



Notice of Reserve Trust Meeting

Notice is hereby given that a Reserve Trust Meeting will be held in the **Ballina Shire Council Chambers**, Cnr Cherry & Tamar Streets, Ballina on **Monday 20 February 2012 commencing at 4.00 pm**

Business

1. Apologies
2. Declarations of Interest
3. Deputations
4. Committee Reports

A handwritten signature in black ink, appearing to read 'Paul Hickey', with a long horizontal line underneath.

Paul Hickey
General Manager

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- 1. Apologies**
 - 2. Declarations of Interest**
 - 3. Deputations**
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- 1. Apologies**
- 2. Declarations of Interest**
- 3. Deputations**

4.1 Shelly's on the Beach - Transfer of Licence

4. Committee Reports

4.1 Shelly's on the Beach - Transfer of Licence

File Reference	Shelly's on the Beach - Property Administration
CSP Linkage	A diverse and prosperous economy
Delivery Program	Commercial Services
Objective	To obtain Reserve Trust approval for transfer of the Licence Agreement to occupy part Crown Reserve 1010068, being part Lot 402 DP 755684.

Background

At the Ordinary Meeting of Council held 15 December 2011, Council resolved to consent to the proposed assignment of the lease of operational land, Lot 1 DP 1095427 (260.3m²) and the assignment of the separate licence agreement for part Crown Reserve 1010068, being part Lot 402 DP 755684 (81.7m²) between Ms E A Keemink and the proposed ingoing lessee/licensee, Messrs M Sims & R Mamone t/as Fishheads @ Byron Pty Ltd. who own and operate 'Fishheads' restaurant of Byron Bay.

To enable the Licence Agreement to be transferred, the Crown requires the endorsement of the Ballina Coastal Reserve Trust before considering the request.

Key Issues

- Transfer of Licence Agreement to operate a business on a Crown Reserve.

Information

Elizabeth Keemink is the owner of the business 'Shelly's on the Beach', and Lessee (land component lease) of an area of Council operational land Lot 1 DP 1095427 and, separately, Licensee of part Crown Reserve 1010068, being part Lot 402 DP 755684. The business is situated upon and operates from both parcels of land that comprise a total area of approx. 342m².

Council granted consent for a 5 + 5 + 5 year lease agreement that commenced on 1 July 2010, with similar consent granted by The Ballina Coastal Reserve Trust and agreed by the LPMA, for part Crown Reserve 1010068 for a 15 year period, running concurrently with the lease. Both agreements terminate on 30 June 2025.

4.1 Shelly's on the Beach - Transfer of Licence

As previously indicated, the business is now in the process of being sold and the Council consented to the assignment to the proposed new business owners, M Sims & R Mamone t/as Fishheads @ Byron Pty Ltd, at the Ordinary meeting held 15 December, 2011. That resolution also requires the endorsement of the Ballina Coastal Reserve Trust insofar as the Licence Agreement is concerned.

Legal / Resource / Financial Implications

The adopted resolution of Council of 15 December 2011 pertaining to the Licence Agreement to occupy part Crown Reserve 1010068 requires the endorsement of the Ballina Coastal Reserve Trust.

Consultation

Not applicable

Options

1. The Ballina Coastal Reserve Trust can refuse the request. This is not recommended in view of the licence area being an integral and essential part of the business operation, and as Council has consented to the transfer of the adjoining approx. 260.3m² lease area.
2. The Reserve Trust can agree to the request and consent to the transfer of the licence agreement. This is the recommended option.

