



Qlapmatl Tnpp SheFR& Young. 1-U Grey St, PO Box 993, Wellfngton,
Kew Zealand. Tel +ga 4 499 5999. Fax +64 4,472 7111. OX SP20204.
WwwUhapmanfrripp.com CfEces also In Auckland and Christchurch.

facsimile

12 February 2004

Our ref: Bob Roche 1 Mark Hay
Direct dial: +64 4 498 6, 372
Email: mark.hay@chapmantripp.com

Number of pages: 6 including this page

Fax ta: 8018953

Peter O'Brien
O'Brien Property Consultancy United
W.ellington

HEADS OF AGREEMENT - STOPBANK CROSSING LICENCE

1. We refer to your ernal yesterday attaching the final version of the Heads of Agreement which GWRC officers are prepared te recommend to the Council.
2. We have been authorised to confmn to you, as solicitors acting on Harvey Norman's behalf, that Harvey Norman agmes to, and is prepared to enter into a formal licence based on, the terms set out in the Heads of Agreement as **attached**. We would be grateful if you could advise the GWRC officers accordingly and request them to seek Council approval and acceptance of the terms set 'out in the Heads of Agreement.
3. We look Forward to receiving confirmation af the above on behalf of the Council as saon as possible.

Yours sincerely

MarkHay ,/
Senior Solicitor

cc Richard Champion, Harvey Norman Holdings United, Australia
Neil Berryman, Harvey Norman Stores (NZ) Fty United, Auckland
David Haines, Haines Planning Consultants Limited, Auckland

*?il/S eiectmn/c menage tvgethej with any attachmenk is confidenffur, end may be privileged. flyOU WE not tFP3
intended r+hnt; (i) do not copy, di-c/ose or use the conrenrs In any way; (in) plcssc /et uS know ImmediatnJy
and then destmy the message.*

HEADS OF AGREEMENT

Proposal to Grant Licence for Stopbank Crossing

Licensor - Greater Wellington Regional Council (GWRC)

Licensee - Harvey Norrnan Properties (NZ) Limited (HN)

Terms proposed:

- 1. Land-** Approximately 765m* of land held by GWRC for the purpose of Flood Protection and River Control, and being developed as part of the city centre - Elwen to Melling reach - stopbank (the stopbank), as shown red on attached plan, being:

 - 1.1 Part of the land contained in certificate of title volume 28B folio 348, being part Section 31 Hutt District and part Lot 1 DP 35096.
 - 1.2 Part of the land contained in certificate of title volume 21 D folio 717, being parts Section 31 Hutt District, parts being delineated on DP A/1558.
- 2. Term** - 25 years from the Commencement Date (but, if the Commencement Date is later than 1 <January 2005, then terminating no later than 31 December 2029) or as terminated earlier as provided below.
- 3. Commencement Date** - 01 July 2004 or at the time HN obtains a revised Resource Consent to develop its adjoining land, (incorporating access over the stopbank and use of approximately 107 carparks in the adjacent riverside carpark area, as shown on the attached plan), on terms completely satisfactory to HN, which ever is the later.
- 4. Right of Renewal** - Nil.
- 5. Licence Fee** - \$14,000.00 per annum plus GST. Licence fee payment to commence from the date of HN first occupation of the land.
- 6. Licence Fee payment dates - Quarterly on** 1 July, 1 October, 1 January and 1 April, for each and every year of the term.
- 7. Licence Fee Reviews** - On 01 July 2009,2014,2019 and 2024. The licence fee shall be reviewed to reflect the Consumer Price Index (All Groups) movement recorded from the previous review date (or in the case of the first review date, from the Commencement Date). On review, the licence fee shall be no less than the licence fee payable immediately preceding the review date.

8. Use of Land - For the construction and operation of a driveway crossing over the stopbank for vehicles and pedestrians.

- 8.1 the driveway shall be used by light vehicles only;
- 8.2 the driveway shall be for the use of HN, its contractors, customers, tenants and other invitees;
- 8.3 a footpath shall connect with both the carpark and the existing stopbank walkway;
- 8.4 a pedestrian crossing shall be provided, crossing the driveway;
- 8.5 the driveway shall be one-way only with suitable markings provided;
- 8.6 two-way access shall be maintained from HN site to Rutherford Street at all times;
- 8.7 any signs posted will be designed to minimise impact on the floodway under flood conditions;
- 8.8 the driveway design shall allow for the stopbank to be reinstated if the driveway and or the HN building is removed;
- 8.9 a lockable gate shall be provided to the HN building, where it interfaces with the land, sufficient to prevent access to the land in the event of a flood, an emergency or during a temporary closure (without limiting HN's ability to close and/or lock the gate in accordance with its own security requirements).

