



# Trade & Investment Crown Lands

Our Ref: 13/10842  
Contact Officer: John Davis  
Phone No: (02) 6391 4305  
Email: [john.davis@lands.nsw.gov.au](mailto:john.davis@lands.nsw.gov.au)

Mail: Crown Lands Division  
P.O. Box 2185  
DANGAR NSW 2309  
Phone No: (02) 6391 4300  
Fax No: 6362 3896  
Email: [OrangeCrownLands@lands.nsw.gov.au](mailto:OrangeCrownLands@lands.nsw.gov.au)  
Website: [www.lands.nsw.gov.au](http://www.lands.nsw.gov.au)

Mr Matthew Johnson  
Manager  
Community & Culture  
Lithgow City Council  
PO Box 19  
LITHGOW NSW 2790

Lithgow City Council

Scanned

09 DEC 2013

Doc. No.....  
GDA Ref.....  
Years.....

2<sup>nd</sup> December 2013

Dear Sir,

I refer to your letter dated 21<sup>st</sup> November 2013 concerning a request for further works at Pearson's Lookout situated on Lot 7308 DP 1130828 Parish of Bandamora County of Roxburgh.

Thank you for your advice concerning the expected completion before Christmas 2013 of previously approved works which essentially involved maintenance of the site.

It is advised that as there is no record in this office of any extinguishment of Native Title over this area of Crown Land, this Department cannot authorize any further works which would involve the construction of any new facility, including a proposal for a viewing platform on the site.

Unfortunately for the reason stated above, this Department must decline Council's request.

Yours faithfully,

John Davis  
For Area Manager,  
Crown Lands Division,  
Orange



Trade & Investment  
Crown Lands

Lithgow City Council

Scanned

07 MAR 2014

Our Ref: 13/10842  
Your Ref: Matthew Johnson

Doc. No.....  
GDA Ref.....  
Years.....

Mr Roger Bailey  
General Manager  
Lithgow City Council  
P.O. Box 19  
Lithgow NSW 2790

3 March 2014

Dear Mr Bailey

**Proposed viewing platform at Pearsons Lookout - Capertee**

I refer to your request of 21<sup>st</sup> November, 2013 and to my Orange Office's subsequent reply of 2nd December 2013, concerning the proposed installation of a viewing platform at Pearsons Lookout. This matter has been referred to me by my Director West Michael Kneipp for further investigation and additional response.

The land in question at Pearsons Lookout is reserved generally (755758) for future public requirements with an additional purpose of communication facilities, which appears unrelated to this specific parcel. There is no Trust manager in place and therefore the land is managed by NSW Trade and Investment, Crown Lands.

In May 2013, NSW Trade and Investment, Crown Lands gave permission to Council to upgrade existing infrastructure at the Lookout. These works included grading and resurfacing with crushed granite, replacement of the fence, removal or repair of the obelisk and installation of a feature sign.

In giving approval to any works on Crown lands, NSW Trade and Investment, Crown Lands must consider the land, its capabilities and suitabilities; the tenure of the land or reserve purpose and any Native Title implications in respect of the proposed development. In granting approval to those works it was determined, in respect of Native Title, that the upgrade of existing infrastructure was a low impact future act and thus Native Title was not a factor. Permission was accordingly given, although it is noted that Council does not have any formal control over the land.

Council then wrote to the Department on 21<sup>st</sup> November, 2013 seeking approval to the establishment of a viewing platform on the land. This is not an upgrade or maintenance of existing infrastructure, this is new infrastructure and the provisions of the Commonwealth Native Title Act must be considered prior to any approval being granted. Given the absence of any past act that might have extinguished Native Title the Department was unable to approve the proposed viewing platform and advised Council of this by letter of 2<sup>nd</sup> December, 2013.

It is clear that the addition of this viewing platform would enhance the visitor experience at the lookout and would be a worthwhile addition. It is also clear that responsibility for ongoing maintenance of the existing infrastructure and any new infrastructure placed on the reserve is an unresolved issue.

WAGGA WAGGA OFFICE  
Corner Johnston and Tarcutta Streets  
Wagga Wagga NSW 2650

PO Box 2155  
Danger NSW 2309  
1300 886 835

ABN 33 537 762 019 | [www.lpma.nsw.gov.au](http://www.lpma.nsw.gov.au)

Subdivision L of the Commonwealth Native Title Act provides the validation of future acts if they are deemed to be a 'low impact' future act. If the proposed viewing platform was designed in such a way that it could be removed, if at any time in the future Native Title was deemed to have existed, then I believe it could be considered a low impact future act for the purposes of Native Title.

If this determination could be made then NSW Trade and Investment, Crown Lands would have resolved this issue in relation to considering approval of the proposed viewing platform. However, this would not resolve the ongoing management and maintenance issue. For this I believe that Council needs to be given control of the land in some capacity. This would then ensure that Council was expending its funds on land that it either owned or controlled, which is not that case at present. It would also ensure that NSW Trade and Investment was not liable for future maintenance of infrastructure that it did not construct.

In its current state as a reserve for Future Public Requirements, the reserve is not considered an operational reserve. I believe however that the land could be re reserved for Environmental Protection and Access. Whilst re-reservation does also impact on Native Title I feel that given the land, its zoning and its capabilities, there is likely to be very little additional development that could be approved over such a reservation that is not already in place or proposed. I would therefore consider the reservation for those purposes as a low impact future act for the purposes of Native Title.

