

6.2 Council to respond to design and specification

- (1) If, within twenty (20) business days of the date of submission referred to in clause 6.1:
 - (a) Council notifies the Developer in writing of its approval of the design and specification, the Developer is to carry out and complete the relevant item of Work in accordance with that design and specification;
 - (b) Council fails to notify the Developer in writing that it approves or does not approve of the design and specification, Council is taken to have approved the design and specification of the item of Work and the Developer may carry out and complete the item of Work in accordance with that design and specification; or
 - (c) Council notifies the Developer in writing that it does not approve of the design and specification, the Developer may:
 - (i) elect to amend the design and specification and submit to Council the amended design and specification in which case the approval process set out in this clause 6 applies to that amendment; or
 - (ii) if the Developer does not agree with the modifications requested by Council, refer the matter for dispute resolution under clause 14.
- (2) For the purposes of paragraph (1)(b), except with the agreement of the Developer, Council cannot require the Developer to:
 - (a) comply with the design approved under this clause if it is inconsistent with the relevant Development Consent; and
 - (b) make modifications to the design and specification of an item of Work that results in a change to the nature and scope of that item of Work as set out in this document.

7 Deferral and Completion of Works [MLG Note: include this clause if the Contributions comprise Works]

7.1 Deferral of Works

- (1) Notwithstanding any other provision of this document, if the Developer forms the view at any time, that it is unable to make all or part of a Development Contribution comprising an item or items of Works (**Deferred Works**) by the time required under this document, then the Developer may seek Council's approval to defer the relevant Works by providing written notice to the Council:
 - (a) identifying the relevant Work that the Developer proposes to defer; and
 - (b) identifying the anticipated time for Completion of the relevant Work.
- (2) The Council, acting reasonably, must give the Developer a written notice stating:
 - (a) whether or not it consents to the deferral of the Deferred Works;
 - (b) the revised date for Completion required by Council; and
 - (c) any conditions Council requires with respect to the deferral, including any requirement for additional Security on account of that deferral.

-
- (3) If the Council consents to the deferral of the Deferred Works, then the following applies:
- (i) the Developer must comply with any conditions required by Council under paragraph (2);
 - (ii) provided the Developer satisfies those conditions, the Developer will not be considered to be in breach of this document as a result of a failure to achieve Completion of the relevant Deferred Works by the time for Completion specified in this document; and
 - (iii) the time for completion of the Deferred Works under this document is the revised date for Completion approved by Council.

7.2 Issue of Completion Notice

If the Developer considers that any particular item of the Works is Complete it must, within fourteen (14) days of Completion of that item, serve a notice on Council which:

- (1) is in writing;
- (2) identifies the particular item of the Works to which it relates; and
- (3) specifies the date on which, the Developer believes the relevant item of the Works was Completed,

(Completion Notice).

7.3 Inspection by Council

- (1) Council must inspect the Works set out in a Completion Notice within ten (10) business days of the receipt of that notice.
- (2) If Council fails to carry out an inspection required under paragraph (1), the Works referred to in the relevant Completion Notice will be deemed to be Complete.

7.4 Council Notice

- (1) Within twenty eight (28) days of inspecting the Works set out in a Completion Notice, Council must provide notice in writing to the Developer that the Works set out in the Completion Notice:
 - (a) have been Completed; or
 - (b) have not been Completed, in which case the notice (**Rectification Notice**) must also detail:
 - (i) those aspects of the Works which have not been Completed; and
 - (ii) the work the Council requires the Developer to carry out in order to rectify the deficiencies in those Works.
- (2) If Council does not provide the Developer with a notice in accordance with paragraph (1), the Works set out in the Completion Notice will be deemed to have been Completed.
- (3) Where Council serves a Rectification Notice on the Developer, the Developer must:

-
- (a) rectify the Works in accordance with that notice; or
 - (b) serve a notice on Council that it disputes the matters set out in the notice.
- (4) Where the Developer:
- (a) serves notice on Council in accordance with paragraph (3)(b), the dispute resolution provisions of this document apply; or
 - (b) rectifies the Works in accordance with paragraph (3)(a), it must serve upon the Council a new Completion Notice for the Works it has rectified and the process in respect of Completion of the Works in this clause 7.4 apply to the Works set out in the new Completion Notice.

7.5 Acceptance of Works [Only applies if land is to be dedicated to Council]

Council accepts ownership, possession and control of, and risk in, any Works carried out on Designated Land when:

- (1) those Works are Completed; and
- (2) the relevant land has been dedicated to Council.

7.6 Works-As-Executed-Plan

No later than forty (40) business days after an item of Work is Completed, the Developer must provide to the Council with:

- (1) a full Works-As-Executed-Plan in respect of the relevant item of Work that has been Completed; and
- (2) all appropriate certificates to verify that the item of Work have been carried out in accordance with relevant standards.

8 Defects Liability

[MLG Drafting Note: These clauses are only required if the Developer is undertaking Works.]

