



Maddocks

Lawyers
Collins Square, Tower Two
Level 25, 727 Collins Street
Melbourne VIC 3008
Australia

Telephone 61 3 9258 3555
Facsimile 61 3 9258 3666

info@maddocks.com.au
www.maddocks.com.au

DX 259 Melbourne

Advice

To David Bezuidenhout
Chief Executive Officer
West Wimmera Shire Council

Date 9 November 2021

Subject Lake Wallace, Edenhope

Questions You have sought our advice on whether Council, or another government body or agency is responsible for the land known as Lake Wallace, Edenhope, both generally and specifically in respect of weed removal and weed management.

Summary of advice *Below is a summary of our advice. Please read it in conjunction with the detailed advice that follows.*

- 1.1 Lake Wallace and the surrounding foreshore is Crown land which has been set aside for water supply, recreation and public purposes.
- 1.2 DELWP has divided the management of Lake Wallace and its surrounding foreshore into 3 separate reserves, and Council has been appointed committee of management (**CoM**) for all 3 reserves. Specifically:
 - in 1910, Council was appointed as CoM of a small portion of Lake Wallace (along the western foreshore with residential frontage); and
 - in 1998, Council took over from the Lake Wallace Foreshore Committee of Management Inc. as the CoM of the remaining two reserves encompassing the balance of Lake Wallace and the recreational foreshore.
- 1.3 In its role as CoM of Lake Wallace, Council is:
 - able to make decisions in respect of Lake Wallace, and may exercise a broad range of powers and functions over that land;
 - responsible for managing, improving, maintaining and controlling Lake Wallace, including reactive maintenance such as weed removal; and

Interstate offices
Canberra Sydney
Affiliated offices around the world through the
Advoc network - www.advoc.com

-
- may generate revenue from the Crown land in order to pay for the cost of maintaining and managing it.
- 1.4 Council has the discretion to determine the most appropriate way to manage and maintain Lake Wallace having regard to social, economic and cultural considerations. There is no positive obligation on Council to undertake extensive weed cutting of Lake Wallace if the cost outweighs the practical benefits to be gained by the community, however, Council must comply with all laws and must not be negligent in its management of Lake Wallace.
- 1.5 On the information available to us:
- Grampians Water's current role in relation to Lake Wallace is limited to the 'local water manager' responsible for managing blue-green algae blooms at Lake Wallace under the Regional Blue-Green Algae Co-ordination Plan (**Plan**). This responsibility does not extend to routine maintenance such as clearing of weeds from Lake Wallace (unless such clearing is necessary as a direct response to a blue-green algae incident).
 - The Wimmera Catchment Management Authority has a broader role with respect to wetlands and watercourses across the region, however, it does not have any direct management responsibilities for Lake Wallace.

Contact

Our Ref: GOC:CCB: 8747338

Clare Batrouney
61 3 9258 3829
clare.batrouney@maddocks.com.au

Partner

Guy O'Connor

Detailed analysis

Background

2. Historically, Lake Wallace supplied fresh water to the township of Edenhope. Grampians Wimmera Mallee Water Corporation (**Grampians Water**), as the local water authority, was responsible for extracting water from Lake Wallace for this purpose.
3. A prolonged drought led to this resource becoming unreliable so alternative water supplies were secured by Grampians Water in approximately 2001. Since then, the township has not relied on Lake Wallace for its water supply.
4. Lake Wallace continues to attract tourists for recreational water activities (fishing and water sports). The southern foreshore of Lake Wallace includes:
 - extensive open space with a children’s playground, picnic areas (including barbeques and picnic shelters), walking tracks, amenities and gardens; and
 - the Lakeside Tourist Caravan Park, which is leased to a 3rd party operator.
5. Council has an active presence at Lake Wallace as it is both:
 - the ‘waterway manager’ appointed under the *Marine Act 1998*, being responsible for the recreational use of the Lake (e.g. boats and other vessels); and
 - the CoM for the recreational foreshore, having taken over this role from the Lake Wallace Foreshore Committee of Management Inc. (**LWF CoM**) in 1998.
6. The growth of ‘ribbon weed’ (**Weed**) within Lake Wallace has been prolific in recent times, causing potential interference to boating and other recreational users of the lake. The Weed also has the potential to impact detrimentally on the marine life and water quality of the lake if it is not appropriately managed.
7. There is a community expectation that Council will remove the Weed to ensure the continued and uninterrupted use of Lake Wallace for tourism and recreational purposes.
8. Council wishes to understand whether its responsibilities described in paragraph 5 extend to it being responsible for the removal of Weeds within the Lake itself, noting that Council had been informed by Grampians Water that Grampians Water is responsible for Lake Wallace up to the ‘high water mark’ and that Council is responsible for the Foreshore only¹
9. It is clear from our investigations that there is a complex history associated with the allocation of responsibilities for the management of Lake Wallace and its surrounds.
10. This history is further complicated by the fact that over time several parties have either misunderstood or been misinformed as to the exact nature of their responsibilities for Lake Wallace.

