

Small Print

Features

- NorthGate Park
- North Shore Projects

Regulars

- Matters of Law
 - The Answer is Blowing In The Wind - Is It?
 - Health Check - Has Your Business Had One Lately?
- Knight Watch

VISIONARY MOVE

NorthGate Park, Marsden Point

If you have been feeling a bit gloomy about the property scene recently, Tony Gore, Partner at Knight Coldicutt, recommends that you talk to developer Oliver Scott – unless of course, you are the jealous type. Oliver purchased NorthGate Park at Marsden Point when it was a dairy farm. Unlike every other person in this country who was looking for the buttery support of Fonterra, he foresaw the potential of the farm's deep-water surrounds and its underlying industrial zoning.

Three years later, the opportunities in the Marsden Point area are attracting huge national and international interest, not least because the port at Marsden Point is now well on track to becoming New Zealand's first truly deep-water super-port, designated to eventually handle a substantial amount of our import and export container traffic. Ports of Tauranga and Ports of Auckland have purchased significant shareholdings in Northport, which is committed to expanding the port at Marsden Point to accommodate increases in shipping activity. It makes total

are forcing ports around the World to expand their facilities to accommodate them. Even the Suez Canal is being widened in response to this phenomenon!

Oliver's move to purchase the dairy farm years ago was visionary. It is now ideally situated on flat land in the heart of an area that is undergoing substantial growth with an expected increase in population of 10,000 to 15,000 over the next decade. NorthGate Park is the first freehold industrial land offered for public purchase on Port Marsden Highway. The proposed Marsden Point town centre is directly adjacent, with a railway link running through the town centre, shops, services, commercial and residential units, a sports complex and aquatic centre, and tertiary education facility. All sites come fully serviced and are selling fast! Construction has commenced. Stage 1 is sold out and limited lots are available at never to be repeated prices. I suggest you visit www.northgate.co.nz now.

But it hasn't been plain sailing. "The process of getting consent for future zoning of the dairy farm into B4 should have been straightforward," Oliver claims, "but it wasn't. The RMA should have taken six months but it took two years... the process has been difficult and stressful" mainly because he bought the land which was "worth about \$3 - 4 million as a dairy farm and was paying interest on \$21 million when the best valuation at the time was for \$12 million, so it was very high risk". Now the land is valued around \$55 million and land around Marsden Point, One Tree Point and Ruakaka has been snapped



sense, being the closest port to Australia and other Pacific neighbours. It will eventually relieve other ports of their increasing difficulties in managing the large volumes of cargo traffic and super-size vessels that



up by other big developers like Fulton Hogan and Hopper Developments.

Oliver's success in achieving council consent for NorthGate Park is, in part, due to the collaborative approach with fellow developers in the area who are, in every other sense, in competition. Oliver claims that consent was achieved by forming a board called BBLOA (Bream Bay Land Owners Association) which created a joint venture with council and landowners to solve infrastructure issues. Developers pay a levy at the beginning of their projects which allows for research to be done using the council's consultants. They then create policy documents and structure plans that the developers can adhere to. This collaborative approach between the private and public sectors facilitates faster solutions than traditional 'wait and see' council policies, allowing everyone to benefit.

Ken Patterson, CEO of the Northland Regional Council, maintains that trains will be running in five years time from Marsden Point to the main trunk line between Auckland and Whangarei. This \$200 million rail link will allow the rest of the area to boom. In anticipation of this a 120h block has been designated for the new town centre.

This once dairy farm is destined to become a city the size of Napier supporting 35,000 to 40,000 people, creating 18,000 jobs with its own CBD and a rail, motorway and international deep-water port that will link it inextricably to the rest of the world. All this because Oliver Scott saw it.