8.1 Defects Notice

- (1) Where any part of the Works has been Completed but those Works contain a material defect which:
 - (a) adversely affects the ordinary use and/or enjoyment of the relevant Works; or
 - (b) will require maintenance or rectification works to be performed on them at some time in the future as a result of the existence of the defect,

(Defect) Council may issue a defects notice (**Defects Notice**) concerning those Works but only within the Defects Liability Period.
- (2) A Defects Notice must contain the following information:
 - (a) the nature and extent of the Defect;
 - (b) the work Council requires the Developer to carry out in order to rectify the Defect; and

-
- (c) the time within which the Defect must be rectified (which must be a reasonable time and not less than fourteen (14) days).

8.2 Developer to Rectify Defects

- (1) The Developer must rectify the Defects contained within a Defects Notice as soon as practicable after receipt of the Defects Notice.
- (2) The Developer must follow the procedure set out in clause 7 in respect of the satisfaction of the Defects Notice (as if it were a Rectification Notice).

8.3 Right of Council to Step-In

Council may, at its absolute discretion, enter upon the Land for the purpose of satisfying the Defects Notice where the Developer has failed to comply with a Defects Notice but only after giving the Developer seven (7) days written notice of its intention to do so.

8.4 Consequence of Step-In

If Council elects to exercise the step-in rights granted to it under clause 8.3 then:

- (1) Council may:
- (a) enter upon any part of the Land that it requires access to in order to satisfy the obligations of the Developer in accordance with the Defects Notice; and
 - (b) rectify the relevant Defects in accordance with the Defects Notice; and
- (2) the Developer must not impede or interfere with Council in undertaking that work.

8.5 Costs of Council

Where Council exercises its step-in rights all, costs incurred by Council in rectifying the relevant Defects may:

- (1) call upon the Defects Security provided by the Developer pursuant to clause 11; and
- (2) recover as a debt due any difference between the amount of the Defects Security and the costs incurred by the Council in rectifying the Defects.

9 Developer Warranties and Indemnities

9.1 Warranties

The Developer warrants to Council that it is:

- (1) legally and beneficially entitled to the Land;
- (2) able to fully comply with its obligations under this document;
- (3) it has full capacity to enter into this document; and
- (4) there is no legal impediment to it entering into this document, or performing the obligations imposed under it.

9.2 Indemnity

The Developer indemnifies Council in respect of any Claim that may arise as a result of the conduct of the Works but only to the extent that any such Claim does not arise as a result of the negligent acts or omissions of Council.

10 Contribution Alternatives

[MLG Comment: This clause can be implemented only by the Council. It provides flexibility for the delivery of the Development Contributions which is sometimes required in more complex Planning Agreements and will remove the need to vary the Planning Agreement in the future if the parties agree to, for example, swap an item of work for payment of a monetary contribution to Council for the value of the work (i.e. where the work cannot be completed for some reason)]

10.1 Alternative method of providing Items of Work

- (1) If Council consents, the Developer may satisfy its obligation under this document to provide any or all of the Works by paying to Council the specified Contribution Value for any or all of the Works.
- (2) If the Developer pays a monetary amount under paragraph (1), the relevant amount must be paid to Council by the time that the relevant item of Work was required to have been Completed under this document.
- (3) If Council consents, the Developer may vary or replace any item of Works provided that:
 - (a) the Contribution Value of the varied or new item of Work is the same or greater than the Contribution Value of the original item of Work;
 - (b) the varied or new item of Work serves the same, or a similar, public purpose as the original item of Work;
 - (c) the varied or new item of Work is provided at the same time as the original item of Work was required to have been provided under this document; and
 - (d) the varied or new item of Work complies with the requirements of any relevant Authority.

10.2 Alternative method of providing Designated Land

- (1) If Council agrees, the Developer may satisfy its obligation under this document to dedicate any Designated Land by paying to Council the specified Contribution Value of relevant Designated Land.
- (2) If the Developer pays a monetary amount under paragraph (1), the relevant amount must be paid to Council by the time that the relevant Designated Land was required to have been dedicated under this document.

10.3 Alternative method of providing Monetary Contributions

- (1) If Council consents, the Developer may make any of the Monetary Contributions by the carrying out of works or the provision of services.
- (2) If the Developer carries out works or provides the services under paragraph (1):

-
- (a) the Contribution Value of the works provided must equal to or greater than the amount of the relevant Monetary Contribution; and
 - (b) the works must be Completed no later than the time by which the Monetary Contribution was required to have been made under this document.

11 Security

[MLG Drafting Note: Section 7.4(3)(g) requires the planning document to provide for enforcement of the planning document by suitable means such as a bond or bank guarantee. The form and value of security is likely to be a matter for negotiation between the parties and will depend on the nature and extent of the contributions being provided. The form of the following clause may require amendment to reflect the negotiated position.

For Mining VPAs, if payment of a Monetary Contribution is being made up front, then no security is required and Council should ensure it receives payment when the VPA is executed by the parties. If payment of a Monetary Contribution is to be staged however, Council should retain these provisions and ensure that a bank guarantee is provided for the aggregate of the staged payments]

11.1 Provision of Security

Subject to paragraph 11.2, prior to the issue of a Construction Certificate, the Developer must deliver to Council separate irrevocable and unconditional undertakings:

- (1) for the amount equivalent to the sum of all Contribution Values (**Primary Security**); and
- (2) for an amount equivalent to fifteen (15%) of the sum of all Contribution Values for the Works (**Defects Security**),

(collectively referred to as the **Security**).