¹ Letter from Mark Williams, Managing Director, Grampians Water to Mark Crouch, CEO, West Wimmera Shire Council dated 9 December 2014.

Legal analysis

11. Ownership of Lake Wallace

11.1 Lake Wallace and the surrounding foreshore is Crown land, comprised of 5 separate titles.

11.2 We summarise the relevant titles in the table below, and attach a Crown Allotment Plan which we have prepared to assist you in identifying the location of each title:

Crown Allotment Plan colour	Crown Allotment	Volume/Folio	Reservation
Blue	24E	11733/134	Water supply
Green	24D	11733/138	Public purposes
Yellow	24F	11733/136	Public purposes
Red	13	11795/866	Recreation
Orange	14	11795/868	Water supply

11.3 The majority of the lake itself is contained in Crown Allotment 24E, Parish of Edenhope, however, some parts of the lake are included in the titles to the surrounding foreshore (meaning that there is no clearly delineated title boundary between the lake and the foreshore).

11.4 Each Crown parcel has been temporarily reserved under s 4 of the *Crown Land (Reserves) Act 1974 (CLR Act)* for the purpose specified in the last column of the above table. This reservation means that Lake Wallace has been set aside on behalf of the community for a particular purpose by the Crown, and the land cannot be used for a different purpose without the Minister's approval.

11.5 Copies of our title searches are attached, for your records. We make the following comments in respect of these titles:

11.5.1 despite a volume/folio reference appearing on each title, no certificate of title actually exists for these Crown parcels (as is standard for Crown land). These title references are for the Land Registry's electronic database purposes only; and

11.5.2 DELWP has nominated Council as the 'Crown Land Administrator' for all 5 parcels. This notation on title is solely for the Department's internal administrative and asset management purposes, and is not indicative of the legal ownership of the land.

12. Committee of Management

General comments

12.1 Crown land generally falls under the management of the Department of Environment Land Water and Planning (**DELWP**) unless an express delegation to another body is made.

12.2 Where Crown land has been temporarily reserved for a public purpose, the Crown (represented by the Governor-in-Council) may appoint a CoM over the land, subject to any conditions and for any term the Governor-in-Council sees fit. The appointment may also be revoked by the Governor-in-Council at any time.

12.3 A CoM effectively 'steps into the shoes' of the Crown to become responsible for the management and control of the land for which it is appointed CoM, including being able to exercise a broad range of powers and functions in respect of that land, for example, the granting leases or licences (subject to Ministerial approval), carrying out works and constructing improvements.

Lake Wallace

- 12.4 DELWP has divided the management of Lake Wallace and its surrounding foreshore into three (3) separate and distinct reserves for the purposes of appointing a CoM for each reserve.
- 12.5 We summarise these reserves in the table below, and attach a CoM Plan identifying each reserve at Attachment 2 (noting that the boundaries of the reserves do not necessarily follow the Crown Allotment boundaries described above):

Description	Reserve No. (DELWP ref. no.)	CoM Plan	CoM appointment	Reservation
Residential Foreshore	RS10580 (0206651)	Green	Council appointed on 02/11/1910	Lake Wallace Water Supply Reserve
Recreation Foreshore	RS2468 (0203099)	Yellow	Council appointed on 16/07/1998	Lake Wallace Public Park, Gardens & Recreation Reserve
Lake	RS2365 (0203100)	Blue	Council appointed on 16/07/1998	Lake Wallace Water Supply Reserve

Residential Foreshore Reserve:

- 12.6 Reserve RS10580, shown in green on the CoM Plan, affects the south-western foreshore adjacent to residential houses with lake frontage, together with a small portion of the lake in front of that foreshore (**Residential Foreshore Reserve**). DELWP also knows this land by the reference no. 0206651.
- 12.7 Council's predecessor, the Shire of Kowree, was appointed as the CoM of the Residential Foreshore on 2 November 1910².
- 12.8 DELWP has confirmed to us that this appointment has not been revoked. Council remains the CoM over the Residential Foreshore.

