

Fineprint

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Eggs in One Basket?

A perspective on farm diversification

Farmers are always being told to consider diversification in order to spread risk, add value and achieve profitability. This article takes an overview on diversification, recognising that although it is nothing new, farm diversification these days is certainly a highly complex topic.

When considering the future there are often lessons to be found in the past, even if those lessons are founded on old sayings. Looking back has particular relevance for farming, after all, the past has been founded on agriculture and it is a fair bet so will be the future.

Avoiding shell shock

If we reflect for a moment, we can readily understand a medieval chook farmer's production and marketing problems. No firm land tenure, little knowledge of animal disease and control, food supply difficulties, theft and confiscations. Getting the eggs safely to market and still fresh, also posed severe problems as...well...eggs are eggs!

Experience showed that one did not risk the eggs being carried in one basket or saddle bag or if possible not by just one means, or at the same time, or to even just one market. Understandably then the saying *Don't put all your eggs in one basket* carried with it a lot of wisdom and human experience. What does that tell us today?

Our medieval farmer was practising a diversification strategy. He made sure his precious product got to market. He relied upon one product, and became expert in producing that one product. He had few products to compete against and his product was a guaranteed seller. National economics played no part, nor did international economics.

Today, the modern farmer, despite considerable scientific assistance and agricultural and pastoral knowledge, is now facing the biggest challenges and dynamic changes in farming history.

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A challenging future

Today, and for the foreseeable future, the challenge is coping with the sheer economics of change. Change is impacting on many fronts. Today there is real competition as transport allows products to reach anywhere around the world. There are more growers competing. It is true there are more consumers, but they are more demanding and expect greater variety, freshness, quality, innovation and at the lowest price. Marketing and pricing is not a level playing field. International policies, political and local factors and even fashion fads all add variables to the equation.

As if that was not enough, changing global weather will revolutionise both the methods of farming and what it is possible to grow.

Then there is genetic engineering making an entry. The level of uncertainty is rising and possibly uncomfortably. Our medieval farmer would not survive.

Modern farming has also become a numbers game. To operate profitably is becoming increasingly difficult. Land prices consume a large and increasing percentage of farm capital. Farm services, and plant and machinery costs increase. Water, once taken for granted, is now rationed and it is not universally distributed. Greater acreages and stock numbers are needed just to pay the bills as well as promote a profit.

It is true that a farmer can now farm and produce more with modern technology than previously, but even more will be required in the future.

In the past natural diversification has helped farming cope. Mixed farming in its various forms illustrates how the right kind of farm can well use its soil types and contours with crops, winter feed, sheep and cattle and so on. This is a form of on-farm diversification.

“Today, and for the foreseeable future, the challenge is coping with the sheer economics of change.”

But what is meant by farm diversification in the context of this article? It includes any method or strategy by which the farmer can keep farming profitably, and also add value to the national and or international community.

Diversification is amorphous

Diversification can take various forms. At one end of the scale a farm might in fact be uneconomic yet still contribute usefully to a particular market with a particular product. The farmer may have invested significantly off-farm, perhaps in an agricultural research company, maybe with patents producing good income.

At the other end of the scale a farm may be totally transformed to produce entirely

new products, possibly combining into a corporate entity with neighbours to handle scale, capital and so on.

However, before making drastic changes, the farmer must audit the existing operation. Can the operation run more efficiently? Can the farm, and the farmer, in fact cope with another product? Extra land may be needed or a new farm, or simply an additional farm product. Significant diversification involves capital, time delays before there is an income stream, more labour and, above all, risk. Your financier will be looking for strong equity and personal factors which give confidence to the bottom line result.

Not for everyone

Diversification cannot be regarded as the panacea for a sick operation. Experience indicates that those who diversify successfully are already good operators. Experience breeds experience. Uncharted waters require knowledgeable navigators to help guide the way.

Listen well

It is often said that not to adapt to change means stagnation and death. It is a fair bet that the future of farming will always require constant adaptation and diversification to survive. The future is here. While our medieval chook farmer would not survive today, he was ahead of his time, when he said to his son — *Don't put all your eggs in one basket.*

Overheated Housing Market

The boom in the housing market is matched by a plethora of housing articles and property market seminars — clear indication that the market is getting frothy. House prices have increased on average by 25% in the past two years. This increase has largely been driven by:

- Massive growth in farm incomes in 2001 which made the house boom more nationwide than in previous booms.
- Large migration inflows amounting to a 1% increase in the population each year for the past two years.

