

Consultation Paper:

Consent Requirements for Easements and Restrictive Covenants

Landgate 2025



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1. Background

Registered easements and restrictive covenants are interests in land that control the use of the land for the benefit and protection of landowners, the public, a local government or public authority.

An easement is an interest attached to a parcel of land that gives another landowner, local government or public authority a right to use a part of that land for a specified purpose. Generally, an easement has a servient tenement (burdened land) and a dominant tenement (benefited land). An easement in gross refers to an easement that provides benefit to a single entity, such as a local government or public authority and does not have a dominant tenement.

Examples of an easement include rights of carriage way and rights to light and air. While an easement in gross includes rights to install and operate drains and drainage works, or rights to install, maintain and operate electric power lines, telephone and other cables.

A restrictive covenant is an agreement or the imposition of a restriction on the use of land such that the value and enjoyment of adjoining land will be preserved. Generally, restrictive covenants must:

- Directly control the use of the land of the covenantor
- Benefit the land of the covenantee
- Be negative in their content; and
- Be intended by the parties creating them to run with the land.

Examples of restrictive covenants include estate covenants, which preserve a certain standard for the construction of dwellings within an estate; or a protected view covenant which applies a restriction to the height of dwellings and treescapes on a subdivided lot to preserve the views on an adjoining lot.

The registration of the creation, modification or removal of a restrictive covenant or easement on a land title in Western Australia (WA) is bound by legislative requirements. Most significant of these being the requirement to obtain written consent to enable registration, from parties with an interest registered or otherwise in the affected land, in accordance with the legislation.

The process of obtaining consents can be a roadblock in the land development and registration process in WA. It is widely noted across industry that the process is often onerous, costly and creates hurdles for the progression of land developments to market.

The Minister for Lands, the Honourable John Carey BA MLA approved the commencement of a consultation process between Landgate and stakeholders, including industry groups and professionals, regarding the consent requirements in WA on 28 June 2024.

2. Purpose

The purpose of this Consultation Paper is to generate discussion, review the current legislation and consider future options with respect to the requirements for obtaining consent to enable registration of the creation, modification and removal of restrictive covenants and easements.

This Consultation Paper aims to identify current issues and generate stakeholder discussion on the identified issues in obtaining consent to enable the registration of the creation, modification and removal processes of easements and restrictive covenants. The paper will include a number of questions that aim to assist in the facilitation of valuable stakeholder feedback.

Landgate further seeks to determine if the legislative requirements are up to date, fit for purpose and whether they meet the needs of Landgate's stakeholders, a directive that aligns with the Public Sector Commission's guidelines for reviewing legislation.

Stakeholders are invited to consider future options for reform of the current processes outlined within this Consultation Paper relating to obtaining consents to enable registration of the creation, modification and removal of both restrictive covenants and easements.

3. Issues

3.1 Clarity and Consistency of Requirements

The legislative requirements of easements and restrictive covenants in WA are governed under five separate pieces of legislation, dependent on the method in which they are created, modified or removed. This includes the:

- *Transfer of Land Act 1893* (TLA)
- *Strata Titles Act 1985* (STA)
- *Community Titles Act 2018* (CTA)
- *Planning and Development Act 2005*; and
- *Land Administration Act 1997*.

The *Planning and Development Act 2005* (PDA) and the *Land Administration Act 1997* (LAA) are administered by the Department of Planning, Lands and Heritage (DPLH) and therefore do not form part of this consultation paper and subsequent discussion.

Despite the PDA and LAA not being considered for potential reform at this time, these Acts currently provide for the creation of an easement in gross, however, do not contain provisions allowing the modification and removal of such an easement. The modification and removal of an easement in gross created under the PDA or LAA depend on section 129B of the TLA. It is important to consider these dependencies when contemplating any potential legislative reform.

Under the TLA, STA and CTA, there are multiple methods by which a person, or local government or public authority can create, modify and remove an easement or restrictive covenant and the consent requirements for registration vary based on this methodology. For ease of review, the relevant consent requirements have been outlined in the tables under the 'WA Legislation' header at section 4 of this document.

