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# DOCUMENT ON EXHIBITION

## Moolarben OC3 Voluntary Planning Agreement

**Exhibition period: 28 days  
26 May 2023 – 23 June 2023**

Please address any queries to  
Director Development.

Please submit your feedback in writing  
addressed to the General Manager.

Email: [council@midwestern.nsw.gov.au](mailto:council@midwestern.nsw.gov.au)

Post: Mid-Western Regional Council  
PO Box 156  
Mudgee NSW 2850

# Moolarben Coal Complex OC3 Planning Agreement

Section 7.4 of the *Environmental Planning and  
Assessment Act 1979*

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Moolarben Coal Operations Pty Ltd ACN 077 939 569  
(**MCO**)

Mid-Western Regional Council (**Council**)

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# Voluntary Planning Agreement

## Moolarben Coal Complex OC3

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# Details

## Date

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## Parties

Name	<b>Moolarben Coal Operations Pty Ltd</b> ACN 077 939 569
Short form name	<b>MCO</b>
Notice details	Level 18, Tower 2, Darling Park, 201 Sussex Street, Sydney NSW 2000 Facsimile: +61 2 8583 5399 Email: notices@yancoal.com.au Attention: Company Secretary

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Name	<b>Mid-Western Regional Council</b> ABN 96 149 391 332
Short form name	<b>Council</b>
Notice details	PO Box 156 Mudgee NSW 2850 Email: council@midwestern.nsw.gov.au Attention: General Manager

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## Background

- A The Moolarben Coal Complex is an existing coal mining operation located approximately 40 kilometres north of Mudgee in New South Wales.
- B The Moolarben Coal Complex is operated by MCO.
- C The existing approved Moolarben Coal Complex comprises four open cut (OC1, OC2, OC3 and OC4) and three underground mining areas (UG1, UG2 and UG4), as well as other mining related infrastructure including coal processing and transport facilities.
- D Mining operations at the Moolarben Coal Complex are currently approved until 31 December 2038.
- E MCO is seeking development consent SSD-33083358 for the Moolarben Coal Complex OC3 Extension Project, to extend open cut mining operations immediately south of the approved OC3 open cut pit as well as develop four new open cut pits to the east and south-east of the approved OC3 mining area. The extended open cut mining operations would provide approximately 10 years of mining (from approximately 2025 to 2034), which would occur in parallel with mining of OC4 (**Project**).
- F The Project Area is immediately adjacent to the approved OC3 mining area.
- G The Council is the relevant local government authority in respect of the Project Area.
- H MCO have agreed to provide Council the Community Contribution in the form of monetary contributions on and subject to the terms contained in this Deed.

# Agreed terms

## 1. Defined terms & interpretation

### 1.1 Defined terms

In this document:

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

**Approval** includes approval, authority, consent, licence or permission.

**Authority** means the New South Wales government, a Minister of the Crown, a government department, a public authority established by or under any Act, a council constituted under the *Local Government Act 1993*, or a person or body exercising functions under any Act including a commission, panel, court, tribunal and the like.

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

**Business Hours** means from 9.00am to 5.00pm on a Business Day.

**Claim** includes a claim, demand, remedy, suit, injury, damage, loss, Cost, liability, action, order, judgment, proceeding or right of action.

**Commencement Date** means the later of, the date when this Deed has been executed by all parties, or another date agreed in writing by the parties prior to execution.

**Community Contributions** means the payment of \$350,000.00 specified in clause 3.

**Confidential Information** means any information and all other knowledge at any time disclosed (whether in writing or otherwise) 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:

- (a) is by its nature confidential;
- (b) is designated, or marked, or stipulated by either party as confidential (whether in writing or otherwise);
- (c) any party knows or ought to know it is confidential;
- (d) is information which may be reasonably considered to be of a confidential nature.

**Consent Authority** means the NSW Minister administering the Act (Minister) or the Independent Planning Commission (IPC), whichever is responsible under the Act for determining the Development Application.

**Cost** means a cost, charge, expense, outgoing, payment, fee, legal costs and other expenditure of any nature.

**Deed** means this Deed and includes any schedules, annexures and appendices to this Deed.

**Development Application** means the SSD 33083358 approval sought for the Project under the state significant development provisions of Part 4 of the Act.

