



Our Ref: O-34419
Enquiries: Stuart Dyson

21 March 2018

Attention Mr J. Engelke – General Manager
Kimberley Agricultural Investment P/L
PO Box 2531
Kununurra, WA 6743

Dear Jim,

Re: Carlton Hill Road

We refer to your letter dated 29 August 2017 and our meeting at your offices on the 15 March 2018 regarding changing the status of Carlton Hill Road from reserve to access easement.

The Shire's planning department has provided the following advice.

The dedication of the road to the KAI freehold lot was undertaken under section 24KA of the Native Title Act 1993 (NTA), which uses the non-extinguishment principle, i.e. native title rights and interests continue to exist.

However, to create an easement over this section of the road the NTA cannot be used, on the basis that a road is public work that can be used by the general public, however an access easement will just provide for private access and use and is not for public works. Therefore the creation of an easement will require either the native title rights or interests to be taken (NOITT process), or for an ILUA to be entered into to confirm that native title rights and interests are not extinguished. Entering into an ILUA is always DPLH's preference. In either instance there is usually some benefit negotiated to the native title holders.

So an ILUA is only required if KAI want the road to be closed and an easement to be created instead. The alternative is that it remains as a public road, and the Shire and KAI come to an agreement in regard to constructing and maintaining the road to an agreed standard.

Planning also had a look through the Ord Final Agreement (OFA), to see what agreements were in place regarding establishing access to the proposed CPC Freehold Area to Consolidated Pastoral Company (Lessee and owner before KAI). Clause 54.2 of the OFA required the pastoral lessee to "provide public road access to the CPC freehold area", with administrative assistance from the State.

Yours faithfully

Stuart Dyson
Director Infrastructure