

Hutt River City Centre Upgrade Project – Property Strategy

1. Purpose

To formalise a strategy that will enable Council to acquire all property interests required for the delivery of the Hutt River City Centre Upgrade Project in a timely and cost effective manner.

2. Background

In December 2015, following extensive consultation, Council approved 'Option A' as the preferred option to proceed with the preparation of the preliminary design, costing and implementation timelines for the Hutt River City Centre Upgrade Project (HRCCUP).

During the consultation phase it was indicated that Council would consider the purchase of any property interest required for the project any time after the preferred option was confirmed; should owners have a genuine need or desire to sell. Hence the property acquisition phase of the project has effectively commenced.

A high level property strategy was presented to the Hutt Valley Flood Management Subcommittee at its meeting on 3rd March 2016. At that meeting it was agreed that a detailed property strategy would be documented and presented to the Subcommittee at its next meeting on the 6th May 2016.

The following property strategy document expands on the key objectives outlined below and explains how it is proposed that these outcomes will be achieved.

3. Key objectives of the property strategy

Objective 1 - Acquire all property interests required for delivery of the project within the project timeframe. This will be achieved through:

- Ensuring all project property requirements are captured within the land requirement plan in the Notice of Requirement (NoR)/designation.
- Engagement of a suitably qualified and experienced property acquisition service provider(s).
- The purchase of properties from those owners who wish to sell early on a willing buyer willing seller basis through "good faith" negotiations.
- Timely commencement of formal PWA processes (for compulsory acquisition) for those owners whom are unwilling to sell.

Objective 2 - Properties acquired early to be managed efficiently to maximise holding return. This will be achieved through:

- Keeping properties tenanted for as long as is possible.
- Prudent management of property maintenance expenditure – minimise expenditure whilst maintaining a reasonable standard for tenants, for neighbouring owners and to preserve re-sale/disposal values of improvements.
- The outsourcing of property management to specialist residential and commercial management company(s).

Objective 3 - Maximise outcomes (\$ returns/future land use) from disposal of surplus land/and or improvements. This will be achieved through:

- Considering options for disposal of improvements and selecting the optimum method (e.g. one contract, bundled contracts, one-by-one).
- Promote re-use of buildings, structures and landscape materials where possible.
- Potential district plan changes (re-zoning) of surplus land to meet long term commercial and/or community objectives e.g. "Making Places".

Objective 4 - Achieve fair and reasonable outcomes for property owners and Council. This will be achieved through:

- Building trust by treating all land owners openly, fairly and consistently.
- On-going good quality communication.
- Showing empathy but also recognising that Council has responsibility to the wider ratepayer community to be fiscally prudent.

Objective 5 – Encourage businesses/employers whose properties are required for the works to re-establish their operations elsewhere in the Hutt Valley. This will be achieved through:

- HCC funding of professional property advisors to assist with the sourcing of alternative land or premises and assist with business relocations.
- The remission of fees and fast-tracking of building and/or resource consents relating to relocation of businesses to new premises in the Hutt Valley.
- The consideration of changes to zoning and/or district plan rules to encourage business re-locations within the Hutt Valley

4. The project property requirement

At this stage the property requirements are indicative only. Finalisation of the overall property requirement for the integrated project will need to be informed over time through:

- The developed design of the flood protection works.
- The NZTA/HCC design for the Melling interchange and bridge.
- Greater Wellington Rail and KiwiRail requirements for the Melling Rail Station and associated commuter car parking.
- The progression of the HCC "Making Places" urban development scheme.
- HCC vision for the balance of land on Pharazyn Street that is not required for the flood protection works.
- Property requirement for any other infrastructural works that arise as a consequence of the project.

Pending confirmation of final property requirements, decisions around the need to purchase properties (or not) will be guided by the indicative land requirement for Option A and through discussions with the affected agencies. The Indicative Land Requirement Plan is contained in **Attachment 1(a)** to this report.

Based on the current project scope as defined by Option A, 117 private properties will need to be acquired. Of these properties 19 are owner occupied residences, 75 are residential investment properties and 23 are commercial.

Some business will also require relocation where the lease of their premises extends beyond the project timeline or where the businesses are owner occupiers.