Recreation Foreshore Reserve and Lake Wallace Reserve

12.9 Reservations

- 12.9.1 Reserve RS2468, shown in yellow on the CoM plan, encompasses the recreational foreshore described in paragraph 4, and that part of Lake Wallace directly adjacent to the recreational foreshore (**Recreational Foreshore Reserve**). DELWP also knows this land by the reference no. 0203099.
- 12.9.2 Reserve RS 2365, shown in blue on the CoM Plan, relates to Lake Wallace itself, other than those parts of the lake contained in RS2468 (yellow) and RS10580 (green) (**Lake Reserve**). DELWP also knows this land by the reference no. 0203100.

12.10 LWF CoM Appointment & Revocation

The CoM appointment for the Recreation Foreshore Reserve and the Lake Reserve has a complex history. We summarise the key elements as follows:

² Victoria Government Gazette no. 141 (pp 4985)

- 12.10.1 On 29 May 1991, the LWF CoM was appointed CoM for **both** Recreational Foreshore Reserve and the Lake Reserve³
- 12.10.2 However, at the time, the LWF CoM was not aware that its appointment extended beyond the Recreational Foreshore Reserve to include the Lake Reserve.
- 12.10.3 When, in 1996, the LWF CoM discovered that its CoM appointment included the Lake Reserve, it informed Council that it was prepared to continue to act as CoM for the Recreational Foreshore Reserve but not for the Lake Reserve.
- 12.10.4 On 3 September 1996, Council informed DELWP's predecessor, the Department of Natural Resources (**Department**), that:
- (a) Council would remain CoM of the Residential Foreshore Reserve;
 - (b) LWF CoM would remain CoM of the Recreational Foreshore Reserve; and
 - (c) responsibility for the Lake Reserve would revert to the Crown (the implication being that neither Council nor LWF CoM was prepared to accept a CoM appointment for the Lake Reserve).
- 12.10.5 In responding to Council, the Department expressed its desire for a single CoM to be appointed over all 3 reserves to avoid the fragmentation of responsibilities⁴. Council did not agree to accept responsibility for the Lake Reserve at that time.
- 12.10.6 Approximately 16 months later, the LWF CoM formally resolved on 13 February 1998 to relinquish its duties in respect of the management of the Recreation Foreshore Reserve 'in favour of West Wimmera Shire Council', and informed the Department of its decision on 26 February 1998.
- 12.10.7 Following this decision, the Department again requested that Council accept responsibility for the Recreational Foreshore Reserve and the Lake Reserve.
- 12.10.8 By letter dated 17 April 1998, Council informed the Department that it had resolved to assume management responsibilities of 'the area of the Crown land previously administered by' the LWF CoM. Council did not seek to limit its role to CoM of the Recreational Foreshore Reserve only.

12.11 Council's CoM Appointment

- 12.11.1 Presumably as a result of this letter, the Department began the process to formally appoint Council as CoM of **both** the Recreation Foreshore Reserve **and** the Lake Reserve. On the information available to us, it is not clear why Council agreed to accept responsibility for the Lake Reserve in 1998 when it was not prepared to do so in 1996 (refer to paragraph 12.10.4 above).
- 12.11.2 The Minister signed an instrument of appointment on 14 July 1998 (**Instrument**) which simultaneously:
- (a) appointed Council as the CoM of the Recreational Foreshore Reserve and the Lake Reserve; and
 - (b) revoked all previous appointments made in respect of these areas,

³ *Victoria Government Gazette* no. G20 (pp 1412-13)

⁴ Letters from the Department to Council dated 16 September 1996 and 10 October 1996 -

both of which took effect on the date on which the revocation of LWF CoM's appointment was published in the Victoria Government Gazette, being 16 July 1998 (No. G28, p. 1958).

