**Presentation on proposed Gulf Golf Course Developments**

**Chris Gedye, Legal Advisor to KGWS. Updated on 24/12/2023.**

**Introduction**

**KWGS now has a very experienced legal and planning team appointed.**

**The KWGS Legal advisor is co-ordinating this team.**

**Legal opinions have been obtained on several key issues which are commented on below.**

These opinions take into account the key issues applicable to the closure of the Gulf Harbour Country Club and golf course together with the recent Resource Consent application by the developer and owner of the golf course.

The starting point for any legal actions is to identify who the various people and associated companies are and what they are attempting to do.

We do not have complete information on much of this so we can only draw inferences on the developer’s motivations, but we believe they are fairly obvious. You be the judge.

It is also important to understand the corporate structure involved because this has a direct impact on the developer’s commercial aspirations.

The developer’s corporate structure in terms of publicly available information is as follows:

1. **The Owner/Developers corporate structure comprises four companies.**
2. **The Owner of the Golf Course: Long River Investment Corporation Ltd**

The shares in this company were acquired by the present owner in July 2021 for, we believe, some $20 to $25 million.

This company has a first, a second, and a third mortgage registered over the property.

The first mortgage with a priority amount of $78.67 million plus interest was provided by an American Private Equity Company.

Remember this figure because it is significant in the big picture. You might also ask why a US private equity company would be funding the purchase of a NZ golf course.

The second and third mortgages are to NZ based companies. You might also ask why these companies advanced mortgage funds when the first mortgagee had a priority to $78.67 million plus interest on a property purchased for $20 to $25 million.

Shortly after purchasing the shares in Long River the ultimate owner, a developer by the name of Greg Olliver, approached various third parties with a plan to rezone the Golf Course land to residential housing and to sell the land to those parties who would then subdivide the land and build residential houses.

This did not eventuate.

Olliver then attempted to swap the Whangaparaoa Golf Course for the Golf Harbour Golf Course.

This also did not eventuate.

However, these and other activities we are aware suggest that Olliver had no intention of maintaining a golf course on the land in the long term.

1. **The Operator of the Golf Course and Country Club: GHCC 2016 Ltd**.

This is the company that Gulf Harbour Golf and Country Club Members paid fees to.

It is understood to have numerous unpaid creditors including Golf Club members who have claims for fee reimbursement following the closure of the Golf Course and Country Club earlier this year.

Failure to pay debts (and these have not been disputed) indicates the company is likely to be insolvent and has been for some time.

Various promises to pay by specified dates have not been honoured.

The sole director of GHCC 2016 Limited and indeed all four companies involved with the golf course, is Wayne Bailey of Christchurch, a long-time business associate of Greg Olliver.

Emails have been sent to Bailey on several occasions to seek his assurances that GHCC is solvent and will repay creditors.

He has refused to respond.

If the company is insolvent and continues to trade as it currently is, under NZ company law, Bailey as sole director is likely to be personally liable for some, if not all, the company’s debts incurred during the period of insolvency.

We have been assisting GHCC members to recover pre-paid fees by way of the Disputes Tribunal.

Tribunal decisions have been received in two cases so far.

In one, the applicant won judgement in his favour but has received no refund to date.

In the second, Bailey actually attended by telephone, accepted liability, and stated the money would be paid back on 18 December.

I suspect this was simply a delaying tactic. No money has been received as at 24/12/2023.

In the event that GHCC 2016 Ltd is ultimately placed in liquidation, it is important that we have confirmed debts through the Disputes Tribunal as this gives us a seat at the table of creditors. It also allows Golf Club Creditors to seek High Court approval to appoint a liquidator if this is considered appropriate.

Liquidators have wide powers to enquire into a company’s historic financial transactions and management actions.

It is worth noting that Bailey has previously been censured by the Society of Accountants for breach of the Society’s rules.

1. **The Equipment Company: Gulf Harbour Equipment Ltd**

This company owned or leased the plant and equipment needed to maintain the golf course and country club. Again, this separates any owned assets from the operating company that owes money to creditors.

1. **The 100% shareholder in these three companies: Pheonix Trust Limited**

The 100% owner of Pheonix Trust Limited is Greg Olliver who in October 2021 was banned by the Companies Office from managing or being a director of any NZ company for four years (subsequently reduced to three years on appeal)

**2) The Encumbrance.**

In 2006 the then owner of the Golf Course wished to set aside some of the land (not part of the actual golf course itself, but adjacent land) for small lot residential development.

