



PUBLIC EXCLUDED

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Committee Landcare
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Harvey Norman stopbank crossing and car park approval

1. Purpose

To obtain the Committee's position on revised parameters for the agreement with Harvey Norman and Hutt City Council for Harvey Norman to use the Riverside car park.

2. Exclusion of the public

Grounds for exclusion of the public under section 48(1) of the Local Government Official Information and Meetings Act 1987 are:

That the public conduct of the whole or relevant part of proceedings of the meeting would be likely to result in the disclosure of information for which good reason for withholding exists, i.e. to preserve commercial confidentiality and to enable the Council to carry on negotiations (including commercial negotiations), without prejudice or disadvantage.

Interests protected:

The Greater Wellington Regional Council

Hutt City Council

Harvey Norman Stores (NZ) Pty Limited

3. Background

At its meeting of 19 November 2003 the Landcare Committee considered a proposal from Harvey Norman Limited (HN) for a stopbank crossing at Melling (see **Attachment 1**). The crossing would link a proposed retail development to the Riverside car park.

The Riverside car park land is owned by Greater Wellington (GW) and leased to Hutt City Council (HCC). Hence, in addition to the stopbank crossing approval, Greater Wellington was also required to adjust the terms of its lease to HCC in order to allow HCC to sublease a number of car parks to HN.

The Committee resolved to approve the proposal in principle noting the support of HCC and the exceptional circumstances involved. The Committee further provided Officers with guidance within which an agreement could be negotiated and determined that the proposed terms and conditions should be brought back to the council for ratification.

Following discussions with HN and HCC Officers a draft “Heads of agreement” was negotiated and prepared for HN board and GW Committee approval (see **Attachment 2**). HN solicitors approved the draft agreement on 12 February 2004 and to avoid any hold ups for HN a report was prepared for the next appropriate GW Committee (Policy, Finance and Strategy).

The draft “Heads of agreement” included a clause, to be inserted in both the stopbank crossing licence and the car park lease, allowing those instruments to be terminated after 1 January 2016 should GW want the land for any flood protection or river management purpose.

The clause was included to allow GW to keep as many options open as possible when the time comes to upgrade the Hutt central business district flood defences. The clause was considered non-contentious, as HN’s submission to the Landcare Committee had included the following undertaking:

Harvey Norman agrees to the following conditions being attached to the Committee’s and GWRC’s Council’s approvals.

- a. No compensation will be payable to Harvey Norman or its successors in title for the cancellation of the driveway easement/licence and associated parking area lease, prior to the expiry date of those instruments (However, an “equality of exchange” calculation will need to be separately recognised).*
- b. Condition a) will be recognised in the driveway easement/licence and parking area lease and recorded in all lease documentation with tenants/lessees of the proposed building.*

(emphasis added)

Unfortunately, the HN Board of Directors determined, in March 2004, that while it was able to agree to the possible termination of the stopbank crossing licence, it could not agree to anything that gave the possibility of losing the car parks.

In short, the entire HN development is contingent on a guaranteed level of car parking. Accordingly the HN Board rejected the draft “Heads of agreement” and the report recommending GW approval (04.117) was not considered by the Policy, Finance and Strategy Committee, but referred back to the Landcare Committee for further consideration.

Since that time we have had a number of discussions with both HCC and HN. In addition, some Councillors have been briefed on developments by HN, HCC as well as GW staff.

4. Discussion

In order to progress the proposal we have worked up a number of options that may meet HN’s needs. HN’s requirement for a 25-year car parking lease with no prospect of early termination, represents a significant change from the proposal approved in principle by the Landcare Committee in November. Hence, if we are to meet HN’s needs, then the Committee should determine whether it is prepared to accept a 25-year lease term for the Riverside car parks with no prospect of early termination.

Such a lease term would be unprecedented within the river corridor, particularly prior to upgrade works being completed. A 25-year lease term would have the effect of providing HN with a property right within the river corridor. In the longer term the most likely effect of such a lease is to reduce the flexibility for finding least cost and highest benefit design and management solutions when the flood defences are upgraded around 2016-2020.

Counterbalancing that, we recognise that all things being equal it should be possible to retain a majority of the car parking in the Riverside car park once the upgrade is complete. In our correspondence with HN we noted that the risk of them losing rights to occupy the Riverside car park as a result of flood protection work is “very low”.

Given that HCC consider the retention of as many car parks as possible in the Riverside car park as “essential” for the CBD, the most likely scenario is that GW will need to design around car parks. This may involve some extra expense but, based on current knowledge and provided there is some flexibility about precisely where the car parks may be, is likely to be achievable.

Operational aspects such as retaining the ability to temporarily close areas (by suspending the lease and/or licence) for up to 2 years while the upgrade work is being carried out and retaining the right to maintain the flood defences should be able to be addressed in any lease negotiated. HN and HCC have also indicated that they do not have any issues with the car parks being removed as a result of an “act of god” (i.e. should a large flood make them inoperative either temporarily or permanently).

5. Summary

The key issue here is one of risk. All parties are aware that the risks of HN losing rights to 107 car parks in the Riverside car park are low. However, for commercial reasons HN is unable to accept a risk that GW would have the right to terminate their sublease before the 25-year timeframe has elapsed.

In essence, HN has asked GW to share some of the risk by committing to guaranteeing car parks for 25 years. That has the effect of slightly increasing the risk that GW will not be able to undertake a preferred river management approach when it upgrades the central city flood defences in 2016.

HCC has indicated its strong support for both the HN proposal and the retention of as many car parks as possible in the Riverside car park. While it may not be an ideal situation from a purely flood protection perspective, should the Committee agree to provide HN with guaranteed access to car parks for 25 years, there are likely to be significant economic benefits to the ratepayers of HCC and GW. These benefits need to be considered when making your decision, particularly as they relate to the Council's overall goal of working towards a sustainable region.

6. Recommendations

That the Committee:

1. **receive** the report.
2. **note** the contents of the report.
3. **either:**
 - **instruct** officers to work with Harvey Norman Stores (NZ) Pty Limited and Hutt City Council to determine a way forward which allows Harvey Norman Stores (NZ) Pty Limited the level of car parking security that they need (not less than 25 years) albeit inclusive of a right of suspension

or

 - **determine** that it is appropriate to retain the ability to terminate any lease in 2016 should that be necessary.
4. **authorise** the Chief Executive to sign the agreement with Harvey Norman Stores (NZ) Pty Limited and Hutt City Council.

Report prepared by:

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Attachment 1: Report 03.696 (**note:** does not include all attachments)

Attachment 2: Report 04.117 696 (**note:** does not include any attachments)