It is recognised that the inconsistency between the requirements creates uncertainty surrounding the requirements under the legislation, which could result in an unintentional unlawful dealing, breach or non-compliance.

Questions for consideration

Q1. Under the TLA, s.129A and s.129BA contain different consent requirements. In practice do these requirements need to stay separate and distinguished from one another?

Q2. Are there any foreseeable issues with forming one streamlined consent process to enable registration of the creation of all easements and restrictive covenants?

Q3. Are there any foreseeable issues with forming one streamlined consent process to enable the registration of the modification or removal of all easements and restrictive covenants?

Q4. Should easements and restrictive covenants be evaluated separately to establish their consent prerequisites?

3.2 Definitions and Terminology

The STA and CTA have some definitions which specifies whose consent is required. The STA refers to a 'designated interest' which has been defined in s.3 of the STA as:

- a registered mortgage,
- a registered lease,
- a caveat recorded under the TLA,
- the interest of a judgment creditor named in a property seizure and sale order under the TLA,
- the interest of a person named in a memorial registered under the TLA as having a statutory right,
- a plantation interest registered under the TLA, and
- a carbon covenant registered under the TLA.

The STA requires the written consent from the holder of each designated interest, as defined in that Act, over the 'common property or a lot' affected by an amendment of scheme plan that creates or discharges an easement or restrictive covenant. Stakeholders have raised queries as to whether the 'common property or a lot' refers to the entire common property or lot, or whether it refers only to the part of the common property or lot affected by the creation or discharge of the easement or restrictive covenant. On a large parcel of land, a broad interpretation could significantly increase the number of required consents to enable the registration of an amendment of scheme plan.

The CTA requires the consent for the amendment of a scheme plan that creates or discharges an easement or restrictive covenant from the holder of a 'type 1 interest' and a 'type 2 interest' over common property or a lot affected by the amendment, which is defined in s.3 of that Act.

A type 1 interest is defined as:

- the interest of a person who holds the remainder or reversionary interest in land comprised of a lot in a community titles scheme,
- a registered mortgage,
- the interest of a judgment creditor named in a property seizure and sale order registered under the TLA,
- the interest of a person named in a memorial registered under the TLA as having a statutory right,
- a plantation interest registered under the TLA,
- a carbon covenant registered under the TLA,
- a carbon right registered under the TLA, or
- a profit à prendre registered under the TLA.

A type 2 interest is defined as:

- a registered lease, or
- a caveat recorded under the TLA.

Again, it is not clear as to whether the 'common property or a lot' affected refers to the entire common property or lot, or whether it refers only to the part of the common property or lot that is affected by the creation or discharge of the easement or restrictive covenant.

In comparison, the language and terminology used to describe the consent requirements in the TLA is more generic. The TLA uses the terms 'land affected', 'registered interest', and 'persons interested in land affected'. None of these terms are defined within this Act to provide more clarity on the limitations of 'a registered interest', 'persons interested', boundaries of the 'land affected', or whether the 'land affected' incorporates both burdened and benefited lands.

Without clear definitions, the terminology contained within the legislation is subject to interpretation, and while Landgate has done its best to ensure that the expectations and accepted interpretation is communicated broadly, new issues may arise which could affect how the legislation is interpreted and applied.

The process of partial removal of an easement or restrictive covenant can be problematic due to the lack of clarity with identifying parties required to consent and a person may be legislatively required to consent with no practical vested interest or benefit.

Questions for consideration

Q5. Who should be considered to be 'a person with a registered interest' or 'persons interested'? Should the definition be the same regardless of individual scenario?

Q6. How should the parties required to consent be defined? i.e. in legislation, in regulations, or other?

Q7. Should the 'affected land' be considered as a whole, or just the distinctive area where an encumbrance and land intersect? i.e. is land considered wholly affected once just a portion of the land is affected by an encumbrance?

3.3 Identification

The identification of the holder of a registered interest is also recognised as a common issue. Under the TLA, the identification of 'who' is required to consent involves searching numerous titles. Combine this with the uncertainty of the definitions and interpretation, the searches may return a broader or narrower scope of persons than are required by the legislation to consent under the legislation, including persons which appear to have no practical benefit or connection to the land. Performing unnecessary searches can be expensive and time consuming.