**Dispute** means a dispute between the Parties under or in relation to this Deed.

**GST** has the same meaning as in the GST Law.

**GST Law** has the same meaning as in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and any other Act or regulation relating to the imposition or administration of the GST.

**Party** means a party to this Deed.

**Payment Date** means three months following the **Commencement Date** of this deed..

**Project** means the proposed Moolarben Coal Complex OC3 Extension Project, subject of the Development Application, to extend open cut mining operations immediately south of the approved OC3 open cut pit as well as develop four new open cut pits to the east and south-east of the approved OC3 mining area, within existing mining tenements. The extended open cut mining operations would provide approximately 10 years of mining (from approximately 2025 to 2034), which would occur in parallel with mining of OC4.

**Project Area** means the land specified in Schedule 1.

**Pump Track Works** means the construction of a pump track by Council, within the area of the Glen Willow Regional Sporting Complex, Mudgee NSW 2850 (or other location as agreed in writing by the parties), utilising the Community Contribution.

**Regulation** means the *Environmental Planning and Assessment Regulation 2021*.

**Sign** means the permanent signage to be erected by Council at the pump track acknowledging MCO funding the Pump Track Works.

## 1.1 Interpretation

In this agreement, except where the context otherwise requires:

- (a) the singular includes the plural and vice versa, and a gender includes other genders;
- (b) another grammatical form of a defined word or expression has a corresponding meaning;
- (c) a reference to a clause, paragraph, schedule or annexure is to a clause or paragraph of, or schedule or annexure to, this agreement, and a reference to this agreement includes any schedule or annexure;
- (d) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
- (e) a reference to **A\$, \$A, dollar** or **\$** is to Australian currency;
- (f) a reference to time is to Sydney, Australia time;
- (g) a reference to a party is to a party to this agreement, and a reference to a party to a document includes the party's executors, administrators, successors and permitted assigns and substitutes;
- (h) a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;
- (i) a reference to 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;
- (j) a word or expression defined in the Corporations Act has the meaning given to it in the Corporations Act;
- (k) the meaning of general words is not limited by specific examples introduced by **including, for example** or similar expressions;
- (l) any agreement, representation, warranty or indemnity by two or more parties (including where two or more persons are included in the same defined term) binds them jointly and severally;
- (m) any agreement, representation, warranty or indemnity in favour of two or more parties (including where two or more persons are included in the same defined term) is for the benefit of them jointly and severally;
- (n) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of this agreement or any part of it; and
- (o) if a day on or by which an obligation must be performed or an event must occur is not a Business Day, the obligation must be performed or the event must occur on or by the next Business Day.

## 1.2 Headings

Headings are for ease of reference only and do not affect interpretation.



## 2. Application and operation of Deed

### 2.1 Planning Agreement

This Deed is a planning agreement:

- (a) within the meaning set out in s 7.4 of the Act; and
- (b) governed by Subdivision 2 of Division 7.1 of Part 7 of the Act.

### 2.2 Application of this Deed

This Deed applies to the Project Area and the Development Application.

### 2.3 Operation

- (a) Subject to clause 2.3(b), this Deed operates from the Commencement Date.
- (b) Clause 3.5 of this Deed will only operate if the Consent Authority has not approved the Development Application by 31 December 2025.

## 3. Provision of contributions

### 3.1 Monetary contribution

MCO is to pay the Community Contribution to Council by the Payment Date and in accordance with the terms of this deed.

### 3.2 Purpose of the Community Contribution

Council agrees and acknowledges that it will hold the Community Contribution for the specific purpose of delivery of the Pump Track Works and the Sign.

### 3.3 Method of Payment

MCO must pay the Community Contribution to the Council by electronic funds transfer into a bank account of the Council as directed in writing by the Council.

### 3.4 Consideration of benefits

MCO acknowledges and agrees that the Community Contributions to be paid under clause 3.1 are made in addition to:

- (a) the community contributions already provided under the Stage 1 Project Approval (05-0117); and
- (b) the community enhancement contributions under the Stage 2 Project Approval (08\_0135), which remain ongoing.

### 3.5 Deemed Payment

Council agrees and acknowledges that in the event that the Development Application for the Project is not approved by the Consent Authority by 31 December 2025, the Community Contribution paid under clause 3.1, will be:

- (a) deemed to be a payment in respect of any future Community Enhancement Payments associated with the Stage 2 Project Approval (08\_0135); and
- (b) any outstanding or future amounts required from MCO pursuant to Stage 2 Project Approval (08\_0135) will be reduced by the value of the Community Contribution paid.