12.11.3 This means that Council has been CoM of the Recreational Foreshore Reserve and the Lake Reserve since 16 July 1998. DELWP has confirmed to us that Council's CoM appointment has not been revoked, and Council remains the CoM of both the Recreation Foreshore Reserve and the Lake Reserve.

12.11.4 Interestingly, due to the wording of the Instrument:

- (a) the gazettal notice only refers to the dissolution of the LWF CoM and does not mention the Council's appointment as the incoming CoM; and
- (b) one would not know from reading the 1998 gazettal notice that its effect is to appoint Council as CoM unless you also obtained a copy of the underlying Instrument signed by the Minister (this would not usually be necessary).

This may explain why, over time, Council staff may not have been made aware of Council's appointment as CoM over the Lake Reserve.

13. Responsibility for Lake Wallace

13.1 We consider there to be 3 essential components to Lake Wallace for the purpose of considering the allocation of responsibilities amongst government agencies:

13.1.1 the lake bed and banks,

13.1.2 the body of water; and

13.1.3 the use or activities on the surface of the water (e.g. boats and other vessels).

Lake bed

13.2 The lake bed (any anything fixed to the lake bed, including the Weeds) and the banks of Lake Wallace would ordinarily be the responsibility of the landowner.

13.3 However, the practical effect of Council being appointed CoM of Lake Wallace is that Council (rather than DELWP) assumes the obligations of the Crown in respect of the lake bed. Specifically, Council (as CoM) is responsible for 'managing, improving, maintaining and controlling' Lake Wallace for the purpose for which it is reserved⁵.

13.4 This statutory obligation is confirmed by the *Committee of Management Guidelines* (dated March 2020), which provides that a CoM has an obligation to 'control all weeds and pests on reserved land' (refer to para 8.8 of the attached Guideline).

13.5 Council may ultimately determine the most appropriate manner in which it discharges its management and maintenance responsibilities as CoM, provided that it complies with any cultural heritage, environmental and other requirements to the extent that they apply to Lake Wallace.

13.5.1 For example, there is no positive obligation on Council to undertake extensive and regular weed cutting of Lake Wallace if the cost outweighs the practical benefits to be gained from the exercise.

13.5.2 It is open to Council to investigate various options available to it in respect of weed management before determining the most appropriate option moving forward.

⁵ s 14 of the *Crown Land (Reserves) Act 1978* (Vic)

- Body of Water*

- 13.7 Grampians Water is a water authority established under the *Water Act 1989* (Vic).
- 13.8 Grampians Water has an entitlement to take and use water from Lake Wallace (for the purpose of supplying drinking water to the township), although it has not utilised this entitlement for many years.
- 13.9 It is responsible for ensuring the safety of its water supply, and to this extent, Grampians Water is appointed the:
 - 13.9.1 regional co-ordinator for blue-green algae outbreaks under the *Emergency Management Act 1986*; and
 - 13.9.2 'local water manager' for the purpose of managing blue-green algae at Lake Wallace under the Regional Blue-Green Algae Co-ordination Plan (**Plan**).
- 13.10 You have instructed us that when Grampians Water ceased drawing water from Lake Wallace for water supply purposes, it sought to nominate Council as the 'local water manager' for Lake Wallace, however this proposal was rejected by Council in 2010. Council has accepted the role of 'local water manager' under the Plan for Serviceton Reservoir only.
- 13.11 The narrow scope of Grampians Water's role in relation to managing blue-green algae outbreaks is contrary to Grampians Water's previous advice to Council suggesting that Grampians Water was entirely responsible for the body of water within Lake Wallace.
- 13.12 On the information available to us, other than as described above, we have not been able to establish that Grampians Water, the Wimmera Catchment Management Authority or any other organisation is responsible for the body of water within Lake Wallace or has a specific obligation to maintain or cut the Weeds within Lake Wallace.

13.13 In 1988, the LWF CoM was declared to be the 'local authority' for Lake Wallace under the *Marine Act 1988* (Vic)⁶ (**1988 Marine Act**), meaning that it was responsible for ensuring safe recreational and aquatic facilities for visitors.