11.2 Replacement of Security

- (1) The Developer may replace any Security provided by it at any time, provided that the amount of that replacement is not less than that which is required to be provided under this document.
- (2) On receipt of a replacement Security, Council must immediately release the Security being replaced and return it to the Developer.

11.3 Council may call on Security

- (1) If the Developer commits an Event of Default Council, without limiting any other remedies available to it, may call on any Security provided by the Developer.
- (2) If Council calls on any Security, it may use the amount so paid to it in satisfaction of any costs incurred by it in remedying the relevant Event of Default.

11.4 Top up of Security

If Council calls on the Security, Council, by notice in writing to the Developer, may require the Developer to provide a further or replacement Security in an amount that, when added to any unused portion of any Security then held by Council, does not exceed the amount of the Security Council is entitled to hold at that time under this document.

11.5 Release of Primary Security

Unless:

- (1) Council has made or intends to make a demand against any Security provided by the Developer;
- (2) the Development Contributions on account of which that Security was provided have not been made; or
- (3) the Developer is in breach of this document at the relevant time,

Council, upon a written request being made by the Developer, must return the Primary Security within ten (10) business days of such a request being made.

11.6 Release of Defects Security

Unless:

- (1) Council has made or intends to make a demand against any Security provided by the Developer;
- (2) the relevant Defects Liability Period has not expired; or
- (3) the Developer is in breach of this document at the relevant time,

Council, upon a written request being made by the Developer, must return the Defects Security within ten (10) business days of such a request being made.

11.7 Indexation of value of Security value

The Developer must ensure that the Security held by Council at all times equals the indexed amount of the Contribution Values from time to time.

11.8 Compulsory acquisition of the Designated Land

[MLG Comment: This clause should be used where part of the Development Contributions include the dedication of the Designated Land]

- (1) The Developer consents to the compulsory acquisition of the Designated Land:
 - (a) in accordance with the *Land Acquisition (Just Terms Compensation) Act 1991* (NSW) (**Acquisition Act**); and
 - (b) on the terms set out in this clause 11.8.
- (2) Council may only acquire the Designated Land compulsorily in accordance with the Acquisition Act if the Developer has committed an Event of Default with respect the dedication of that land under this document.
- (3) If Council acquires the Designated Land compulsorily in accordance with the Acquisition Act:
 - (a) the Developer agrees that the compensation payable to it on account of that acquisition under the Acquisition Act is \$1.00; and
 - (b) Council must complete that acquisition within twelve (12) months of the relevant Event of Default.

-
- (4) The parties agree that the provisions of this clause 11.8 are an agreement with respect to the compulsory acquisition of the Designated Land for the purpose of s30 of the Acquisition Act.

11.9 Developer must not deal with property

[MLG Comment: This clause should be used where part of the Development Contributions include the dedication of the Designated Land]

- (1) The Developer must not during the term of this document Assign the Designated Land without first obtaining Council's consent in writing.
- (2) Council may, at its absolute discretion, refuse its consent or give consent with conditions.

12 Registration of this document

12.1 Registration

This document will be registered on the title of the [MIA Land/Land] [MLG Drafting Note: Include as 'MIA Land' ONLY for mining VPA's] pursuant to s 7.6 of the Act.

12.2 Obligations of Developer

The Developer must:

- (1) do all things necessary to allow the registration of this document to occur under paragraph (1); and
- (2) pay any reasonable costs incurred by Council in undertaking that registration.

12.3 Release by Council

The Council agrees to provide the Developer with a release and discharge of this document from any part of the MIA Land with respect to which the Developer has complied with its obligations under this document (**Release Land**).

13 Review & Amendment

13.1 Negotiation of review

If either party requests a review of the whole or any part of this document then the parties must use their best endeavours, acting in good faith, to review this document in accordance with that request.

13.2 Amendment to be in writing

If the parties agree to amend this document as a result of a review conducted under clause 13.2 then any such amendment must be made in writing signed by both parties.

14 Dispute Resolution

14.1 Notice of dispute

- (1) If a dispute or lack of certainty between the parties arises in connection with this document or its subject matter (**Dispute**), then either party (**First Party**) must give to the other (**Second Party**) a notice which:

-
- (a) is in writing;
 - (b) adequately identifies and provides details of the Dispute;
 - (c) stipulates what the First Party believes will resolve the Dispute; and
 - (d) designates its representative (**Representative**) to negotiate the Dispute.
- (2) The Second Party must, within five (5) Business Days of service of the notice of dispute, provide a notice to the First Party designating as its representative a person to negotiate the Dispute (the representatives designated by the parties being together, the **Representatives**).

14.2 Conduct pending resolution

The parties must continue to perform their respective obligations under this document if there is a Dispute but will not be required to complete the matter the subject of the Dispute, unless the appropriate party indemnifies the other parties against costs, damages and all losses suffered in completing the disputed matter if the Dispute is not resolved in favour of the indemnifying party.

14.3 Further steps required before proceedings

Subject to clauses 14.14 and 14.15 and except as otherwise expressly provided in this document, any Dispute must, as a condition precedent to the commencement of litigation, mediation under clause 14.5 or determination by an expert under clause 14.6, first be referred to the Representatives. The Representatives must endeavour to resolve the dispute within five (5) Business Days of the date a notice under clause 14.1(2) is served.

