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BY EXPRESS POST

Partner
David Flavell

Mr Tim Grimwade
Acting General Manager of Adjudication Branch
Australian Competition and Consumer Commission
PO Box 1199
DICKSON ACT 2602

Our reference
SCK/NA/LENS5588-6675262

Dear Mr Grimwade

LENSWORTH KAWANA WATERS PTY LTD, LENSWORTH CALOUNDRA DOWNS PTY LTD AND LENSWORTH BUDDINA PTY LTD - THIRD LINE FORCING NOTIFICATION

We act for the above companies (collectively referred to as the "Lensworth Companies") and attach a:

- notification for the Lensworth Companies in accordance with Section 93(1) of the *Trade Practices Act 1974*, concerning the proposed supply of cottage land blocks by:
 - (a) Lensworth Kawana Waters Pty Ltd and Lensworth Buddina Pty Ltd at their Kawana Waters urban development; and
 - (b) Lensworth Caloundra Downs Pty Ltd at its Bellvista urban development,

to purchasers on the condition that those purchasers acquire building and related services for the building of housing on those blocks from one of a number of builders nominated by the Lensworth Companies;
- supporting submission; and
- cheque for \$300 in payment of the applicable statutory fee for each of the Lensworth Companies.

AUST. COMPETITION & CONSUMER COMMISSION
11 JUL 2003

10 July 2003

Page 2

Australian Competition and Consumer Commission

**LENSWORTH KAWANA WATERS PTY LTD, LENSWORTH
CALOUNDRA DOWNS PTY LTD AND LENSWORTH BUDDINA PTY
LTD - THIRD LINE FORCING NOTIFICATION**

If you have any queries, please do not hesitate to contact Nik Andersen on (03)
9672 3143.

Yours faithfully

CORRS CHAMBERS WESTGARTH



David Flavell
Partner

encl

COMMONWEALTH OF AUSTRALIA

Trade Practices Act 1974 - Sub-section 93(1)

EXCLUSIVE DEALING

NOTIFICATION

To the Australian Competition and Consumer Commission:

Notice is hereby given, in accordance with sub-section 93(1) of the *Trade Practices Act (Cth) 1974*, of particulars of conduct or of proposed conduct of a kind referred to in sub-section 47(2), (3), (4), (5), (6) or (7), or paragraph 47(8)(a), (b) or (c) or (9)(a), (b), (c) or (d) of that Act in which the person giving notice engaged or proposes to engage.

(PLEASE READ DIRECTIONS AND NOTICE ON BACK OF FORM)

- 1 (a) Name of persons giving notice
- Lensworth Kawana Waters Pty Ltd ABN 15 009 693 556 (“LK”)
 - Lensworth Buddina Pty Ltd ABN 56 009 682 384 (“LB”)
 - Lensworth Caloundra Downs Pty Ltd ABN 94 068 356 525 (“LCD”)
- (b) Short description of business carried on by those persons
- LK, LB and LCD are commercial subdividers and urban community developers.
- (c) Address in Australia for service of documents on that person
- c/- Corrs Chambers Westgarth
600 Bourke Street
MELBOURNE VIC 3000
Reference: Stephen Kroker
- 2 (a) Description of the goods or services in relation to the supply or acquisition of which this notice relates.
- The supply of land.
 - The supply of building and related services.
- (b) Description of the conduct or proposed conduct
- LK and LB (collectively referred to as “LKW”) wish to require purchasers of residential lots that are designated for cottages at their Kawana Waters urban development (“**Kawana Waters Development**”) to purchase building and related services from one of a number of builders nominated by LKW.

LCD wishes to require purchasers of residential lots that are designated for cottages at LCD's Bellvista urban development ("**Bellvista Development**") to purchase building and related services from one of a number of builders nominated by LCD.