9. The Licensee (HN)

- 9.1 To comply with all statutes, regulations and by-laws at any time in force.
- 9.2 No structures or improvements to be erected on the land without written consent of GWRC, first being held. All work proposed to be undertaken on the land by HN, being new work and maintenance work, shall be subject to HN compliance in full with the terms set out in Design and Quality Plans provided by HN and which have first been approved, in all respects, by GWRC.
- 9.3 At termination, all improvements are to be removed, in the manner specified by GWRC, by and at HN cost.
- 9.4 To maintain all improvements in good order and condition.
- 9.5 To maintain public risk insurance for not less than \$1 m for each event.
- 9.6 To indemnify GWRC against all claims and actions arising from HN use and occupation of the land.
- 9.7 To construct the driveway in absolute compliance with GWRC instructions.
- 9.8 In the event GWRC wish to upgrade or alter the stopbank, all HN improvements are to be removed, in the manner specified by GWRC, by and at the cost of HN and no compensation shall be payable by GWRC.

IO. The Licenser (GW'RC)

- 10.1 May withhold any consent at its absolute discretion for any proposed work (other than standard maintenance work of a non-structural nature) by HN on the stopbank.
- 10.2 Will give 6 months notice of entry for planned work.
- 10.3 Retains the right, at all times, to enter the land with provision of a reasonable notice for the purpose of managing and maintaining its flood protection assets and the stopbank.
- 10.4 Retains the right, at all times, to enter the land without notice for the purpose of responding to flooding, responding to an emergency or any unforeseen event which has or might place at risk the integrity of the flood protection system.

11. General -

- 11.1 Disputes to be resolved by negotiation - mediation - arbitration, all within a reasonable time frame.
- 11.2 The GWRC Hutt River Floodplain Management Plan contains a programme for an upgrade of the stopbank during the period commencing 2013.
- 11.21 Up to 31 December 2015, GWRC shall retain the right to temporarily suspend this Licence, but only:
 - 11.2.1(a) for the purpose of urgent upgrade or replacement of the stopbank;
 - 11.2.1(b) for the purpose of upgrade or replacement of the Melling bridge;
 - 11.2.1(c) where capital works programmes of GWRC and/or Hutt City Council are brought forward.
 - 11.2.1 (d) for the purpose of any other Public Work, (as defined in the Public Works Act 1981), that affects this land.

During the term of any temporary suspension of this Licence, the requirement for HN to pay the Licence fee shall also be suspended.

- 11.2.2 After 01 January 2016, GWRC may, if it requires the land for any GWRC Flood Protection, River Control or other Public Work, (as defined in the Public Works Act 1981), purpose, either temporarily suspend this Licence, (with suspension of the licence fee for that period), or terminate this Licence and resume possession of the land with no compensation being payable. GWRC confirms that it is the GWRC intention for this Licence to run its full term if this can be reasonably facilitated.
- 11.3 HN and GWRC acknowledge that the rights granted to HN under this Licence are collateral to and interdependent with the intended rights to be provided to HN by the Hutt City Council to use approximately 107 carparks in the adjacent riverside carparking area (the grant of which and the Resource Consent, as noted above, are pre-conditions to the commencement of this Licence). HN may, on provision of 3 months prior written notice to GWRC, terminate this Licence in the event that the carparks provided to HN by the Hutt City Council, are no longer available to HN for its use in accordance with the terms of the Resource Consent or any superseding resource consent, or if any arrangements which HN has with the Hutt City Council relating to the use of those carparks are otherwise terminated for any reason.
- 11.4 HN acknowledges:
- 11.4.1 that GWRC shall at all times retain unfettered rights to upgrade and or replace the stopbank and all flood protection systems at the time GWRC deems to be the most appropriate. The cost of any such upgrade or replacement shall be at the sole expense of GWRC.
- 11.4.2 that the optimum design of the upgraded or replacement stopbank is not to be compromised in any way. GWRC is to be unfettered in its design considerations to achieve the optimum flood protection for Lower Hutt City and the optimum design criteria shall prevail over all other considerations.
- 11.5 This Licence shall contain a conditional right of assignment. Any assignment request shall be subject to GWRC reserving an absolute right, without reasons, to decline the request. On making any request to assign this Licence, HN shall provide GWRC with all information GWRC requires to be satisfied that the proposed assignee is solvent, willing and capable of fulfilling all of the obligations contained within the Licence, including but not limited to a statement to that effect from the proposed Assignee.
- 11.6 All costs incurred by GWRC in establishing and granting this Licence (property consultancy and legal) shall be met by HN.