14.4 Disputes for mediation or expert determination

If the Representatives have not been able to resolve the Dispute, then the parties must agree within five (5) Business Days to either refer the matter to mediation under clause 14.5 or expert resolution under clause 14.6.

14.5 Disputes for mediation

- (1) If the parties agree in accordance with clause 14.4 to refer the Dispute to mediation, the mediation must be conducted by a mediator agreed by the parties and, if the parties cannot agree within five (5) Business Days, then by a mediator appointed by the President of the Law Society of New South Wales for the time being.
- (2) If the mediation referred to in paragraph (1) has not resulted in settlement of the Dispute and has been terminated, the parties may agree to have the matter determined by expert determination under clause 14.6.

14.6 Choice of expert

- (1) If the Dispute is to be determined by expert determination, this clause 14.6 applies.
- (2) The Dispute must be determined by an independent expert in the relevant field:
 - (a) agreed between and appointed jointly by the parties; or
 - (b) in the absence of document within five (5) Business Days after the date that the matter is required to be determined by expert determination, appointed by the President of the Law Society of New South Wales for the time being.

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- (3) If the parties fail to agree as to the relevant field within five (5) Business Days after the date that the matter is required to be determined by expert determination, either party may refer the matter to the President of the Law Society of New South Wales for the time being whose decision as to the relevant field is final and binding on the parties.
 - (4) The expert appointed to determine a Dispute:
 - (a) must have a technical understanding of the issues in dispute;
 - (b) must not have a significantly greater understanding of one party's business, functions or operations which might allow the other side to construe this greater understanding as a bias; and
 - (c) must inform the parties before being appointed of the extent of the expert's understanding of each party's business or operations and, if that information indicates a possible bias, then that expert must not be appointed except with the written approval of the parties.
 - (5) The parties must promptly enter into an document with the expert appointed under this clause 14.6 setting out the terms of the expert's determination and the fees payable to the expert.

14.7 Directions to expert

- (1) In reaching a determination in respect of a dispute under clause 14.6, the independent expert must give effect to the intent of the parties entering into this document and the purposes of this document.
- (2) The expert must:
 - (a) act as an expert and not as an arbitrator;
 - (b) proceed in any manner as the expert thinks fit without being bound to observe the rules of natural justice or the rules of evidence;
 - (c) not accept verbal submissions unless both parties are present;
 - (d) on receipt of a written submission from one party, ensure that a copy of that submission is given promptly to the other party;
 - (e) take into consideration all documents, information and other material which the parties give the expert which the expert in its absolute discretion considers relevant to the determination of the Dispute;
 - (f) not be expected or required to obtain or refer to any other documents, information or material (but may do so if the expert so wishes);
 - (g) issue a draft certificate stating the expert's intended determination (together with written reasons), giving each party ten (10) Business Days to make further submissions;
 - (h) issue a final certificate stating the expert's determination (together with written reasons); and
 - (i) act with expedition with a view to issuing the final certificate as soon as practicable.

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- (3) The parties must comply with all directions given by the expert in relation to the resolution of the Dispute and must within the time period specified by the expert, give the expert:
- (a) a short statement of facts;
 - (b) a description of the Dispute; and
 - (c) any other documents, records or information which the expert requests.

14.8 Expert may commission reports

- (1) Subject to paragraph (2):
- (a) the expert may commission the expert's own advisers or consultants (including lawyers, accountants, bankers, engineers, surveyors or other technical consultants) to provide information to assist the expert in making a determination; and
 - (b) the parties must indemnify the expert for the cost of those advisers or consultants in accordance with clause 14.6(5) of this deed.
- (2) The parties must approve the costs of those advisers or consultants in writing prior to the expert engaging those advisers or consultants.

14.9 Expert may convene meetings

- (1) The expert must hold a meeting with all of the parties present to discuss the Dispute. The meeting must be conducted in a manner which the expert considers appropriate. The meeting may be adjourned to, and resumed at, a later time in the expert's discretion.
- (2) The parties agree that a meeting under paragraph (1) is not a hearing and is not an arbitration.

14.10 Other courses of action

If:

- (1) the parties cannot agree in accordance with clause 14.4 to refer the matter to mediation or determination by an expert; or
- (2) the mediation referred to in clause 14.5 has not resulted in settlement of the dispute, the mediation has been terminated and the parties have not agreed to refer the matter to expert determination within five (5) Business Days after termination of the mediation,

then either party may take whatever course of action it deems appropriate for the purpose of resolving the Dispute.