## 4. Warranties

### 4.1 MCO warranty

MCO warrants to Council that:

- (a) it has full capacity to enter into this Deed;
- (b) it is able to fully comply with its obligations under this Deed; and
- (c) there is no legal impediment to entering into this Deed or performing the obligations imposed under it.

### 4.2 Council warranty

Council warrants to MCO that:

- (a) it has full capacity to enter into this Deed;
- (b) it is able to fully comply with its obligations under this Deed; and
- (c) there is no legal impediment to entering into this Deed or performing the obligations imposed under it.

## 5. Dispute Resolution

### 5.1 No arbitration or court proceedings

If a dispute arises out of this Deed (**Dispute**), a party must comply with this clause 5 before starting arbitration or court proceedings (except proceedings for urgent or interlocutory relief).

### 5.2 Notification

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

### 5.3 Parties to resolve Dispute

- (a) During the 15 Business Days after a notice is given under clause 5.2 (or longer period if the parties to the Dispute agree in writing), each party to the Dispute must use its reasonable efforts to resolve the Dispute.
- (b) If the parties cannot resolve the Dispute within that period, they must, they must refer the Dispute to a an appropriately qualified expert or mediator if one of them requests.

### 5.4 Dispute resolution – expert determination

- (a) This clause applies to a Dispute between the Parties to this Deed concerning a matter arising in connection with this Deed that can be determined by an appropriately qualified expert if:
  - (i) the Parties to the Dispute agree that it can be so determined; or
  - (ii) the Chief Executive Officer of the professional body that represents persons who appear to have the relevant expertise to determine the Dispute gives a written opinion that the Dispute can be determined by a member of that body.
- (b) A Dispute to which this clause applies is taken to arise if one Party gives another Party a notice in writing specifying particulars of the Dispute.
- (c) If a notice is given under clause 5.4(b), the Parties are to meet within 14 days of the notice in an attempt to resolve the Dispute.
- (d) If the Dispute is not resolved within a further 28 days, the Dispute is to be referred to the President of the NSW Law Society to appoint an expert for expert determination.
- (e) The expert determination is binding on the Parties except in the case of fraud or misfeasance by the expert.

- (f) Each Party is to bear its own costs arising from or in connection with the appointment of the expert and the expert determination.
- (g) The Parties are to share equally the costs of the President, the expert, and the expert determination.

### **5.5 Dispute Resolution – mediation**

- (a) This clause applies to any Dispute arising in connection with this Deed other than a Dispute to which clause 5.4 applies.
- (b) Such a Dispute is taken to arise if one Party gives another Party a notice in writing specifying particulars of the Dispute.
- (c) If a notice is given under clause 5.5(b), the Parties are to meet within 14 days of the notice in an attempt to resolve the Dispute.
- (d) If the Dispute is not resolved within a further 28 days of the meeting referred to in clause 5.5(c), the Parties are to mediate the Dispute in accordance with the Mediation Rules of the Law Society of New South Wales published from time to time and are to request the President of the Law Society to select a mediator.
- (e) If the Dispute is not resolved by mediation within a further 28 days, or such longer period as may be necessary to allow any mediation process which has been commenced to be completed, then the Parties may exercise their legal rights in relation to the Dispute, including by the commencement of legal proceedings in a court of competent jurisdiction in New South Wales.
- (f) Each Party is to bear its own costs arising from or in connection with the appointment of a mediator and the mediation.
- (g) The Parties are to share equally the costs of the President, the mediator, and the mediation.

### **5.6 Role of mediator**

The role of a mediator is to assist in negotiating a resolution of the Dispute. A mediator may not make a binding decision on a party to the Dispute except if the party agrees in writing.

### **5.7 Confidentiality**

Any information or documents disclosed by a party under this clause 5:

- (a) must be kept confidential; and
- (b) may only be used to attempt to resolve the Dispute.

### **5.8 Costs**

Each party to a Dispute must pay its own costs of complying with this clause 5.