13.14 Shortly after being appointed CoM, Council replaced the LWF CoM as the 'local authority' for Lake Wallace under the 1988 Marine Act⁷. When the *Marine Act 1998* (Vic) (**1998 Marine Act**) was introduced, Council was appointed under that Act as the 'waterway manager' for Lake Wallace for a 5-year period⁸. On 7 August 2017, Council agreed (by exchange of correspondence) to continue as waterway manager of Lake Wallace for a further period of 5 years (i.e. until 2022).

13.15 As Council accepts its responsibilities as the 'waterway manager' for Lake Wallace, we do not propose to provide detailed advice on the scope of this role.

13.16 The nature of Lake Wallace as a water source, an area of environmental and cultural significance and the growth of tourism and other economic benefits to the local area means

⁸ Victorian Government Gazette No. S220 and S221 28 June 2012

that there are a multitude of government, quasi-government and regulatory bodies each have a role to play in respect of Lake Wallace. The Wimmera Catchment Management Authority, DELWP, Department of Primary Industries, Environment Protection Authority, Parks Victoria, Heritage Victoria and Aboriginal Affairs Victoria (to name a few) provide expertise in specific areas including:

13.16.1 management and conservation of fisheries and aquatic life (including fish deaths);

13.16.2 native vegetation and wildlife management;

13.16.3 environmental protection and contamination management;

13.16.4 control of pests and noxious weeds.

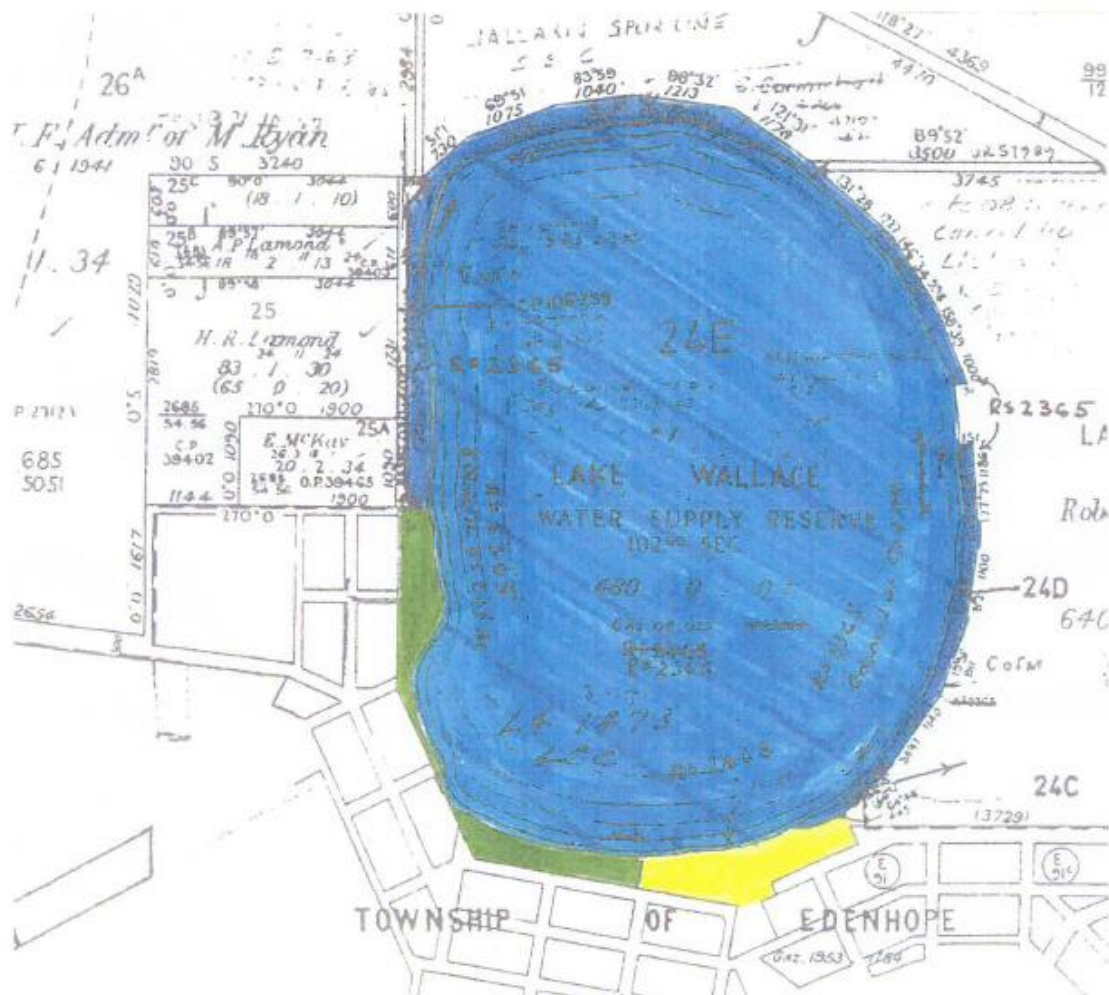
13.17 As an example, the Wimmera Catchment Management Authority has a facilitation and coordination role at a regional level (which includes Lake Wallace as part of the wetland ecosystem), but it does not have a direct management responsibility for Lake Wallace itself.