14.11 Confidentiality of information provided in dispute resolution process

- (1) The parties agree, and must procure that the mediator and the expert agree as a condition of his or her appointment:
- (a) subject to paragraph (2), to keep confidential all documents, information and other material disclosed to them during or in relation to the mediation or expert determination;

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- (b) not to disclose any confidential documents, information and other material except:
 - (i) to a party or adviser or consultant who has signed a confidentiality undertaking; or
 - (ii) if required by Law or any Authority to do so; and
 - (c) not to use confidential documents, information or other material disclosed to them during or in relation to the mediation or expert determination for a purpose other than the mediation or expert determination.
- (2) The parties must keep confidential and must not disclose or rely upon or make the subject of a subpoena to give evidence or produce documents in any arbitral, judicial or other proceedings:
- (a) views expressed or proposals or suggestions made by a party or the mediator or the expert during the expert determination or mediation relating to a possible settlement of the Dispute;
 - (b) admissions or concessions made by a party during the mediation or expert determination in relation to the Dispute; and
 - (c) information, documents or other material concerning the dispute which are disclosed by a party during the mediation or expert determination unless such information, documents or facts would be discoverable in judicial or arbitral proceedings.

14.12 Final determination of expert

The parties agree that the final determination by an expert will be final and binding upon them except in the case of fraud or misfeasance by the expert.

14.13 Costs

If any independent expert does not award costs, each party must contribute equally to the expert's costs in making the determination.

14.14 Remedies available under the Act

This clause 14 does not operate to limit the availability of any remedies available to Council under the Act.

14.15 Urgent relief

This clause 14 does not prevent a party from seeking urgent injunctive or declaratory relief concerning any matter arising out of this document.

[MLG Drafting Note: Section 7.4F(3)(f) of the Act requires a planning agreement to provide a mechanism for the resolution of disputes. The clause set out above is comprehensive but not exhaustive. The nature and extent of the dispute resolution mechanisms will depend on the agreement between the parties.]

15 Breach of this document

15.1 Breach Notice

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

- (1) the nature and extent of the alleged breach;
- (2) if:
 - (a) 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
 - (b) 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
- (3) the time within which Council requires the breach to be rectified, which must be a reasonable time of not less than forty (40) business days [MLG Drafting Note: this period can be adjusted as appropriate].

15.2 Events of Default

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

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

15.3 Consequences of Events of default

Where the Developer commits an Event of Default, Council may, in addition to any rights it has at Law or under this document, call on the Security to the extent of any compensation claimed in a Breach Notice and not paid by the Developer.

16 Termination

16.1 Termination

This document terminates in the following events:

- (1) The parties agree in writing to terminate the operation of this document at any time.
- (2) Council serves notice on the Developer terminating this document where the Developer has failed to comply with a notice issued in accordance with 15.1.

16.2 Consequence of termination

Upon termination of this document:

- (1) all future rights and obligations of the parties are discharged; and
- (2) all pre-existing rights and obligations of the parties continue to subsist.

17 Position of Council

17.1 Consent authority

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

17.2 Document does not fetter discretion

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

- (1) the power of Council to make any Law; or
- (2) the exercise by Council of any statutory power or discretion,

(Discretion).

17.3 Severance of provisions

- (1) No provision of this document is intended to, or does, constitute any unlawful fetter on any Discretion. If, contrary to the operation of this clause, any provision of this document is held by a court of competent jurisdiction to constitute an unlawful fetter on any Discretion, the parties agree:
 - (a) they will take all practical steps, including the execution of any further documents, to ensure the objective of this clause 17 is substantially satisfied;
 - (b) in the event that paragraph (1)(a) 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 document has full force and effect; and
 - (c) to endeavour to satisfy the common objectives of the parties on relation to the provision of this document which is held to be an unlawful fetter to the extent that it is possible having regard to the relevant court judgment.
- (2) 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 document contracted out of a provision or exercised a Discretion under this document, then to the extent of this document is not to be taken to be inconsistent with the Law.

17.4 No Obligations

Nothing in this document will be deemed to impose any obligation on Council to exercise any of its functions under the Act in relation to the Development Consent, the Land or the Development in a certain manner.

18 Confidentiality

18.1 Document not Confidential

The terms of this document are not confidential and this document may be treated as a public document and exhibited or reported without restriction by any party.

18.2 Other Confidential Information

- (1) The parties acknowledge that:

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- (a) Confidential Information may have been supplied to some or all of the parties in the negotiations leading up to the making of this document.
 - (b) The parties may disclose to each other further Confidential Information in connection with the subject matter of this document.
 - (c) Subject to paragraphs (2) and (3), each party agrees:
 - (i) not to disclose any Confidential document received before or after the making of this document to any person without the prior written consent of the party who supplied the Confidential Information; or
 - (ii) to take all reasonable steps to ensure all Confidential Information received before or after the making of this document is kept confidential and protected against unauthorised use and access.
- (2) A party may disclose Confidential Information in the following circumstances:
- (a) in order to comply with the Law, or the requirements of any Authority; or
 - (b) to any of their employees, consultants, advisers, financiers or contractors to whom it is considered necessary to disclose the information, if the employees, consultants, advisers, financiers or contractors undertake to keep the information confidential.
- (3) The obligations of confidentiality under this clause do not extend to information which is public knowledge other than as a result of a breach of this clause.

19 GST

19.1 Defined GST Terms

Defined terms used in this clause 19 have the meaning ascribed to them in the GST Law.

19.2 GST to be Added to Amounts Payable

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

19.3 GST Obligations to Survive Termination

This clause 19 will continue to apply after expiration of termination of this document.