There may be instances in which the identification of the 'person with a registered interest' is no longer current and a service address has not been maintained, which further adds complexities and a time impost to the identification process.

There is also an administrative burden associated with contacting and obtaining consent from the identified persons. Consideration should be given to easements and restrictive covenants that are no longer relevant or effectual, however still appearing as registered on a title.

3.3.1 Scenario

Person A plans to develop parcel of land B. Parcel of land B is subject to an estate covenant, which includes a single dwelling restriction. All lots on the same survey as land B enjoy the benefit of this covenant. To develop on the parcel of land B, the covenant needs to either be removed or modified. As the single dwelling clause is not inconsistent with the local government's town planning scheme, all those persons with a benefit of the covenant are required to provide written consent to its removal or modification. Person A is required to undertake a title search for each of these relevant lots separately to obtain the consents required by the legislation and finds that some of those lots have been further subdivided, requiring additional title searches. Each title search equates to a cost of \$31.60.

Questions for consideration

Q8. Is there a less onerous approach that can be adopted to identify and locate who is required to consent?

Q9. To avoid the need for onerous people searches, should the onus be put back on the person from whom consent is required to ensure their details for service of notification are maintained appropriately?

3.4 Objection, Waiver and Time Periods

An objection process currently exists under the TLA for the discharge or modification of an easement noted on a plan under section 136C or restrictive covenant noted on a plan under section 136D (section 136J) which can be for the benefit of a local government, public authority or private party. An objection under s.136J provides a period to object of between the date of notice being given and 3 days prior to the intended application date.

The TLA also provides an objection process for the discharge or modification of restrictive covenants created under section 129BA which is for the benefit of a local government or public authority (section 129BB). Section 129BB provides for an objection period between the date that notice of the application to discharge or modify the covenant has been given, and three (3) days prior to the proposed application being made.

There are no further objection abilities under the TLA in respect to the modification or discharge (removal) of an easement or restrictive covenant.

An objection process also exists under the CTA, in respect to the registration of an amendment to scheme plan that creates or discharges an easement or restrictive covenant (section 40). However, that objection process only applies to type 2 interests. Type 1 interest holders must always consent. An objection under section 40 must be made within a 60-day period of notice being given. There is no ability to object to the initial registration of a scheme (written consent is required from the holder of each type 1 or type 2 interest over the whole or part of the parcel of land or land being subdivided by registration of the scheme).

Similarly to the CTA, the objection process under the STA relates to the registration of an amendment to scheme plan that creates or discharges an easement or restrictive covenant (section 35). An objection under s.35 must be made within a 60-day period of notice being received and applies to all designated interests.

Where a written objection has not been received upon expiry of the 60-day period, consent is deemed to have been provided, under both the STA and CTA.

In all other instances of creating, modifying and discharging an easement or restrictive covenant under the Acts, there are no time periods legislated for obtaining consent. The lack of a clear timeframe to obtain the appropriate consents can result in an ongoing process with no ability for resolution outside of a Court application.

There is no ability for the Commissioner of Titles, Registrar of Titles, or other delegated authority to waive the requirements of consent should the easements or restrictive covenants be deemed unused, or irrelevant to a development process, or whereby it has been determined that there is no practical vested interest in the land affected.

Questions for consideration

Q10. What is an appropriate timeframe to provide 'a person with a registered interest' or 'an interested person' to respond to a notice of creation, modification or removal?

Q11. Should there be an ability for the Commissioner of Titles, Registrar of Titles or other delegated authority to waive consent requirements, or use discretion when registering a plan or instrument?

Q12. Who should be responsible for hearing and making determination on an appeal or objection to the creation, modification or removal of easements and restrictive covenants?

4 WA Legislation

There are three pieces of WA legislation administered by Landgate that govern the registration of creation, modification and removal of easements and restrictive covenants. These Acts are the TLA, STA and CTA.

The below tables provide a simplified summary of the different methodologies to create, modify and remove an easement or restrictive covenant, as well as the associated current legislative requirement for obtaining consents.