13.18 The delineation of responsibilities between these organisations is often not clear and may overlap at times. However, based on our investigations, none of these other agencies have a direct management obligation relating to weed control. As such, it falls to Council, as CoM of Lake Wallace, to maintain and manage the lake bed and weeds growing from that lake bed.

Contact

Please contact Clare Batrouney on 03 9258 3829 or email clare.batrouney@maddocks.com.au if you have any other queries.

Attachment 2 – CoM Plan



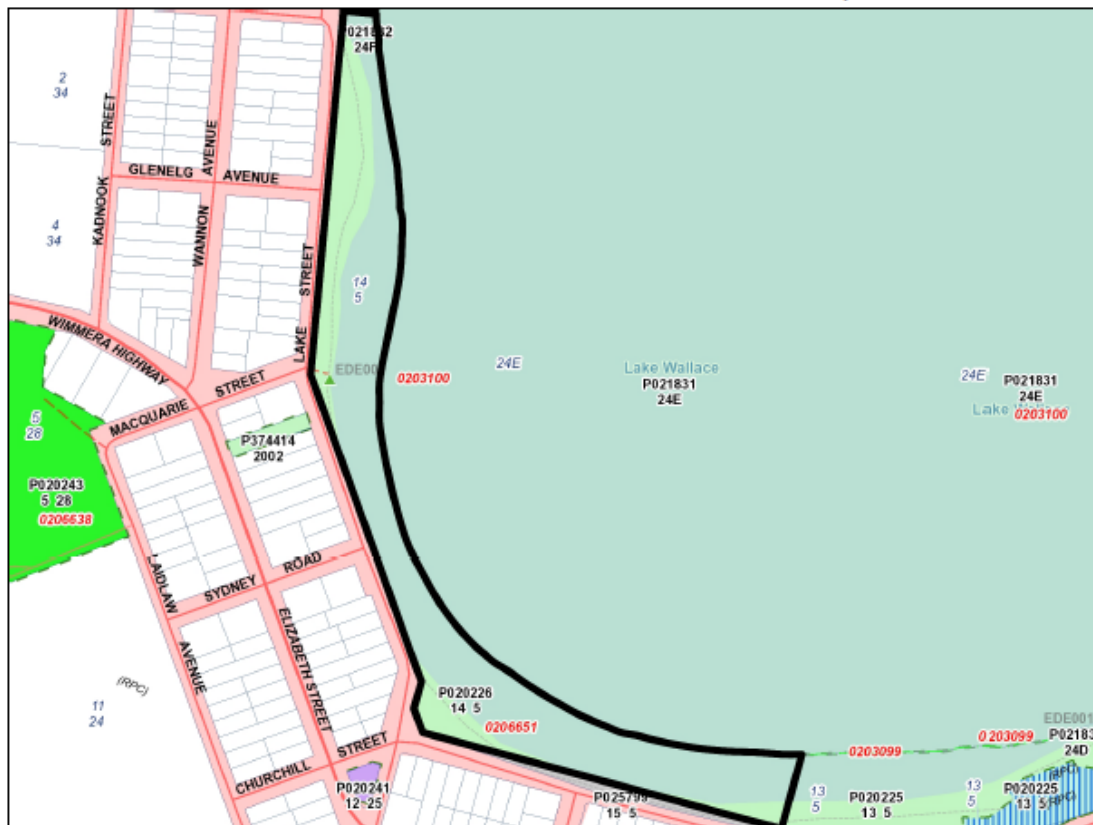
COMMITTEES OF MANAGEMENT
LAKE WALLACE RESERVES

- Lake Wallace and foreshore comprises of three reserve areas being:
- 0203094 RS 2408 - Lake Wallace Public Park, Gardens and Recreation Reserve
 - 0203100 RS 2409 - Lake Wallace Water Supply Reserve
 - 0206657 RS 10580 - Lake Wallace Water Supply Reserve