- Low interest rates, which has encouraged people to take on more debt. Interest rates are currently 15% below their average level in 2000.
- Good job security.
- A very favourable kiwi dollar in 2001 and 2002 which has made New Zealand property attractive to overseas investors and returning kiwis.
- Disillusionment with other investments in 2001 and 2002.

However, the growth is unsustainable and a market breather is anticipated. Westpac believes the New Zealand housing market is on average 9% over valued and will

eventually need to correct. Many of the factors that have been driving up the market are now turning. House prices will eventually return to a closer alignment with rental yield as indefinite capital gain at the levels seen recently is not sustainable.

Westpac's view is that house prices will rise by a further 5% in 2004 and then go sideways for a number of years whilst the fundamentals gradually catch up.

Quality, impartial investment advice is essential when making informed decisions about your financial future. Contact us for details on which financial planners we feel comfortable recommending.

Fashion and intellectual property get into bed together

Modus Operandi



Links between a fashion design (cluster) and an intellectual property law firm could, for most people, be difficult to fathom. However, in the case of *Modus Operandi* and intellectual property lawyers and patent attorneys, James & Wells, there is a strong connection.

Last November, Modus Operandi opened its first retail outlet in Auckland's High Street. Inside, clothes by some of the best young New Zealand fashion designers are displayed in a radically new way with the display system supports hanging from tracks in the ceiling. James & Wells drafted and filed a provisional patent application to protect specific aspects of the Modus Operandi display system. This strengthened an already close relationship with James & Wells — the firm has registered as trade marks the Modus Operandi brand and associated logo.

"We've enjoyed very much being involved with the development of Modus Operandi — it's a good business to support," says Simon Rowell, the James & Wells' partner responsible for the Modus Operandi IP portfolio. "The firm is a strong supporter of New Zealand innovation and in this way the fashion industry is really no different from other industries we're involved in."

Small beginnings four years ago

The business is the brainchild of Miriam Clements. Starting with a germ of an idea four years ago, Miriam's passion is to give fashion designers an opportunity to develop and showcase their designs. "It started as

a total concept", she says. "I had a vision of a brand and operation that would enable talented young designers to develop their commercial potential and present their designs to market, contributing to one fashion brand known for representing the work of New Zealand talent."

Miriam said that young designers find a steep learning curve as they try to make a living from fashion. Not only do they have to have the 'creativity gene' but they also have to develop savvy business skills — something that many find difficult.

"We help these young fashion designers by giving advice about suppliers and the style retailers are looking to purchase. Once they have created the garments we approach the wholesale market, consolidate their marketing, produce the clothing ordered and of course retail the designs in our gallery on High Street. It saves all these people constantly re-inventing the wheel. Why should, say, 10 designers all be production managing their designs, selling the designs, working to gain publicity for the designs; when effectively if this work is clustered far superior economies of scale and efficiencies are achieved? We can do the work that complements their designing

skills in order to create successful brand, whilst they concentrate on their creativity and innovative market leading designs."

"Most young designers underestimate the complexity of the fashion industry and business in general. By coming under the wing of Modus Operandi, the framework is already in place."

But it's not all one way, says Miriam.

"Modus Operandi has quite stringent conditions for the designers who come on board. Each designer needs to have some other source of income. This ensures they fund their basic expenses. We are not into giving handouts. Our role is to provide a creative environment that allows these people to experience the reality of designing their own clothes and seeing commercial progress, otherwise for many, designing will remain a dream."

Miriam says her work experience has given her an excellent base upon which to launch Modus Operandi. "Apart from a retail work whilst studying my work has been based in marketing, PR and sales. I started off at performing arts school and did some business papers at university. Then I moved on to label management for a record company — the music industry has some

very interesting parallels with what I'm doing now," says Miriam.

Great support networks

Modus Operandi has been virtually self-funded all the way long. "I didn't get paid for years!" chortles Miriam. She counts herself very lucky to have had excellent contacts, and some of these have become sponsors. "We've had great support from our legal teams — a large commercial law firm has helped with property and business issues, and of course James & Wells has been marvelous with all the IP work."