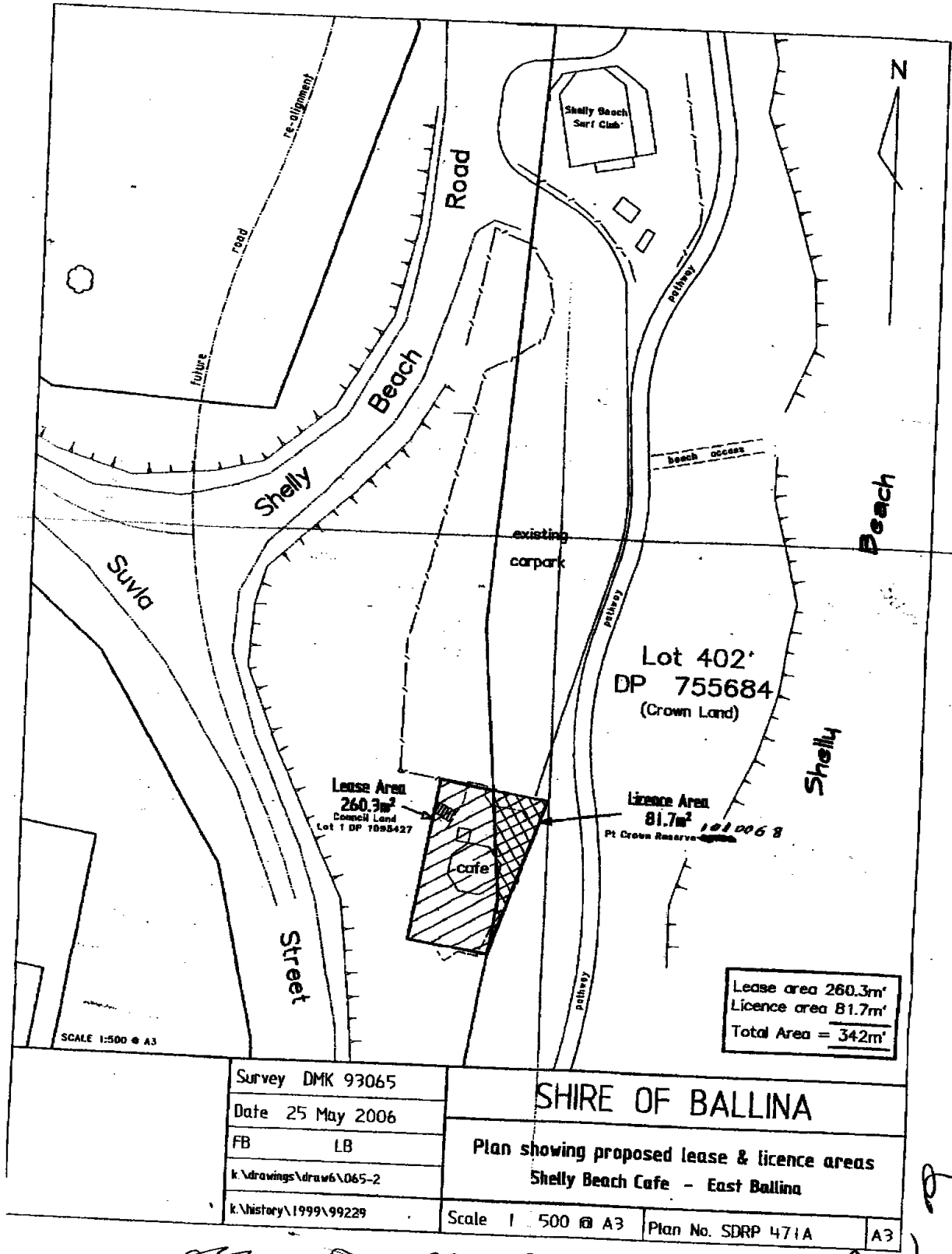
RECOMMENDATION

That Council, as the Ballina Coastal Reserve Trust, consents to the transfer of the Licence Agreement between the Trust and Ms E A Keemink of part Crown Reserve 1010068, being part Lot 402 DP 755684, to Messrs M Sims & R Mamone t/as Fishheads @ Byron Pty Ltd.

Attachment(s)

1. Plan of Lease and Licence areas

4.1 Shelly's on the Beach - Transfer of Licence



Survey DMK 93065	SHIRE OF BALLINA	
Date 25 May 2006		
FB LB	Plan showing proposed lease & licence areas	
k:\drawings\draw6\065-2	Shelly Beach Cafe - East Ballina	
k:\history\1999\99229	Scale 1:500 @ A3	Plan No. SDRP 471A
		A3

4.2 Compulsory Acquisition - Easement for Underground Powerlines

File Reference	Williams Reserve
CSP Linkage	Diverse and balanced land use
Delivery Program	Commercial Services
Objective	Compulsory Acquisition - Essential Energy Easement over Williams Reserve at Lennox Head

Background

Council has received formal request on behalf of Essential Energy seeking consent for the acquisition of an easement for underground powerlines on Crown Land at Lot 473 DP 729088, at Lennox Head, known as Williams Reserve. This report deals with that request.

