

In the Planning and Environment Court
Held at: Brisbane

No. 4609 of 2016



Between: **GLENCORE COAL QUEENSLAND PTY LIMITED, SUMISHO COAL AUSTRALIA PTY LTD AND ICRA ROLLESTON PTY LTD** Appellant

And: **CHIEF EXECUTIVE DEPARTMENT OF INFRASTRUCTURE LOCAL GOVERNMENT AND PLANNING** Respondent

FINAL ORDER

Before His Honour Judge Jones

Date of Hearing: 13 October 2017

Date of Order: 13 October 2017

THIS MATTER HAVING on this day come on for hearing by way of appeal against conditions 6, 8, 9(a), 9(b) and 9(d) contained in the decision of the Respondent on 19 October 2016 to grant a Regional Interests Development Approval under the *Regional Planning Interests Act 2014* in respect of the Rolleston Coal Expansion Project.

AND UPON HEARING Counsel for the Appellant and the Solicitor for the Respondent.

AND UPON READING the Notice of Appeal filed on 22 November 2016, the Amended Notice of Appeal filed on 21 April 2017, the Affidavit of Benjamin John Zillmann filed on 9 January 2017, the Affidavit of Brian Joseph French filed on 9 January 2017, the Affidavit of Gobind Gary Singh Kalsi filed on 12 October 2017 and the Affidavit of Kate Jean McLean filed on 12 October 2017.

AND UPON THE COURT BEING SATISFIED THAT

- (a) there has been substantial compliance by the Respondent with section 51(2)(a) of the *Regional Planning Interests Act 2014* concerning the giving of a decision notice to the Department of Natural Resources and Mines and Associated Products & Distribution Pty Limited.
- (b) there has been substantial compliance by the Appellant with section 75(1)(b) of the *Regional Planning Interests Act 2014* concerning the giving of notice of this appeal to the Department of Natural Resources and Mines and Associated Products & Distribution Pty Limited.
- (c) it is appropriate, in accordance with section 440 of the *Sustainable Planning Act 2009*, to:
 - i. excuse any non-compliance with section 51(2)(a) of the *Regional Planning*



ORDER
Filed on behalf of the Respondent
Form PEC-7

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12408/20135/80182689

13/10/17

Interests Act 2014; and

- ii. excuse any non-compliance with section 75(1)(b) of the *Regional Planning Interests Act 2014*.

IT IS ORDERED THAT

1. The appeal be allowed in part.
2. The Regional Interests Development Approval granted on 19 October 2016 in respect of the Rolleston Coal Expansion Project be replaced with the Regional Interests Development Approval contained in Annexure A which comprises 14 pages with effect from the date of this order.
3. Each party bear their own costs.

Filed on: 13 / 10 / 2017

Filed by: Clayton Utz, Lawyers

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Registrar

ANNEXURE A



Department of Infrastructure,
Local Government and Planning

REGIONAL INTERESTS DEVELOPMENT APPROVAL (RIDA)

RPI16/001 GLENCORE – Rolleston Coal Expansion Project (RCEP)

(Given under the *Regional Planning Interests Act 2014* section 53)

Description of the land

Real property description: Lot 18 on RP617697, Lot 1 on SP164061, Lot 1 on SP164068, Lot 1 on SP174071, Lot 3 on CPDSN590, Lot 4 on RP617701, Lot 4 on SP170740, Lot 5055 on SP276918, Mount Kelman Road and Springwood Road Reserves

Local Government Area: Central Highlands Regional Council

Approved activities

Resource activities (open cut coal mine and other resource activities (coal)) as follows.

Table 1: Approved Activities

Area of regional interest	Resource activity (see definitions in Attachment 1)	Location	Disturbance area (ha)	Total area of priority agricultural land use (PALU) disturbance (ha)
Priority agricultural area (PAA)	Open cut mining, creek diversion channel	18RP617697, 4RP617701	907.88	-
	Access Road	18RP617697, 1SP164068	20.14	-
	Water infrastructure, access road	18RP617697, 4SP170740	102.95	-
	Open cut mining, creek diversion channel, access road	18RP617697, 1SP174071	162.28	-
	Open cut mining, creek diversion channel, road realignment	1SP164061	851.45	-
	Water infrastructure,	1SP174071	20.98	-