4.1 *Transfer of Land Act 1893*

Transfer of Land Act 1893

Creation	Consents Required
s.129A Creation by way of instrument Applies to: Restrictive Covenants	Mortgagee, annuitant, or proprietor of a carbon right, carbon covenant or plantation interest if relevant on the land affected by the restrictive covenant.
s.129BA Created for the benefit of Local Government and Public Authorities by way of instrument Applies to: Restrictive Covenants	Each person who has a registered interest in the land that would be burdened by the restrictive covenant.
s.136C / s.136D Created by way of notation on a plan (consents are set out in s.136E) Applies to: Easements Restrictive Covenants	Each person who has a registered interest in any land that would be burdened or benefited from the easement or restrictive covenant; and

Transfer of Land Act 1893

	Each person who is a caveator in respect of any land that would be burdened or benefited from the easement or restrictive covenant.
Modification	Consents Required
s.129B Modification of restrictive covenants and agreements, except those created under 129BA or Part IVA. Applies to: Easements (interpretation of “agreements”) Easements created under s.195 and s.196 of the LAA. Restrictive Covenants	Agreement by all persons interested in the land affected by such easement or covenant or agreement consenting to the modification.
s.129BB Modification of restrictive covenants created under 129BA. Applies to: Restrictive Covenants	Each person who has a registered interest in any land burdened by the restrictive covenant and the local government or public authority (relevant authority); or Without the above consent, the applicant for modification must provide a statutory declaration that the relevant authority and each person who has a registered interest in any land burdened have been given 28 days’ notice of the application, and no valid objection has been lodged.
s.129C Order of the Court. Applies to: Easements Restrictive Covenants	Nil or as required by the Court.
s.136J Modification of restrictive covenants and easements created under 136C/136D Applies to: Easements Restrictive Covenants	Each person who has a registered interest in, or is a caveator in respect of, any land that is either burdened or benefited by the easement or restrictive covenant and the relevant authority (if applicable); or Without the above written consent, the applicant for modification must provide a statutory declaration that each person who has a registered

Transfer of Land Act 1893

	interest in or is a caveator and relevant authority (if applicable) in respect of, any land that is either burdened or benefited have been given 28 days' notice of the application, and no valid objection has been lodged.
Removal	Consents Required
s.129B Discharge of restrictive covenants and agreements, except those created under 129BA or Part IVA. Applies to: Easements (interpretation of "agreements") Easements created under s.195 and s.196 of the LAA. Restrictive Covenants	Agreement by all persons interested in the land affected by such easement or covenant or agreement consenting to the discharge.
s.129BB Discharge of restrictive covenants created under 129BA. Applies to: Restrictive Covenants	Each person who has a registered interest in any land burdened by the restrictive covenant and the relevant authority; or Without the above consent, the applicant for discharge must provide a statutory declaration that the relevant authority and each person who has a registered interest in any land burdened has been given 28 days' notice of the application, and no valid objection has been lodged.
S.129C Order of the Court. Applies to: Easements Restrictive Covenants	Nil or as required by the Court.
s.136J Discharge of restrictive covenants and easements created under 136C/136D Applies to: Easements Restrictive Covenants	Each person who has a registered interest in, or is a caveator in respect of, any land that is either burdened or benefited by the easement or restrictive covenant and the relevant authority (if applicable); or Without the above written consent, the applicant for discharge must provide a statutory declaration that each person who has a registered interest in, or is a caveator in respect of, any land that is either burdened or benefited and if applicable the relevant authority, has been given 28 days' notice

Transfer of Land Act 1893

	of the application, and no valid objection has been lodged.
s.184 Removal of encumbrance which no longer affects title. Applies to: Easements Restrictive Covenants	Nil

Questions for consideration

Q13. Should the consent of a caveator recorded on the Certificate of Title be required for the creation, modification or removal of an easement or restrictive covenant. If so, why?

Q14. Should requiring caveator consent be dependent on the type of caveat or circumstance?