Key Issues

- Legal authority
- Use of land
- Compensation

Information

A formal request has been received on behalf of Essential Energy for the compulsory acquisition of an easement for underground powerlines on Williams Reserve (copy attached).

Essential Energy's lawyers advise that ..."the Land Acquisition (Just Terms Compensation) Act 1991 requires Essential Energy to either:

1. Procure written consent of every person who has an interest over all or part of the Land to the acquisition of the Easement; or
2. Follow the statutory procedures for the compulsory acquisition of the Easement."

Essential Energy's lawyers further advise that their Client has received consent from the Minister of Lands (on behalf of the State of NSW) pursuant to section 29 of the Land Acquisition (Just Terms Compensation) Act 1991 to the acquisition of the Easement and requires Council's formal consent as the Reserve Trust Manager to Essential Energy acquiring the Easement.

4.2 Compulsory Acquisition - Easement for Underground Powerlines

Essential Energy also advise that compensation is to be paid by them in relation to the acquisition of the Easement affecting the Land as determined by the Valuer-General of the Department of Finance and Services and unless otherwise advised by the Minister for Lands, paid to Ballina Council in its capacity as the manager of Reserve Trust.

Council's engineering staff are aware of the proposal and there is no objection to this easement as Council infrastructure is catered for in this locality. Also the planning for the pathway along the eastern side of Williams Reserve has allowed for this easement and the delay in finalising part of that path is due to Council waiting for Essential Energy to provide an upgraded power supply.

Legal / Resource / Financial Implications

Essential Energy's lawyers advise they (Essential Energy) have the Department of Primary Industries' consent to construct underground electrical infrastructure and acquire an easement for underground powerlines. Council has not sought our own legal advice on this as there are not considered to be any legal ramifications. Council, as the Reserve Trust Manager, is also to be compensated as determined by the Valuer General, however this compensation is not expected to be significant based on the zoning and use of the land.

Consultation

Not Applicable

Options

1. Council acting in its capacity as Reserve Trust Manager consent to acquisition of the easement as requested, and authorise the General Manger to sign and return the letter attached to this Report.
2. Council not authorise the proposal. Even if Council objected the Minister could over-ride Council's objection.

There is no objection to the creation of this easement and the use of the Valuer General for valuation purposes. Therefore recommendation one is supported.