5. Property acquisition database

A preliminary database of all properties required for the project has been compiled recording the brief attributes of each property and owner information. Over time this will be refined with information in regard to any particular property risks that are perceived to exist, lease and lessee information (where it is available), tracking of where each property sits within the acquisition process and any other relevant information.

It is anticipated that the strategy outlined in this report will be further developed in conjunction with the property acquisition service provider engaged by Council (refer Section 9 below) as in all likelihood they will already have a template document that could be adopted for such use.

6. Designation

When the final land requirement for the project is confirmed, a designation plan will be produced to form part of Council's NoR. Once the NoR has been notified, landowners can legally call upon Council to purchase their properties (subject to meeting certain criteria under the RMA).

Owners will then be restricted in what they can do with their properties without first obtaining the written approval of Council. For example, owners would need Council approval to undertake works requiring a building consent or subdivision of their property. The underlying principle here is that owners should not take action that has the effect of increasing the cost of the public work without prior reference to Council.

It is important to note that only land that is included in the NoR/Designation Plan can be compulsorily acquired under the PWA. Therefore it is critical to ensure all property required for the project is included within the designation plan.

While it is intended that the HRCCUP area will be held in public ownership the designation also serves as a mechanism to protect the public work from interference which would affect its function for the purpose for which it is designated.

7. Timing of property purchases

The timing of property acquisitions will be influenced primarily by two factors.

Firstly from Council's perspective the critical path will be defined by the decision of when the project is to be physically commenced and how it is staged. Once this is confirmed the acquisition programme can be worked backwards from that date allowing sufficient time for removal of buildings and structures and the various notice periods that are required to complete compulsory acquisition; if that is required.

The second influencing factor; given Council has indicated it will consider early purchase of properties, are the wishes of individual property owners, many of who may require Council to purchase early.

As at mid-April 2016, Council Officers and Jigsaw Property have met 20 owners who have expressed an interest in pursuing early sale of their properties to Council. Council/Jigsaw is actively engaged in the early stages of negotiations with 7 of those owners.

8. Early purchase – rent back, deferred settlement

At law Council is not obligated to consider purchase of any property until the land has been designated.

While in most instances properties are not required for the project for some years, Council has clearly indicated through written communication with affected property owners and at individual/group landowner meetings, that it will consider early purchase.

Therefore, Council is obligated to consider early purchase of property if an owner has a genuine need or desire to sell. At the outset it should be emphasised that negotiations for early purchase will proceed on the understanding that the owner has a clear desire and intent to sell and that the owner will negotiate in good faith with Council to conclude an agreement that represents a fair outcome for both parties.

While Council can express a preference to acquire properties at a later (rather than a sooner) date, ultimately if called upon by an owner, Council must be prepared to purchase their property.

Council has also indicated that it will consider renting back properties to the former owners (at market rent) or to enter into sale and purchase agreements with deferred settlement periods. This will give owners the time and space to look for an alternative property in the knowledge that an agreement with Council for purchase of their property has already been confirmed.

9. Engagement of property negotiators/advisors

Because of the sheer number and diverse nature of property interests to be acquired, Council's current property providers (Jigsaw Property) will not have the capacity and/or skills to handle the property acquisition workload generated by this project.

It is, therefore, intended that a specialist property acquisition service provider be engaged to undertake the property acquisition role on behalf of Council. The service provider will be responsible for conducting the "coal face" negotiations with owners and lessees on a without prejudice basis, subject to Council approvals. The Council Property Group (Jigsaw Property and Council representative(s)) would oversee all purchase activity via regular and one-off property meetings with the service provider as required.

The Council Property Group would be responsible for project overview (from a property perspective), reporting back to Council management and authoring reports for approval of purchases by Council or its CEO; if those powers are delegated.

Proposals are currently being obtained for the provision of property acquisition services via a two-step procurement process i.e. a request for expressions of interest followed by a request for proposals from the shortlisted service providers.

Once a services provider has been confirmed their skills and experience will be utilised to assist in the refinement and implementation of the property acquisition strategy.

10. Engagement of secondary professional service providers

By necessity the property negotiation and acquisition process will require the input of other professionals including:

- Legal – To draft and approve purchase agreements, entry agreements and provide general legal advice.
- Registered property valuers - To assess and assist in the negotiation of compensation.
- Surveyors – To produce SO and LT plans for partial land takes, unit title re-structures and possible easement arrangements.
- Accountancy - To assess the value of a business if it is to be acquired or to assess business loss that arises during relocation.
- Other specialist advisors (such as architects or project managers) will be required to assist in the assessment of costs and management of works arising from the relocation of businesses to new premises.

