



**The Hon Brad Hazzard MP**  
Minister for Planning and Infrastructure  
Minister Assisting the Premier on Infrastructure NSW

Mr Simon Nunan  
Eastern Bridge Pty Ltd  
Level 11  
380 St Kilda Road  
MELBOURNE VIC 3004

11/07113

Dear Mr Nunan

I refer to your letter concerning the Department of Planning and Infrastructure's present approach of encouraging the inclusion of Model Clause 1.9A in Council LEPs, and the relationship between the model local clause and the *Land Acquisition (Just Terms Compensation) Act 1991* (LAJTC Act).

While the clause is optional, the Department's present approach is to require, in most cases, councils to adopt the model local clause as part of their Standard Instrument LEPs, unless there are exceptional circumstances. This is because the clause reinforces the primacy of the development controls contained within a LEP by allowing consent granted, pursuant to the controls contained within a LEP and on merit, to override private covenants and agreements "to the extent necessary" to enable development to be carried out.

The Model Clauses published on the website have all been subject to Parliamentary Counsel opinion and approval.

In terms of its relationship with the LAJTC Act, the Department's understanding is not the same as that stated by Eastern Bridge lawyers. It is not considered the case that whenever Clause 1.9A suspends a covenant or agreement or similar instrument for the purpose of enabling development to be carried out in accordance with an Environmental Planning Instrument or in accordance with a consent granted under the *Environmental Planning and Assessment Act*, this would constitute an acquisition of land by the Council.

This is because while a suspension of covenants clause empowers local councils to positively authorise the doing of acts on land by or on behalf of landowners, it is the landowners who benefit from the suspension of the covenant or agreement, not the Council.

As a result, it is not proposed that any changes to the above position are made at this stage.

Should you have any further enquiries about this matter, I have arranged for Ms Cheramie Marsden, Policy, Planning Systems and Reform, of the Department of Planning and Infrastructure to assist you. Ms Marsden can be contacted on (02) 9228 6458.

Yours sincerely

  
**HON BRAD HAZZARD MP**  
Minister

30/6/2011