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**STRUTT
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Mrs Lucy Galloway
Scottish Law Commission
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Our ref: IS1K/cae/CPO

27th July 2015

Dear Mrs Galloway

**Consultation and Reform of the Compulsory Purchase Regime in Scotland
Issues regarding design and build**

I refer to Strutt & Parker's response dated 17th June 2015 in respect of the above, in which I raised concerns with regard to design and build. A recent issue with Transport Scotland further highlights our comments regarding acquiring authorities using design and build contracts as a means of abrogating responsibility for claims.

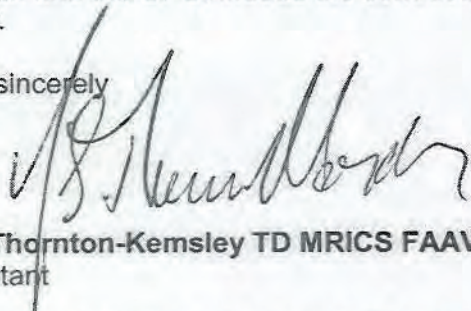
Our clients, Aberdeen Endowments Trust, are a Charity that raises money to award grants to students at various educational institutions in the locality and owns land from which part of this income is obtained. Some of their land was acquired compulsorily for the AWPR. Last week we discovered that agents for Transport Scotland were parking on our client's property and taking access to the acquired land across retained land. We contacted the District Valuer to request that this stop and tried to discuss compensation. Their response was that as their Contractor had strayed outwith the acquired area, this was an issue that should be raised with them and not Transport Scotland. He stated that it was not a matter that could form part of our land compensation claim.

We spoke to the Corporate Social Responsibility Manager for the CJV and the Site Foreman at the land concerned (Morrison Construction) who declined to know anything about the issue, blaming other contractors. This perfectly illustrates the point we were trying to make with regard to this issue in response to your consultation.

Donovan -v- Welsh Water (1993) 67 P&CR 233; [1993] RVR 126, LT; [1994] 05 EG suggests that a contractor acts as agent for the acquiring authority and that whatever work was done on land was carried out on that basis and that a claimant is entitled to seek compensation from the acquiring authority. Any dispute as to the authority of the contractor was a matter between the acquiring authority and the contractor and did not affect the acquiring authority's liability.

We feel it important that this principle is carried through into any new legislation, given the increasing use of design and build. It is quite ridiculous that our client should be told to raise an expensive court action against a third party which is only present on his property because of the CPO. There is a causal link between this incursion and the CPO; indeed the contracting body only exists as a JV between various contractors to build the AWPR.

Yours sincerely



**Ian S Thornton-Kemsley TD MRICS FAAV DipFBOM HDA ACI Arb
Consultant**

cc: Archie Rintoul, Valuation Office Agency
Andrew Duncan, AET