In reserving for these purposes, action could be taken simultaneously to appoint Council as trust manger of the reserve, thus eliminating my concerns about expenditure of Council funds on land that it does not control and ongoing liabilities.

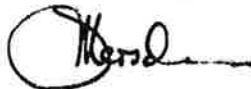
An alternative to reservation would be for Council to acquire the land required for the lookout, under its legislation and in this regard compensation would need to be assessed in accordance with the Land Acquisition (Just Terms Compensation) Act 1991.

I believe that reservation of the Whole of Lot 7308 for Environmental Protection and Access and Council's acceptance as Trust Manager of the reserve created, is the most appropriate way forward.

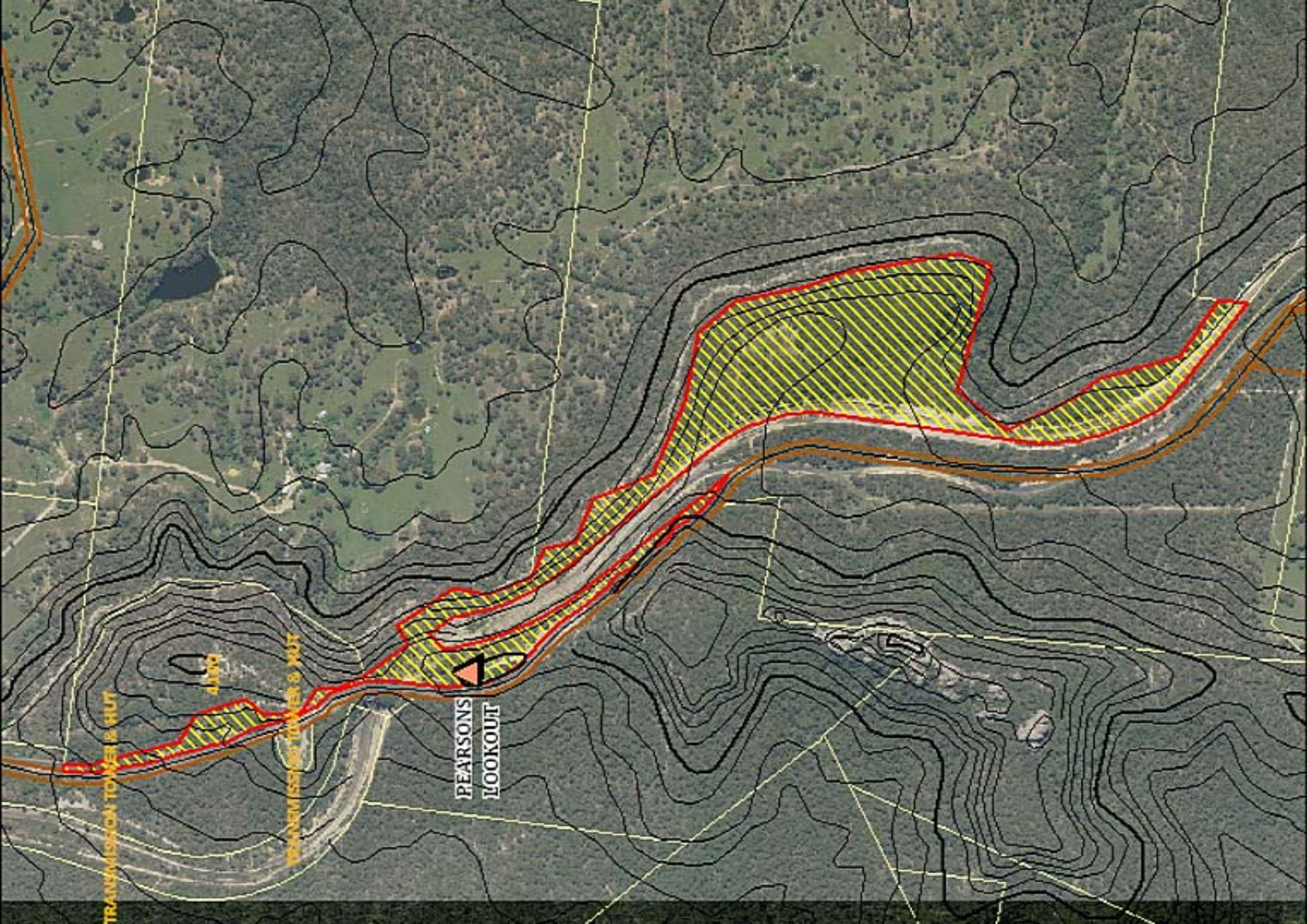
If this is acceptable to Council, then I am able to accede to its request to install the viewing platform, as the fundamental issues of Native Title and future management of the infrastructure, will have been resolved to NSW Trade and Investment, Crown Lands satisfaction.

I welcome the opportunity to discuss this and can be contacted at [grant.marsden@lands.nsw.gov.au](mailto:grant.marsden@lands.nsw.gov.au) or on 02 6937 2704.

Yours sincerely



**Grant Marsden**  
South West Area Manager  
NSW Trade and Investment, Crown Lands



TRANSMISSION TOWER & HUT

4100

TRANSMISSION TOWER & HUT

PEARSONS  
LOOKOUT