



Hon Stephen Dawson MLC
Minister for Environment
Level 12 Dumas House
Havelock Street
WEST PERTH WA 6005

Dear Minister

**REGISTRATION OF ENVIRONMENTALLY SENSITIVE AREAS AS A
MEMORIAL ON CERTIFICATE OF TITLE**

Hon Dr Steve Thomas MLC, has proposed an amendment to the *Environmental Protection Amendment Bill 2020* to require environmentally sensitive areas (ESAs) made under section 51B of the *Environmental Protection Act 1986* to be registered on the certificate of title as a memorial. Dr Thomas's suggested drafting is:

51B. Registration of an environmentally sensitive area by regulation

- (1) Regulations may declare as an environmentally sensitive area for the purposes of this Part —
 - (a) an area of the State specified in the regulations; or
 - (b) an area of the State of a class specified in the regulations.
- (2) Before a regulation is declared under this section, the CEO must —
 - (a) notify each owner or occupier of the land to which the environmentally sensitive area would relate of their intention to declare by regulation an environmentally sensitive area; and
 - (b) take into account any comments received from any owner or occupier of the land to which the environmentally sensitive area would relate.
- (3) The CEO must deliver a memorial of an environmentally sensitive area to the relevant land registration officer.
- (4) The memorial must be in a form approved by the relevant land registration officer.
- (5) The relevant land registration officer must register the memorial and accordingly endorse or note the appropriate register or record in respect of the land to which the environmentally sensitive area declaration applies.

This proposed approach was considered through the Standing Committee on Environment Affairs Petition No. 42 Inquiry into Environmentally Sensitive Areas. The then Minister for Environment, Hon Albert Jacob MLA, and the then Director General of the Department of Environment Regulation, Jason Banks, both wrote to the Chair of the Committee providing advice on the cost of registering a notification or memorial on title. Page 45 and following of the Standing Committee's report also discusses this issue. Copies of this information are attached.

In summary, the Standing Committee found that the noting of the ESAs on title would not be effective in advising owners of their effect, and recommended that the Government write to each affected property owner about the presence of ESAs and the impact of the law.

The Parliamentary Counsel's Office has provided possible wording of an alternative amendment that would ensure notice is provided to owners when a new ESA is declared, for your consideration.

Based on the updated costs of notifications under section 70A of the *Transfer of Land Act 1893*, and the number of titles which include ESAs (98,042), the cost of notification without any allowance for the administrative resources required to undertake the process would be more than \$17.1 million. This does not account for removal of areas without native vegetation, as to do this would require further investigation.

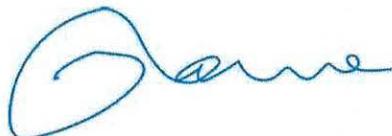
It is beyond the resources of the Department of Water and Environmental Regulation (the Department) to undertake this process without an appropriation including salary costs for additional positions or the imposition of a fee or cost recovery charge to cover these costs. The *Constitution Acts Amendment Act 1899*, at s.46(3) states that "*the Legislative Council may not amend any Bill so as to increase any proposed charge or burden on the people*". Therefore, the Legislative Council cannot ensure that the resourcing required to implement this amendment is provided.

Based on the requirement for an appropriation to implement Dr Thomas's amendment, and the inability to impose cost recovery due to section 46(3) of the *Constitution Acts Amendment Act 1899*, it is the Department's opinion that this change cannot be made by the Legislative Council.

ESAs are now included in Landgate's Property Interest Report, which is available to the public online. Stakeholders have been informed and the Department has updated its website and guidance. This ensures that information about ESAs is accessible for owners, prospective owners and real estate agents. This approach provides the advantages of having ESAs on a certificate of title without the drawbacks and costs of registering memorials. It provides transparency without the red tape or potential impact on property values.

The Department has also commenced discussions with the Real Estate Institute of WA (REIWA) about how to highlight the availability of property interest reports to all potential buyers. A link to the report is currently available on every property advertisement on the REIWA website. To strengthen this, REIWA is also considering adding a notice to the front page of the standard offer and acceptance contract template, as well as adding a new clause in the Joint Form of General Conditions for the Sale of Land.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Mike Rowe', with a large, stylized initial 'M'.

Mike Rowe
DIRECTOR GENERAL

11 September 2020