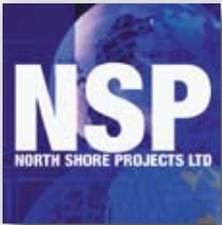
Jacqueline Klisser

DEVELOPMENTS ON THE SHORE

NORTH SHORE PROJECTS LTD

Werner Eichholz is my dentist. He is also a director of North Shore Projects Ltd (NSP) and I am friends with his wife. So in the interests of continued pain-free dental visits and happy lunches I interviewed Henk Kamffer, the other NSP director, who I didn't know at all.

When I met Henk I instantly decided that property developers who want to alter their stereotypical image of flashy foreign cars and year round long coats (you know who you are) could use Henk (or Werner for that matter) as their model for a clean, no nonsense Rodd & Gunn style down to earth image.



In 2001, with twenty years of property development under his belt in South Africa, Henk decided to emigrate to New Zealand and apply his knowledge here. He met Werner through his brother-in-law (also a dentist) and when Henk and Werner both ended up in New Zealand they decided to form a business relationship.

Although the property systems in New Zealand differ from what they had experienced, some things do not change, namely "waiting for the right opportunity to buy the right land at the right time," said Henk. The other things that do not change are professional relationships, which Henk and Werner value. NSP claims to keep the same banks, consultants and solicitors, "unless of course they can't do the job". Happily, Knight Coldicutt has been performing for NSP for six years and the relationship is strong.

Henk spent the first six months in New Zealand "getting to understand Auckland" and he found the process of learning about his new homeland a humbling experience. Things began to gather pace at the beginning of the boom in

2002 after being slow. "Hysteria" was the word Henk used. Opportunities grew and Henk and Werner concentrated their efforts on "two meaningful properties." One was a lifestyle block development and the other a multi-unit commercial complex. They were determined to get the volume right and find the right mix of product, and that is precisely what they achieved. NSP was on its feet and running in two years.

NSP, as the name suggests, operates mainly on the North Shore of Auckland because this is the market that Henk and Werner understand best. They understand their competition and know exactly what product works best and why. If there was a competition for a person's ability to recall the square meterage of all available leasehold land and buildings, versus freehold of the same, I bet Henk would win hands down. I couldn't get away with lying to him about land on the North Shore that he may not have heard of. I tried.

A new development for NSP for 2008/09 is a 41 apartment and 3 retail/commercial unit building situated in the heart of Albany Village called Tenor. It will be one of the only freehold developments in the area. The building boasts clean elegant lines with secured underground parking in a prime location. Tenor is within walking distance from Massey University, the impressive Albany Mall, the new bus station and the North Shore



Tenor, Albany

Stadium. Not to mention a concentration of private and state schools.

The other area of interest for NSP is Silverdale. Henk believes that *"Albany's industrial land is exhausted and that the real area for industrial growth is Silverdale"*. Soon the Johnstone Hill twin tunnels at Puhoi will be complete, which will bypass the Orewa bottleneck. Silverdale is the logical starting point for providing services to the North. There is very little precious flat land and, with the inevitable continued growth of the North Shore, freehold land in Silverdale will be a great asset.

Currently NSP is working on a multi-unit commercial development in this area called Hub. They have secured VTNZ as the anchor tenant with a host of other auto industry businesses in the vicinity.



Hub, Silverdale

NSP has a most impressive stable of other successful developments and I recommend you Google them or go to www.northshoreprojects.co.nz

Jacqueline Klisser

MATTERS OF LAW

THE ANSWER IS BLOWING IN THE WIND – IS IT?



With oil at record prices, and increasing, and a growing global distaste for traditional forms of energy generation which produce carbon dioxide, the search for renewable energy which really works, is on. Globally, and more recently in New Zealand, one solution is to harness the wind.

We have recently advised a number of land owners in successfully negotiating long-term arrangements with power companies, in one case with competing power companies bidding for access to and use of the same land.

What is clear is that if a wind farm does prove viable, then the revenue to the land owner, and associated increase in the value of the land, can be substantial.