4.2 Strata Titles Act 1985

Strata Titles Act 1985

Creation	Consents Required
s.33 Creation by way of registration of scheme plan Applies to: Short form Easements and Restrictive Covenants	No express consent for the creation of short form easement or restrictive covenant is required, however in order for creation to be effectual, registration of a scheme plan is required under s.34. The registration of a scheme plan requires: - the written consent of the owner of the parcel (if not the applicant); and - the written consent of the holder of each designated interest over the whole or a part of the parcel to be subdivided.
s.35 Creation by way of registration of an amendment of scheme plan. Applies to: Easements Restrictive Covenants	For a short form easement or restrictive covenant being created on the amendment of scheme plan, approval by the Planning Commission.

Strata Titles Act 1985

	For an amendment affecting common property, authorisation by resolution without dissent of the strata company. For an amendment affecting a lot, written consent of the owner of the lot. In any case, the holder of each designated interest over the common property or lot affected by the amendment is to be provided with notice of creation of the easement or restrictive covenant. Written consent must be obtained from each of these parties within a 60-day period. Consent is considered obtained in the instance of no response and no objections lodged.
Modification	Consents Required
There are no means for modification of short form easements and restrictive covenants under the <i>Strata Titles Act 1985</i> .	
Removal	Consents Required
s.33 Discharge by way of termination of strata titles scheme Applies to: Short Form Easements Restrictive Covenants	No express consent for the discharge of a short form easement or restrictive covenant is required under section 33. However for the discharge to be effectual, registration of the termination is required under s.194 or s.196.
s.35 Discharge by way of registration of an amendment of scheme plan. Applies to: Easements Restrictive Covenants	For a short form easement or restrictive covenant being discharged on the amendment of scheme plan, approval by the Planning Commission. For an amendment affecting common property, authorisation by resolution without dissent of the strata company. For an amendment affecting a lot, written consent of the owner of the lot. In any case, the holder of each designated interest over the common property or lot affected is to be provided with notice of discharge of easement or restrictive covenant. Written consent must be obtained from each of these parties within a 60-

Strata Titles Act 1985

day period. Consent is considered obtained in the instance of no response and no objections lodged.

Questions for consideration

Q15. Does s.35(1)(i) require further clarification as to the scope of amendments to scheme plans?

Q16. Should the STA requirement for consents for the creation or removal of easements and restrictive covenants only apply to short form easements and restrictive covenants created under s.33?

Q17. Should the STA contemplate the modification of an easement or restrictive covenant? If so, why and in what circumstances would it be used in place of removal?

4.3 Community Titles Act 2018

Community Titles Act 2018

Creation	Consents Required
s.38 Creation by way of registration of a scheme plan. Applies to: Short form Restrictive Covenants and Easements	No express consent for the creation of short form easement or restrictive covenant is required, however in order for creation to be effectual, registration of a scheme plan is required under s.39. The registration of a scheme plan requires: • for a tier 1 scheme¹, the written consent of the owner of the parcel being subdivided by the scheme (if not the applicant); or • for a tier 2 or 3 scheme², the written consent of the owner of the lot being

¹ Defined in s.8 of the *Community Titles Act 2018* as a scheme for the creation of community titles that upon registration effects a physical division of a parcel of land into 2 or more lots; or 2 or more lots and common property.

² A tier 2 scheme is defined in s.9 of the *Community Titles Act 2018* as a scheme for the creation of community titles that upon registration effects a physical division of a tier 1 lot into 2 or more lots; or 2 or more lots and common property. A tier 3 scheme is defined in s.10 of the *Community Titles Act 2018* as a scheme for the creation of community titles that upon registration effects a physical division of a tier 2 lot into 2 or more lots; or 2 or more lots and common property.