20 Miscellaneous

20.1 Obligation to act in good faith

The parties must at all times:

- (1) cooperate and use their best endeavours to profitably and professionally give effect to their rights and obligations set out in this document;

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- (2) not unreasonably delay any action, approval, direction, determination or decision which is required of them;
 - (3) make approvals or decisions that are required of them in good faith and in a manner consistent with the completion of the transactions set out in this document; and
 - (4) be just and faithful in their activities and dealings with the other parties.

20.2 Legal costs

The Developer agrees to:

- (1) pay or reimburse the reasonable legal costs and disbursements of Council of the negotiation, preparation, execution, and stamping of this document;
- (2) pay the reasonable legal costs and disbursements referred to in paragraph (1) within fourteen (14) days of receipt of a Tax Invoice from Council; and
- (3) pay or reimburse the legal costs and disbursements of Council arising from the ongoing administration and enforcement of this document including any breach or default by the Developer of its obligations under this document.

[MLG Drafting Note: this clause requires the costs referred to in this clause to be paid by the Developer. Council may also require the Developer to pay 'up-front' to cover Council's initial costs in preparing this document however this is a matter for Council to determine on a case by case basis.]

21 Administrative Provisions

21.1 Notices

- (1) Any notice, consent or other communication under this document must be in writing and signed by or on behalf of the person giving it, addressed to the person to whom it is to be given and:
 - (a) delivered to that person's address;
 - (b) sent by pre-paid mail to that person's address; or
 - (c) transmitted by facsimile to that person's address.
- (2) A notice given to a person in accordance with this clause is treated as having been given and received:
 - (a) if delivered to a person's address, on the day of delivery if a Business Day, otherwise on the next Business Day;
 - (b) if sent by pre-paid mail, on the third Business Day after posting; and
 - (c) if transmitted by facsimile to a person's address and a correct and complete transmission report is received, on the day of transmission if a Business Day, otherwise on the next Business Day.
- (3) For the purpose of this clause the address of a person is the address set out in this document or another address of which that person may from time to time give notice to each other person.

21.2 Entire Document

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

21.3 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.

21.4 Cooperation

Each party must sign, execute and deliver all agreements, 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.

21.5 Counterparts

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

21.6 Amendment

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

21.7 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.

21.8 Power of Attorney

Each attorney who executes this document on behalf of a party declares that the attorney has no notice of:

- (1) the revocation or suspension of the power of attorney by the grantor; or
- (2) the death of the grantor.

21.9 Governing law

The law in force in the State of New South Wales governs this document. The parties:

- (1) submit to the 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; and
- (2) may not seek to have any proceedings removed from the jurisdiction of New South Wales on the grounds of *forum non conveniens*.

Schedule 1– Requirements Under Section 7.4 of the Act

REQUIREMENT UNDER THE ACT	THIS PLANNING AGREEMENT
Planning instrument and/or development application – (Section 7.4(1)) The Developer has: (c) sought a change to an environmental planning instrument. (d) made, or proposes to make, a Development Application. (e) entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies.	(a) Yes/No (b) Yes/No (c) Yes/No/Not applicable
Description of land to which this agreement applies – (Section 7.4(3)(a))	[insert folio identifiers of relevant land]
Description of change to the environmental planning instrument to which this agreement applies – (Section 7.4(3)(b))	Yes/No
Application of section 7.11 of the Act – (Section 7.4(3)(d))	Applies/Does not apply
Applicability of section 7.12 of the Act – (Section 7.4(3)(d))	Applies/Does not apply
Consideration of benefits under this agreement if section 7.11 applies – (Section 7.4(3)(e))	Refer to clause 4.2 of the Planning Agreement.
Mechanism for Dispute resolution – (Section 7.4(3)(f))	See clause 14.
Enforcement of this agreement (Section 7.4(3)(g))	See clause 11 and 13.
No obligation to grant consent or exercise functions – (Section 7.4(9))	See clause 17.

Schedule 2 – Defined Terms And Interpretation

Part 1 – Definitions [Drafting Note: definitions have been included in this part based upon all optional clauses contained in the agreement. Accordingly the definitions will need to be checked carefully based upon the clauses that are actually retained in the agreement and amended accordingly].

Act	means the <i>Environmental Planning and Assessment Act 1979</i> (NSW).
Assign	as the context requires refers to any assignment, sale, transfer, disposition, declaration of trust over or other assignment of a legal and/or beneficial interest.
Authority	means (as appropriate) any: (1) federal, state or local government; (2) department of any federal, state or local government; (3) any court or administrative tribunal; or (4) statutory corporation or regulatory body.
Claim	against any person any allegation, action, demand, cause of action, suit, proceeding, judgement, debt, damage, loss, cost, expense or liability howsoever arising and whether present or future, fixed or unascertained, actual or contingent whether at law, in equity, under statute or otherwise.
Completed	means completed in accordance with the requirements of this document.
Completion Notice	has the meaning ascribed in clause 7.2.
Confidential Information	means any information and all other knowledge at any time disclosed (whether in writing and orally) by the parties to each other, or acquired by the parties in relation to the other's activities or services which is not already in the public domain and which: (1) is by its nature confidential; (2) is designated, or marked, or stipulated by either party as confidential (whether in writing or otherwise); (3) any party knows or ought to know is confidential; and (4) is information which may be reasonably considered to be of a confidential nature.
Construction Certificate	has the meaning ascribed to that term in the Act.
Contributions	means the Works, the Designated Land and the Monetary Contributions.
Contribution Value	means the amount specified in Schedules 3, 4 and 5 in the column headed "Contribution Value" for each item of the

