Rebuild Opportunities for Those Who Work Together

Anderson Lloyd Lawyers Partner Ben Johnston advocates a collaborative approach for landowners and property developers in the central Christchurch rebuild.

The rebuild of the Christchurch central city raises some issues but also some significant opportunities for landowners and potential investors in the city. Some of these issues can be resolved and opportunities realised through a collaborative approach.

Many landowners may have previously been purely commercial property owners who don't have the requisite skills, resources or appetite to be property developers. There are other people who aren't currently landowners in the market who want to invest in the central city and get a ‘slice of the action’ but perhaps don't have the right opportunity, capital, contacts or skills to go it alone. There are others still, whether they currently own land or not, who are very keen to be developers but who for one reason or another can't or don't want to go it alone.

An answer in all these cases is to team up with others.

For those landowners who own land in the central city retail precinct, where new buildings will need to be a minimum of 7,500m^2 (or roughly one-third of a block) as a development standard, only the big players will be able to develop buildings of that size themselves. Selling out to a big player or teaming up becomes the only option.

Outside of the central city retail precinct, investors don’t have the same imperative for collaboration, but there are compelling reasons to work together with others. Whether it be a neighbouring landowner to complete a development, a proposed tenant, an outside investor, an industry participant willing to help fund or provide services to the development, you share the risk, the cost and the reward. You make possible for yourself something which might not have been possible on your own.

For a number of landowners and investors this does require a mind shift – the classic Kiwi property investor enjoys having their own slice of land which they own and control, they choose their own tenants, bankers, advisors and their tax structure and they go their own way.

There will always be those people who want to continue in that category, and generally they will be the larger and more experienced property developers. However, for others there is an inherent attractiveness in pooling resources, finances and skills, and sharing risk and ultimately taking a smaller slice of a much larger investment pie.

A number of straight forward legal structures can be implemented for collaboration. In terms of property structures, this can be as simple as amalgamating your title with your neighbour’s, or outside investors buying into an existing landowner's piece of land and taking a share of the title.

In each case with that type of property structure, there should still be an agreement between the collaborators as to how they will control, fund, manage and exit their investment.

There are also recognised commercial legal structures which lend themselves to property collaboration – these include partnerships, limited partnerships, joint ventures, or alliances or management arrangements. Usually in each of those situations the land itself is held by someone (often a company) ultimately for the joint benefit of the collaborators.

One commercial structure which is particularly attractive is that of limited partnership. A limited partnership is a separate legal entity run by a general partner or partners who would manage the property development, for example.

The general partner shares responsibility for the debts and liabilities of the limited partnership. There are also one or more limited partners whose liability is capped to the amount of their investment in the partnership and who have restricted involvement in its management. Usually, however, the limited partners will have the right to appoint the directors of the general partner company and can exercise control in that way.

Limited partners can choose their own investment entity (for example personally, through family trusts or companies) to hold their partnership share.

Because limited partnerships are effectively taxed as though their business activities were carried on by the partners, any profit or loss flows through directly to the partners.

As with a traditional partnership, limited partnerships are governed by a partnership agreement which is confidential to the partners. The agreement covers things like control, entry and exit to the partnership, contributions (whether that be land, services, money or a combination), financial arrangements, and what the major decisions are that need special approval and by whom.

So limited partnerships offer some attractive features including capped liability and confidentiality for the limited partners and have the potential advantage of being taxed like a partnership.

In summary, for those who see the benefit in rebuild collaboration, either to resolve an issue or to realise an opportunity, or both, then as long as there is a will there is most definitely a legal way – and in fact a number of ways.

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