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**From:** Mary-Anne Crawford < >  
**Sent:** Thursday, 23 October 2025 3:56 PM  
**To:** Portfolio Committee 4; Justin Fitzpatrick-Barr; Samantha Calleja  
**Subject:** RE: Inquiry into the Impact of Renewable Energy Zones (REZ) on rural and regional communities and industries in New South Wales - Singleton Council post-hearing response

**Attachments:** POL 6017.4 Singleton Community Economic Development Fund Policy July 2025.pdf; POL 10069.2 Planning Agreement Policy.pdf; Transcript - HIGHLIGHTED FOR QON - PC4 - Renewable Energy Zones (REZ) - 25 September 2025 - JFB Comments.pdf; Transcript Correction .docx

Hi Margaret

Thank you for sending through the draft transcript for our review and feedback. Please find attached our comments, noting that Justin is on leave this week and he hasn't had a final review.

Also attached are our documents related to our Legacy Fund and Planning Agreement Policy. Please don't hesitate to contact me if you needed further information.

Thank you again for the opportunity to present to the committee.

Regards



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Manager Development and Environmental Services

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Singleton Council acknowledges the Wanaruah, Wonnarua people and their custodianship of the land in the Singleton Local Government Area. We also acknowledge all other Aboriginal and Torres Strait Islanders who live within the Singleton Local Government Area and pay our respect to Elders past, present and future.

# PLANNING AGREEMENT

## POLICY | Development and Environmental Services

This document 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.

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<b>Responsible Officer:</b>	Manager Development and Environmental Services		
<b>Responsible Director:</b>	Director Infrastructure and Planning		
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Prepared by:

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# Singleton Council

## Planning Agreements Policy

### 1 Background

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#### 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 19 September 2023.

#### 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.

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 (or two (2) or more planning authorities including Council) and a person:
  - (a) who has sought a change to an environmental planning instrument (such as a rezoning application);
  - (b) who has made, or proposes to make, a development application, subdivision application or application for a complying development certificate; 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:
  - (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 (including their negotiation).

## 2 Legal and policy context

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### 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 9, Division 1 of the *Environmental Planning and Assessment Regulation 2021* (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 following:
  - (a) The Practice Note entitled "*Planning Agreements Practice Note – February 2021*" (**Practice Note**) issued by the NSW Department of Planning, Industry and Environment (**DPE**) for the purposes of clause 203(6) of the Regulation. This policy has been prepared in accordance with, and is not inconsistent with, the Practice Note. If there is any inconsistency between that Practice Note and this policy, then this policy applies to the extent of that inconsistency.
  - (b) All planning circulars issued by DPE from time to time, including DPE Planning Circular PS 21-002 '*Reporting and accounting requirements for infrastructure contributions*' issued on 12 February 2021.

### 2.2 Community Strategic Plan

In considering whether to accept an offer to enter into a planning agreement, Council will have regard to its then current Community Strategic Plan, and in particular whether the proposed planning agreement is not inconsistent with that Community Strategic Plan.

Council will not enter into a planning agreement which is inconsistent with its then current Community Strategic Plan.

### 2.3 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.

### 2.4 Template Planning Agreement

- (1) A template planning agreement is attached as **Annexure 1**. Unless otherwise specified in this policy, 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.
- (3) Council will generally not agree to amend the following clauses in the template planning agreement at Annexure 1 (as applicable to each development):
  - (a) Planning Agreement (clause 3.1).
  - (b) Defects Liability (clause 8).
  - (c) Developer's Warranties and Indemnities (clause 9).
  - (d) Registration (clause 13).
  - (e) Assignment (clause 22).
  - (f) Dispute Resolution (clause 15).
  - (g) Breach (clause 16).
  - (h) Termination (clause 17).
  - (i) Legal costs (clause 21.2).

### 2.5 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.

## 2.6 The use of an Explanatory Note

- (1) Clause 205 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 (or amendment or revocation of a 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 (or amendment or revocation of a planning agreement); and
  - (b) contains an assessment of the merits of the proposed planning agreement (or amendment or revocation of a planning agreement) including the impact (positive or negative) on the public or any relevant section of the public.
- (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

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### 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 impose an obligation on Council to grant development consent or 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.
  - (i) Council will not enter into any planning agreement that is unrelated to a particular development or planning proposal.
  - (j) Council will not enter a Planning Agreement unless it is satisfied that the proposed development is acceptable on planning grounds having regard to the objects set out in s1.3 of the EPA Act and the general heads of consideration set out in s4.15 of the EPA Act.
  - (k) Council will not give any preferential treatment to proponents with development applications or planning proposals that require planning agreements.
  - (l) A Planning Agreement may propose measures that can address planning issues that have been identified with respect to the relevant Development Application.
- (2) Council will generally 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 adverse planning decisions.

### **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 the development meets the objectives of Council's Community Strategic Plan.
- (4) 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.
- (5) 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.
- (6) Whether the timing of providing development contributions is appropriate.
- (7) 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 (including whether any initial or ongoing costs are designated as Council's responsibility); and
  - (b) whether recurrent funding of those facilities is required or provided.
- (8) The extent to which Council needs to monitor the planning impacts of development.
- (9) Whether there are any other relevant circumstances that may operate to preclude Council from entering into the proposed planning agreement.

### **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 Works**

Where works are to be provided under a planning agreement, the planning agreement will specify:

- (1) the design process required to be followed in respect of the works (if any), including a requirement for Council to approve any such design where appropriate;
- (2) the timing for completion of the works;
- (3) the standard of the works; and

- (4) rectification of defects in respect of the works,

as generally included in Council's planning agreement template at **Annexure 1**.

### **3.5 Timing of Development Contributions**

A planning agreement must contain a time, or times, by which each development contribution provided under the planning agreement must be provided. The timing of the provision of each development contribution must be acceptable to Council, who must ensure that each development contribution is provided by a time which ensures that the public need for the relevant item is met.

### **3.6 Singleton Community and Economic Development Fund**

- (1) For a planning agreement which relates to any development, Council will generally require the payment of a monetary contribution in an amount equivalent to **1.5%** of the capital investment value for that development, 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, 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 19 September 2023 (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 PS 21-022 .

### **3.7 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 a suitably qualified independent valuer appointed by Council and paid for by the Developer.
- (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 suitably qualified quantity surveyor appointed by Council and paid for by the Developer.
- (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.

### **3.8 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.

### **3.9 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.

### **3.10 Other development contributions**

- (1) A planning agreement differs from development contributions under s7.11 or s7.12 of the EPA Act in that it may require the Developer to construct items itself, at its cost, rather than pay a monetary sum to Council, with Council undertaking the construction of the relevant item. Under a s7.11 contributions plan Council can only require a Developer to pay a monetary contribution, or dedicate land free of charge, or both. A Planning Agreement may be entered into where there is already a Contributions Plan in place or it may be entered into where there is no current Contributions Plan.
- (2) A planning agreement may or may not exclude, in whole or in part, the application of s7.11, s7.12 and/or s7.24 of the Act with respect to the development to which the planning agreement relates depending on the nature and extent of the development contributions being provided under the planning agreement.
- (3) 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.
- (4) 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.
- (5) 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.
- (6) 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.