Area of regional interest	Resource activity (see definitions in Attachment 1)	Location	Disturbance area (ha)	Total area of priority agricultural land use (PALU) disturbance (ha)
	access road			
	Open cut mining, creek diversion channel, water infrastructure	5055SP276918	1,278.44	-
	Open cut mining, road realignment, water infrastructure	1SP164061, 3DSN590	1927.99	11.58
	Open cut mining, road realignment	Road parcels	46.91	-
	Total		5,319.02	11.58
Area of regional interest	Resource activity	Location	Disturbance area (ha)	Total area of strategic cropping land (SCL) disturbance (ha)
Strategic cropping area (SCA)	Open cut mining	1SP164061	32.57	32.57
	Road realignment	1SP164061, 3DSN590	10.17	10.17
	Water infrastructure, creek diversion channel	3DSN590	7.16	7.16
	Total		49.90	49.90

General Advice

This approval does not relieve the applicant of the obligation to obtain all approvals and licenses from all relevant authorities required under any Act.

Approved plans and documents

The following plans and documents form part of this RIDA and are included in **Attachment 2**:

Drawing/Report Title	Prepared by	Date
Figure 1 – Site Layout	Glencore	9 September 2016
Figure 2 - Potential PALU Identified in the Study	Glencore	9 September 2016
Figure 4 - Areas of Regional Interest (Strategic Cropping)	Glencore	9 September 2016
Map 2 - Sampling sites and soil in the proposed Mitigation area on Meteor Downs (contained within Mitigation of Impacted PALU land)	Landline Consulting	8 July 2016

Regional interests conditions

A person who is the holder of, or is acting under, this RIDA must not contravene a condition of this approval.

Condition number	Condition	Timing for condition
1.	a) Carry out the resource activities mentioned in Table 1: Approved Activities of this RIDA (Approved Activities): <ul style="list-style-type: none"> i. only in the location and to the extent permitted in accordance with that specified in Table 1: Approved Activities; and ii. generally in accordance with Figure 1 – Site Layout, prepared by Glencore dated 9 September 2016 in Attachment 2. 	At all times
2.	Maintain the Approved Activities generally in accordance with Figure 1 – Site Layout, prepared by Glencore dated 9 September 2016 and Table 1: Approved Activities.	At all times
3.	Any disturbance of land in accordance with this RIDA is not to impact adversely on other priority agricultural land uses in the PAA.	At all times
4.	A full copy of the RIDA is to be held on-site and available to any person(s) contracted to undertake the Approved Activities, throughout the construction, operation and restoration period.	At all times
5.	The maximum area of impact on SCA that may occur as a result of this RIDA is to be no greater than 49.9ha.	At all times
6.	As mitigation for the strategic cropping land identified as 'Direct Impact on SCL' on Figure 4 – Areas of Regional Interest (Strategic Cropping) prepared by Glencore, dated 9 September 2016 (Approved Permanently Impacted Strategic Cropping Land), pay to the strategic cropping land mitigation fund, the sum of money calculated as follows: 39 hectares multiplied by the dollar amount prescribed by the Regional Planning Interests Regulation 2014 at the time of payment. <i>Note:</i> <i>The mitigation value is determined by multiplying each hectare of the mitigated SCL land by the prescribed mitigation value, where:</i> <ul style="list-style-type: none"> a) the number of hectares is rounded up to the nearest whole hectare; and b) the mitigation value for land in the Central Highlands Isaac sub-zone in the Western Cropping zone is prescribed in section 16 (1)(a)(ii) of the Regional Planning Interests Regulation 2014. 	Prior to commencing any Approved Activities upon the area of Approved Permanently Impacted Strategic Cropping Land
7.	The maximum area of impact on PALU that may occur as a result of this RIDA is to be no greater than 11.58ha.	At all times
8.	(a) The holder of, or person acting under, the approval must provide a minimum of 16ha of land (PALU	Prior to commencing any Approved Activities upon the

