

Model local clauses for Standard Instrument LEPs

General Information

If a clause for the suspension of covenants is to be included, the model clause below should be used and inserted as clause 1.9A. Councils may wish to alter the wording of the settled model clause so that it does not apply in certain zones or for certain purposes (e.g. clause 4.5(9) & (10) of the Standard Instrument).

1.9A Suspension of covenants, agreements and instruments [local]

- (1) For the purpose of enabling development on land in any zone to be carried out in accordance with this Plan or with a development consent granted under the Act, any agreement, covenant or other similar instrument that restricts the carrying out of that development does not apply to the extent necessary to serve that purpose.
- (2) This clause does not apply:
 - (a) to a covenant imposed by the Council or that the Council requires to be imposed, or
 - (b) to any prescribed instrument within the meaning of section 183A of the *Crown Lands Act 1989*, or
 - (c) to any conservation agreement within the meaning of the *National Parks and Wildlife Act 1974*, or
 - (d) to any trust agreement within the meaning of the *Nature Conservation Trust Act 2001*, or
 - (e) to any property vegetation plan within the meaning of the *Native Vegetation Act 2003*, or
 - (f) to any biobanking agreement within the meaning of Part 7A of the *Threatened Species Conservation Act 1995*, or
 - (g) to any planning agreement within the meaning of Division 6 of Part 4 of the Act.
- (3) This clause does not affect the rights or interests of any public authority under any registered instrument.
- (4) Under section 28 of the Act, the Governor, before the making of this clause, approved of subclauses (1)–(3).

Drafting direction.

Suspension of laws is made possible by s28 of the Act, which only allows suspension to the extent necessary to enable development consistent with the plan. For example, a private covenant limiting development on certain lots to a single storey dwelling would prevent two-storey dwelling development of the area even though it was permissible under the local plan. Given the potential impacts on private property rights this clause should not automatically be included, but should be considered by the council and the Department on a case-by-case basis.