	Contributions.
Defect	has the meaning ascribed to it in clause 0.
Defects Notice	has the meaning ascribed to it in clause 0.
Defects Liability Period	means [insert period of time e.g. 12 Months].
Defects Security	has the meaning ascribed to it in clause 11.
Designated Land	means that part of the Land outlined [insert colour/hatching] on the plan attached as Annexure 1 .
Development	means [insert here a full description of the proposed development].
Development Application	means an application for the Development Consent.
Development Consent	means the consent issued under the Act for the Development.
Development Cost	means, in relation to an item of Work: <ol style="list-style-type: none"> (1) the construction cost of the relevant item of Work; (2) any costs incurred under a building contract in relation to the relevant item of Work; (3) the costs of any consultants engaged in relation to the relevant item of Work; or (4) any costs or expenses payable to any Authority in relation to the relevant item of Work.
Dispute	has the meaning ascribed to it in clause 14.1.
Encumbrance	means an interest or power: <ol style="list-style-type: none"> (1) reserved in or over an interest in any asset; (2) created or otherwise arising in or over any interest in any asset under any mortgage, charge (whether fixed or floating), pledge, lien, hypothecation, title retention, conditional sale agreement, hire or hire purchase agreement, option, restriction as to transfer, use or possession, easement, subordination to any right of any other person and any other encumbrance or security interest, trust or bill of sale; or (3) by way of security for the payment of a debt or other monetary obligation or the performance of any obligation. <p>Encumber means to grant an Encumbrance.</p>
Event of Default	has the meaning ascribed to it in clause 15.2.
GST Law	means <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth) and any other Act or regulation relating to the imposition or administration of the GST.

Index	means the Consumer Price Index (All Groups - Sydney) as provided by the Australian Bureau of Statistics
Instrument Change	means [MLG Drafting Note: set out the nature of the instrument change being sought (if applicable)].
Land	means [MLG Drafting Note: insert details (by reference to folio identifiers) of land to which the VPA applies].
Law	means all legislation, regulations, by-laws, common law and other binding order made by any Authority.
Location Plan	means the plan attached as Annexure 2 .
MIA Land	means [MLG Drafting Note: USE FOR MINING VPA's insert details (by reference to folio identifiers) of land which is crucial to the operation of the mine (if applicable) and upon which the VPA is to be registered].
Monetary Contributions	means the monetary contributions set out in Schedule 5 .
Owners	means [insert name of any owners of the Land other than the Developer if applicable including title details of the Land for each].
Planning Legislation	means the Act, the <i>Roads Act 1993</i> (NSW) and the <i>Local Government Act 1993</i> (NSW).
Primary Security	has the meaning ascribed to it in clause 11.
Rectification Notice	has the meaning ascribed to it in clause 7.4.
Security	means collectively the Primary Security and the Defects Security.
SCEDF	means the Singleton Community and Economic Development Fund adopted by Council at its meeting on 16 December 2019.
Works	means the works specified or described in Schedule 4 .

Part 2 - Interpretational Rules

clauses, annexures and schedules	a clause, annexure or schedule is a reference to a clause in or annexure or schedule to this agreement.
reference to statutes	a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them.
singular includes plural	the singular includes the plural and vice versa.
person	the word "person" includes an individual, a firm, a body corporate, a partnership, joint venture, an unincorporated body or association or any government agency.
executors, administrators, successors	a particular person includes a reference to the person's executors, administrators, successors, substitutes (including persons taking by novation) and assigns.

dollars	Australian dollars, dollars, \$ or A\$ is a reference to the lawful currency of Australia.
calculation of time	if a period of time dates from a given day or the day of an act or event, it is to be calculated exclusive of that day.
reference to a day	a day is to be interpreted as the period of time commencing at midnight and ending 24 hours later.
accounting terms	an accounting term is a reference to that term as it is used in accounting standards under the Corporations Act or, if not inconsistent with those standards, in accounting principles and practices generally accepted in Australia.
reference to a group of persons	a group of persons or things is a reference to any two or more of them jointly and to each of them individually.
meaning not limited	the words “include”, “including”, “for example” or “such as” are not used as, nor are they to be interpreted as, words of limitation, and, when introducing an example, do not limit the meaning of the words to which the example relates to that example or examples of a similar kind.
next day	if an act under this agreement to be done by a party on or by a given day is done after 4.30pm on that day, it is taken to be done on the next day.
next Business Day	if an event must occur on a stipulated day which is not a Business Day then the stipulated day will be taken to be the next Business Day.
time of day	time is a reference to Sydney time.
headings	headings (including those in brackets at the beginning of paragraphs) are for convenience only and do not affect the interpretation of this agreement.
agreement	a reference to any agreement, Agreement or instrument includes the same as varied, supplemented, novated or replaced from time to time.
Gender	a reference to one gender extends and applies to the other and neuter gender.