Condition number	Condition	Timing for condition
	<p>Mitigation Land) on:</p> <ul style="list-style-type: none"> i. any part of Lot 2 on RP618664 (Meteor Downs) that: <ul style="list-style-type: none"> (A) has an average top soil depth (A horizon) of 80cm; and (B) is shown as 'PALU stone-free' or 'PALU stony' on <i>Map 2: Sampling sites and soil in the proposed Mitigation area on Meteor Downs</i> contained within 'Mitigation of Impacted PALU land' prepared by Landline Consulting, dated 8 July 2016; or ii. on such other alternative mitigation land, located entirely within the State of Queensland and approved in writing by the Chief Executive administering the <i>Regional Planning Interests Act 2014</i> (the Chief Executive). 	<p>area identified as 'Project Footprint' in area 8 on Figure 2 – Potential PALU Identified in the Study prepared by Glencore, dated 9 September 2016 (Approved Permanently Impacted PALU) and maintained for the duration of the Approved Activities</p>
	<p>(b) The holder of, or person acting under, the approval, must ensure that the PALU Mitigation Land, including any approved substitution of the PALU Mitigation Land under part (a) of this condition, is legally secured and held, at no cost to the State of Queensland:</p> <ul style="list-style-type: none"> i. as a freehold interest vested in the holder of the approval (and/or the holder's successors in title or assignees for the land on which the Approved Activities are to be carried out); or ii. as a leasehold interest for a period at least equivalent to the duration of Approved Activities on the Approved Permanently Impacted PALU land secured by the holder of the approval (and/or the holder's successors in title or assignees for the land on which the Approved Activities are to be carried out). 	<p>Prior to commencing any Approved Activities upon the area of Approved Permanently Impacted PALU and maintained for the duration of the Approved Activities.</p> <p>If other alternative mitigation land is approved under part (a) of this condition, part (b) of this condition must be complied with for the alternative mitigation land.</p>
	<p>(c) The holder of, or person acting under, the approval, must ensure that the PALU Mitigation Land, including any approved substitution of the PALU Mitigation Land under part (a) of this condition, is legally secured and held, at no cost to the State of Queensland by lodging for registration a covenant with the State of Queensland under section 97A of the <i>Land Title Act 1994</i> or section 373A of the <i>Land Act 1994</i> or any amendments to, or re-enactments of, those provisions over the PALU Mitigation Land.</p>	<p>Prior to commencing any Approved Activities upon the area of Approved Permanently Impacted PALU.</p> <p>If other alternative mitigation land is approved under part (a) of this condition, part (c) of this condition must be</p>

Condition number	Condition	Timing for condition
		<p>complied with for the alternative mitigation land prior to substituting the alternative mitigation land for the existing PALU Mitigation Land.</p>
	<p>(d) Any covenant lodged under part (c) of this condition must be registered.</p>	<p>Within 6 months of lodging the covenant for registration</p>
	<p>(e) Any covenant lodged under part (c) of this condition must provide that the PALU Mitigation Land be used in accordance with the corresponding PALU Management Plan (to be attached to the covenant) for the duration of Approved Activities.</p>	<p>At all times</p>
	<p>(f) The holder of, or person acting under, the approval must provide a PALU Management Plan to the Chief Executive.</p>	<p>Prior to commencing any Approved Activities upon the area of Approved Permanently Impacted PALU.</p> <p>If other alternative mitigation land is approved under part (a) of this condition, part (f) of this condition must be complied with for the alternative mitigation land prior to substituting the alternative mitigation land for the existing PALU Mitigation Land.</p>
	<p>(g) Any PALU Management Plan must:</p> <ul style="list-style-type: none"> i. be prepared by a suitably qualified person such as an agronomist; and ii. relate to the land provided as PALU Mitigation Land under part (a) of this condition; iii. provide for the management of the PALU Mitigation Land by stating the management measures to address the following, to the extent each is appropriate having regard to existing land use, the crop to be planted and the use of the PALU Mitigation Land: <ul style="list-style-type: none"> A. Soil erosion - minimise soil erosion by 	<p>Prior to commencing any Approved Activities upon the area of Approved Permanently Impacted PALU.</p> <p>If other alternative mitigation land is approved under part (a) of this condition, part (g) of this condition must be complied with for the alternative mitigation land prior to</p>