RECOMMENDATIONS

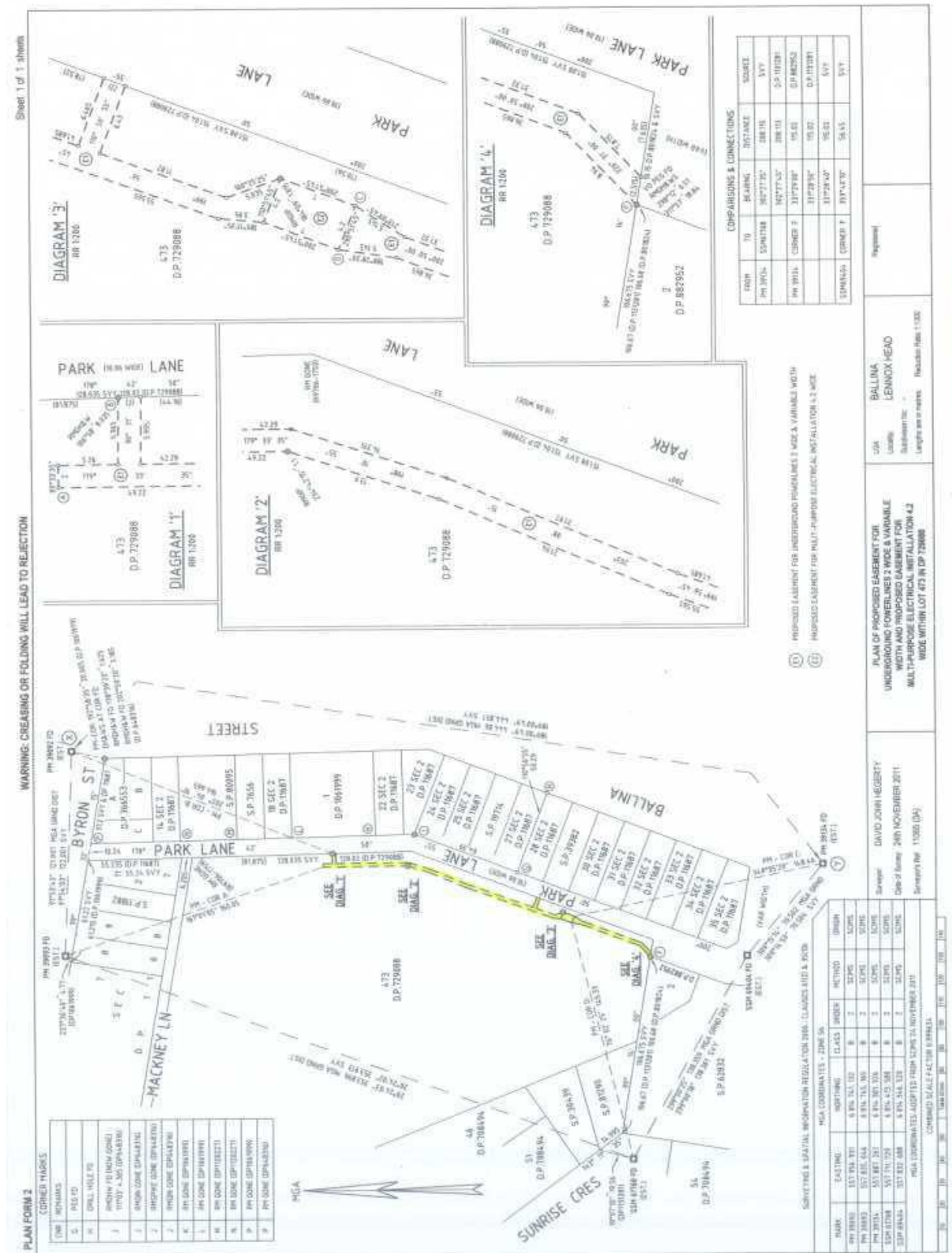
1. That Council, as Reserve Trust Manager for Williams Reserve (R8297), consents to the acquisition of the easement as outlined in this report.
2. Council also authorises the General Manager to sign and return the correspondence as attached to this report, and if required, also authorise the General Manager to finalise negotiations for the sale of the easement to Essential Energy.
3. The Council seal is authorised to be attached to documents, notices, contracts and transfers required to facilitate the sale.

Attachment(s)

1. Deposited Plan showing easement
2. Endorsement letter

4.2 Compulsory Acquisition - Easement for Underground Powerlines

Attachment 1



4.2 Compulsory Acquisition - Easement for Underground Powerlines

Attachment 2

[date]

Essential Energy
c/- Norton Rose Australia
Level 18
225 George Street
Sydney NSW 2000

Dear Sir

**Essential Energy - Proposed acquisition of easement for underground powerlines
Land: Lot 473 in DP729088, at Lennox Head**

Ballina Shire Council, as manager of Reserve No. 82927 for Public Recreation (**Reserve Trust**), acknowledges that Essential Energy:

- 1 has constructed an underground electrical infrastructure (**Works**) on Crown land known as Lot 473 in DP729088 (**Land**) at Lennox Head; and
- 2 proposes to acquire an easement for underground powerlines (**Easement**) on the Land.

Ballina Shire Council confirms that it:

- 1 consents to the acquisition of an Easement by Essential Energy under the *Electricity Supply Act 1994* and the *Land Acquisition (Just Terms Compensation) Act 1991* in relation to the Works on Essential Energy's standard terms; and
- 2 agrees that the compensation to be paid by Essential Energy in relation to the acquisition of the Easement affecting the Land is to be:
 - (1) determined by the Valuer-General of the Department of Finance and Services; and
 - (2) unless otherwise advised by the Minister for Lands, paid to Ballina Shire Council in its capacity as the manager of Reserve Trust.

Yours faithfully

Signed by
an authorised representative of
Ballina Shire Council

APAC-#12929886-v1

4.3 Closure of Crown Public Road - Ballina Coastal Reserve

File Reference	Sharpes Beach Master Plan
CSP Linkage	Diverse and balanced land use
Delivery Program	Commercial Services
Objective	To obtain Reserve Trust Approval to proceed with the closure and addition of a Crown road reserve into the Ballina Coastal Reserve

Background

The management and use of the Crown land along the Ballina coastline is regulated by the Ballina Coastal Reserve Plan of Management. The Plan of Management was adopted by the Crown in 2004. The Plan of Management states:

The primary objective of the Ballina Coastal Reserve Plan of Management is the rationalisation of all vacant Crown land and existing Crown reserves into a single coastal Crown reserve for the notified purpose of Public Recreation and Coastal Environmental Protection with the appointment of Ballina Shire Council as the Reserve Trust Manager.

This report deals with administrative matters that will allow Council to proceed with formalising the Sharpes Beach Car Park.

Key Issues

- Closure of a Crown road reserve
- Inclusion of the land in the Ballina Coastal Reserve

Information

The NSW Department of Primary Industries (DPI) - Catchments and Lands have been notified of Council's intention to lodge a Development Application (DA) for the formalisation of the Sharpes Beach Car Park, along with future construction of beach accesses and provision of toilet and life saving amenities.

These actions are being taken to enact the lease with the Stewart Family for part of this land and to ensure development consent is in place to allow the works to proceed as funding becomes available.

In response to Council's notification the Department has advised that prior to the DA being signed off by NSW DPI, Council, acting as the Reserve Trust Manager, must resolve to close the Crown road reserve that traverses this locality and include the land in the Ballina Coastal Reserve. A copy of that Crown road reserve is outlined in the attachment to this report.

4.3 Closure of Crown Public Road - Ballina Coastal Reserve

Once this process is commenced, or completed, Council can then make application for the closure of the unmade road reserve that passes through that part of the Sharpes Beach Car Park area that is privately owned land by the Stewart Family.

The closure of this Crown road reserve is in accordance with the Ballina Coastal Reserve Plan of Management which states as its primary objective, the amalgamation of the various land parcels and road reserves within the Ballina Coastal Reserve.

Legal / Resource / Financial Implications

The status of the parcel of land is currently unmade Crown road reserve.

Comments have been expressed that this unmade Crown road reserve could assist Council in obtaining planning approvals for the coastal recreational path. It is the opinion of staff that this is not the case in that the approvals required will not vary whether the land is an unformed Crown road reserve or Crown reserve.

Consultation

Council staff have consulted with Department of Primary Industries who have advised that a formal resolution is required to enable the process to occur. The original Coastal Reserve Plan of Management was the subject of extensive consultation.

Options

1. Apply to the NSW Department of Primary Industries - Catchments and Lands to formally close the Crown road reserve and amalgamate the parcel of land into the Ballina Coastal Reserve.
2. Not proceed.

The formalisation of this lease area, along with the future plans for this site, is an important part of Council's overall strategic planning for this locality therefore the recommendation is to proceed.

RECOMMENDATION

That Council, as the Reserve Trust Manager for the Ballina Coastal Reserve, resolves to apply to the NSW Department of Primary Industries - Catchments and Lands to formally close the Crown road reserve, as per the attachment to this report. Once closed this land is to be amalgamated into the Ballina Coastal Reserve.

Attachment(s)

1. Site plan

4.3 Closure of Crown Public Road - Ballina Coastal Reserve



Red edge:
Crown public road 30 wide proposed to be closed and added to R1010068

Green fill:
R1010068 for Public Recreation & Coastal Environmental Protection (Ballina Coast Reserve)

Reduction Ratio 1:5,000 @ A4
0 100 200 300 400
Meters



Projection: Transverse Mercator
Zone: 56 Datum: GDA94
Aerial Photography: LPI Orthoview
Date of Photography:
Prepared by: Crown Lands Division, Grafton
Date: 11/01/2012



NSW GOVERNMENT
Department of Primary Industries
Catchments & Lands

Disclaimer:
The information contained in this map has been provided in good faith. Whilst all effort has been made to ensure the accuracy and completeness of this information the data providers take no responsibility for errors or omissions nor any loss or damage that may result from the use of this information.
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