It is intended to confirm a strategy for the procurement of these secondary services with the assistance of the property acquisition service provider (once appointed).

11. The acquisition process

Prior to Council lodging its NoR, property acquisition will be by way of purchase by agreement through good faith negotiations based on valuation advice. While these negotiations are conducted on a “willing buyer willing seller” basis, the principles and entitlements to compensation under the Public Works Act 1981 (PWA) are deemed to apply.

Following lodgement of Council’s NoR, Council may continue to purchase property by way of agreement, however, from that point onwards it will have the power to initiate formal acquisition processes under the PWA with any owner that is subject to the NoR/designation.

Clearly it will be Council’s preference to acquire property by agreement. However, where Council is unable to reach agreement with an owner or an owner refuses to sell, Council will be required to revert to the compulsory acquisition process under the PWA; so as not to compromise project time frames. The commencement of this process, (which is subject to statutory notices and timeframes), will need to be carefully planned, ensuring adequate time is allowed to ensure access to all property when required.

12. Compensation – current law

Property owners’ entitlements to compensations are set out in Part V of the PWA. The underlying principle is that property owners are entitled to “full compensation” so that they are left in a no better or worse position than they were before the public work commenced. This means that landowners will not be deprived of their property without fair compensation, but will not be compensated so as to make a profit from the public work.

Compensation for land taken for a public work is generally based on the current market value of the property interest that is acquired. This market value is normally determined

through the engagement of registered public valuers who provide advice as to expected price that the property would fetch if sold on the open market.

In addition to the market value of the property interest that is acquired, owners are entitled to claim for the reimbursement of the professional fees of their advisors (valuers, lawyers, property experts), mortgage break costs and in the case of residential owner occupiers, relocation costs and a solatium payment of \$2,000.

In some instances, businesses occupying properties required for the project may be entitled to compensation (relocation costs and any associated business loss) if their lease terms extend beyond the date of requirement for the property.

13. Compensation – proposed law changes

In December 2015 the Resource Legislation Amendment Bill was introduced to Parliament. The Bill proposes, among other things, changes to some of the compensation provisions of the PWA. If the Bill is passed in its current form, for most owners, entitlements to compensation will be significantly increased.

In summary, the \$2,000 solatium payment which is currently only available to owner/occupiers of residential property is abolished and replaced with a new entitlement termed as “additional” compensation. These additional compensation entitlements would apply to all property interest for which compensation is payable under the PWA.

In respect to residential owner occupier properties the amount of additional compensation payable is set at a minimum of \$35,000 with up to another \$15,000 payable if certain criteria are met.

In respect to all other property types the additional compensation is determined to be 10% of the agreed value of the property up to a maximum of \$25,000.

The Local Government and Environment Committee is currently receiving consultation on the Bill and is required to report back to Parliament with its findings early June 2016.

Given the proposed changes to the PWA compensation provisions are significant, Officers have made landowners aware of the Bill. It has also been made clear to owners that, until the Bill is enacted, the existing compensation provisions of the current Act apply. Owners can then make their own judgment as to whether or not the prospect of the Bill affects their timing for a decision to sell to Council.

If the bill is passed in its current form it is estimated that it will add circa \$3.0 million to the total cost of property acquisition for the HRCCUP.

14. Risks

Risk identification and risk management will be an important area of focus throughout the life of the project. A comprehensive assessment of potential/perceived risks will be undertaken in conjunction with HRCCUP Management Group and, from a property perspective, with the input of the property acquisition service provider.

Risk will need to be identified and managed at both a macro and micro level. Some of the more obvious risks that will exist from a property perspective are:

- Increasing property values – This is a risk over which Council has no control and market forces will prevail.