### **3.11 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.

### **3.12 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 s7.11 Contributions Plan.

### **3.13 Council's compulsory acquisition power**

- (1) A planning agreement may include an obligation on a developer to make a monetary development contribution to Council to meet some, or all, of the costs incurred by Council in undertaking the acquisition of land.
- (2) A Planning Agreement cannot impose an obligation on Council to use the compulsory acquisition power conferred on it under the *Local Government Act 1993* (NSW), the *Roads Act 1993* (NSW) and the *Land Acquisition (Just Terms Compensation) Act 1991* (NSW).
- (3) Any such acquisition of land by Council may only be undertaken for a public purpose, and is subject to the approval of the Minister and the Governor. Council will not agree to compulsorily acquire land in a planning agreement where such an acquisition is for the sole benefit of the development and does not serve a broader public purpose.
- (4) If Council resolves to acquire land for which a monetary development contribution is required to be paid under a planning agreement, Council cannot be subject to an obligation to acquire that land by a certain time, or at all.

### **3.14 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**

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### **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 free of actual or perceived corrupt conduct or maladministration..

- (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, specifically, how the Planning Agreement system operates and how Council will deal with developments objectively;
  - (c) notify and exhibit planning agreements to ensure they are open and transparent specifically achieving maximum public awareness of the matters contained in a planning agreement and the potential public benefit;
  - (d) ensure appropriate delegations and separation of responsibilities in considering planning proposals and development applications that involve planning agreements, specifically the need to ensure processes adequately address the level of risk of corruption while at the same time also being appropriate to the likely level of risk;
  - (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, specifically, independent assessment by third parties where Council has an interest and not entering into any contractual arrangement which purports to guarantee outcomes that are contrary to separate regulatory processes and the public interest.
- (3) In certain circumstances, Council may decide to implement a probity policy specific to the negotiation of a particular planning agreement.

## **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:
  - (a) public notice is given of the proposed agreement, amendment or revocation; and
  - (b) a copy of the proposed agreement, amendment or revocation has been available for inspection by the public.
- (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**

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### **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, the form of security Council may require in a planning agreement may include, but is not limited to one (1) or more of the following:
  - (a) Registration of the agreement on the land to which it applies pursuant to s7.6 of the EPA Act will not be accepted in lieu of other forms of security referred to below.
  - (b) Provision of security in the form of an unconditional bank guarantee or bond from an Australian bank in favour of Council to the full value of the contributions to be provided under the Planning Agreement (including in respect of any works and defects for works) or for some or all of the obligations of the proponent under the planning agreement on terms acceptable to Council.
  - (c) The ability for Council to withhold issuing a construction certificate, occupation certificate and/or subdivision certificate until the Developer has fulfilled some or all of its obligations under the planning agreement.
  - (d) The ability for Council to step-in and complete works where the Developer fails to complete them within a specified time.
  - (e) Where the development contributions include the dedication of land to Council, a right for Council to:

- (i) compulsorily acquire the relevant land in the event the Developer fails to dedicate it to Council by the time required under the planning agreement; and/or
  - (ii) register a caveat on the title of the relevant land until such time as it is dedicated to Council.
- (f) Council will only accept a personal guarantee, or a parent company/corporate guarantee as security for the obligations of the Developer under a planning agreement in addition to other forms of security specified above.
- (3) If a Bank Guarantee is required to be provided to secure the provision of works, Council may require that Bank Guarantee to be provided in an amount which exceeds the agreed value of the works as set out in the planning agreement. The basis for that is that the works may not be provided for some time after the planning agreement is entered into, and the actual cost of providing those works may greatly exceed the estimated value as set out in the planning agreement.
- (4) Subject to this section 6.3, 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 where payment of monetary contributions are proposed on a staged basis rather than upfront under paragraph (2)).

### **6.4 Registration of Planning Agreements**

- (1) Council will require a planning agreement to contain a provision requiring the Developer to agree to registration of the Planning Agreement pursuant to s7.6 of the EPA Act.
- (2) On execution of the planning agreement and until it is registered on title, the developer may be required to consent to Council lodging a caveat on the title of the relevant land.
- (3) The Developer must provide Council with all the necessary documents required to facilitate the registration of the Planning Agreement on the title to the land, including the written consent of any parties with interests in the land.

### **6.5 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.

## **6.6 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.

---

## 1. Schedule 1: Mandatory requirements of a planning agreement

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### 1.1 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.

### 1.2 Part 2: Explanatory Note

---

Clause 205(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 that purpose.
<input type="checkbox"/> Identify whether the planning agreement conforms with Council's capital works program (if any).

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.

---

## **2. 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 should seek legal advice on any planning agreement at the commencement of negotiations, even if Council undertakes initial negotiations itself, without its solicitor present.
- (5) 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.
- (6) The participants will identify the issues and timelines for negotiation and undertake the negotiations. In particular, Council should seek to reach agreement with the Developer as to:
  - (a) the nature and extent of the development contributions to be provided by the Developer under the planning agreement;
  - (b) the estimated value of those development contributions;
  - (c) the time by which each of the development contributions should be provided;
  - (d) whether the Planning Agreement will exclude, in whole or in part, the application of s7.11 and/or s7.12 of the EPA Act to the Development; and
  - (e) the nature and extent of the development to which the planning agreement will apply.
- (7) 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.
- (8) The parties will decide who will prepare the agreement. If the Developer is preparing the agreement, the Developer should prepare and submit a proposed Planning Agreement in accordance with this policy and the appropriate planning agreement template adopted by Council from time to time.
- (9) 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.
- (10) When the content of the draft agreement is agreed, the developer should then:
  - (a) submit the planning proposal or development application to the Council, accompanied by the planning agreement and the explanatory note; and

- (b) the Developer should make a written irrevocable and unconditional offer to Council to enter into the Planning Agreement (a copy of which should accompany the application/proposal).
  - (11) Subject to any direction of the relevant Minister and/or decision of any local planning panel constituted under the EPA Act, Council may then proceed to adopt any of the processes available to it with respect to deciding to proceed, or not to proceed, with the proposed planning agreement. Ideally, that process will include the submission of a report to the elected Council with a recommendation to either:
    - (a) proceed with the exhibition of the proposed planning agreement; or
    - (b) proceed no further with the proposed planning agreement,
  - (12) Where Council supports exhibition of the proposed planning agreement, it will publicly exhibit the proposed planning agreement (together with the proposed planning proposal or development application) in accordance with the EPA Act and its notification requirements.
  - (13) Once the exhibition of the proposed planning agreement has been undertaken the proposed planning agreement should be reported to the elected Council in order to:
    - (a) consider any public submissions made with respect to the proposed planning agreement; and
    - (b) resolve whether or not to accept the offer made by the Developer to enter into the planning agreement.
  - (14) 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.
  - (15) Council will consider the planning agreement and the application to which it relates concurrently. The agreement and public submissions made in relation to that agreement will be matters for consideration in the determination of the planning proposal or development application. A determination will then be issued.
  - (16) 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.
  - (17) 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.
  - (18) 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.
  - (19) 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.
-

### 3. **Schedule 3:** **Public notification process**

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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.