Having a mentor and inspiration has been vital to the success of Modus Operandi. Inspiration and support has come from another person in the rag trade, but someone whose market and product couldn't be more different from Modus Operandi. Miriam says that Sally Sinnot, founder of Pumpkin Patch, has been a

wonderful role model and mentor to her over the years. "I first met Sally when she spoke to my business class at university. I was so inspired by her. When I started this business, I sought out Sally and we've become firm friends as well as business associates. Sally is now a director of Modus Operandi.

Wonderful 2003

Last year was a momentous year for Modus Operandi. "Not only did our gallery and bar open in High Street, but also our fashion awards were launched. We had regional fashion shows throughout the year with the final parade being held in High Street in October," says Miriam. "The city council allowed us to close off the street for the event. That made such a difference — it meant we could have a 40 metre long catwalk right up the middle of the street. It was an amazing sight and gave us all

such a buzz. With nine designers' work being shown, 35 models taking part, modeling 80 different outfits — the parade made a huge impact. We'd like this to become a two-yearly event."

"The dedicated retail outlet was one of the final pieces in the jigsaw — the opening of our High Street shop last year has been a great success. It's literally given us the shop-front for our business. We now have a café within the shop, so we can offer a relaxing shopping experience."

Miriam looks back to the hard graft of the last four years with no regrets and says she's immensely enjoyed the challenge of establishing Modus Operandi. "I've loved every minute of it. With all the successes of 2003, it seems as though it's just beginning."

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Giving it Away is Not Always Easy

Gifting and the PRA

Until the arrival of the Property (Relationships) Act 1976, gifting of money attracted gift duty. However, now the gifting of money or property between spouses can be exempt from the payment of duty but only if they comply with formalities provided by the legislation.

In New Zealand (as distinct from most other OECD economies) property or money gifted by one party to another attracts the payment of gift duty.

The amount of gift duty payable on any gift is assessed by the Inland Revenue Department (IRD) on a sliding scale. The scale begins at 5% on gifts over \$27,000 and rises to 25% on gifts exceeding \$72,000. An exemption is available; a donor may make gifts totalling not more than \$27,000 per calendar year without payment of duty.

The gift or gifts are assessed by the IRD by the donor filing a statement with the Department setting out the total amount of gifts made. Once a dutiable gift has been made, the IRD has no discretion and must assess the gift duty payable and require its payment.

Gifting between spouses and partners

Since 1977 when the Matrimonial Property Act 1976 came into force, the gifting between husband and wife has been exempt from payment of gift duty.

The legislation was revised a few years ago being renamed the Property (Relationships) Act 1976 (PRA), and now extends to de facto spouses or partners, including same sex partners.

However, this only is effective if the money or property gifted from one spouse/partner to the other is made as a result of a court order, or pursuant to the terms of a formal document (a relationship property agreement) signed by the parties complying with the requirements of section 21 of the PRA.

In the absence of a relationship property agreement or court order, gift duty will be assessed according to the value of the property given by one spouse/partner to the other. This scenario could, unwittingly, affect many New Zealanders.

Will this affect me?

A common occurrence is when one spouse or partner receives a large lump sum superannuation payment and this sum is often invested on the advice of a financial advisor in the names of both spouses or partners.

In this situation, a gift has been made to the donee spouse/partner of a half share of the lump sum when the investment is taken in both parties' names. In this case, gift duty is payable on the gift.

If the spouses or partners intended that the funds should be invested in both parties' names, a property relationship agreement must be prepared prior to the transfer to both parties in which the parties acknowledge that the property is 'relationship property' and agree that it should be subject to the equal sharing provisions of the PRA, and comply with the other formalities of section 21 of the PRA. In this example, the gifting party is not liable for payment of gift duty.

Be careful

It is easy to inadvertently become liable for gift duty — unfortunately with the best of intentions. If you receive a windfall or are to come into large sums of money, it is imperative that you get some advice from us before you do anything with the funds.

More Peace of Mind for Retirement Village Residents

New legislation now in force

Retirement villages are a popular lifestyle choice for the elderly in New Zealand, currently attracting over 20,000 residents. Legislation that came into force on 1 February 2004 gives more protection for villagers and prospective residents alike. This article summarises the implications of the legislation.