Community Titles Act 2018

	subdivided by the scheme (if not the applicant); and the written consent of the holder of each type 1 or type 2 interest, over the whole or a part of the parcel or lot to be subdivided.
s.40 Creation by way of registration of an amendment of scheme plan. Applies to: Easements Restrictive Covenants	- The creation of a short form easement or restrictive covenant upon registration of an amendment of scheme plan requires the approval of the Planning Commission; and - In the case of amendment affecting common property, the authorisation by special resolution of the community corporation; and - In the case of amendment affecting a lot, the written consent of the owner of the lot; and - In the case of a type 1 interest over common property, or a lot, affected by the amendment, the holder of that interest is given notice, and has provided written consent; and - In the case of a type 2 interest over common property, or a lot, affected by the amendment the holder of that interest is given notice, and has provided written consent, or has not objected at the end of a 60-day period.
Modification	Consents Required
There are no means for modification of a short form easement or restrictive covenant under the <i>Community Titles Act 2018</i> .	
Removal	Consents Required
s.38 Discharge by way of termination of community titles scheme Applies to: Easements Short form Restrictive Covenants	No express consent for the discharge of easement or restrictive covenant is required under section 38, however for the discharge to be effectual, registration of the termination is required under s.154.

Community Titles Act 2018

s.40

Discharge by way of registration of an amendment of scheme plan.

Applies to:

Easements

Restrictive Covenants

- The registration of an amendment of scheme plan requires the approval of the Planning Commission; and
- In the case of amendment affecting common property, the authorisation by special resolution of the community corporation; and
- In the case of amendment affecting a lot, the written consent of the owner of the lot; and
- In the case of a type 1 interest over common property, or a lot, affected by the amendment the holder of that interest is given notice, and has provided written consent; and
- In the case of a type 2 interest over common property, or a lot, affected by the amendment the holder of that interest is given notice, and has provided written consent, or has not objected at the end of a 60-day period.

Questions for consideration

Q18. Does s.40 require further clarification as to the scope of amendments to scheme plans?

Q19. Should the CTA requirement for consents for the creation or removal of easements and restrictive covenants only apply to short form easements and restrictive covenants created under s.38?

Q20. Should the CTA contemplate the modification of an easement or restrictive covenant? If so, why and in what circumstances would it be used in place of removal?

Q21. Should the consent requirements of the STA be mirrored in the CTA or vice versa?

5 Options

5.1 Option 1 - Status Quo

Option 1 is for no change, and to continue with the status quo. The legislation has been developed over time with additions being made over multiple legislative amendments. The current condition of the legislation is one of the main drivers for the review and this Consultation Paper.

5.1.1 Option 1 Benefits

A benefit of Option 1 is that processes and requirements continue as is, with no associated legislative changes, consultation process and change education.

5.1.2 Option 1 Risks

The current legislation does not appear to be fit for purpose or in the interests of Landgate's stakeholders. The legislation has been developed over time with amendments being made in a fragmented fashion. The various amendments to the legislation have created inconsistencies, confusion and inefficiency for industry professionals including the land development industry.

Questions for consideration

Q22. Are there any reasons that it is imperative that the status quo is retained?

Q23. Is the current model useable, fit for purpose and future-proof? Why, or why not?

5.2 Option 2 - Education

Option 2 reflects Option 1 in that it proposes no changes to the legislation, however with the adoption of an education program, through workshops and guidance materials that explain Landgate's expectations and interpretation of the current legislation.

5.2.1 Option 2 Benefits

The introduction of a large-scale education program would assist with the administrative burden suffered both internally and externally as a result of the current lack of clarity and confusion. Educational materials that provide a one-stop shop for the legislative requirements for registration of the creation, modification and removal of easements and restrictive covenants will assist stakeholders in navigating the existing legislation. Once implemented, the Option 2 education process should provide stakeholders with a consistent approach and base understanding of expectations. Given there is no requirement to undertake legislative change involved in this option, the process of implementation would be considerably timelier.

5.2.2 Option 2 Risks

Option 2, while it would address the majority of the clarity issues that currently exist, it would not resolve the administrative and costly burden of identification of affected parties for obtaining consent, or the inconsistency of the requirements across the suite of legislation. It also doesn't account for the lack of an ability for an authorised person to waive the consent requirements or to provide a time limit on a registered interest holder or interest holder to either provide consent or object, after which time an application or development can progress.

Questions for consideration

Q24. Would an education focussed solution alone be sufficient to resolve the majority of outstanding issues?

Q25. With the provision of clear intention and interpretation, is the legislation perceived to be fit for purpose or future-proof? Why, or why not?