### **5.9 Termination of process**

- (a) A party to a Dispute may terminate the dispute resolution process by giving notice to each other after it has complied with clauses 5.1 to 5.5.
- (b) Clauses 5.7 and 5.8 survive termination of the dispute resolution process.

### **5.10 Breach of this clause**

If a party to a Dispute breaches this clause 5, the other party to the Dispute does not have to comply with those clauses in relation to the Dispute.

## 6. Notices and other communications

### 6.1 Service of notices

A notice, demand, consent, approval or communication under this agreement (**Notice**) must be:

- (a) in writing, in English and signed by a person duly authorised by the sender; and
- (b) hand delivered or sent by prepaid post or facsimile to the recipient's address for Notices specified in the Details, as varied by any Notice given by the recipient to the sender.

### 6.2 Effective on receipt

A Notice given in accordance with clause 6.1 takes effect when taken to be received (or at a later time specified in it), and is taken to be received:

- (a) if hand delivered, on delivery;
- (b) if sent by prepaid post, on the second Business Day after the date of posting (or on the seventh Business Day after the date of posting if posted to or from a place outside Australia);
- (c) if sent by facsimile, when the sender's facsimile system generates a message confirming successful transmission of the entire Notice unless, within eight Business Hours after the transmission, the recipient informs the sender that it has not received the entire Notice,

but if the delivery, receipt or transmission is not on a Business Day or is after 5.00pm on a Business Day, the Notice is taken to be received at 9.00am on the next Business Day.

## 7. Section 7.11 and 7.12 Contributions

This Deed does not exclude the application of sections 7.11, 7.12 or 7.24 of the Act to the Project. The Community Contributions under this Deed are to be taken into account in determining any sections 7.11, 7.12 or 7.24 of the Act contributions for the Project in accordance with this clause.

## 8. Termination

This Deed terminates from the date the parties agree in writing to terminate the operation of this Deed at any time.

## 9. GST

### 9.1 Consideration

- (a) Any consideration to be paid or provided under or in connection with this Deed, unless specifically described in this Deed as 'GST inclusive', does not include an amount on account of GST.
- (b) If and to the extent, for any reason, a supply under or in connection with this Deed specifically described in this Deed as 'GST inclusive' is not subject to GST, the amount payable or other consideration to be provided for that supply shall be reduced by 1/11th and if and to the extent that a payment has already been made for that supply, the payee shall refund that component.

## 9.2 Gross up of consideration

- (a) Despite any other provision in this Deed, if a party (Supplier) makes a supply under or in connection with this Deed on which GST is imposed (not being a supply the consideration for which is specifically described in this Deed as 'GST inclusive');
- (b) the consideration payable or to be provided for that supply under this Deed, but for the application of this clause 9 (GST exclusive consideration), is increased by, and the recipient of the supply (Recipient) must also pay to the Supplier, an amount equal to the GST payable on the supply (GST Amount); and
- (c) the GST Amount must be paid to the Supplier by the Recipient without set off, deduction or requirement for demand, at the same time as the GST exclusive consideration is payable or to be provided.

## 9.3 Reimbursements (net down)

If a payment to a party under this Deed is a reimbursement or indemnification, calculated by reference to a loss, cost or expense incurred by that party, then the payment will be reduced by the amount of any input tax credit to which that party, or the representative member of a GST group of which that party is a member, is entitled for that loss, cost or expense.

## 9.4 Exclusion of GST from calculations

If a payment is calculated by reference to or as a specified percentage of another amount or revenue stream, that payment shall be calculated by reference to or as a specified percentage of the amount or revenue stream exclusive of GST.

## 9.5 Tax invoice

The Recipient need not pay the GST Amount until the Supplier has given the Recipient a tax invoice for the supply to which the payment relates.

## 9.6 GST obligations to survive termination

This clause 9 will continue to apply after expiration or termination of this Deed.

# 10. Confidentiality

## 10.1 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.

## 10.2 Other Confidential Information

- (a) The parties acknowledge that:
  - (i) Confidential Information may have been supplied to some or all of the parties in the negotiations leading up to the making of this document; and
  - (ii) The parties may disclose to each other further Confidential Information in connection with the subject matter of this document.
  - (iii) Subject to paragraphs (b) and (c), each party agrees:
    - (A) 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
    - (B) 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.
- (b) A party may disclose Confidential Information in the following circumstances:
  - (i) to the extent (if any) the party is required by law to disclose any Confidential Information; or

- (ii) 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.