Reserve 0206651

Map Created on 04-Nov-2021



© The State of Victoria, Department of Environment, Land, Water and Planning 2021

Legend

- Township
- Parish
- Parcel
- Crown Parcel
- Crown Land
- Government Road
- Plan Noting
- Applidy
- Temporary Appliance Rights
- Water and Range Services
- Linear Tenure
- Other Pipelines
- Industrial Commercial Licences
- Recreation Amusement Licences
- Occupancy Licences
- Radiotelecommunications Licences
- Emergency Services User Licences
- Water Supply Licences
- Miscellaneous General Licences
- Reservoirs
- Pipe Corridors
- Leases
- General Licence
- Delegated Lease
- Delegated Licence
- Grazing Licence
- Riparian Management Licence
- Water Franchise Licence
- Unused Road Licence
- Delegated Management Reserve
- Direct Management Reserve
- Government Road
- Government Road
- Dual Status Government Road

Reserve

Tenure Type : Water Supply Regulation and Drainage
Parish : EDENHOPE
Township :
Area : 9.1491 Ha
Purpose : WATER SUPPLY
Local Name : LAKE WALLACE - PART WATER SUPPLY RESERVE
Land Manager : WEST WIMMERA SHIRE COUNCIL

Scale 1: 6,612

Overview



Land and Built Environment
Grampians
Dept of Environment, Land, Water & Planning

Disclaimer: This map is a snapshot generated from Victorian Government data. This material may be of assistance to you but the State of Victoria does not guarantee that the publication is without flaw of any kind or is wholly appropriate for your particular purposes and therefore disclaims all liability for error, loss or damage which may arise from reliance upon it. All persons accessing this information should make appropriate enquiries to assess the currency of the data.



Map Created on 04-Nov-2021



Scale 1: 2,048

Overview

- | | |
|----------------|---------------------------------|
| Tenure Type : | Recreation Area |
| Parish : | EDENHOPE |
| Township : | |
| Area : | 5.9157 Ha |
| Purpose : | RECREATION |
| Local Name : | LAKE WALLACE RECREATION RESERVE |
| Land Manager : | WEST WIMMERA SHIRE COUNCIL |