<b>Development application</b>
<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"><li>(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</li><li>(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.</li></ol>
<b>Where change to planning instrument is involved</b>
<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"><li>(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</li><li>(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.</li></ol>

---

**Annexure 1 - Template Planning Agreement**

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# Planning Agreement

**[insert Name of Development OR 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

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# Planning Agreement

**[MLG Note: Insert Name of Development or 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

[Drafting Note: The Background must reflect the specific factual circumstances and in particular reflect compliance with 7.4(1) of the Act.]

- A The Developer owns the Land.
- B The Developer wishes to carry out the Development.
- C The Developer has [applied for]/[proposes to apply for]/[obtained] [Drafting Note: delete as applicable]: the [Development Consent]/[Instrument Change] [Drafting Note: delete 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 is made in respect of the [Development/Instrument Change] [Drafting Note: delete as applicable]; and 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 and operates as a deed from the date it is executed by both parties.
- (2) This document operates as a planning agreement for the purpose of the Act when:
  - (a) the [Development Consent becomes operative/Instrument Change is made] [Drafting Note: delete as applicable]; and
  - (b) the planning agreement is entered in accordance with clause 203(3) 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.

[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.

**[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.

**[Drafting Note: Section 7.24 is the section dealing with Special Infrastructure Contributions and as such, this section can only be excluded by the Minister.]**

---

## 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 in accordance with **Schedule 3**.
- (2) The Developer must meet all costs (including legal and registration 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) **(Deposited Plan)** if the relevant land is dedicated in a plan registered at the NSW Land Registry Services, when that plan is so registered; or
  - (b) **(Instrument of Transfer)** otherwise when the Developer delivers to Council:
    - (i) a transfer of the relevant land in registrable form;
    - (ii) any consent required by an interested party in 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 Development Consent, and any other form of consent or approval required by a relevant Authority for the construction and use of the Works;
- (2) carry out and complete the Works to the satisfaction of the Council in accordance with **Schedule 4**; and
- (3) carry out and complete the Works:

- 
- (a) in accordance with the specification (if any) referred to in **Schedule 4** for the relevant item of Work;
  - (b) in accordance with the requirements of, or consents issued by, any Authority, including any relevant Development Consent;
  - (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 determined at the date on which the Works are Completed 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

- (1) The Developer must 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.
- (2) The Developer must enable Council, its officers, employees, agents and contractors access to the location of the Works where this is not the Land, Council land or a public road.

### 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 in accordance with **Schedule 5**.
- (2) The Monetary Contributions are made for the purpose of this document when Council receives the full amount of the Monetary Contributions payable under this document:
  - (a) in cash; or
  - (b) by unendorsed bank cheque; or

- 
- (c) by the deposit by means of electronic funds transfer of cleared funds into a bank account nominated by Council.
- (3) 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 for each Development Contribution will increased (with the calculation to be made as from the date the relevant Development Contribution is required to be provided to Council 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

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### 6.1 Developer must submit design

- (1) The Developer must:
- (a) consult with Council with respect to the development of the detailed design and specification with respect to each item of Works; and
  - (b) ensure that the relevant design is consistent with, and has regard to, any relevant policies of Council as identified in the Development Consent.
- (2) Before commencing construction of an item of Work, the Developer must submit to Council:
- (a) for its approval, the detailed design and specification for the relevant item of Work; and
  - (b) a report from a suitable qualified and experienced Quantity Surveyor which estimates the cost to complete the relevant item of Work in accordance with the detailed design.
- (3) 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 set out in **Schedule 4**; and
  - (b) the Contribution Value of that item of Work.

## 6.2 Council to respond to design and specification

If, within **[insert number of days (X)] business days** of the date of submission referred to in clause 6.1:

- (1) 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;
- (2) 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
- (3) Council notifies the Developer in writing that it does not approve of the design and specification, the Developer may:
  - (a) 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
  - (b) if the Developer does not agree with the modifications requested by Council, refer the matter for dispute resolution under clause 15.
- (4) For the purposes of paragraph (2), 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 **[Optional: 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 Complete any item of Works (**Deferred Works**) by the time required under this document, then the Developer may seek Council's approval to defer the Completion of the relevant Works by providing written notice to the Council:
  - (a) identifying the relevant Work that the Developer proposes to defer;
  - (b) specifying the reason for the request to defer the Completion of that item of the Works; and
  - (c) 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:
    - (a) the Developer must comply with any conditions required by Council under paragraph (2);
    - (b) 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
    - (c) 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 Rectification 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 [Optional - 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 [Optional: include this clause if the Contributions comprise Works]**

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#### **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,

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(**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 **[insert number of days (X)]**).

## **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 12; 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**

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## **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 Contamination [Optional: Should only be included if Land will be dedicated to Council]

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### 10.1 Definitions

For the purpose of this clause 10:

**Contamination** means any material, gas, substance, liquid, chemical or biological mineral or other physical matter which would, if present on the Land:

- (1) result in an Authority issuing a notice, direction or order under an Environmental Law; or
- (2) which would constitute a violation of contribution of contravention of any Environmental Law.

**Contaminated** means subject to Contamination.

**Environmental Law** means all planning, environmental or pollution laws and any regulations, orders, directions, ordinances or requirements, permissions, permits, licences issued under those laws or instruments.

### 10.2 Warranties and Indemnities

The Developer:

- (1) warrants that as far as it is aware, and other than as disclosed to Council, the Designated Land is not Contaminated; and
- (2) indemnifies and must keep indemnified Council against all liability for and associated with all Contamination present in, on and under the Designated Land including full responsibility for compliance with and any liability in respect of such Contamination under the *Contaminated Lands Management Act 1997* (NSW) and all other relevant legislation and the requirements of any relevant Authority.