In order to obtain Council approval for the applicable zoning change the owner agreed to enter into an encumbrance for 999 years whereby the golf course land could only ever be used as a golf course or country club.

In this respect the Council was effectively acting as the representative of the community and should always act in the best interests of the community.

People buying or building homes in the area did so happy in the knowledge that this encumbrance existed and ensured that the green open spaces associated with the golf course remained so, essentially in perpetuity.

Obviously, the golf course was a real positive in terms of property values.

The two parties to the encumbrance were the Council and whoever owned the land at any time. This is termed “running with the land” and binds all future owners.

The encumbrance also supported the original Precinct plan for the whole Gulf Harbour development of what was then Hobbs Farm.

The whole rational for the development was that it would encompass a world class marina and world class golf course.

It also took into account, that due to infrastructure issues, particularly limited road access, that total housing had to be limited and green spaces maintained.

Encumbrances are an interesting legal creature.

They are effectively a contract between the two initial parties which also binds subsequent landowners.

Because they are a contract, the parties can agree to vary or remove them.

So, it would be possible for the Council and the current owner (Long River Investment Corporation Ltd) to agree to remove or vary the encumbrance.

There is also a provision in the Property Law Act where, in the absence of agreement between the parties, one party may unilaterally apply to the High Court for the encumbrance to be removed or varied.

However, in this particular encumbrance, it is specified that the Council may not exercise the provisions of the Property Law Act, but it does not make the same provision for the landowner.

There is also a further interesting provision in the encumbrance which specifies that if the Council gives the landowner approval (which includes a resource consent) for some activity other than a golf course or country club, that will over-ride the encumbrance provisions for the land to be used only for a golf course or country club.

The question is whether a Resource Consent to amalgamate boundaries and issue new titles is “an activity.”

So, you can see why it is important to ensure that the Council never agrees to any removal or variation of the encumbrance, including issuing a resource consent that has the effect of doing this.

Even if the Council does not agree to vary the encumbrance or issue a resource consent for an alternative activity, the landowner can make a unilateral application to the high court to remove or vary it.

The legal team have reviewed the case law that could apply to such a unilateral application by the landowner and believe that he would have an uphill battle to obtain the High Court’s approval, but a battle there may well be, and we will need to be prepared to fight it.

For so long as the encumbrance remains in place, the Golf Course remains in place and all the negative aspects related to intensive housing development on the golf course land will not happen.

**3) The Resource Consent Application.**

a) A Resource Consent application was recently lodged with Council on behalf of Long River Investments Corporation and was dated 15 November 2023.

KWGS was not immediately notified by Council, so we only became aware of it several days later.

There are time constraints within which Council has to decide how to handle the application so we moved very quickly with our legal and planning team to put together a comprehensive justification of why the Council should, as a minimum, notify the application thus allowing any individual who may be affected to make submissions as to why the Resource Consent should not be approved.

b) The Resource Consent Application is quite clever in that it presents itself as simply an amalgamation of existing titles and therefore according to the developer’s consultants, doesn’t require notification.

If approved, the existing nine titles which comprise the golf course, would be amalgamated into two titles, referred to as New Title 1 and New Title 2 in the Application.

New Title 1 would comprise all the land Northwest of Gulf Harbour Drive comprising 37.53 hectares.

New Title 2 would comprise all the land to the Southwest of Gulf Harbour Drive comprising 51.4 hectares.

The Resource Consent Application makes it clear that this is the first step in a proposed development where New Title 1 land will be sold off presumably (although not specifically stated) for residential housing.

It is fairly obvious this is the intention because, to make the whole scheme work financially, this is a necessity.

New Title 2 would remain as part of a smaller golf course which would have 6 or 7 new holes created on the land owned by Hoppers on the Southwest side of Pinecrest Drive.

But there is no guarantee this would happen.

The Resource Consent states that a deal has been done with Hoppers to buy the land but in a Stuff Article, Hoppers told the journalist that there was no deal.

Let’s assume for arguments sake that a deal has been done.

Let’s assume Olliver’s company(s) apply for a zoning change for New Title 1 and Resource Consent for residential housing or even commercial developments.

Let’s assume Council approves the Resource Consent.

End result, the encumbrance is no longer valid so bang goes your 999-year protection.

And it could get worse.

