

The bay of plenty that ended up returning so little

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Set in the heart of Bob Carr's electorate, a block of land at Jennifer Street, Little Bay, is known as home to the rare eastern banksia scrub, the last fragment of an ecosystem that once stretched from Botany Bay to Woollahra.

But now it has been identified as a different kind of treasure.

And that has brought some of the city's best connected developers to the doors of its owner, La Perouse Local Aboriginal Land Council.

One of those to come knocking, in 1999, was a consortium of three companies - Offset International Pty Ltd, Gulf Pacific Pty Ltd and Trafalgar Properties Ltd (now Harrington Properties).

Offset International is associated with Brian Scanlen, the former chairman of Permanent Trustee Company; Gulf Pacific is linked with a developer, Tom Wynyard; and Trafalgar Properties is linked with Robert Whyte, the multi-millionaire businessman and director of Kerry Packer's PBL.

Australian Securities and Investments Commission records show that the ultimate holding company of Trafalgar Properties is Audant Investments Pty Limited.

Audant's directors include Stephen Anstice, who until last year was a director of Rivkin and Co, once run by the disgraced stockbroker Rene Rivkin. One of Audant's former shareholders includes Offset Alpine Printing Pty Ltd.

The consortium was interested in Jennifer Street and other parcels of former Crown land granted to the land council under the NSW Land Rights Act.

In fact, it also helped identify real estate the land council could claim - on the understanding they would develop it together.

But first the consortium suggested a joint venture agreement, which included a trust fund to manage the land council's projected profits.

The consortium had envisaged a system similar to one in Fiji, where land granted under the equivalent of native title was leased for 99 years rather than sold.

"Fijian tribes are not permitted to sell land, so they forever own the land," Mr Wynyard said.

"[This] is part of the basic problem at La Perouse. That the people have been disenfranchised and are quite miserable about their lives in the main."

Mr Wynyard said that in Fiji the person cleaning your room in a five-star hotel owns the land on which the hotel is built - and this made a big difference.

At this stage of the story, the troubled history of the La Perouse land council becomes relevant.

Like many local land councils in NSW, La Perouse has struggled to cope financially. It has been in administration for more years than it has not.

When the consortium came calling, La Perouse was in the hands of Art Sideris, an administrator appointed by the NSW Government.

He told the consortium that if it wanted to proceed that it would have to meet the majority of legal costs because the land council had limited income.

He also made a second, crucial, suggestion that a small amount of money be used to get necessary community input into the setting up of a management trust.

The meetings to set up the trust were to include the then land council chairman, Ken Foster, and its then secretary, the late Herb Simms, he said. Mr Sideris said the list was later extended to include the council's then treasurer and Mr Simms' niece, Barbara Keeley.

"I envisaged that it would be no more than in the order of a month, or two months, of consultancy. Three to four months maximum," said Mr Sideris, who resigned as administrator before the management trust was formalised. But rather than taking a few weeks, the meetings appeared to stretch on longer than two years.

Sometimes there were two meetings a week, sometimes none. The three elected officials of the land council collected \$250 a week - in total more than \$25,000, according to documents obtained by the *Herald*.

Both Mr Foster and Ms Keeley declined to comment for this article.

Meanwhile, the council was well advanced in talks to develop several multi-million dollar blocks of eastern suburbs land.

The fairness of two of the development deals was later questioned by Tony Hanrahan, who in July 2002 was appointed by the NSW Government as administrator to the council. It was more than \$700,000 in debt.

After stopping the payments to the three officials, he noted that the trust had still to be established. He then queried the proposal for the 11,000 square metre block at Jennifer Street, which had been valued in 2000 in its raw state at between \$4.6million and \$5million.

Under a complicated arrangement with the consortium, the land was to be leased, broken up into 18 residential lots and a 60-home unit residential development - raising about \$9million.

The land council would receive an initial payment of \$4million from the consortium. It would also get the first \$1million of any remaining profit - termed a super profit - after expenses of about \$2.4million and a financial return for the consortium were deducted. The return for the consortium was put at about \$1.6million. If the development made more than \$9 million it would be split equally.

"The proposal as it stands is perhaps too much slanted in favour of the developers," Mr Hanrahan told the Government. "A better deal could have been negotiated for the council had the appropriate expertise been applied when the agreement was initially established."

The Jennifer Street deal had also been questioned a year earlier by Isabella Ferguson, an official in the NSW Aboriginal Land Council's land rights unit. The umbrella body must consent to any land disposals.

In a briefing paper dated February 2001, she said: "On the information supplied, if the super profit is not achieved, the local Aboriginal land council may receive less than the valuation of the land."

However, a month later, Ms Ferguson changed her advice and the NSW Aboriginal Land Council gave its blessing for the Jennifer Street deal.

Mr Hanrahan also criticised a second proposal put forward by some members of the consortium involving a nine-hectare block of nearby land, known as Hill 60, especially the fees to be charged.

"The only means to determine whether a 30 per cent fee is fair is to determine what a market rate for the proposed work would typically be. Informal advice from industry sources suggests that the figure is on the high side."

The actual development costs would be funded through a mortgage taken out over the land.

Mr Hanrahan also reported to the Government concerns that he had over documents signed by the chairman, Mr Foster, which appeared to exceed the chairman's authority.

"At this stage and in the absence of any documentation to the contrary I believe Mr Foster was acting beyond his capacity."

In April last year Mr Hanrahan referred the weekly payments to the three land council members to the Independent Commission Against Corruption.

However, six months later he was informed that it had decided that the matter did not warrant an investigation.

"I just think it is quite untoward for people who are put in to honorary positions to be receiving payments on a regular basis," Mr Hanrahan said.

"You are not dealing with an individual here who owns a block of land. You are dealing with community assets." He said what most concerned him was that not all members of the land council knew about the payments.

"I wonder why you would make payments to three members ... You could reasonably make the assessment that these payments were made as inducements so that they could find favour and get things done their way. That is the other side of it."

A land council member, Vanessa Longbottom, said yesterday that she and other members did not know about the payments to their officials through any meetings. She said she found out about them through leaked documents after they had begun.

But Mr Wynyard said the administrator had been wrong to query the arrangement.

He said the consortium was under a legal requirement to make the payments, which were designed to help the three individuals carry out their obligations as joint venture partners. "It [was] the chairperson at the time, the secretary at the time, and the treasurer at the time [who got paid]. It didn't matter who was in the position," he said.

"It would have been very wrong if that had been a nominated person where you pay Fred Smith this, and Bill Jones that."

The ultimate irony is that none of the land deals ever went ahead, although both are still current in one form or other.

First, the Endangered Species Act intervened with the Jennifer Street proposal, cutting the available land by about one third. The eastern banksia scrub turned out to be a protected species.

That led to further problems in 2002, when changes were made to the state's bushfire laws that disallowed development close to a potential fire hazard.

Mr Hanrahan's appointment delayed matters even further, and now only a version of the planned apartment complex remains.

The consortium claims to be down more than \$100,000 on the Jennifer Street proposal alone.

"So far we have had five years' work and we haven't made a penny," Mr Scanlen said. "The end result is, it wasn't slanted our way."

Both men have also lost out over the second, Hill 60, proposal.

Despite putting forward detailed plans for the land, the land council is now flirting with a second proposal from a different consortium.

"Had it gone through and Tom Wynyard and Brian Scanlen made a lot of money, it could be something you could go ... to ICAC [with] and say these guys made some money," Mr Wynyard said.

"But if you go to ICAC and say these guys lost some money, what does it matter?"