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### 10.3 Remediation

- (1) If Council becomes aware or reasonably suspects that any part of the Designated Land was Contaminated before the date of this document, Council may as soon as practicable notify the Developer in writing to that effect.
- (2) As soon as practicable after receipt of the notice pursuant to paragraph (1) the Developer will at its cost (with the assistance of qualified experts) carry out all reasonable investigations (including investigations which Council reasonably directs in writing) to enable the parties to be informed of the full nature and extent of the Contamination in, on, under the surface of, and leaving from the relevant part of the Designated Land and provide copies of all reports on such investigations to Council (**Investigation Reports**).
- (3) As soon as practicable after receipt by Council of the Investigation Reports the parties must meet to discuss in good faith the method by which the relevant part of the Designated Land might be dealt with so that it is no longer Contaminated.
- (4) Following the discussions pursuant to paragraph (3) the Developer must at its own cost undertake all reasonable measures which the Developer (acting reasonably) determines (and as Council acting reasonably approves in writing) as necessary to ensure that the relevant part of the Designated Land is no longer Contaminated.

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## 11 Contribution Alternatives

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[Drafting Note: 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)]

### 11.1 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.

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## 11.2 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.

## 11.3 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):
- (3) the Contribution Value of the works provided must equal to or greater than the amount of the relevant Monetary Contribution; and
- (4) the works must be Completed no later than the time by which the Monetary Contribution was required to have been made under this document.

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## 12 Security

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[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]

### 12.1 Provision of Security

Subject to paragraph 12.2, prior to the issue of a Construction Certificate in respect of the Development, the Developer must deliver to Council separate irrevocable and unconditional undertakings to the satisfaction of Council:

- (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**).

### 12.2 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.

### **12.3 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.

### **12.4 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.

### **12.5 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.

### **12.6 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,

**E** 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.

### **12.7 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.

### **12.8 Compulsory acquisition of the Designated Land**

**[Drafting Note: This clause should be used where part of the Development Contributions include the dedication of the Designated Land]**

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- (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 12.8.
  - (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 12.8 are an agreement with respect to the compulsory acquisition of the Designated Land for the purpose of s30 of the Acquisition Act.
  - (5) If Council:
    - (a) acquires the Designated Land under paragraph (3); and
    - (b) is required to pay any compensation to a third party as a result of that acquisition,then the Developer must pay Council the amount of that compensation as a Monetary Contribution:
    - (c) within **ten (10) business days** of demand for payment being made by Council; and
    - (d) prior to the issue of the then next Occupation Certificate or Subdivision Certificate with respect to the Development.

### **12.9 Council may withhold Construction Certificate**

- (1) The Developer may only make, or cause, suffer or permit the making of, an application for a Construction Certificate in respect of the Development if, at the date of the application, the Developer is not in breach of its obligation to make any Development Contribution under this document.
- (2) Council may withhold the issue of a Construction Certificate if, at the relevant time, the Developer is in breach of any obligation to make any Development Contribution under this document until such time as:
  - (a) the breach is rectified; or
  - (b) Council calls upon the Security provided by the Developer in respect of the Development Contribution to which the breach relates.

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### 12.10 Council may withhold Subdivision Certificate

- (1) The Developer may only make, or cause, suffer or permit the making of, an application for a Subdivision Certificate in respect of the Development if, at the date of the application, the Developer is not in breach of its obligation to make any Development Contribution under this document.
- (2) Council may withhold the issue of a Subdivision Certificate if, at the relevant time, the Developer is in breach of any obligation to make any Development Contribution under this document until such time as:
  - (a) the breach is rectified; or
  - (b) Council calls upon the Security provided by the Developer in respect of the Development Contribution to which the breach relates.

### 12.11 Council may withhold Occupation Certificate

- (1) The Developer may only make, or cause, suffer or permit the making of, an application for an Occupation Certificate in respect of the Development if, at the date of the application, the Developer is not in breach of its obligation to make any Development Contribution under this document.
- (2) Council may withhold the issue of an Occupation Certificate if, at the relevant time, the Developer is in breach of any obligation to make any Development Contribution under this document until such time as:
  - (a) the breach is rectified; or
  - (b) Council calls upon the Security provided by the Developer in respect of the Development Contribution to which the breach relates.

### 12.12 Developer must not deal with property

[Drafting Note: 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.

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## 13 Registration of this document

### 13.1 Registration

The Developer acknowledges and agrees that:

- (1) This document will be registered on the title of the [MIA Land/Land] [Drafting Note: Include as 'MIA Land' ONLY for mining VPA's] pursuant to s 7.6 of the Act; and
- (2) subject to clause 13.2:
  - (a) Council will undertake the registration in paragraph **Error! Reference source not found.**; and

- 
- (b) the Developer will pay or reimburse Council for all its legal and registration costs associated with that registration.

### 13.2 Obligations of Developer

- (1) The Developer, at its own expense must, promptly after this document comes into operation, and before the issue of any Construction Certificate or Subdivision Certificate for the Development, take all necessary and practical steps, and otherwise do anything that the Council reasonably requires, to procure:
  - (a) the consent of each person who:
    - (i) has an estate or interest in the [MIA Land/Land] [Drafting Note: Include as 'MIA Land' ONLY for mining VPA's]; or
    - (ii) is seized or possessed of an estate or interest in the [MIA Land/Land] [Drafting Note: Include as 'MIA Land' ONLY for mining VPA's];
  - (b) the execution of any documents; and
  - (c) the production of the relevant title documentation,to enable the registration of this document in accordance with clause 13.1.
- (2) The Developer, at its own expense, will take all necessary and practical steps, and otherwise do anything that the Council reasonably requires:
  - (a) to allow the lodgement of this document with the Registrar-General as soon as reasonably practicable after this document comes into operation but in any event, no later than **thirty (30) business days** after that date; and
  - (b) to allow the registration of this document by the Registrar-General in the relevant folios of the Register for the [MIA Land/Land] [Drafting Note: Include as 'MIA Land' ONLY for mining VPA's] as soon as reasonably practicable after this document is lodged for registration.

### 13.3 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**).

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## 14 Review & Amendment

### 14.1 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.

### 14.2 Amendment to be in writing

If the parties agree to amend this document as a result of a review conducted under clause 14.2 then any such amendment must be made in writing signed by both parties.

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## 15 Dispute Resolution

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### 15.1 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**).

### 15.2 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.

### 15.3 Further steps required before proceedings

Subject to clauses 15.14 and 15.15 and except as otherwise expressly provided in this document, any Dispute must, as a condition precedent to the commencement of litigation, mediation under clause 15.5 or determination by an expert under clause 15.6, 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 15.1(2) is served.

### 15.4 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 15.5 or expert resolution under clause 15.6.

### 15.5 Disputes for mediation

- (1) If the parties agree in accordance with clause 15.4 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 15.6.

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## 15.6 Choice of expert

- (1) If the Dispute is to be determined by expert determination, this clause 15.6 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.
- (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 15.6 setting out the terms of the expert's determination and the fees payable to the expert.