### **10.3 Public knowledge not confidential**

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.

## **11. General**

### **11.1 Assignment**

A party must not assign, novate or otherwise transfer its rights and/or obligations under this Deed without the prior written consent of the other parties.

### **11.2 Amendments and variations**

This Deed may only be amended or varied by a later written document executed by all parties.

### **11.3 Counterparts**

This Deed may be entered into by the exchange of executed counterparts.

### **11.4 Entire agreement**

The contents of this Deed constitute the entire agreement between the parties and supersede any prior negotiations, representations, understandings or arrangements made between the parties regarding the subject matter of this Deed, whether orally or in writing.

### **11.5 Further assurances**

Each party must promptly execute all documents and do all other things reasonably necessary or desirable to give effect to the arrangements recorded in this Deed.

### **11.6 Representations and warranties**

The parties represent and warrant that they have the power to enter into this Deed and comply with their obligations under the Deed and that entry into this Deed will not result in a breach of any Law.

### **11.7 Waiver**

A right or remedy created by this Deed cannot be waived except in writing signed by the party entitled to that right. Delay by a party in exercising a right or remedy does not constitute a waiver of that right or remedy, nor does a waiver (either wholly or in part) by a party of a right operate as a subsequent waiver of the same right or of any other right of that party.

### **11.8 Relationship between parties**

- (a) Nothing in this Deed:
  - (i) constitutes a partnership between the parties; or
  - (ii) except as expressly provided, makes a party an agent of another party for any purpose.
- (b) A party cannot in any way or for any purpose:
  - (i) bind another party; or
  - (ii) contract in the name of another party.
- (c) If a party must fulfil an obligation and that party is dependent on another party, then that other party must do each thing reasonably within its power to assist the other in the performance of that obligation.

**11.9 Time for doing acts**

- (a) If the time for doing any act or thing required to be done or a notice period specified in this Deed expires on a day other than a Business Day, the time for doing that act or thing or the expiration of that notice period is extended until the following Business Day.
- (b) If any act or thing required to be done is done after 5pm on the specified day, it is taken to have been done on the following Business Day.

**11.10 Legal expenses**

MCO will pay the reasonable costs of the Council in participating in negotiating and executing this Deed up to a maximum of \$5,500.00 (including GST and disbursements).

**11.11 Invalidity**

- (a) A word or provision must be read down if:
  - (i) this Deed is void, voidable, or unenforceable if it is not read down;
  - (ii) this Deed not be void, voidable or unenforceable if it is read down; and
  - (iii) the provision is capable of being read down.
- (b) A word or provision must be severed if:
  - (i) despite the operation of clause 11.11(a), the provision is void, voidable or unenforceable if it is not severed; and
  - (ii) this Deed will be void, voidable or unenforceable if it is not severed.
- (c) The remainder of this Deed has full effect even if clause 11.11(b)(i) or 11.11(b)(ii) applies.

**11.12 Governing law and jurisdiction**

- (a) The Laws applicable in New South Wales govern this Deed.
- (b) The parties submit to the non-exclusive jurisdiction of the courts of New South Wales and any courts competent to hear appeals from those courts.

**11.13 Electronic execution**

The parties acknowledge and consent to this Deed being executed electronically.