Condition number	Condition	Timing for condition
	<p>protecting the soil surface, minimising runoff and maximising rainfall capture, including by:</p> <ul style="list-style-type: none"> • use of contour banks and waterways to manage water runoff effectively; • rebuilding, where necessary, and maintaining contour banks to reduce soil erosion; • repair of existing gullies and the construction of new gullies within the PALU Mitigation Land; and • maintaining crop stubble. <p>B. Soil fertility - design and implement a fertiliser program based on soil test results, including by:</p> <ul style="list-style-type: none"> • undertaking a complete soil test (including the Corwell P, BSES P and PBI tests) to determine the phosphorus status of the soil prior to implementation of the PALU Management Plan; • developing a program that identifies the type and rate of P fertiliser, and other fertilisers such as nitrogen and potassium, based on the soil test results; and • undertaking a complete soil test every five years (including the Corwell P, BSES P and PBI tests) to determine the phosphorus status of the soil and adjusting the fertiliser program if required. <p>C. Weed and pest control - maintain a weed free fallow to capture and maximise soil moisture, including by:</p> <ul style="list-style-type: none"> • applying pre and post plant herbicides as appropriate to reduce and eliminate weeds; and • spraying to maintain good insect control. <p>D. Plant establishment - identify an appropriate sowing program designed to achieve the equivalent productive capacity to the Approved Permanently Impacted PALU, including by:</p> <ul style="list-style-type: none"> • choosing appropriate varieties; 	<p>substituting the alternative mitigation land for the existing PALU Mitigation Land.</p>

Condition number	Condition	Timing for condition
	<ul style="list-style-type: none"> • identifying appropriate planting rates; and • identifying appropriate row spacing, depth and sowing time. 	
	(h) The holder of, or person acting under, the approval must implement the PALU Management Plan for the PALU Mitigation Land.	<p>From commencement of any Approved Activities upon the area of Approved Permanently Impacted PALU and for the duration of any Approved Activities.</p> <p>If other alternative mitigation land is approved under part (a) of this condition, part (h) of this condition must be complied with for the alternative mitigation land.</p>
	(i) The holder of, or person acting under, the approval must prepare and retain records detailing implementation of any PALU Management Plan and provide those records to the Chief Executive.	Every 3 years from commencement of any Approved Activities upon the area of Approved Permanently Impacted PALU, for the duration of any Approved Activities
	(j) The holder of, or person acting under, the approval must provide a report to the Chief Executive, that: <ul style="list-style-type: none"> i. reports on compliance with any PALU Management Plan that applied during the period the subject of the report; and ii. details any events, whether natural or not, that have impacted the ability to implement any PALU Management Plan; and iii. details any corrective actions that will be implemented to secure compliance with the current PALU Management Plan. 	Every 10 years from commencement of any Approved Activities upon the area of Approved Permanently Impacted PALU, for the duration of any Approved Activities

9.	<p>a) All complaints received, and resulting actions taken, about the impact of the Approved Activities on the PALU in the PAA, or SCA must be recorded. The record must include:</p> <ul style="list-style-type: none"> i) name, address and contact number of the complainant ii) time and date of complaint iii) reasons for the complaint iv) investigations undertaken v) conclusions formed vi) actions taken to resolve the complaint vii) any abatement measures implemented viii) details of the person responsible for resolving the complaint. <p>b) The records of any complaints received and recorded in accordance with this condition must be provided to the chief executive within 3 business days of receipt of the complaint.</p>	At all times
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If you require any further information, please email RPIAct@dilgp.qld.gov.au.

Yours sincerely



Steve Conner (A/Deputy Director-General)

Delegate of the Chief Executive of the Department of Infrastructure, Local Government and Planning

Attachment 1

Definitions of resource activities proposed within the RCEP project area

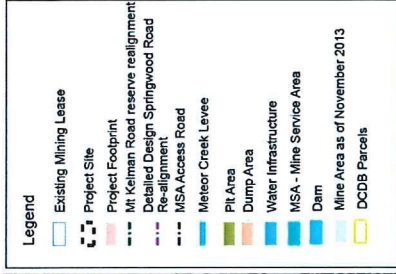
Resource activity	Definition of terms
Open cut mining	An open pit, trench, excavated overburden or rehabilitated area at the surface from which form the area where coal is extracted. This also includes ancillary activities and supporting infrastructure such as haul roads, bunding, overburden dumps, soil stockpiles, hardstands, offices and services workshops.
Water infrastructure	Water storage facilities, associated ancillary equipment and water management structures installed to separate mine affected water and open cut mining from the surrounding environment in accordance with approved environmental and technical specifications.
Creek diversion channel	Manmade channel to divert the flow of water in a creek to a defined alignment, in accordance with environmental and technical specifications, and includes associated infrastructure.
Access road	Internal light vehicle access road to connect existing mine site access road the future open cut mining pit areas.
Road realignment	The construction of a road and a powerline along a defined alignment and in accordance with approved environmental and technical specifications.