In October last year the Retirement Villages Act was passed, and came into force on 1 February. Its purpose ensures that residents' rights are protected and that they receive security for their investment. Implications are:

- Village owners are now required to provide disclosure of all matters material to a prospective resident including entry, residency and exit costs. This disclosure will assist the prospect and his or her lawyer, accountant and financial planner to make a sound decision on whether to buy into the village.
- Prospective residents must now seek legal advice about their investment before signing an Occupation Right Agreement. Lawyers must also certify the general effect and implications of the agreement have been explained before the agreement is signed.
- After the agreement is signed, there is now a 15-day cooling off period during which time the agreement can be cancelled without incurring any penalty. This is designed to allow prospective residents to talk with their lawyers, contemplate the implications of the agreement, and discuss the matter with friends and family before finally being committed to the contract.
- Village owners must now register their standard form of Occupation Right Agreement and Disclosure Statement with the Companies Office, and must file financial returns. In addition, most village owners must now appoint a statutory

supervisor to monitor the running of the village. These provisions provide external standards and reporting processes which will ensure operator compliance with legal requirements and promote financial transparency and accountability.

- Compulsory dispute resolution procedures are to be set in place by village owners. Residents have the right to have any disputes referred to a Disputes Panel at the cost of the village owner. This ensures accessible dispute resolution for residents and village owners without preventing the parties from seeking to enforce contractual rights and obligations through the courts.
- Village owners may not reduce or cancel services offered without written informed consent from all residents. This should prevent unscrupulous operators from making unrealistic promises with the intention of later renegeing.
- Residents will now have greater security as the Land Registrar is required to enter a memorial on the village land title declaring the land to be a retirement village. This memorial will prevent the village land from being saleable by secured creditors or receivers except as an operating retirement village.

In conjunction with sound legal advice this legislation provides protection for people who choose to live in retirement villages. It will allow residents to enjoy the camaraderie and security that a well-run retirement village can provide.

“...residents' rights are protected and they receive security for their investment.”

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NZ LAW member firms have agreed to co-operate together to develop a national working relationship. Membership enables firms to access one another's skills and information whilst maintaining client confidentiality.

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Woodward Chrisp - Gisborne

Postscript

No smoke next Christmas

The Smoke-Free Environments Act was passed in December last year outlawing smoking in bars, clubs, restaurants and casinos from December 2004 onwards.

In the workplace there is to be no smoking at all. This includes taxis and company cars (except with the agreement of other users). There are to be no special smoking rooms in business premises. Ironically, smoking rooms will still be allowed in rest homes and for hospital care residents.

In addition, much stricter rules for the advertising and promotion of tobacco products will apply.

From 1 January 2004 smoking is now not allowed in and around the grounds of schools and early child care centres.

Landonline now complete

New Zealand's computerised land information system, *Landonline*, is now complete. Finished in November last year to the tune of just over \$140 million, the system allows survey plans to be generated and lodged electronically.

Processing of nearly all land transactions is now carried out electronically enabling much faster and more accurate and accessible information to conveyancers, surveyors and the general public.

More protection for car buyers

Legislation giving more protection for car buyers came into force on 15 December last year. The new Motor Vehicle Sales Act creates a new registration regime and allows for the removal of unsuitable participants.

The legislation requires all car dealers and auctioneers, and car market operators to display a Supplier Information Notice (SIN) on all used vehicles being sold giving details about any money owed on the vehicle, and give a summary of the buyer's rights.

Complaints may now be heard directly by the Motor Vehicle Disputes Tribunal. The Tribunal will be able to hear cases dealing with not only the new legislation but also the Fair Trading Act, Consumer Guarantees Act and the Sale of Goods Act.

"We have had a great deal of consultation and input from stakeholders and experts, and this legislation has strong support from the motor vehicle industry who agree there should be protections for consumers and that bad players should be removed from the industry," said Judith Tizard, Minister of Consumer Affairs.

Privy Council now history

The new year heralded in a major change in New Zealand's court system. From 1 January 2004 New Zealand's final court of appeal is now our own home-grown Supreme Court, replacing the London-based Privy Council. The Supreme Court will be housed in Wellington's old High Court Building in Stout Street and will begin hearing cases in July.