Let’s assume that Olliver subsequently decides that it’s no longer economic to complete the proposed new 18-hole golf course, resells the Hopper land for residential development which it is already zoned and consented for, and then says it’s not possible to have 18 holes only on the proposed New Title 2 so he now applies for another Resource Consent to develop that 51.4 hectares as residential housing.

In other words, the whole golf course is gone and replaced with up to 3000 further homes.

c) The KWGS response to the developers Resource Consent application was based on applicable sections of the Resource Management Act and taking into account relevant case law.

In one relevant case the Planning Tribunal held that:

***“Good resource management practice requires that in general all the resource consents required for a project should be carefully identified from the outset, and applications for them all should be made so that they can be considered together or jointly.”***

This statement encapsulates the KWGS position that required zoning changes and other resource consent applications should be produced and consents sought so that all planning issues related to the developer’s proposed project can be considered in detail.

This would give us the best opportunity to object and kill this disastrous proposal.

As a minimum, KWGS’s position is that this Resource Consent Application must be deferred pending further requested information from the Applicant and before any decision on notifying or non-notifying can be made.

KWGS has recently been notified that further information has been requested by Council and we have asked for details of both the Council’s request for further information and the developers response.

No decision will be made this year in terms of notification or non-notification.

If, in the unlikely event that Council decides not to notify (an independent Commissioner makes this decision), then KWGS will immediately request a Judicial Review.

If the Resource Consent is notified, KWGS will present comprehensive arguments to Council as to why the Resource Consent should not be granted.

**4) The Big Picture**

The big picture is that Olliver is clearly driven by a commercial imperative to make as much money as he can.

Consider the difference in value between what an operating golf course is worth and the value of the same land for residential housing purposes.

This difference is usually very substantial because golf courses do not typically produce large profits.

This does not mean that a well-run golf course is not profitable, rather that it is not a huge profit.

This in turn reflects what someone is prepared to pay for it, i.e. not a lot.

KWGS has undertaken a financial feasibility study which indicates the golf course can be run profitability and that if Olliver says he can’t run it profitability then he should sell it to someone who can, rather than destroy the green environment for thousands of people, cause extensive traffic congestion problems for the entire peninsula and reduce property values for many.

If we look at the Gulf Harbour golf course land as a golf course, it is probably worth well less than Long River paid for it. Two sales ago it reputedly changed hands for $6 million.

Developed and sold as residential housing land its likely to be worth more than $200 million.

Remember that $78.67 million priority on the golf course land held by the first mortgagee?

Add roughly $10 million from second and third mortgagees.

That only makes sense if the land has a value of at least $100 million.

The reality is that, when valued as an operating golf course, Olliver overpaid for the land.

Valued as residential land, he got a bargain. He also took a huge risk that he could have the encumbrance removed and the land rezoned, in whole or in part.

Effectively what Olliver is proposing to do, and always has, is make millions of dollars in development profits, while existing Gulf Harbour residents lose millions of dollars in lower housing valuations as a result, and all residents of the Whangaparaoa Peninsula are subjected to far more traffic congestion than already exists.

From what we can understand, he is doing this largely using other people’s money (mortgagees) on the basis that he can persuade the Council or ultimately the Environment Court to allow him to develop the golf course land for residential housing.

If he succeeds, he makes millions.

If he fails, the corporate structure he has set up appears designed to minimise any personal financial loss.

The vast majority of creditors have been nicely compartmentalised in GHCC 2016 Ltd while the landowner (Long River Investment Corporation) probably has no creditors other than the three mortgagees.

GHCC 2016 Ltd can be placed in liquidation, all the creditors suffer a loss, but the land is probably totally protected.

Olliver must be stopped, and we need your financial support.

There will be court cases either instigated by KWGS to protect the environment or in response to court cases instigated by Olliver in his attempt to make millions at our expense.

While much of the work will be done pro bono by the KWGS team and others, there will still be Barristers and Consultants fees and court costs.

We need at least $300,000 to start and maintain the fight. Donation slip details will be passed around shortly.

**5) Public Access to the Golf Course**

In the past, the owners of the golf course have actively prevented general public access to the course which has deprived locals of some magnificent walks overlooking the Hauraki Gulf and its islands.

Some overseas courses have put in place policies that encourage and allow public access to their course at certain times of the day particularly early morning and in the evening.

KWGS believes new owners who are dedicated to keeping the golf course as a golf course would be amenable to such a policy and KWGS would actively support this.

Thankyou for your support. We can win this.