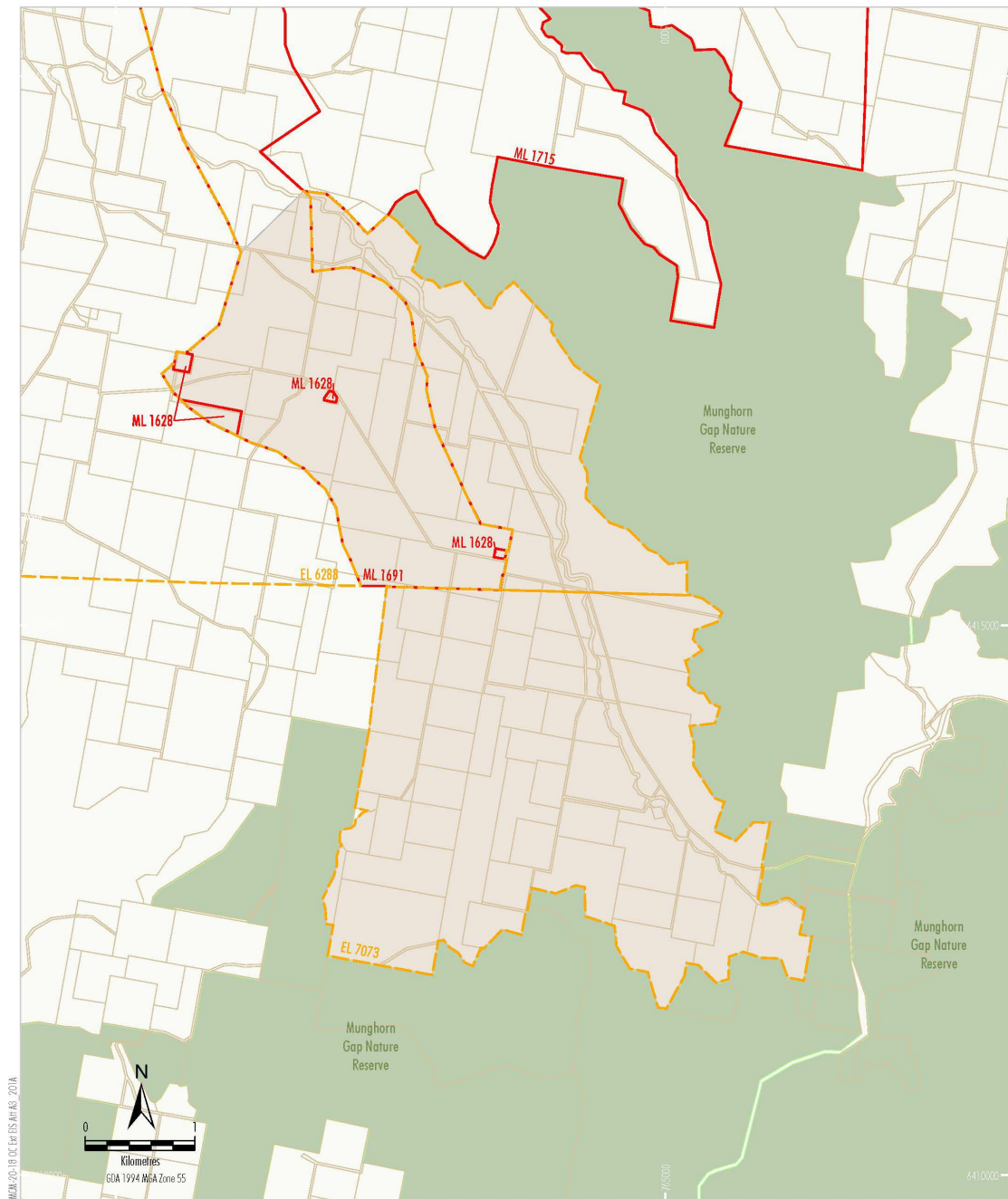
**11.14 Non merger**

The rights, obligations, and representations and warranties under this Deed or under any other document entered into under this Deed will not merge on its expiration or termination.

**11.15 Successors to be bound**

The Parties agree that all successors in title and assigns are to be bound by this Deed.

# Schedule 1 – Project Area



Source: MCO (2022); NSW Spatial Services (2021)

- LEGEND**
- National Park/Nature Reserve
  - Exploration Licence Boundary
  - Mining Lease Boundary
  - Development Application Area
  - Cadastral Boundary

  
**MOOLARBEN COAL COMPLEX**  
 Development Application Area

**Figure A3-1**



# Signing page

**EXECUTED** as a deed.

**Signed, sealed and delivered by Moolarben Coal Operations Pty Ltd ACN 077 939 569** in accordance with Section 127 of the *Corporations Act 2001*

\_\_\_\_\_

Signature of director

\_\_\_\_\_

Signature of director/company secretary  
(Please delete as applicable)

\_\_\_\_\_

Name of director (print)

\_\_\_\_\_

Name of director/company secretary (print)

**Signed, sealed and delivered** by Mid-Western Regional Council ABN 96 149 391 332 in accordance with a resolution of the Council dated **(Insert date)** in the presence of:

\_\_\_\_\_

Signature of witness

\_\_\_\_\_

**[name of signatory]**

\_\_\_\_\_

Name of witness (print)