Recreation Area
EDENHOPE

5.9157 Ha
RECREATION

LAKE WALLACE RECREATION RESERVE
WEST WIMMERA SHIRE COUNCIL

Land and Built Environment
Grampians
Dept of Environment, Land, Water & Planning

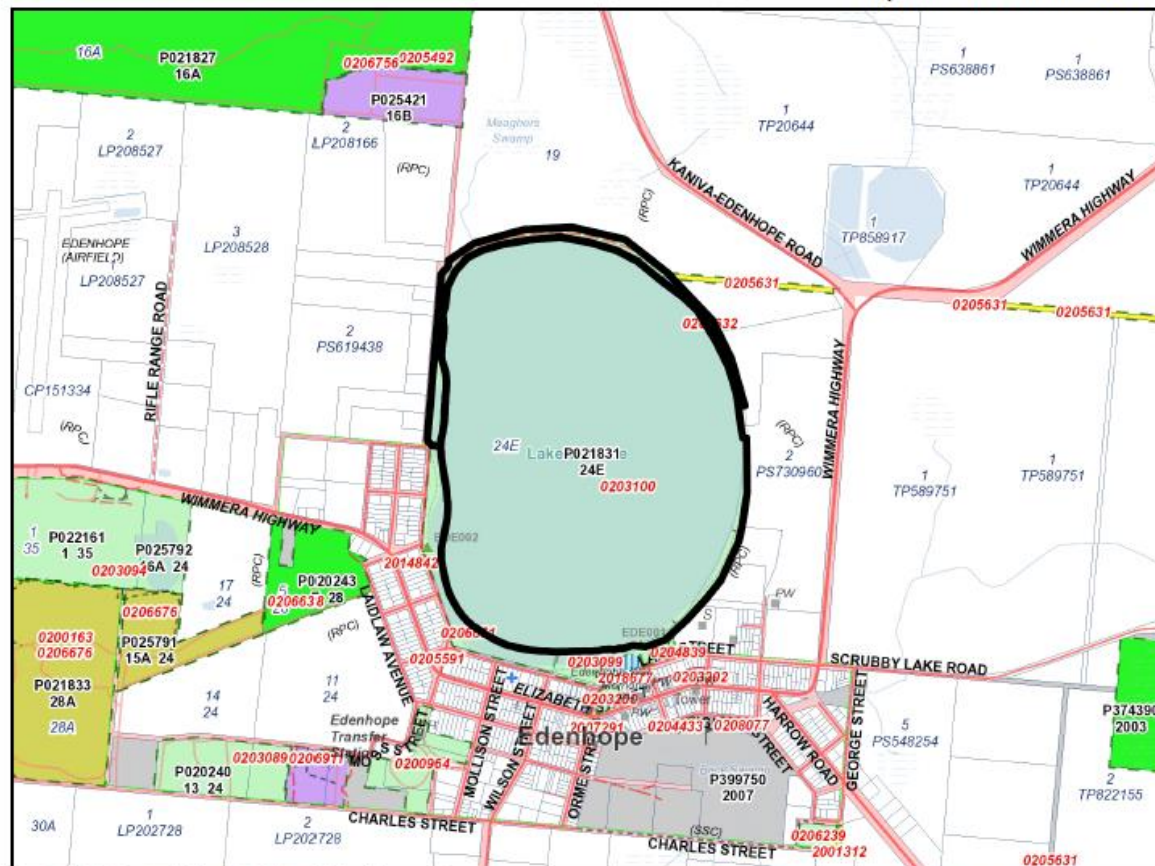


Disclaimer: This map is a snapshot generated from Victorian Government data. This material may be of assistance to you but the State of Victoria does not guarantee that the publication is without flaw of any kind or is wholly appropriate for your particular purposes and therefore disclaims all liability for error, loss or damage which may arise from reliance upon it. All persons accessing this information should make appropriate enquiries to assess the currency of the data.

Environment,
Land, Water
and Planning

Reserve 0203100

Map Created on 04-Nov-2021



© The State of Victoria, Department of Environment, Land, Water and Planning 2021

Scale 1: 25,000

Legend

- Township
- Parish
- Parcel
- Crown Parcel
- Other Land
- Government Road
- Plan Noting
- Applly
 - Temporary Applly Rights
 - Bottom and Range Licences
- Linear Tenure
 - Other Facilities
 - Industrial Commercial Licences
 - Recreation Areas and Licences
 - Occupancy Licences
 - Radio TV Telecomm Licences
 - Emergency Services Use Licences
 - Water Supply Licences
 - Miscellaneous General Licences
 - Easements
 - Pipe Corridors
- Lease
 - General Licence
 - Delegated Lease
 - Delegated Licence
 - Grazing Licence
 - Riparian Management Licence
 - Water Frontage Licence
 - Unused Road Licence
 - Delegated Management Reserve
 - Direct Management Reserve
- Government Road
 - Government Road
 - Dual Status Government Road

Reserve

Tenure Type : Recreation Area
Parish : EDENHOPE
Township :
Area : 214.5212 Ha
Purpose : PUBLIC PURPOSES & WATER SUPPLY
Local Name : LAKE WALLACE RESERVES
Land Manager : WEST WIMMERA SHIRE COUNCIL

Overview



Land and Built Environment
Grampians
Dept of Environment, Land, Water & Planning

Disclaimer: This map is a snapshot generated from Victorian Government data. This material may be of assistance to you but the State of Victoria does not guarantee that the publication is without fault of any kind or is wholly appropriate for your particular purpose and therefore disclaims all liability for error, loss or damage which may arise from reliance upon it. All persons accessing this information should make appropriate enquiries to assess the currency of the data.