What is also clear is that there is considerable risk, work, time and uncertainty between granting a power company or prospector a licence to investigate the viability of a wind farm on your land and the time when a fully commissioned wind farm is generating revenue. Land owners should be careful in who they contract with and in what they agree to. A number of the current forms of agreement in use in the market have the potential to lock land owners in for many years, sometimes indefinitely.

Some of the issues that land owners should take account of are:

- Does the operator have sufficient experience and capital to see a wind farm development through to commissioning? One speculator tried to lock land owners into an exclusive long-term licence in order to shut more substantial and genuine operators out.
- Who is going to buy the power produced by the wind farm and on what terms, i.e. does the operator have the necessary relationships and ability to sell the power produced by the wind farm?

- How is the agreement with the land owner and power operator structured and what rights of access to, and use of land, will the operator have? You and your advisors need to "future proof" the agreement and your rights under it as it will potentially last for generations.
- What revenue will the operator pay and when? Are there guaranteed minimum payments and do they meet the market? Will the land owner obtain the benefits of any carbon credits or "green tickets" available to the operator? Is there a regular right to review the pricing? Operators should pay for access to and use of land, not just a royalty.
- How is the relationship between multi-owners governed and maximised?
- What are the operator's rights and responsibilities to the land owner in respect of access to and use of the land and for damage to the land and livestock?
- What are the land owners' rights and obligations with respect to their own land and the development site of the operator?
- What happens if the agreement is terminated by the operator in terms of notice period and reinstating the property? Land owners may have raised finance on the back of the wind farm revenue and need time to refinance.
- Will you have access to the wind data produced by the operator in relation to the site?

We are well placed to assist land owners in considering, negotiating, structuring and documenting wind farm arrangements. Please call Michael Alexander or John Heimsath.



HEALTH CHECK – HAS YOUR BUSINESS HAD ONE LATELY?

What we often see is business owners actively (and often exhaustively) involved in the day-to-day running of their businesses with little or no time or resource to consider the structure, investor relationships,

owners' liabilities or attractiveness of the businesses to other investors or buyers. It is only when something like an owners' dispute, threat from creditors or desire to get out of the business arises that these matters are considered, often to the detriment of the owners and usually at considerably more expense than if those had been dealt with earlier in the piece. With this in mind, here are some thoughts:

BUSINESS STRUCTURE Is ownership of assets structured in the best way? It is usually preferable to have assets distanced from the operating entity that has the day-to-day business risks. This may allow flexibility for tax and estate planning. Should IP be hived off and licensed back to the business, establishing a rental or management company in the group or a financing entity?

OWNER RELATIONSHIPS Is there an appropriate shareholders' agreement in place that covers capital contributions and profit share, resolutions of deadlocks

in the management team and procedures for owners selling shares?

FUTURE CAPITAL RAISING Is the business in good shape for anticipated listing on the stock exchange, a venture capital buy in or debt funding agreements?

PEOPLE Are employment and consultancy contracts in place and enforceable? Are there appropriate confidentiality undertakings? Are restraint of trade provisions required to protect goodwill?

THE BUSINESS ITSELF What are the key elements of the business model, i.e. what drives the revenue and success? Are those elements secure and protected by legal structures, arrangements and documentation? Are they future proofed against changes in law or marketplace? Do they comply with associated consents and authorities from government bodies or is more effort needed to make the business clean and compliant on an audit? Do contracts allow for assignment/transfer if the business is sold or investors are brought in?

If you would like assistance with any of the matters discussed in this article, or would like us to conduct a health check on your business, please contact us.

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KNIGHT WATCH New website – www.kclaw.co.nz

Being offline for some time while our new website was developed has reaffirmed the importance of having online information about our services available.

We are back online. Please visit us for information on our services and downloading newsletters. Email your views to kc@kclaw.co.nz



This newsletter is sent to all clients on our mailing list. If we have your name or address incorrect, we would appreciate advice from you, so that we can update our records. Email kc@kclaw.co.nz with changes.