5.3 Option 3 - Use of Singular Existing Model

Option 3 proposes that Landgate use one of the existing models for consent requirements and replicate it to be a consistent approach across the creation, modification and removal processes. This option proposes that there would be two streams for consent, one for the creation, and one for the modification / removal of easements and restrictive covenants across the suite of legislation. An existing model will require the inclusion of refined definitions to support the changes.

5.3.1 Option 3 Benefits

The main and significant benefit of Option 3 is that the consent process is consistent and clear regardless of the methodology for creation, or modification or removal. By using a process that is already in place, there is existing knowledge of the function and operability in practice. Option 3 aims to reduce the administrative burden experienced by stakeholders in ensuring compliance with the interpretation of the legislation and identifying the appropriate consenting parties. Additionally, given the practices are already in place, an existing model will require less intensive additional education for stakeholders and Landgate employees.

5.3.2 Option 3 Risks

Option 3 does not necessarily address what is lacking in the current consent process. It is dependent on an agreed upon existing model, which needs to be fit for purpose across the board for all creation, modification and removal and to provide legislative support for all circumstances that may arise. There is a risk that one model of legislation will not be appropriate when applied across all methods of creation, modification and removal. Unless the single model contemplates all 'interested parties', which would not alleviate administrative burden, there is the risk of gaps in the requirement for certain consents.

Without being appropriately identified, this could result in compliance with the legislation not providing procedural fairness to all parties with an interest in lands.

Questions for consideration

Q26. Which of the models currently present in the TLA, STA or CTA for creation and then separately, modification and removal, is the most appropriate?

Q27. Is there one model currently used that is fit for purpose across the board?

5.4 Option 4 - Use of Singular New Model

Option 4 proposes that a new model for the consent requirements is produced to apply to both all creations, and all modifications / removals of easements and restrictive covenants. This option could contemplate components of existing models to form a new, refined and consistent model. It is envisaged that Option 4 should clearly identify when consent is required, who is required to provide the consent and the process for providing that consent, supported by clear definitions to provide clarity. Option 4 is envisaged to be inclusive of an objection and review process and intends to apply broadly across the suite of legislation.

5.4.1 Option 4 Benefits

Option 4 contemplates using the current models and issues experienced to form a new model that addresses the broad concerns of both internal and external stakeholders. The development of a new model will allow Landgate and stakeholders to collaborate and consider what works, what doesn't work and what needs to be addressed. Being a singular model across all creations and modifications / removals, the clarity and consistency issues will be addressed, while it can be tailored to include fallbacks (should consent not be given at all, or should objections be lodged), account for unintended consequences / procedural fairness and workable options for resolving roadblocks which previously would have put a stop on development.

5.4.2 Option 4 Risks

The risks involved with Option 4 are minimised as a complete reconfiguration of the legislation will allow for the in-depth review of current issues and remodel of legislative requirements. The introduction of a new model will require extensive stakeholder engagement and consultation, as well as implementation of educational documents to provide support and guidance. Option 4 will likely involve a larger body of work to ensure that there are no unintended consequences and gaps in the new legislation. Consideration should be given to the process of legislative change and the associated extended timeframes for completion.

Questions for consideration

Q28. What components of existing models would be required to be recreated under a new model?

Q29. Who are the parties recognised as being affected by the creation, modification and removal of easements and restrictive covenants that need to be contemplated for consent?

Q30. What should an objection process look like?

6 Feedback and Submissions

You are invited to contemplate the issues, options and questions within this Consultation Paper and provide a feedback submission via the [Landgate website](#).

Visit link to have your say or alternatively send an email to TLA.Amendments@landgate.wa.gov.au

Your submission may contemplate all or some of the issues raised, as appropriate to you. Alternatively, if there are issues not currently contemplated by this paper, we encourage you to raise them in a broad submission.

Important Disclaimer:

Information provided through this consultation process may become public. As your feedback forms part of a public consultation process, the Government may quote from your comments in future publications. If you prefer your name to remain confidential, please indicate this in your submission.

Please also clearly indicate if there is information or data in your submission that is confidential and should be redacted prior to publication. Please also note that submissions made in response to this paper may be the subject of freedom of information requests and will be treated in accordance with the *Freedom of Information Act 1992* (WA).