Schedule 3 - Designated Land

Item	Time for Completion	Contribution Value
[insert description of the relevant part of the Designated Land to be dedicated e.g. "The whole of the Designated Land" or "That part of the Designated Land identified as Public Reserve"]	[insert time by which dedication of the whole or the relevant part of the Designated Land is to occur]	[insert amount]

REVOKED

Schedule 4 - Works

Item of Works	Specification	Time for Completion	Contribution Value
[Insert description of the relevant item of the Works that is to be carried out by the Developer eg "Embellishment of the area identified as "open space" on the Location Plan"]	[Insert details of the scope of the relevant item of the Works]	[insert time by which the relevant item of the Works is to be Completed]	[insert agreed value of the works]

REVOKED

Schedule 5 – Monetary Contributions

Item and Purpose	Time for Payment	Contribution Value
<p>[insert details of contribution and purpose for which it is to be applied by Council.</p> <p>The following wording can be used where a monetary contribution is to be applied to the SCEDF:</p> <p>Singleton Community & Economic Development Fund</p> <p>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 SCEDF, which in turn includes (but is not limited to) the following purposes:</p> <ol style="list-style-type: none"> (1) Fostering business and job creation. (2) Education and training. (3) Sports and recreation. (4) Homelessness and mental health. (5) Infrastructure. (6) Environmental Sustainability] 	<p>[insert time by which the Monetary Contribution must be paid to the Council]</p> <p>[Drafting Note Schedule 5. For mining projects, payment should ideally be made in full on the date of the VPA, and where that is not possible (i.e. a staged payment is proposed), a bank guarantee should be provided for the relevant Contribution Value as security for payment and the relevant bank guarantee template provisions in the VPA can be tailored as necessary in that regard]</p>	<p>[insert amount of the Monetary Contribution]</p>

Annexure 1 - Plan of Designated Land

REVOKED

Annexure 2 - Location Plan

REVOKED

Execution page

Executed as an agreement.

Dated:

Executed 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)

Executed by **[Insert name of Developer]** in accordance with section 127(1) of the *Corporations Act 2001* (Cth) by authority of its directors.

Director/Secretary (Signature)

Director (Signature)

Name of Director/ Secretary (Print Name)

Name of Director (Print Name)

Annexure 2 - Template Explanatory Note

REVOKED

Planning Agreement

Explanatory Note

[Insert address of Land and folio identifier]

Marsdens Law Group

Level 1
49 Dumaresq Street
CAMPBELLTOWN NSW 2560

Tel: 02 4626 5077

Fax: 02 4626 4826

DX: 5107 Campbelltown



Planning Agreement

Explanatory Note

[Insert address of Land and Folio Identifier]

1. Introduction

This Explanatory Note has been prepared in accordance with clause 25E of the *Environmental Planning & Assessment Regulation 2000* (NSW).

The purpose of this Explanatory Note is to provide a plain English summary to support the notification of a draft planning agreement (**Planning Agreement**) between the parties under s7.4 of the *Environmental Planning & Assessment Act 1979* (NSW) (**EPA Act**).

1 Parties to the Planning Agreement

The parties to the Planning Agreement are as follows:

- (1) Singleton Council (**Council**).
- (2) [Insert name of Developer] (**Developer**).

2 Description of the Subject Land

The land to which the Planning Agreement relates is set out in the table below.

Folio Identifier	Location
Insert folio identifier of relevant land	Insert address of relevant land

3 Summary of objects, nature and effect of the Planning Agreement

The offer made by the Developer as set out in the Planning Agreement is largely based on the needs identified by:

- (1) *Singleton Local Environmental Plan 2013*.
- (2) *Singleton Development Contributions Plan 2008*.

[Drafting Note: Insert any other applicable plans, policies or development control plans].

The intent of the Planning Agreement is to ensure that [Insert].

The contributions to be provided by the Developer under the Planning Agreement are described in the table below.

Description of Contributions
Insert details of contributions to be provided by the Developer.

4 Assessment of the merits of the Planning Agreement

4.1 The planning purposes served by the Planning Agreement

In accordance with section 7.4(2) of the EPA Act, the Planning Agreement promotes the following public purpose:

- (1) the provision of public amenities and public services; and
- (2) the monitoring of the planning impacts of development of the Land.

4.2 How the Planning Agreement promotes the public interest

In accordance with the objects of the EPA Act, the Planning Agreement promotes the public interest in the following manner:

- (1) the proper management, development and conservation of land;
- (2) the promotion and co-ordination of the orderly and economic use and development of land; and
- (3) the Planning Agreement will not preclude the public being provided with the opportunity for involvement and participation in development assessment. The public have been provided the opportunity to be involved with the development assessment and are invited to make comment on the Planning Agreement, particularly with regard to the public interest.

[Drafting Note: Insert any other factors which promote the public interest in accordance with the objects of the EPA Act].

5 How the Planning Agreement promotes the Guiding Principles for Council

The Planning Agreement promotes a number of the guiding principles for Council under section 8A of the *Local Government Act 1993* (NSW), as follows:

- (1) [insert].
- (2) [insert].

[Drafting Note: Insert any other applicable factors which promote the Guiding Principles for Council]

6 Identification of whether the Planning Agreement conforms with the Council's capital works program

[Drafting Note: to be inserted by Council]