Rolleston Coal Expansion Project

Figure 1 - Site Layout

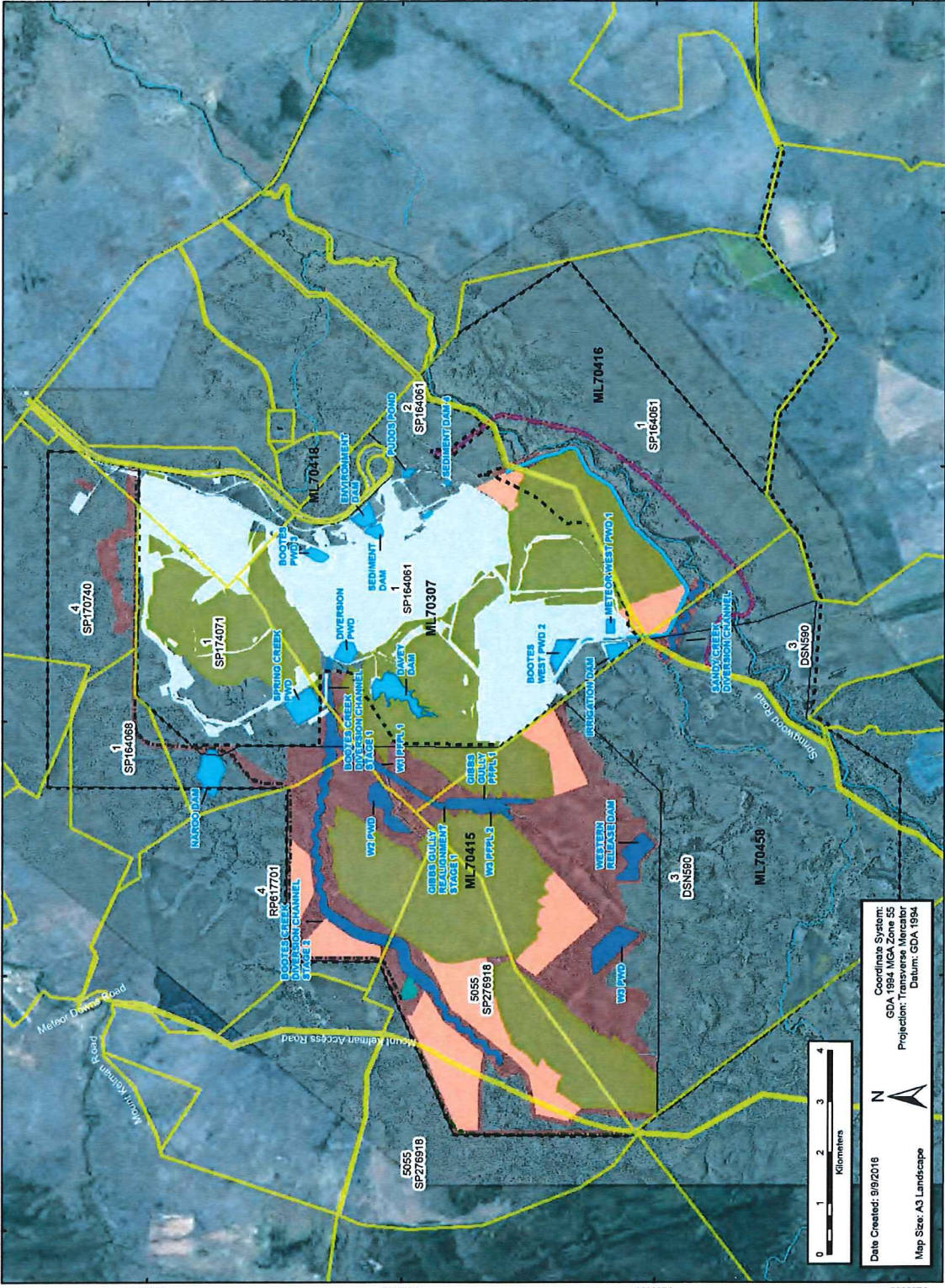
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Coal Assets Australia