## 15.7 Directions to expert

- (1) In reaching a determination in respect of a dispute under clause 15.6, 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.
- (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.

#### **15.8 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 15.6(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.

#### **15.9 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.

#### **15.10 Other courses of action**

If:

- (1) the parties cannot agree in accordance with clause 15.4 to refer the matter to mediation or determination by an expert; or
- (2) the mediation referred to in clause 15.5 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,

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

#### **15.11 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;
  - (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.

#### **15.12 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.

#### **15.13 Costs**

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

#### **15.14 Remedies available under the Act**

This clause 15 does not operate to limit the availability of any remedies available to Council under the Act.

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### 15.15 Urgent relief

This clause 15 does not prevent a party from seeking urgent injunctive or declaratory relief concerning any matter arising out of this document.

[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.]

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## 16 Breach of this document

### 16.1 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 [insert] [Drafting Note: this period to be confirmed].

### 16.2 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.

### 16.3 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:

- (1) exercise its step-in rights so as to carry out any work specified in the relevant Breach Notice; or
- (2) call on the Security to the extent of any compensation claimed in a Breach Notice and not paid by the Developer.

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## 17 Termination

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### 17.1 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 16.1.
- (3) The Development Consent lapses.

### 17.2 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.

### 17.3 Determination

This Planning Agreement will determine upon the Developer satisfying all of the obligations imposed on it in full.

## 18 Position of Council

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### 18.1 Consent authority

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

### 18.2 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).**

### 18.3 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 18 is substantially satisfied;

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- (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.

#### **18.4 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 and/or Instrument Change] [Drafting Note: Delete whichever is not relevant] , the Land or the Development in a certain manner.

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### **19 Confidentiality**

#### **19.1 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.

#### **19.2 Other Confidential Information**

- (1) The parties acknowledge that:
- (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.

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- (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.

## **20 GST**

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### **20.1 Defined GST Terms**

Defined terms used in this clause 20 have the meaning ascribed to them in the GST Law.

### **20.2 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.

### **20.3 GST Obligations to Survive Termination**

This clause 20 will continue to apply after expiration of termination of this document.

## **21 Miscellaneous**

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### **21.1 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;
- (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

be just and faithful in their activities and dealings with the other parties.

### **21.2 Legal costs**

The Developer agrees to pay or reimburse the reasonable legal costs and disbursements of Council in connection with and arising from:

- (1) the negotiation, preparation, execution, and stamping of this document; and
- (2) the ongoing administration and enforcement of this document, including in relation to:
- (a) the registration or removal of this document from title in accordance with clause 13; and

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(b) any breach or default by the Developer of its obligations under this document.  
within fourteen (14) days of receipt of a tax invoice from Council; and

[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.]

## 22 Assignment

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### 22.1 Restriction on Assignment

Other than in accordance with this clause 22 the Developer may not:

- (1) Assign any part of the Land; and/or
- (2) Assign their rights or obligations under this document.

### 22.2 Procedure for Assignment

- (1) If the Developer:
  - (a) wishes to Assign any part of the Land; and/or
  - (b) wishes to Assign its rights or obligations under this document,then the Developer must:
  - (c) provide a written request to Council for the consent of Council to the relevant Assignment;
  - (d) provide Council with any evidence required by Council, acting reasonably, to satisfy Council that the third party in whose favour the Assignment is to be made (**Assignee**) is reasonably capable of performing the obligations under this document that are to be Assigned to it;
  - (e) obtain written consent of Council to the relevant Assignment; and
  - (f) at no cost to Council, procure:
    - (i) the execution by the Assignee of an appropriate deed where the Assignee agrees to be bound by the terms of this document; and
    - (ii) the provision of all Securities to Council by the Assignee that the Developer is required to provide under this document (and any additional securities if required by Council acting reasonably) at the same time as, or prior to, entering into that deed.
- (2) Council is under no obligation to consider granting its consent to any request made by the Developer under paragraph (1)(c) if, at the time the request is made, the Developer is in breach of this document.

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## 23 Administrative Provisions

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### 23.1 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 email 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 sent by email and the sender does not receive a delivery failure message from the sender, within a period of **twenty (24) hours** of the email being sent.
- (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.

### 23.2 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.

### 23.3 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.

### 23.4 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.

### 23.5 Counterparts

This document may be executed in any number of counterparts and all of those counterparts taken together constitute one and the same instrument. A party who has executed a counterpart of this document may exchange it with another party by emailing a pdf (portable document format) copy of, the executed counterpart to that other party, and if requested by that other party, will promptly deliver the original by hand or post. Failure to make that delivery will not affect the validity and enforceability of this document.

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### **23.6 Amendment**

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

### **23.7 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.

### **23.8 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.

### **23.9 Governing law**

- (1) The law in force in the State of New South Wales governs this document. The parties:
- (2) 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
- (3) 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
<p><b>Planning instrument and/or development application – (Section 7.4(1))</b></p> <p>The Developer has:</p> <p>A. sought a change to an environmental planning instrument.</p> <p>B. made, or proposes to make, a Development Application.</p> <p>C. entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies.</p>	<p>(a) Yes/No</p> <p>(b) Yes/No</p> <p>(c) Yes/No/Not applicable</p>
<p><b>Description of land to which this agreement applies – (Section 7.4(3)(a))</b></p>	<p>[insert folio identifiers of relevant land]</p>
<p><b>Description of change to the environmental planning instrument to which this agreement applies – (Section 7.4(3)(b))</b></p>	<p>Yes/No</p>
<p><b>Application of section 7.11 of the Act – (Section 7.4(3)(d))</b></p>	<p>Applies/Does not apply</p>
<p><b>Applicability of section 7.12 of the Act – (Section 7.4(3)(d))</b></p>	<p>Applies/Does not apply</p>
<p><b>Consideration of benefits under this agreement if section 7.11 applies – (Section 7.4(3)(e))</b></p>	<p>Refer to clause 4.2 of the Planning Agreement.</p>
<p><b>Mechanism for Dispute resolution – (Section 7.4(3)(f))</b></p>	<p>See clause 15.</p>
<p><b>Enforcement of this agreement (Section 7.4(3)(g))</b></p>	<p>See clause 12.</p>
<p><b>No obligation to grant consent or exercise functions – (Section 7.4(9))</b></p>	<p>See clause 18.</p>

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## Schedule 2 – Defined Terms And Interpretation

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**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 *Environmental Planning and Assessment Act 1979* (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.

**Bank Guarantee** means an irrevocable and unconditional undertaking without any expiry or end date by one of the following trading banks:

- (1) Australia and New Zealand Banking Group Limited.
- (2) Commonwealth Bank of Australia.
- (3) Macquarie Bank.
- (4) National Australia Bank Limited.
- (5) St George Bank Limited.
- (6) Westpac Banking Corporation.