- Protracted negotiations with difficult and/or unhappy landowners – This can result in high acquisitions costs and result in “bad press” with knock on effects to other owners. This can be mitigated through consistent and fair treatment of all owners and good quality communications.
- Property advocacy firms creating unrealistic owner expectations – We have requested owners discuss the appointment of professional advisors with Council in advance to ensure they are appropriately qualified and experienced.
- Loss of Businesses from the Hutt Valley/ Wellington Region – This is an unfortunate by-product of the project and area of focus for HCC.
- Owners or tenants capitalising their property and/or tenancy fit-out in advance of acquisition - This can (but not always) have the effect of adding value to the property and hence the compensation required. While Council has no power to stop this occurring prior to the NoR, early engagement with owners and tenants will minimise such occurrences.
- Landlords granting long term leases to tenants – Tenants with leases that extend beyond the project timeline will require relocation at Council’s cost. Early discovery of lease arrangements and early purchase of properties with upcoming lease expires and /or renewals will give Council control over any new lease terms that are issued.
- Loss or damage to purchased properties during the property holding period – This will be mitigated by obtaining the appropriate insurance cover.

15. Approval of purchases

Subject to a delegation from Council, GWRC’s Chief Executive will have the power to enter into unconditional agreements to acquire the property interests required for the HRCCUP. This delegation would be on the proviso that the Chief Executive is satisfied that the level of compensation agreed and other principal terms of the agreement are fair and reasonable.

In each instance, a request for the Chief Executive to sign an agreement to purchase property will be accompanied by a suitably detailed cover report providing the Chief Executive with sufficient comfort that the principal terms of the agreement are satisfactory. The Chief Executive’s delegation will be limited to prevailing approved budget for property acquisition.

A detailed record of cumulative property acquisition costs (both direct and indirect) will be maintained and monitored against the budgets. This will be reported to the Project Management Group (PMG) and Subcommittee on a periodic basis and will give the PMG early warning of any potential property acquisition cost over-runs.

Prior to the delegation of authority to the Chief Executive, any property purchase agreements will require the approval of full Council.

16. Purchase estimate

The current budget for property purchases for the HRCCUP is \$42 million being based on a high level estimated undertaken in June 2014.

In respect to this estimate we note:

- It is based on the property requirement as shown on the indicative land requirement plan contained in **Attachment 1(a)**.
- The purchase cost estimate was based on the rateable values of the properties as assessed at 1 September 2013 plus an escalation allowance of 20%.
- Excludes allowances for business relocation costs.
- It is a net sum i.e. it includes an offset for the proceeds from sale of surplus property at the end of the project.
- It does not include any offset for the holding income return from property that is purchased early.
- It includes allowances for professional fees relating to the property purchases – Valuation, legal, survey, property consultancy.
- Makes no allowance for the increased compensation as proposed by the Resource Legislation Amendment Bill.

Anecdotally the Hutt Valley property market has showed strong growth in property values (particularly residential) over the last 2 years or so. Given this and the likely impact of proposed changes to PWA compensation entitlements, it is likely, in our view, that the current property acquisition budget will be inadequate.

Once the final land requirement for the project is confirmed, a revised cost estimate for property acquisition will be prepared.

17. Financial/accounting

A project sub-group comprising Officers from Council's Finance and Flood Protection Departments and Jigsaw property has been formed. The role of the group is to consider the financial/accounting aspects of the project as they relate to property acquisition. Items for consideration will include:

- How acquired property it to be held i.e. by GWRC directly or through a separate property holding financial vehicle.
- Tracking of purchase costs vs budget
- Establishment of protocols for settlement of property purchases
- Systems for managing income and expenditure from rented properties during the holding period.
- Taxation issues and GST treatment on purchases.
- Type of insurance cover to be held for property purchased early.
- Financial reporting.

It is anticipated this project sub-group will report back to the Project Management Group on a periodic and ad hoc basis as circumstances require.

18. Land entry agreements

We anticipate Council and its consultant team will require entry to the project area to undertake site survey and geotechnical investigations to inform the developed and detailed design processes. This will require entry onto private property in advance of acquisition by Council. In some of these instances Land entry agreements will need to be negotiated with those owners and we anticipate this would be done through the appointed property negotiators/advisors.

19. Management of property acquired

As properties are progressively acquired they will need to be managed by Council until required for the project. Essentially this means keeping properties tenanted for as long as possible and maintaining them in a tenanted condition to maximise holding return. Again due to the sheer numbers of properties that will be acquired over time, at least some of the property management work will need to be outsourced to specialist providers during the property holding period.

The properties fall broadly into two categories being residential and commercial.