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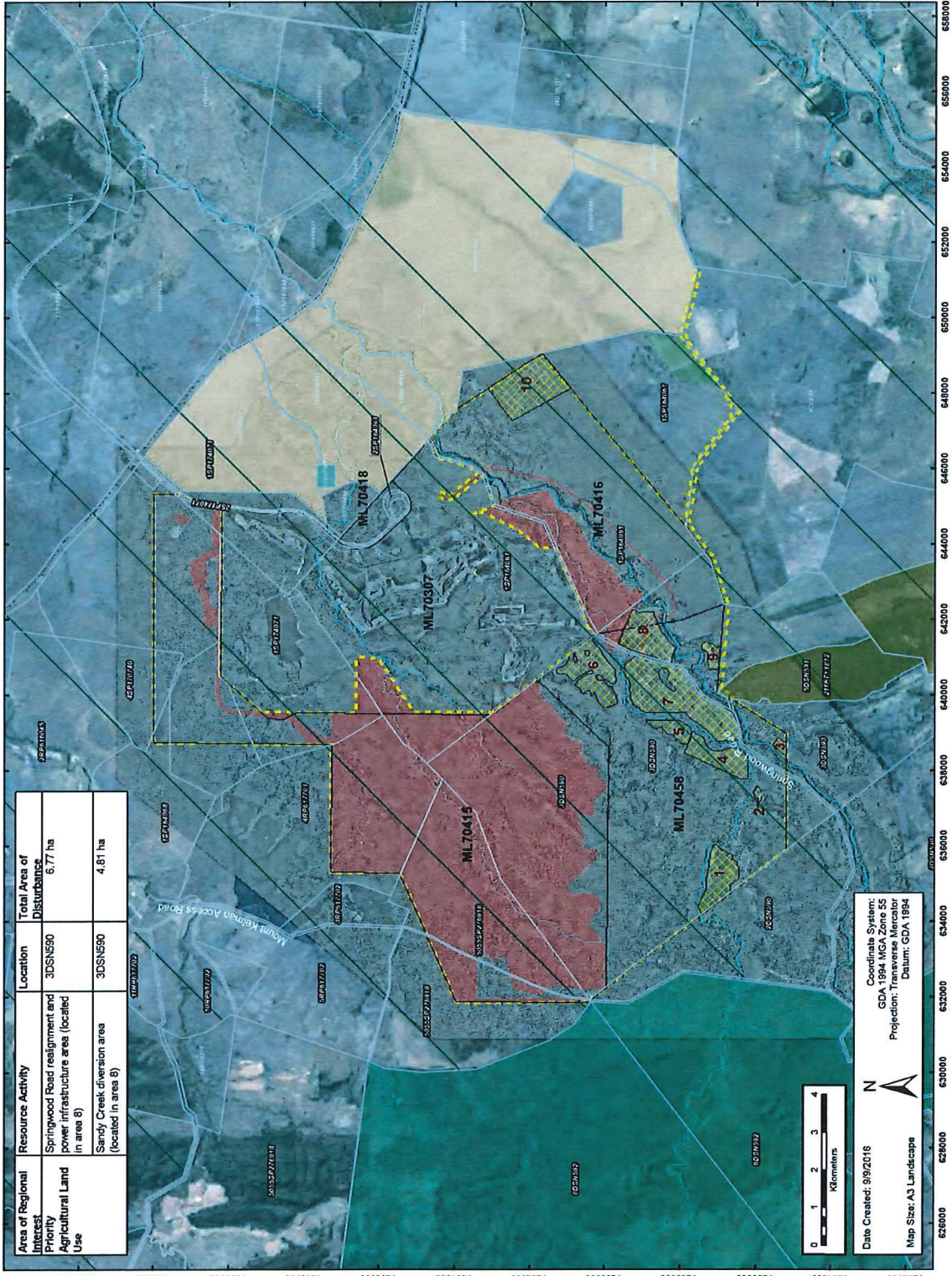
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Rolleston Coal Expansion Project