(See Direction 4 on the back of this Form)

- 3 (a) Class or classes of persons to which the conduct relates
- Actual and potential purchasers of land designated, or to be designated, for the construction of cottages at the Kawana Waters Development and the Bellvista Development.
 - Glenwood Homes Pty Ltd, Beachstyle Homes (QLD) Pty Ltd and Wimco Developments Pty Ltd, being the builders referred to in point 2(b) above.
 - Builders nominated by either LKW or LCD in the future.
- (b) Number of those persons -
- (i) At the present time
- The conduct will relate to the actual and prospective purchasers of about 200 residential blocks of land at LKW's Kawana Waters Development and about 70 blocks of land at LCD's Bellvista Development.
- (ii) Estimated within the next year
- See above.
- (c) Where number of persons stated in item 3(b)(i) is less than 50, their names and addresses
- Not applicable.
- 4 Name and address of person authorised by the person giving this notice to provide additional information in relation to this notice

Stephen Kroker
 Partner
 CORRS CHAMBERS WESTGARTH
 600 Bourke Street
 MELBOURNE VIC 3000

Dated... 10 July, 2003

Signed by/on behalf of the person giving this notice

.....
(Signature)

DAVID JAMES FLAVELL
(Full Name)

PARTNER, CORRS CHAMBERS WESTGARTH
(Description)

DIRECTIONS

- 1 If there is insufficient space on this form for the required information, the information is to be shown on separate sheets, numbers consecutively and signed by or on behalf of the person giving the notice.
- 2 If the notice is given by or on behalf of a corporation, the name of the corporation is to be inserted in item 1(a), not the name of the person signing the notice, and the notice is to be signed by a person authorised by the corporation to do so.
- 3 In item 1(b), describe that part of the business of the person giving the notice in the course of which the conduct is engaged in.
- 4 If particulars of a condition or of a reason of the type referred to in sub-section 47(2), (3), (4), (5), (6), (7), (8) or (9) of the *Trade Practices Act* 1974 have been reduced in whole or in part to writing, a copy of the writing is to be furnished with the notice.
- 5 In item 3(a), describe the nature of the business carried on by the persons referred to in that item.
- 6 In item 3(b)(ii), state an estimate of the highest number of persons with whom the person giving notice is likely to deal in the course of engaging in the conduct at any time during the next year.

NOTICE

If this notification is in respect of conduct of a kind referred to in sub-section 47(6) or (7) or paragraph 47(8)(c) or (9)(d) of the *Trade Practices Act* 1974 ("the Act"), it comes into force at the end of the period prescribed for the purposes of subsection 93(7A) of the Act ("the prescribed period") unless the Commission gives a notice under sub-section 93A(2) of the Act within the prescribed period, or this notification is withdrawn.

The prescribed period is 21 days (if this notification is given on or before 30 June 1996) or 14 days (if this notification is given after 30 June 1996), starting on the day when this notification is given.

If the Commission gives a notice under sub-section 93A(2) of the Act within the prescribed period, this notification will not come into force unless the Commission, after completing the procedures in section 93A of the Act, decides not to give a notice under subsection 93(3A) of the Act. The notification comes into force when that decision is made.

If this notification in respect of conduct of a kind referred to in subsection 47(2), (3), (4) or (5), or paragraph 47(8)(a) or (b) or (9)(a), (b) or (c), of the Act, it comes into force when it is given.

LENSWORTH KAWANA WATERS PTY LTD, LENSWORTH BUDDINA PTY LTD AND LENSWORTH CALOUNDRA DOWNS PTY LTD

SUBMISSION TO THE AUSTRALIAN COMPETITION AND CONSUMER COMMISSION REGARDING THIRD LINE FORCING NOTIFICATION

1 Introduction

1.1 Lensworth Kawana Waters Pty Ltd ABN 15 009 693 556 (“**LK**”), Lensworth Buddina Pty Ltd ABN 56 009 682 384 (“**LB**”) and Lensworth Caloundra Downs Pty Ltd ABN 94 068 356 525 (“**LCD**”) are commercial subdividers and urban community developers. They are also related companies.

2 LK’s and LB’s Kawana Waters Development

2.1 LK’s and LB’s Kawana Waters urban development (“**Kawana Waters Development**”) is located about one hour (by vehicle) north of Brisbane, on Queensland’s Sunshine Coast.