Any other financial institution approved by the Council, in its absolute discretion, in response to a request from the Developer.

**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.

<b>Confidential Information</b>	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: <ul style="list-style-type: none"> <li>(1) is by its nature confidential;</li> <li>(2) is designated, or marked, or stipulated by either party as confidential (whether in writing or otherwise);</li> <li>(3) any party knows or ought to know is confidential; and</li> <li>(4) is information which may be reasonably considered to be of a confidential nature.</li> </ul>
<b>Construction Certificate</b>	has the meaning ascribed to that term in the Act.
<b>Contributions</b>	means the Works, the Designated Land and the Monetary Contributions.
<b>Contribution Value</b>	means the amount specified in <b>Schedules 3, 4 and 5</b> in the column headed "Contribution Value" for each item of the Contributions.
<b>Defect</b>	has the meaning ascribed to it in clause 8.
<b>Defects Notice</b>	has the meaning ascribed to it in clause 8 .
<b>Defects Liability Period</b>	means <b>[insert period of time e.g. 12 Months]</b> .
<b>Defects Security</b>	has the meaning ascribed to it in clause 12.
<b>Designated Land</b>	means that part of the Land outlined <b>[insert colour/hatching]</b> on the plan attached as <b>Annexure 1</b> .
<b>Development</b>	means <b>[insert here a full description of the proposed development]</b> .
<b>Development Application</b>	means an application for the Development Consent.
<b>Development Consent</b>	means the consent issued under the Act for the Development.
<b>Development Cost</b>	means, in relation to an item of Work: <ul style="list-style-type: none"> <li>(1) the construction cost of the relevant item of Work;</li> <li>(2) any costs incurred under a building contract in relation to the relevant item of Work;</li> <li>(3) the costs of any consultants engaged in relation to the relevant item of Work; or</li> <li>(4) any costs or expenses payable to any Authority in relation to the relevant item of Work.</li> </ul>

<b>Dispute</b>	has the meaning ascribed to it in clause 15.1.
<b>Encumbrance</b>	<p>means an interest or power:</p> <ol style="list-style-type: none"> <li>(1) reserved in or over an interest in any asset;</li> <li>(2) arising under, or with respect to, a Bio-Banking Agreement;</li> <li>(3) 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</li> <li>(4) by way of security for the payment of a debt or other monetary obligation or the performance of any obligation.</li> </ol> <p><b>Encumber</b> means to grant an Encumbrance.</p>
<b>Event of Default</b>	has the meaning ascribed to it in clause 16.2.
<b>GST Law</b>	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.
<b>Index</b>	means the Consumer Price Index (All Groups - Sydney) as provided by the Australian Bureau of Statistics
<b>Insolvency Event</b>	<p>means the happening of any of the following events:</p> <ol style="list-style-type: none"> <li>(1) Application which is not withdrawn or dismissed within fourteen (14) days is made to a court for an order or an order is made that a body corporate be wound up.</li> <li>(2) An application which is not withdrawn or dismissed within fourteen (14) days is made to a court for an order appointing a liquidator or provisional liquidator in respect of a body corporate or one of them is appointed, whether or not under an order.</li> <li>(3) Except to reconstruct or amalgamate while solvent, a body corporate enters into, or resolves to enter into, a scheme of arrangement, agreement of company arrangement or composition with, or assignment for the benefit of, all or any class of its creditors, or it proposes a reorganisation, moratorium or other administration involving any of them.</li> <li>(4) A body corporate resolves to wind itself up, or otherwise dissolve itself, or gives notice of intention to do so, except</li> </ol>

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to reconstruct or amalgamate while solvent or is otherwise wound up or dissolved.

- (5) A body corporate is or states that it is insolvent.
- (6) As a result of the operation of section 459F(1) of the *Corporations Act 2001* (Cth) (Corporations Act), a body corporate is taken to have failed to comply with a statutory demand;
- (7) A body corporate is or makes a statement from which it may be reasonably deduced that the body corporate is, the subject of an event described in section 459C(2)(b) or section 585 of the Corporations Act.
- (8) A body corporate takes any step to obtain protection or is granted protection from its creditors, under any applicable legislation or an administrator is appointed to a body corporate.
- (9) A person becomes an insolvent under administration as defined in section 9 of the Corporations Act or action is taken which could result in that event.
- (10) A receiver, manager or receiver and manager is appointed to the Company.
- (11) A claim is filed in a court against a person that is not defended, released or otherwise settled within twenty eight (28) days of the date of its filing at the court.
- (12) Anything analogous or having a substantially similar effect to any of the events specified above happens under the law of any applicable jurisdiction.

**Instrument Change** means [Drafting Note: set out the nature of the instrument change being sought (if applicable)].

**Land** means [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 [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**.

<b>Owners</b>	means [Drafting Note: insert name of any owners of the Land other than the Developer if applicable including title details of the Land for each].
<b>Planning Legislation</b>	means the Act, the <i>Roads Act 1993</i> (NSW) and the <i>Local Government Act 1993</i> (NSW).
<b>Primary Security</b>	has the meaning ascribed to it in clause 12.
<b>Quantity Surveyor</b>	means a person who: <ul style="list-style-type: none"> <li>(1) is a member of their respective professional organisation and has been for at least five (5) years;</li> <li>(2) practises as a quantity surveyor for works of the same nature as the relevant Works;</li> <li>(3) is active as a quantity surveyor at the time of his appointment;</li> <li>(4) has at least three (3) years experience in valuing works of the same nature as the relevant Works; and</li> <li>(5) undertakes to act fairly and promptly in accordance with the requirements of this document.</li> </ul>
<b>Rectification Notice</b>	has the meaning ascribed to it in clause 7.4.
<b>Regulation</b>	means <i>Environmental Planning and Assessment Regulation 2021</i> (NSW)
<b>Security</b>	means collectively the Primary Security and the Defects Security.
<b>SCEDF</b>	means the Singleton Community and Economic Development Fund adopted by Council at its meeting on 16 December 2019.
<b>Works</b>	means the works specified or described in <b>Schedule 4</b> .

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## Part 2 - Interpretational Rules

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<b>clauses, annexures and schedules</b>	a clause, annexure or schedule is a reference to a clause in or annexure or schedule to this agreement.
<b>reference to statutes</b>	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.
<b>singular includes plural</b>	the singular includes the plural and vice versa.
<b>person</b>	the word “person” includes an individual, a firm, a body corporate, a partnership, joint venture, an unincorporated body or association or any government agency.