Figure 2 - Potential PALU Identified in the Study

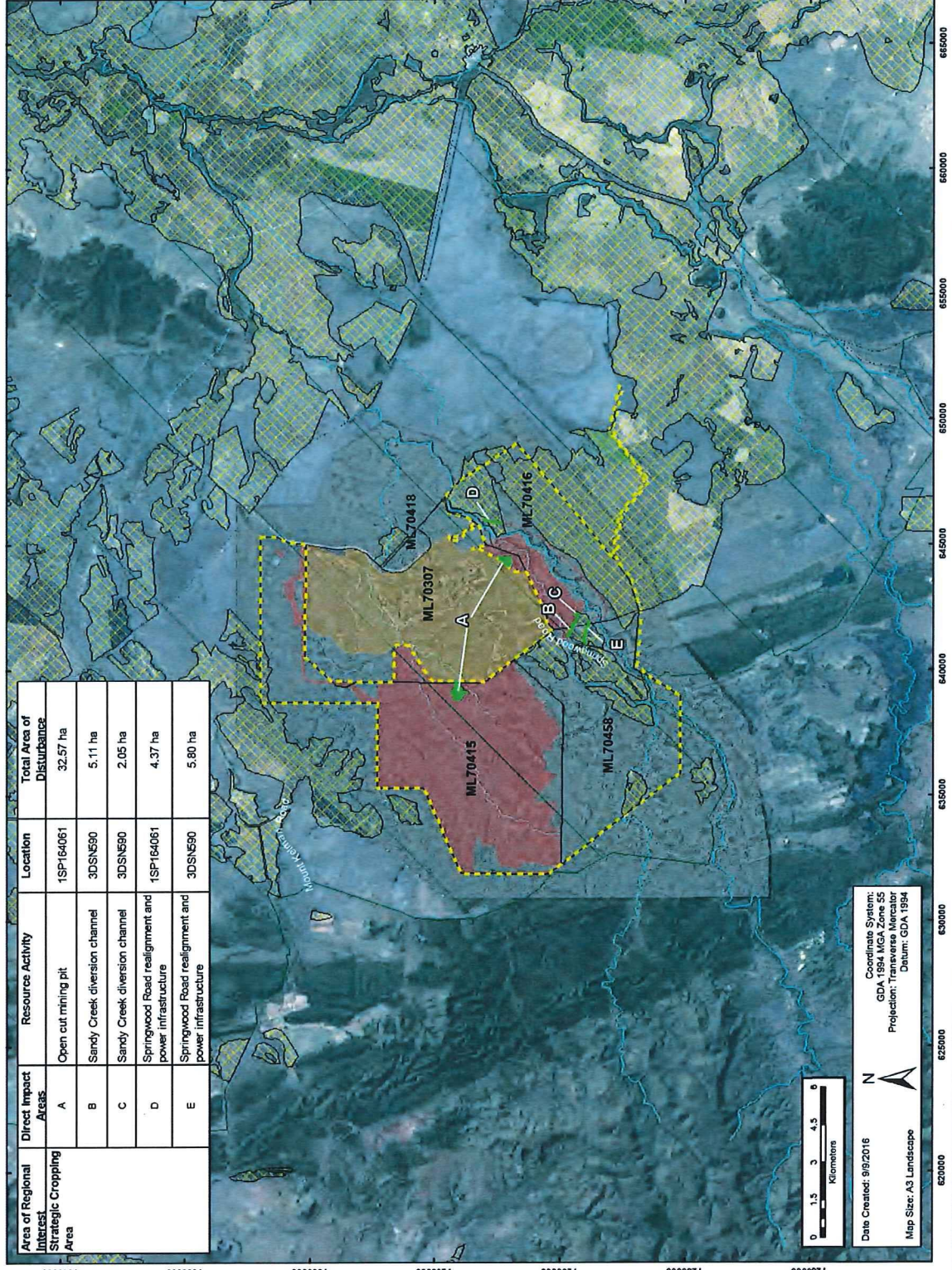


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Rolleston Coal Expansion Project

Figure 4 - Areas of Regional Interest (Strategic Cropping)

Area of Regional Interest Strategic Cropping Area	Direct Impact Areas	Resource Activity	Location	Total Area of Disturbance
	A	Open cut mining pit	1SP164061	32.57 ha
	B	Sandy Creek diversion channel	3DSN690	5.11 ha
	C	Sandy Creek diversion channel	3DSN690	2.05 ha
	D	Springwood Road realignment and power infrastructure	1SP164061	4.37 ha
	E	Springwood Road realignment and power infrastructure	3DSN690	5.80 ha



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- Legend**
- Existing Mining Lease
 - Project Site
 - Previously Approved Disturbance Limit
 - Priority Agricultural Area
 - Strategic Cropping Area
 - Direct Impact on SCL

Note: No Priority Living Areas (PLAs) or Strategic Environmental Areas (SEAs) within extent of map.

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Map 2. Sampling sites and soil in the proposed Mitigation area on Meteor Downs

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