2.2 LK and LB (hereinafter collectively referred to as “**LKW**”) are developing residential, industrial and commercial land at its Kawana Waters Development with the central focus of the development being a 2,500 metre rowing, canoe and recreation lake, and an additional focus being the presence of a nearby surf beach.

2.3 LKW have designated approximately 200 of the residential lots located at their Kawana Waters Development as “cottage” blocks for the construction of residential cottages (“**Cottage Blocks**”).

3 The Bellvista Development

3.1 LCD’s “Bellvista” urban development (“**Bellvista Development**”) is also located on the Sunshine Coast, south west of the regional centre of Caloundra.

3.2 LCD is developing residential land at its Bellvista Development with the central focus being a park which incorporates lakes.

3.3 LCD has designated approximately 70 of the residential lots at the Bellvista Development as Cottage Blocks.

4 Proposed Conduct

4.1 LKW and LCD wish to supply and offer to supply the Cottage Blocks at the Kawana Waters Development and the Bellvista Development to purchasers on the condition that those purchasers enter into a building contract with one of a selection of builders nominated by LKW and LCD, for the construction of cottages on the Cottage Blocks (“**Proposed Conduct**”).

4.2 The builders currently nominated by LKW and LCD to construct cottages on the Cottage Blocks at the Kawana Waters Development and the Bellvista Development are:

- (a) Glenwood Homes Pty Ltd;
- (b) Beachstyle Homes (QLD) Pty Ltd; and

(f) be more affordable to consumers,

(together referred to as the “**Key Objectives**”).

- 5.3 In creating the Design Specifications, LKW and LCD have undertaken detailed consultations with the Caloundra City Council, residents living in the vicinity of the Kawana Waters and Bellvista Developments, builders and other public interest groups.
- 5.4 LKW and LCD interviewed, researched and tested a number of builders to select in respect of the Cottage Blocks. LKW and LCD based their final choices on factors which include those parties’ experience with building homes on small blocks, their comprehensive understanding of design issues associated with high density housing and their ability to construct cottages in a cost effective manner and according to the Design Specifications.
- 5.5 LKW and LCD have worked with the Builders in finalising the Design Specifications. The Builders have also constructed display cottages based on the Design Specifications.
- 5.6 LKW and LCD do not believe they could achieve the Key Objectives as efficiently, or at all in some cases, if purchasers of the Cottage Blocks were able to engage any builder of their choice to build houses on those Blocks. If a purchaser was able to engage any builder of its choice to build a cottage on a Cottage Block, this would result in LKW or LCD, as the case may be, having to:
- (a) familiarise the builder with the Design Specifications for the Cottage Block and screen that builder to ensure its product would be likely to meet those Specifications;
 - (b) work with the builder to ensure that the plan for the cottage to be built on the Cottage Block complied with the Design Specifications; and
 - (c) regularly monitor the progress of that cottage as it was built, to ensure that it and the purchaser’s builder were meeting the Design Specifications.
- 5.7 Some of the Cottage Blocks that LKW and LCD have designated for the Kawana Waters and Bellvista Developments are yet to receive the Caloundra City Council’s building approval. The Caloundra City Council is under no obligation to approve those Cottage Blocks for building purposes. Consequently, LKW and LCD wish to ensure that the quality of the cottages built on the approved Cottage Blocks is carefully controlled so that those cottages do not detract from the area’s surroundings. The most effective and efficient way to achieve this is to have builders who are familiar with and dedicated to the Design Specifications construct houses on the Cottage Blocks.

6 Public Benefits Arising from the Proposed Conduct

- 6.1 LKW and LCD submit that the following public benefits will arise from the Proposed Conduct.
- 6.2 LKW and LCD will be better able to ensure that the cottages constructed on the Cottage Blocks achieve an overall urban development product that:
- (a) meets the Key Objectives and does not detract from the overall surrounds of the Kawana Waters and Bellvista Developments;
 - (b) is aesthetically pleasing to: