

82 Merrivale Road
Pickering Brook
WA 6076

11 April 2017

The CEO
Kalamunda Shire
2 Railway Rd
KALAMUNDA

Dear Rhonda,

I, as the present owner, need to apply to the Shire for appropriate access to Location 830 at what has traditionally been the address of this block at 221 Merrivale Rd. Pickering Brook. When this layout was originally designed the access seems to be via Merrivale Rd. exiting from Kingsmill Rd. However, this road has never been constructed.

A recent experience where a prospective buyer of this property was refused credit from the bank on the grounds that this block has no access other than across what is now National Park under Native Title, means that a more appropriate and formal access needs to be established.

From my, and the previous owners' initial inquiries to the Department of Parks and Wildlife, we were advised that an application could be made to Department of Land (DoL) for an easement from the southern end of the constructed Merrivale Rd. along a portion of the southern boundary of the block (See app 1).

After some 14 months of correspondence DoL now advise that because of Native Title issues this can't happen for at least 2 years and even then may not eventuate (see app 2).

DoL have given me two options, the former being a stop gap resolution only. The second option, and more appropriate, I feel, is for the Council to realign a portion of the unconstructed Merrivale Rd. to about the southern boundary of the block. Because of the close location of the current residence the abutment should achieve at least a similar effect as the requested easement (app 1).

The reason for this is twofold, firstly all services e.g. address, power, phone can remain unchanged and secondly there is no need for any road construction as suitable gravel tracks already exist. I stress this point as my primary concern is for formal and practical access, not necessarily improvements in costly road construction.

Attached please find the salient case file correspondence.

I request the Council assists in what is, to me, a very important formality.

Regards


Gillian S Fantuz

cc Councillor M Fernie

82 Merrivale Road

Pickering Brook

W.A. 6076

20 Jan.2016

The CEO

Department of Lands

WEST PERTH 6873

Attention; Sean Browne (Metropolitan & Peel Region)

Dear Sir,

On behalf of the seller and purchaser we seek your approval of an appropriate easement to Canning Location 830 at 221 Merrivale Road Pickering Brook W.A.

This block has never had access other than through what is now National Park land. Although this has not been a problem in the past, a recent experience (refusal of a bank loan for the purchase of this property) would indicate that a statutory formalisation of appropriate access along the southern boundary is necessary.

Thank you for your consideration and we look forward to a favourable outcome.

Regards,

Signed: On behalf of Sellers

Sarah Hardman

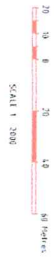
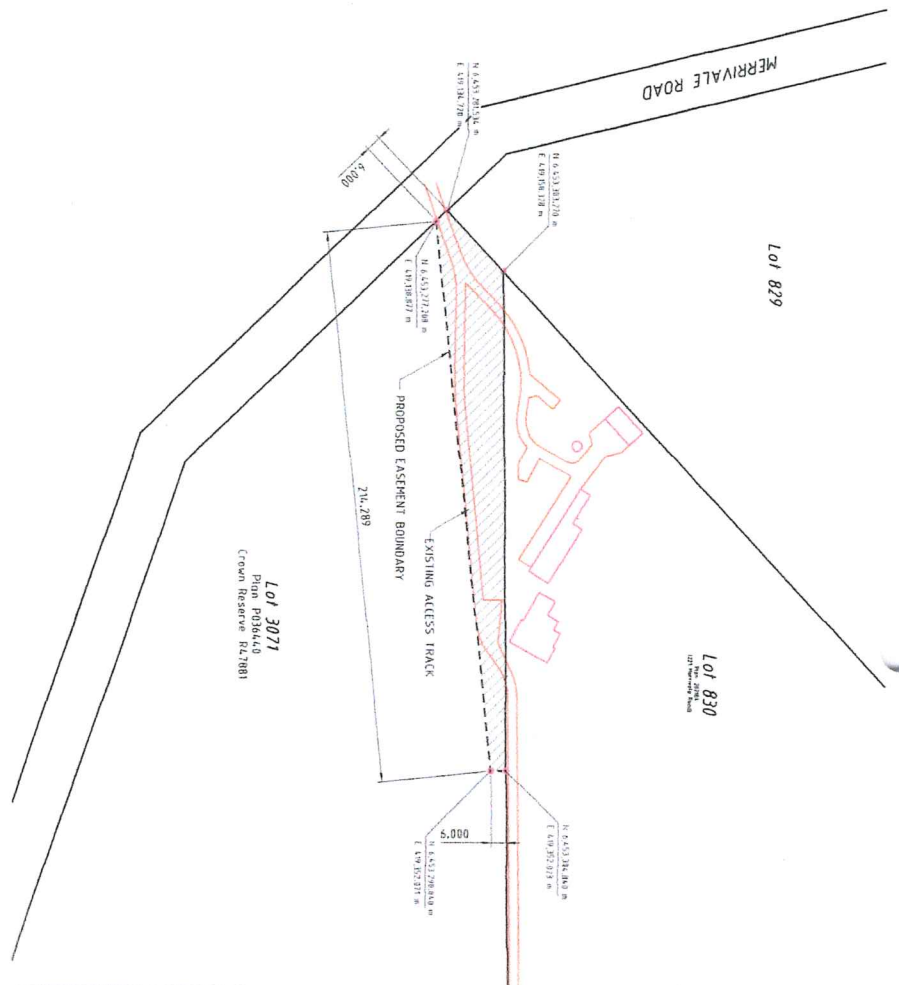
Sarah Hardman

Enduring Power of Attorney for Joseph Hardman

Maurice Hall

Signed: On behalf of Buyer

Gillian Fantuz



LOCATION	LOT 830 221 MERRIVALE ROAD PICKERING BROOK W.A. 6076	BUILDING	LOT 830 ACCESS EASEMENT	EASEMENT PLAN	DRAWN	PLF
					DATE	14.01.16
					DRG No.	C-001



Chuah, Teong

to Sally Fantuz

cc Eidsvold, Jaimie

Tue, Mar 28 4:39 PM

Class A Reserve 47881 Merrivale Road

3 files attached ^ [Save all](#)Attach 2 Class A Res...
.pdf 1.24 MBAttach 3 Easement O...
.pdf 1.46 MBAttach 1 Smartplan...
.pdf 358 KB

[Our ref: 50831-2004 Job No N/A]

Hi Gillian

Thank you for taking the time to speak with a couple of weeks ago.

In the first instance, I ask that you refer to the attached Smartplan graphic wherein to show your property in relation to Merrivale Road. The part of Merrivale Road hatched in red is understood to be unconstructed (not bitumised) which would have otherwise provided direct access to your property (**Attachment 1**).

Merrivale Road is held under the care and control of the local government authority, being Shire of Kalamunda.

Class A Reserve 47881 is held for the purpose of 'National Park' vested pursuant to section 7(2) of the *Conservation and Land Management Act 1984*. The management body is the Conservation Commission of Western Australia, part of Department of Parks and Wildlife.

The Department of Lands (DoL) acknowledges that the Conservation Commission (Department of Park and Wildlife) has advised this Department that it supports the grant of an easement burdening a small portion of Class A Reserve 47881 (Korung National Park) for the purpose of access to your freehold property, being Lot 830 on Deposited Plan 202184, and otherwise known as 221 Merrivale Road in Pickering Brook.

Unfortunately Korung National Park is likely to be the subject of native title rights and interests of the Whadjuk People, which was accepted for registration on 26/6/2011. DoL on behalf of the State Government is unable grant an interest (ie. easement, disposal and grant lease etc.) over any part of Reserve 47881 without addressing native title rights and interests.

As I had briefly explained the State of Western Australia is currently in negotiation with six native title claimants group to surrender native title rights over the South West, which includes Reserve 47881. Once the agreement is finalised native title rights will be surrendered and this will allow DoL to arrange to formal access to your property via a section 144 Easement pursuant to the *Land Administration Act 1997* or to consider any other available options.

I had described two options available to you for further consideration. It is as follows;

Option 1

DoL is able to issue you a non-exclusive section 91 licence over that small portion of Reserve 47881 (currently being used as an informal access track to your property) for the purpose of "Access Only" to the

owner of Lot 830 on Deposited Plan for a term of 2 years. The grant of this licence will be subject to the Conservation Commission, Shire and Department of Mines and Petroleum advising no objections.

It is hoped that whilst in possession of a section 91 licence the State Government and the Native Title Claimants are able to reach an agreement for the South Western Settlement Agreement. If so, the licence will automatically terminate and DoL will then be in a better position to reconsider the grant of an easement or excise the subject portion from Class A Reserve 47881 (if feasible and subject to Conservation Commission's approval) in favour of Lot 830 DP 202184 in order to provide formal access to your property from the constructed part of Merrivale Road.

Option 2

This option involves the Conversation Commission first agreeing to excise the subject portion of land (currently providing Lot 830 with informal track access) to be excised from Reserve 47881. This is in addition to the Shire of Kalamunda also agreeing to resolve to dedicate pursuant to section 56 of the LAA the subject land as a public dedicated road. With regards to native title rights and interest, DoL can undertake a 24KA of the Native Title Act being a notification process only suppresses native title whilst the land is used for a public purpose as a road.

A case can be made to the Shire and the Conservation Commission to advise that because the unconstructed portion of Merrivale Road is not being used for its designated purpose it can be closed pursuant to section 58 of the LAA and subsequently included into Reserve 47881. This can be exchanged for the required subject portion of Reserve 47881, that currently provides you access, which can be dedicated as a road as per the paragraph above.

The proposal to grant an easement and/or excise from a Class A reserve requires ministerial and parliamentary approval. As such, I ask that you refer to the extract from DoL's Practice Manual regarding Class A Reserves and Class A Amendments (Major) wherein to provide you general information about Class A actions (**Attachment 2 and 3**).

Both of these options requires the approval/comments from the Conservation Commission and the Shire which will need to be obtained before DoL can progress any further.

If you have any questions please ask me.

Regards

Teong Chuah | A/Assistant Manager | Case Management - Metropolitan and Peel
Department of Lands | Level 11, 140 William Street | Perth WA 6000
T (08) 6552 4781 | F (08) 6552 4417
E teong.chuah@lands.wa.gov.au | W www.lands.wa.gov.au

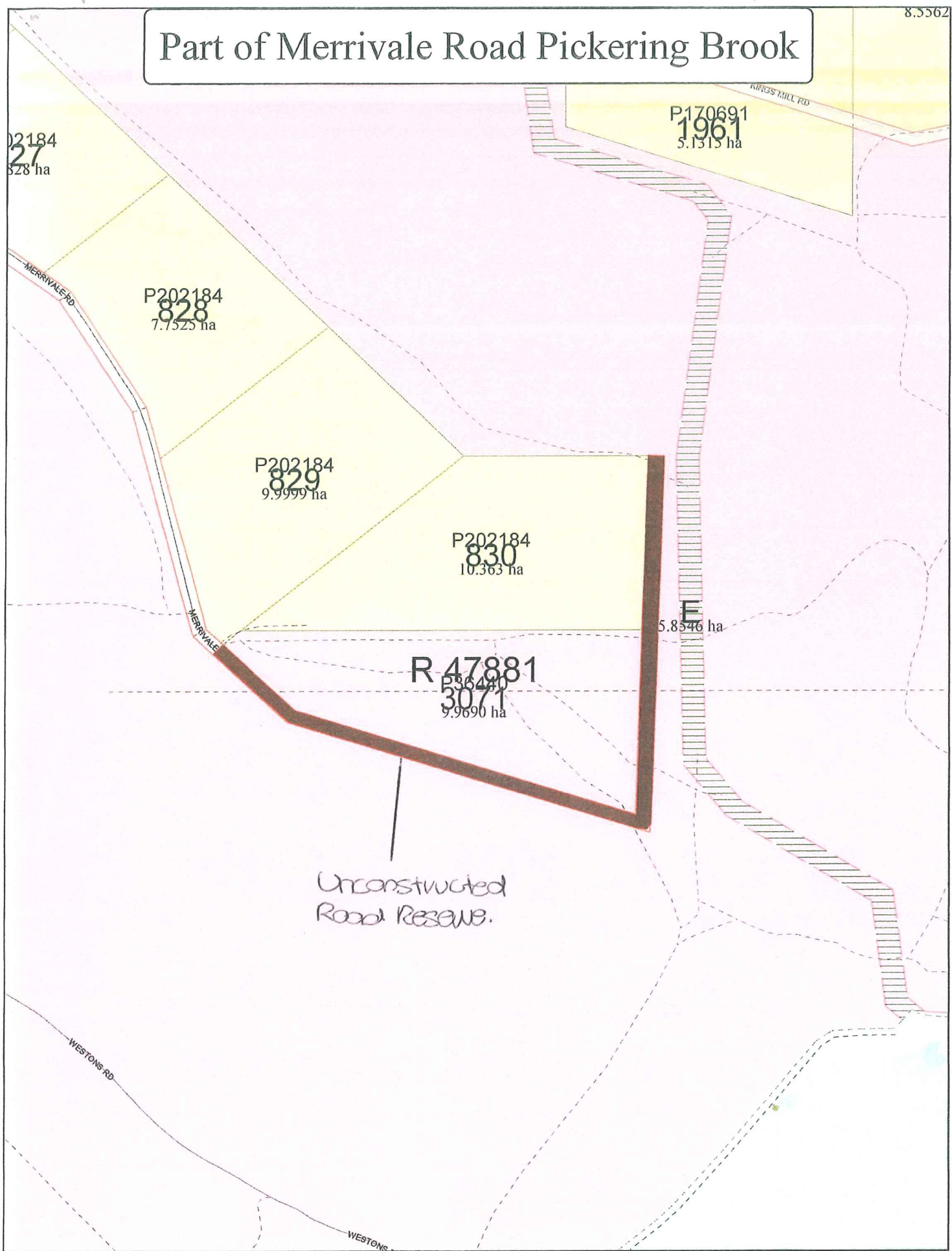


Government of Western Australia
Department of Lands



The Department of Lands has a new Post Office Box. PO Box 1221 West Perth WA 6872. Please update your records accordingly. Thank you

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Scale : 1:6197 (Geographical)
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Printed : 15:24 Tue 28/Mar/2017
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Government of Western Australia
Department of Parks and Wildlife

Parks and Visitor Services
Policy and Planning Group, Land Unit

Your ref:

Our ref: 2010/004837

Enquiries: Anne Greig

Phone: (08) 9219 9790

Email: anne.greig@dpaw.wa.gov.au

Sarah Hardman
221 Merrivale Rd
Pickering Brook WA 6076

Dear Sarah

Access to 221 Merrivale Road, Pickering Brook (Lot 830 on Plan 202184) through Korung National Park (Reserve 47881)

The Department of Parks and Wildlife understands that you are in the process of selling 221 Merrivale Road and that you wish to confirm that the current access via Korung National Park to 221 Merrivale Road will be available to any future owner of this property.

Parks and Wildlife Perth Hills District has no objection to this continuing permissive access arrangement to 221 Merrivale Road subject to the following conditions:

1. that the future owner of 221 Merrivale Road confirm their intention, by writing to Parks and Wildlife's Perth Hills District Manager, to use this access route and their agreement to the conditions outlined in this letter;
2. that the only permitted access through Korung National Park will be via the existing track from Merrivale Road aligned alongside the neighbouring property at 211 Merrivale Road (Lot 829 on Plan 202184) to the southwest corner boundary of 221 Merrivale Road;
3. Parks and Wildlife accepts no liability for any accident, injury or claim for damages caused to any person, machinery, equipment or other thing using the firebreak or track to access 221 Merrivale Road;
4. Parks and Wildlife provides no guarantee of the serviceability of the track;
5. any maintenance to the track, including road works and clearing of encroaching vegetation, to retain access or to ensure serviceability is to be paid for by the landowner of 221 Merrivale Road and only those works that have been approved in consultation and by agreement with Parks and Wildlife Perth Hills District are to be completed;
6. that the future owner of 221 Merrivale Road acknowledges the risk from natural disaster or wildfire / bushfire caused by living on a property with restricted vehicular access and that measures are taken to mitigate these risks. For example, considering and possibly implementing advice provided by the Fire and Emergency Services Authority of WA and the Shire of Kalamunda; and
7. Parks and Wildlife reserves the right to review or cancel this arrangement at any time to amend or realign access but will only do so in consultation with the owner of 221 Merrivale Road. The owner may apply for an easement or excision from class A Korung National Park to formalize access to the property.

The Perth Hills District is located at 275 Allen Road, Mundaring. Phone: 9290 6100. Email: mundaring@dpaw.wa.gov.au

Yours sincerely


Anne E. Greig
Land Services Officer



14 December 2015

City of Kalamunda

Parks and Visitor Services Division:
17 Dick Perry Avenue, Technology Park, Kensington
Locked Bag 104, Bentley Delivery Centre, Western Australia 6983
www.dpaw.wa.gov.au



Minister for Planning; Culture & the Arts
Government of Western Australia

Our Ref: 33-31524

Ms Sarah Hardman
221 Merrivale Road
PICKERING BROOK WA 6076

Dear Ms Hardman

221 MERRIVALE ROAD, PICKERING BROOK

Thank you for your email of 16 December 2015 regarding the above property.

I have noted the contents of the letter dated 14 December 2015 from the Department of Parks and Wildlife (DPaW). Officers of the Department of Planning have confirmed that the land through which you access your property is part of the Korung National Park (Reserve 47881).

Reserve 47881 is owned by the State and managed by DPaW. The formalisation of your access arrangements through the Reserve is therefore a matter which would need to be agreed with that Department. DPaW falls under the ministerial portfolio of the Minister for Environment, Hon Albert Jacob MLA.

While I am unable to assist in resolving your concerns, I have referred your email to Minister Jacob for his consideration.

I appreciate you raising this matter with me and trust the above information is of assistance.

Yours sincerely

JOHN DAY
MINISTER FOR PLANNING;
CULTURE AND THE ARTS

4 JAN 2016



Hon Albert Jacob MLA
Minister for Environment; Heritage

Our Ref: 50-11811

Ms Sarah Hardman
221 Merrivale Road
PICKERING BROOK WA 6076

Dear Ms Hardman

I refer to your email dated 16 December 2015 requesting assistance in formalising access to your property in Pickering Brook. As the Minister responsible for the Environment portfolio, including matters relating to Crown land classified as class 'A' reserve such as Korung National Park, your email has been referred to me by Hon John Day MLA, Minister for Planning.

I am pleased to note from your correspondence that staff from the Department of Parks and Wildlife have been helpful in trying to assist you. I understand the Department provided you with an informal access agreement by way of letter, intended to be sufficient evidence to alleviate any concerns over access, which was unfortunately not accepted by the prospective buyer's bank.

I have asked Parks and Wildlife to seek approval from the Conservation Commission of Western Australia for the creation of an easement over the portion of Korung National Park that is used for access to your property. If endorsed by the Conservation Commission, the easement process can then be finalised by the Department of Lands. In accordance with the *Land Administration Act 1997*, this will require the matter to be laid before both Houses of Parliament by the Minister for Lands. I have copied the Minister for Lands, Hon Terry Redman MLA, into this letter to assist in this process.

I trust that in the interim this letter will be sufficient evidence of the intention to formalise legal access to your property.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Albert Jacob', written over a circular stamp.

Albert Jacob MLA
MINISTER FOR ENVIRONMENT; HERITAGE

cc: Hon Terry Redmond MLA, Minister for Lands
Hon John Day MLA, Minister for Planning

04 FEB 2016



Government of **Western Australia**
Department of **Lands**

Our ref: 39-22563 160579
Enquiries: Jay Colton 6552 4589
jay.colton@lands.wa.gov.au

Ms Sarah Hardman
221 Merrivale Road
PICKERING BROOK WA 6076

Dear Ms Hardman

**ACCESS EASEMENT OVER KORUNG NATIONAL PARK (RESERVE 47881) –
PICKERING BROOK, SHIRE OF KALAMUNDA**

I refer to the letter dated 4 February 2016 from the Hon Albert Jacob MLA, Minister for Environment; Heritage to you which was copied to the Hon Terry Redman MLA, Minister for Lands.

The Department of Parks and Wildlife has recently contacted this Department to bring attention to this matter. The Department's internal Assessment team is currently investigating the proposed grant of an 'access' easement over that portion of Korung National Park (Class A Reserve 47881) used as the access to your freehold Lot 830 on Deposited Plan 202184. This assessment will include an investigation into the history of the land and a determination of whether native title is extinguished.

It is my understanding that the Department of Parks and Wildlife and the Conservation Commission of WA have provided their support to the proposed easement.

As the proposed grant of an easement under section 144 of the *Land Administration Act 1997* (LAA) is through Crown land which is classified as a Class A reserve, the Minister for Lands must cause the proposal to be laid before each House of Parliament. This process will be conducted by the Department of Lands and as this will likely take some time to complete you can contact Jay Colton with any queries on 6552 4589 or jay.colton@lands.wa.gov.au. Jay's details can be passed on to any prospective purchaser if they wish to discuss the matter.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Cecelia Smith'.

Cecelia Smith
Manager
Metropolitan and Peel Region

23 February 2016

82 Merrivale Rd.
Pickering Brook
W.A. 6076

14th December 2016

The Manager
Department of Lands
West Perth

Attention; Cecelia Smith

ACCESS EASEMENT OVER KORUNG NATIONAL PARK (RESERVE 47881) – PICKERING BROOK, SHIRE OF KALAMUNDA

Dear Cecelia,

I would like to draw your attention to our application for a statutory formalisation of appropriate access easement to our property at 221 Merrivale Road Pickering Brook dated 20th January 2016.

I have enclosed a copy of the map showing the proposed access easement and copies of the correspondence that took place 12 months ago.

I have sent an email and made several phone calls to Jay Colton to enquire as to the progress of this application but have never received a reply.

I appreciate that the process does take some time but I want to ensure that all is in order and that the application is in the system.

I look forward to hearing from you.

Yours sincerely



Gillian Fantuz

cc: Anne E Greig Land Service Officer, Department of Parks and Wildlife

4.6. RESERVE CLASSIFICATIONS

The *Land Act 1933* provided for reserves of Crown land to be classified as Class A, B or C reserve.

Under the LAA, there is only one classification for reserves – Class A reserves. All other reserves are simply known as “reserves”. However existing Class “B” reserves are continued by the LAA’s transitional provisions (see paragraph 4.6.2).

4.6.1. CLASS A RESERVES

4.6.1.1. INTRODUCTION

Class A reserves afford the greatest degree of protection for reserves of Crown land created under the LAA. The “A” classification is used solely to protect areas of high conservation or high community value.

As a matter of policy, Lands Division officers should take into consideration principles including but not limited to the following when proposing to classify Class A reserves:

- Where reserved land has special values warranting a very high level of protection,
- “A” classification should not be created without restraint, as the perceived value of such classifications may otherwise be degraded, and because of the substantial overheads involved in modifying such reserves;
- Reserves should not be given an “A” classification without reference to and agreement by the Department of Industry and Resources (DOIR) because of the constraints on accessing class “A” reserves for mining, resource development and other uses;
- Cabinet may direct “A” classification for specified reserves or a particular category of reserves;
- Regard must be had to the requirements of the *Native Title Act 1993* and associated policies, before proceeding with an “A” classification.

4.6.1.2. AMENDMENT OF CLASS A RESERVES

Under the *Land Act 1933*, class A reserves were, subject to certain actions under section 31(4) of that Act only amended by an Act of Parliament. Under the LAA, the process to amend Class A reserves has been modified.

As a general rule, with the exception of class A CALM reserves, amendments of Class A reserves under the LAA do not require an Act to be presented before both Houses of State Parliament.

Under the LAA, class A reserves can be amended in one of 2 ways:

- Where the amendments are of a minor nature, those amendments may be made by the Minister making a Ministerial order.

Reserves

Chapter 4

What constitutes a minor amendment is set out in section 42(3) of the LAA. Minor amendments include:

- adding Crown land to a class A reserve (Refer Form LAA - 1100– Order for Addition of Land to Class “A” Reserves);
- amending Class A reserves for the purpose of correcting unsurveyed boundaries provided that the area of the reserve is not reduced by more than 5%;
- excising 5% or one hectare, whichever is the lesser, of the area of a class A reserve for the purpose of public utility services;
- redescribing locations or lots or adjusting areas of locations or lots within a class A reserve provided that the external boundaries of the class A reserve do not change; and
- amalgamating 2 or more class A reserves having a similar purpose and the same management body (Refer Form LAA - 1097 – Amalgamation Order for Class “A” Reserves).

Please note, forms are to be completed by RDL staff only, however examples of completed forms are available on RDL’s website (see State Land – Forms) for information purposes only).

- Where the amendments are not of a minor nature (that is, do not come within any of the above 5 types of amendments), the Minister can only amend a Class A reserve by tabling the proposal in both Houses of Parliament in accordance with section 43 of the LAA.

What constitutes a major amendment is set out in section 42(4) of the LAA. Major amendments include:

- reducing the areas of, or excising an area from, a class A reserve for a purpose other than the correction of unsurveyed boundaries or for public utility services – Section 42(4)(a);
- excising an area from a class A reserve for the purpose of creating a road - Section 42(4)(b);
- cancelling a class A reserve - Section 42(4)(c);
- changing the purpose of a class A reserve - Section 42(4)(c); or
- changing the classification of a class A reserve - Section 42(4)(c).

Under section 43, the proposal to amend a Class A reserve can only proceed where:

- a disallowance motion to the proposal is not made within 14 sitting days of either House of Parliament; or
- a disallowance motion is made within the 14 sitting days, debated and lost in 30 sitting days.

Where the disallowance motion is not debated within 30 sitting days, the proposal to amend the Class A reserve lapses and the process must be started all over again.

The number of sitting days for the tabling of a proposal to amend a Class A reserve can be counted across different sessions of Parliament and across different Parliaments – Section 43 (2) and (3) of the LAA.

Any amendment of a Class “A” reserve can only be made after the Minister has advertised his or her intention to make those amendments in a newspaper circulating throughout the State 30 days before making that order – Section 42(5) of the LAA.

Chapter 4

Reserves

Quality Assurance Procedures within RDL state, that Members of Parliament representing the region affected by the proposal from both houses are advised of the impending advertisement and tabling of the proposal.

Quality Assurance procedures also make reference to the preparation and submission for a correction to a submission tabled before Parliament.

4.6.2. CLASS B RESERVES**4.6.2.1. INTRODUCTION**

Class “B” reserves were created under the *Land Act 1933*. Those class B reserves remaining under the *Land Act 1933* continue and remain so classified as if the *Land Act 1933* had not been repealed. Class B reserves cannot be created under the LAA.

4.6.2.2. CANCELLATION OF CLASS B RESERVES

Class B reserves can only be cancelled by the Governor by proclamation in accordance with section 31(2) of the *Land Act 1933* by order made under the LAA (see clause 14(6)(a) of schedule 2 of the LAA)

The Minister for Lands may continue to deal with Class “B” reserves created under the *Land Act 1933* provided that, should the reservation be required to be cancelled, the Minister must make an order under the LAA and also present a special report to both Houses of Parliament setting out the reasons for the cancellation and the purpose to which the land is intended to be used. The report must be made to both Houses of Parliament within 14 days from the date of cancellation, if Parliament is already in session, and if not, within 14 days after the commencement of the next session of Parliament: Section 31(2) of the *Land Act 1933*.

4.6.3. CLASS C RESERVES

Class C Reserves were created under the *Land Act 1933*. Class C Reserves cannot be created under the LAA.

4.9.1. EASEMENTS OVER CLASS A RESERVES

Policy 8.1.7 in the Government Land Policy Manual (please note this manual is not available on this website – please contact RDL's Lands Division, State Land Services for further information) deals with easements over Class A reserves.

Once a reserve has been classified as a Class A reserve for a particular purpose, the Minister can only grant an easement under section 144 of the LAA or permit the creation of an easement (under section 148 of the LAA) over a Class A reserve under section 44 of the LAA. An easement over a Class A reserve can only be granted where:

- the Minister advertises his or her intention to so act in a newspaper circulating throughout the State, and
- a proposal for the easement is laid before both Houses of Parliament in accordance with the procedure set out in section 43 of the LAA.

The Minister must advertise his or her intention in a State newspaper not less than 30 days before granting an easement or permitting the freehold owner of a Class A reserve to issue an easement. The advertisement must detail the reason for granting the easement and the purpose of the easement.

Under section 43, the easement can only proceed where:

- a disallowance motion to the proposal for the easement is not made within 14 sitting days of either House of Parliament; or
- a disallowance motion to the proposal for the easement is made within the 14 sitting days, debated and lost in 30 sitting days.

Where the disallowance motion is not debated within 30 sitting days, the proposal to grant the easement lapses and the process must be started all over again.

The number of sitting days for the tabling of a proposal to grant an easement over a Class A reserve can be counted across different sessions of Parliament and across different Parliaments: see section 43(2) and (3) of the LAA.

Easements over Class A reserves should be avoided, wherever possible. Use of existing roads or other 'corridors' through such reserves is to be encouraged. Where it is necessary to grant an easement through an A Class Reserve, the easement and the services it protects should constitute minimal interference with the reserve's values and use and enjoyment by the public.

The easement purpose should complement at least or be compatible with the purpose of the reserve. For example, a gas pipeline through a show ground reserve or an easement that requires substantial land clearing through a flora conservation reserve may not be appropriate. If such easements are essential, it will be necessary to ensure adequate conditions are contained in the easement document to provide protection and/or compatibility between the two purposes or to excise the area from the reserve.

The Manager of the relevant State Land Services region should ensure that any high-risk easement (eg. gas pipeline) through a Recreation or high public use reserve makes comprehensive provisions to safeguard users against danger (eg. encasing pipe in concrete) and the agreed Crown indemnity clause is used.

Where a Class A reserve is the subject of conditional tenure under section 75 of the LAA, and the landowner proposes to grant an easement using his powers under section 148 of the LAA, Registration Services should not accept such easement without first ensuring that 30 days' notice of intent has been published in the newspaper and approval on behalf of the Minister has been granted after tabling in Parliament.

Chapter 4

Reserves

No other transaction is permitted over a Class A reserve. If a particular transaction is essential over part of a Class A reserve, the land must first be excised from the Class A reserve and brought back to unallocated Crown land. The tabling process for excision of the land in section 43 of the LAA must be followed. See Paragraph 4.6.1.2 for details of this process.

Once the land becomes unallocated Crown land, the powers of the Minister under the LAA can apply.

4.9.2. TRANSACTIONS OVER RESERVES

Transactions under the LAA over reserved land are dependent upon whether or not the reserved land is managed or unmanaged.

4.9.2.1. TRANSACTIONS OVER MANAGED RESERVES

Where a reserve is classified for a specific purpose and placed under the care, control and management of a management body, the management body may deal with the reserved land subject to -

- the express powers granted to that management body in the Management Order; and
- the consent of the Minister for Lands under section 18 of the LAA.

It should be noted that section 46 (3b) of the LAA provides that where a management order has been issued to a state government agency or a Minister, the consent of the Minister for Lands under section 18 of the LAA to a dealing in that reserve is not required unless the management order specifically requires such consent. Section 18(8) (d) of the LAA also sets out some exceptions when prior ministerial approval under section 18 is not required.

4.9.2.2. POWERS OF LOCAL GOVERNMENT UNDER THE *PARKS & RESERVES ACT 1895*

Section 3.54 of the *Local Government Act 1995* empowers Local Governments to exercise certain powers for the purpose of controlling and managing reserves placed under their care, control and management by the *Land Act 1933* and, following its repeal, by the LAA.

Under this section of the *Local Government Act 1995*, Local Governments have certain powers under section 5(1) of the *Parks and Reserves Act 1895* to control and manage reserves, including the power to grant licences for

- the de-pasturing of animals on reserves; and
- the removal of any sand, gravel or other earth or mineral, and for cutting and removing wood.

With the exception of section 5 of the *Parks and Reserves Act 1895* as it relates to the exercise of certain management powers in relation to reserves by Local Government under the *Local Government Act 1995*, most of the management issues relating to reserves of Crown land are now covered by Part 4 of the LAA.

The powers exercised by Local Government over reserves under the *Local Government Act 1995* are statutory powers given to Local Government, and are in addition to the powers under the LAA. Licences prepared and entered into by Local Government (using the powers of a Board appointed under the *Parks and Reserves Act 1895*) are licences granted by Local Government under the *Parks and Reserves Act 1895*.

However, Officers within the Directorate should note that section 5(1a) of the *Parks and Reserves Act 1895* clearly provides that, unless the purpose of the reserve is the same as that

8.4.3. EASEMENTS OVER CLASS A RESERVES

Section 44 of the LAA requires that any proposal to grant an easement over a Class A reserve should be:

- advertised in a State-wide newspaper;
- no sooner than 30 days after advertisement, tabled in both Houses of Parliament.

Easements over Class A reserves should be avoided, wherever possible. Use of existing roads or other 'corridors' through such reserves is to be encouraged. Where it is necessary to grant an easement through an A Class Reserve, the easement and the services it protects should constitute minimal interference with the reserve's values and use and enjoyment by the public.

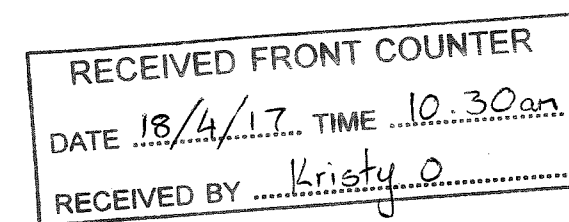
Where after careful consideration it has been agreed that an easement should be created over a Class A Reserve, the Lands Division is to arrange preparation and publication of newspaper advertisement 30 days prior to issuing or granting approval to an easement through a Class A Reserve. Notice for tabling in Parliament may be prepared at the same time. Newspaper advertisements must detail reason, purpose, extent and grantee of the proposed easement. Advertisement must also occur 30 days before action/approval to ensure that easement occurs.

State Land Services Managers of the Lands Division should ensure that any high-risk easement (for example, gas pipeline) through a Recreation or high public use reserve makes comprehensive provisions to safeguard users against danger (for example, encasing pipe in concrete) and the agreed Crown indemnity clause is used.

An LAA Easement cannot be granted over CALM Act Reserves for purposes inconsistent with the CALM Act. *(Note however, that the LAA may be amended to enable easements to be granted over CALM Act land for any purpose).*

Where a Class A reserve is the subject of conditional tenure under section 75 of the LAA, and the landowner proposes to grant an easement using his powers under section 148 of the LAA, Registration Services should not accept such easement without first ensuring that 30 days' notice of intent has been published in the newspaper and approval on behalf of the Minister has been granted after tabling in Parliament.

RDL Officers should relate to Policy 8.1.7 in the Government Land Policy Manual which relates to easements over Class A reserves



C.E.O
KALAMUNDA SHIRE
2 RAILWAY RD.
KALAMUNDA.
L.P 6076