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<b>executors, administrators, successors</b>	a particular person includes a reference to the person's executors, administrators, successors, substitutes (including persons taking by novation) and assigns.
<b>dollars</b>	Australian dollars, dollars, \$ or A\$ is a reference to the lawful currency of Australia.
<b>calculation of time</b>	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.
<b>reference to a day</b>	a day is to be interpreted as the period of time commencing at midnight and ending 24 hours later.
<b>accounting terms</b>	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.
<b>reference to a group of persons</b>	a group of persons or things is a reference to any two or more of them jointly and to each of them individually.
<b>meaning not limited</b>	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.
<b>next day</b>	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.
<b>next Business Day</b>	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.
<b>time of day</b>	time is a reference to Sydney time.
<b>headings</b>	headings (including those in brackets at the beginning of paragraphs) are for convenience only and do not affect the interpretation of this agreement.
<b>agreement</b>	a reference to any agreement, Agreement or instrument includes the same as varied, supplemented, novated or replaced from time to time.
<b>Gender</b>	a reference to one gender extends and applies to the other and neuter gender.

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## 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]

## 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]

## 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><b>Singleton Community &amp; Economic Development Fund</b></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> <p>(7) Fostering business and job creation.</p> <p>(8) Education and training.</p> <p>(9) Sports and recreation.</p> <p>(10) Homelessness and mental health.</p> <p>(11) Infrastructure.</p> <p>(12) Environmental Sustainability]</p>	<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

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## Annexure 2 - Location Plan

---

## 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**

---

## **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 jointly by the parties in accordance with clause 205 of the *Environmental Planning & Assessment Regulation 2021* (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**).

This Explanatory Note is not to be used to assist in construing the Planning Agreement.

### 2 Parties to the Planning Agreement

---

The parties to the Planning Agreement are as follows:

- (1) Singleton Council (ABN 52 877 492 396) (**Council**).
- (2) **[Insert name of Developer]** (ACN **[insert]**) (**Developer**).

### 3 Description of the Subject Land

---

The land to which the Planning Agreement relates, and to which the Planning Agreement will be registered, is set out in the table below.

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

### 4 Description of the Development

---

**[Drafting Note: Use for instrument Change]** The Planning Agreement relates to the **[insert details of Planning Proposal/Instrument Change]** (**Instrument Change**).

**[Drafting Note: Use for Development Application]** The development to which the Planning Agreement relates is the development generally described in **[insert details of Development Application/Development Consent]** (**Development**).

### 5 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*.

## Planning Agreement Policy

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(2) *Singleton Development Contributions Plan 2008.*

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

The **objective** of the Planning Agreement is to provide community infrastructure, amenities and resources to the local community by facilitating the delivery of development contributions consisting of:

(1) [list development contributions]

(2)

so that the community does not need to bear those costs (**Contributions**).

The **intent** of the Planning Agreement is to facilitate the provision of the Contributions by the Developer.

**[Drafting Note: Insert if the Planning Agreement will be registered]** The Planning Agreement will be registered on the title of the Land.

**[Drafting Note: Insert if Council is withholding certificates]** Council will be able to withhold **Construction Certificates, Subdivision Certificates and Occupation Certificates** until such time as those Contributions are made.

**[Drafting Note: Insert if Council is providing bank guarantees]** The Developer will provide Council with the following bank guarantees to ensure completion of the Contributions: **[Drafting Note: Insert whichever is relevant]**

- (1) A bank guarantees for an amount equivalent to [insert] (**Primary Security**).
- (2) A bank guarantee for an amount equivalent to [insert] prior to the completion of an item of Work to satisfy any defects in the Works during the relevant Defect Liability Period which will be [insert] months commencing from the date the item of Works are completed (**Defects Security**).

The **nature** of the Planning Agreement is a contractual relationship between the Council and the Developer for providing the Contributions.

The **effect** of the Planning Agreement is that the Developer will provide the Contributions in the manner provided for by the Planning Agreement (as applicable) and as set out in **Schedule 1**.

### 6 Assessment of the merits of the Planning Agreement

---

#### 6.1 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 contributions to accommodate and meet the demands of future developments and to mitigate the potential impacts of that development on existing infrastructure;
- (2) the provision of public amenities and public services;
- (3) [Drafting Note: insert if providing monetary contributions] the provision of monetary contributions to meet the demands for infrastructure in relation to public amenities and public services. and
- (4) the monitoring of the planning impacts of development of the Land.

#### 6.2 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) by providing certainty for the Developer and Council as to the provision of the Contributions directed towards community infrastructure within the local community;
- (2) the proper management, development and conservation of land;
- (3) the promotion and co-ordination of the orderly and economic use and development of land; and
- (4) 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].

### 7 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) The exhibition of the Planning Agreement facilitates the involvement of members of the public in the consultation process for the Planning Agreement;
- (2) To plan strategically for the provision of effective and efficient services and regulation to meet the diverse needs of the local community;
- (3) To act fairly, ethically and without bias to the interests of the local community;
- (4) To recognise diverse local community needs and interests.

## Planning Agreement Policy

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- (5) To have regard to the long term and cumulative effects of its decisions on future generations.
- (6) To engage in long-term strategic planning on behalf of the local community;
- (7) To bear in mind that it is the custodian and trustee of public assets and to effectively plan for, account for and manage the assets for which it is responsible.
- (8) The Planning Agreement makes it clear that Council has a statutory role as consent authority in relation to the development proposal and that the Planning Agreement is not intended to unlawfully influence the exercise of Council's regulatory functions.

(9) [insert].

(10) [insert].

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

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

---

The Planning Agreement **does/does not** conform to Council's capital works program.  
**[Drafting Note: Insert whichever is correct.]**

**I**

**Planning Agreement Policy**

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**Schedule 1: Contributions**

---

Development Contributions	Specifications	Time for Completion	Contribution Value
[insert]	[insert]	[insert]	[insert]

# SINGLETON COMMUNITY & ECONOMIC DEVELOPMENT FUND

Policy | Corporate and Community Services

To govern the expenditure of monies allocated to help secure a prosperous and enjoyable future for the residents of the Singleton Local Government Area

<b>Policy No:</b>	POL/6017	<b>Version:</b>	4
<b>Service Unit:</b>	Organisation Excellence		
<b>Responsible Officer:</b>	Manager Community Experience & Events		
<b>Responsible Director:</b>	Director Corporate & Community Services		
<b>Authorisation Date:</b>	19 August 2025	<b>Review Date:</b>	19 August 2029
<b>Minute No:</b>	96/25		

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# 1 Background

## 1.1 Title of the Policy and Commencement Date

The Singleton Community & Economic Development Fund (the Fund) Policy takes effect from 20 August 2025.

## 1.2 Purpose of the Policy

The purpose of the policy is to govern the expenditure of funds allocated to help secure a prosperous and enjoyable future for residents of the Singleton Local Government Area (LGA).

# 2 Objectives

## 2.1 Objectives and Coverage of the Policy

The objectives of the Fund are to assist in proactively managing the impacts of mining by using policy funds to increase economic growth and productivity, foster innovation, support and grow jobs, increase business profitability, improve living standards, reduce social issues and promote health and wellbeing for the communities of the Singleton LGA.