In respect to the 94 residential properties it is recommended that specialist residential property management companies be invited to submit proposals for management of those properties from the time of acquisition until they are removed for the project works. Council already owns some 20 residential properties for various future public works and it is proposed the management of these properties be included in the request for proposals. This should result in a lower cost structure for the management of residential properties overall and release capacity within Jigsaw Property to focus on core Council property matters.

The project will also require the purchase of some 20 commercial properties and consideration should also be given to engaging alternative property service providers to manage these properties and other existing commercial properties held by Council pending the execution of flood protection and other Council projects. Commercial property management requires a different set of skills to residential; hence a separate procurement process would be required if it was decided to outsource the commercial property management as well.

At this stage we recommend Council defer a decision to outsource the commercial property management role until a better appreciation of the likely work load is known.

20. Removal of Improvements

Prior to construction of the new stopbank, vacant possession of all buildings and structures will be required so that arrangements can be made for their removal, disconnection of services and the like. Some buildings will hold value for relocation to other sites, some will hold salvage value for re-use of materials and others will simply need to be demolished.

Options for removal of improvements and structures are:

- Inclusion within the main stopbank construction contract.
- Tender a separate contract for all the removal works as a single package.
- Tender contracts for removal based on pre-determined packages (e.g. residential versus commercial).

- Tender individual contracts for each site.

These options should be considered both in context of the anticipated return/cost of each as well as the project management and timeline risk. This will require some thought and analysis at a later stage of the project.

21. Disposal of surplus property

While some properties are only partially required for the project, because of the effect of the work, Council will be required to purchase the entire property. Therefore, there is likely to be surplus land available on completion of the project works.

Generally it is not recommended to undertake survey of the project area until the project works have been physically completed. Once works are complete, surplus property can be defined by survey and decisions made as the optimum method for disposal. Where possible properties will be purchased by agreement with “willing buyer/willing seller” clauses in which case the need to offer those properties back to former owners will be obviated.

There may also be opportunities to offer surplus property to adjoining owners “in exchange” but these will need to be considered on a case by case basis.

Before disposal of any “surplus” property careful consideration should be given to whether there is any value in holding the land for a wider community purpose.

22. Adjacent property not required by the project

Some owners of a property located in close proximity to the project area may consider that the stopbank project will diminish the value of their property and, as a consequence, form a view that Council should be required to purchase their property or alternatively compensate them for loss in value.

The law is quite clear in this regard in that, if no part(s) of these properties are required for the project, these owners have no entitlement to compensation under the PWA 1981; even if a loss in value could be supported by valuation.

While this may be unfortunate, we do not recommend compensation be offered; particularly in context of the precedent it would create. If a decision were made to compensate these owners, this would be a purely political decision.

The interests of these adjacent owners are protected by the RMA and through the right to make submissions during the consenting processing. Early engagement with adjacent owners will be crucial so that Council can understand their individual concerns and work with them to incorporate appropriate mitigation measures into the project design and implementation documentation.

This engagement might include:

- Ensure adjacent landowners understand how the preliminary designs affect their property/neighbourhood.
- Secure their involvement and give them opportunities to contribute in the preliminary design process.
- Where there may be affects as a result of the design, Council to work with owners to mitigate, where possible, the impacts on their property.

- Where landowners are facing zoning or policy changes Council will work with them to ensure they are informed and have an opportunity for input into the process.
- Offer support to affected businesses to facilitate their continued presence in the Hutt CBD.

23. Making Places – Daly Street Area

To date there has been limited interaction with HCC regarding how it intends to handle property matters relating to the Making Places project. While the “city side” has been left largely with HCC to date, the Council stopbank project is somewhat reliant on HCC reaching agreements with property owners along Daly Street, so the stopbank retaining wall structure can be built.

It is recommended that discussions occur with HCC at an early stage to establish how it intends to integrate their project into the critical path of Council’s flood protection works.

24. Communication

Consultation continues to progress with landowners whose land is required for the project. Landowners were provided with opportunities to meet with property consultants to better understand the processes.

Communication with directly and indirectly affected landowners will be ongoing through one-on-one meetings, ad hoc written communication, project newsletters and media.

25. Summary

This document provides a high level reference point for the processes and actions that will be required to successfully achieve the property requirements of the HRCCUP. It is anticipated that it will be updated and refined as the HRCCUP matures through its design and implementation stages.

Attachment 1(a): Preliminary Land Requirement Plan