# 3 Application

## 3.1 Application of this Policy

This policy applies to the management of monies allocated to the Fund from all Voluntary Planning Agreements as entered into for the operation of mining activities in the Singleton LGA.

# 4 Definitions

For the purposes of this policy:

Term	Meaning
Singleton Community & Economic Development Fund	A restricted account under the Fund into which identified monies from mining related Voluntary Planning Agreements monies are deposited.
Capital Fund	Initial lump sum deposits to the account from Voluntary Planning Agreements.
Interest	The financial interest generated on the capital component of any account under The Fund.
The Fund	Includes all monies allocated from the VPAs listed below: <ul style="list-style-type: none"> <li>• Mount Thorley Warkworth – CEDF Component</li> <li>• United Collieries – CEDF Component</li> </ul>



	<ul style="list-style-type: none"> <li>• Bloomfield Collieries – CEDF Component</li> <li>• Mount Owen Collieries – CEDF Component</li> <li>• Bulga Coal – CEDF Component</li> <li>• plus any monies allocated subsequently (to the date of adoption to this policy) and as noted in CEDF Management Board minutes.</li> </ul>
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## 5 Principles/Body

### 5.1 Procedural Statement

The broad principles of The Fund are to support the socio-economic future of Singleton by:

- Creating an environment that fosters and supports business, promotes job creation, supports entrepreneurship and diversifies our industry base.
- Providing education and training to create the foundations of a prosperous economy and community.
- Supporting and promoting activities that provide personnel fulfilment for residents through arts and culture, encouraging personnel development and by creating beautiful outdoor spaces.
- Supporting and promoting sporting activities and events that provide physical development and pathways to excellence.
- Minimising the impacts of social issues such as homelessness and mental health issues.
- Improving infrastructure to a standard equal to or better than what is available in our cities.
- Promoting and supporting initiatives that preserves regional biodiversity, minimises waste, supports long-term community sustainability and minimises environmental impacts for future generations.

The Fund provides funding to conduct projects, activities and events that result in a demonstrated economic or social benefit for the Singleton Local Government Area community.

Particular principles that apply to the Fund are as follows:

- Where a Voluntary Planning Agreement (VPA) is proposed for an extractive enterprise Council will negotiate the proportion of the VPA contributions to be preserved in the Fund with the proponent of the enterprise.
- Once agreement is reached monies will be deposited in the Fund Account. A record will be maintained of the contributions of each party to the Account.
- Interest on monies accrued in the Fund Account will remain within the account.
- Decisions on projects and initiatives to which the monies are allocated will be agreed and approved in accordance with the "Singleton Community and Economic Development Fund Deed.
- In general, the capital contribution to the Fund is to be preserved to provide longevity of the fund. Any proposal to draw down on capital contributions must be supported by a detailed business case that demonstrates the benefits for such a



proposal to validate the drawdown of the capital.

- Revenue raised by Council whether through sale of assets or by other means may be deposited in the Account from time to time.

General provisions for the management of the Funds are as follows:

- **Investment:** Amounts invested in the Fund will be managed in accordance with Singleton Council's Investment Policy.
- **Reinvestment:** All interest accrued on the Fund account is to be reinvested in the same account.
- **Reporting:** Reporting on monies invested in the Fund will be undertaken in accordance with the requirements for a Restricted Account as defined by the Local Government Act 1993
- **Expenditure:** Any expenditure of monies invested in the Fund will be undertaken in accordance with the principles of this Policy and the requirements of Council's Procurement Policy (POL6001)
- **Auditing:** Accounts will be audited in accordance with Council's general audit procedures, the requirements of the Local Government Act 1993, Local Government (General) Regulation 2021 and the Local Government Code of Accounting Practice and Financial Reporting.
- **Account Closure:** The Fund described in this policy is designed to operate in perpetuity. However should an account no longer be required or all monies are expended the closure of the account will be undertaken by a resolution of Council.

## 6 Relevant Legislation

Legislation relevant to this Policy includes:

- *Environmental Planning and Assessment Act 1979;*
- *Local Government Act 1993;*
- *Local Government (General) Regulation 2021; and*
- *Local Government Code of Accounting Practice and Financial Reporting.*

## 7 Document Information

Related documents and reference information in this section provides a single reference point to develop and maintain site compliance information.

### 7.1 Related Documents

Related documents, listed in **Table 7-1** below, are internal documents directly related to or referenced from this document.

Number	Title
POL/6004	Investment Policy
POL/6001	Procurement Policy
LD/2380	Singleton Community Economic Development Fund Deed
22/21880	Singleton Legacy Fund Governance Panel Terms of Reference



23/9524	Singleton Community + Economic Development Fund Plan of Management
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Table 7-1 – Related documents

## 8 Responsible Officer / Policy Owner

Ownership of this policy rests with the Manager Strategy & Engagement.

## 9 Responsibilities

Parties or Persons	Responsibilities
Councillors	Approval by resolution of Council to expend funds.
General Manager Singleton Council or nominated delegate	Negotiation of Voluntary Planning Agreement contributions to The Fund.
Financial Controller	Management, auditing and reporting on accounts.

## 10 Approval

As per cover sheet.

## 11 Monitoring

This policy will be monitored by the Manager Strategy & Engagement to ensure compliance.

## 12 Review Date

This policy, once adopted, is to remain in force until it is reviewed by Council. This policy is to be reviewed approximately every four (4) years to ensure that it meets legislative requirements.

## 13 Record Keeping, Confidentiality and Privacy

This policy is to be made available for public viewing as required under the *Government Information (Public Access) Act, 2009*.

## 14 Breaches and Sanctions

Any breaches of this Policy will be referred to the General Manager for appropriate action.



## 15 Document History

The below table provides a summary of changes and amendments to this document.

Version	Date Amended	Author	Comments (e.g. reason for review)
2	19/03/2021	V Brereton	Update following comments from Independent audit of Voluntary Planning Agreement process. <ul style="list-style-type: none"> <li>• Updated policy number and dates</li> <li>• Updated Directorate and responsible persons</li> <li>• Updated approval date</li> <li>• Updated responsibilities table for the General Manager.</li> </ul>
3	15/02/2023	V Brereton	<ul style="list-style-type: none"> <li>• Grammar to improve readability</li> <li>• Update to legislation year</li> <li>• Update to policy versions</li> <li>• Inclusion of new related documents</li> <li>• Period of next review.</li> </ul>
4	11 July 2025	D Graham	<ul style="list-style-type: none"> <li>• Replaced funds with monies, to reduce confusion with “the Fund”</li> <li>• Added list of funds included in CEDF</li> <li>• Replaced Director Organisation and Community Capacity with Director Corporate and Community Services.</li> </ul>

