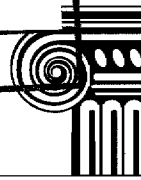


Lawyers

Sydney • Melbourne • Brisbane

FILE No:	
DOC:	
MARS/PRISM:	



holding
redlich

19 November 2007

Australian Competition and Consumer Commission
Adjudication Branch
PO Box 1199
DICKSON ACT 2602

Partner
Direct Line
Email
Our Ref

David Walker
+61 (0)2 8083 0446
david.walker@holdingredlich.com.au
DIW:JFC 27650044

Attention: Scott Gregson, General Manager

Dear Mr Gregson

Exclusive Dealing Notification re Third Line Forcing

We refer to the exclusive dealing notification lodged by DLL Wilton Pty Limited numbered N93213 and to the letter from the Australian Competition and Consumer Commission dated 15 November 2007 confirming that no further action would be taken in respect of that notification.

Bradcorp Wilton Park Pty Limited (**Applicant**) wishes to submit an exclusive dealing notification (**Notification**) in accordance with section 93(1) of the *Trade Practices Act 1974 (Act)* in relation to conduct falling within sections 47(6) and 47(7) of the Act (exclusive dealing). This Notification lodged by the Applicant is to be read in conjunction with the notification lodged by DLL Wilton Pty Limited.

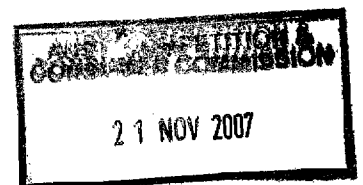
In support of the Notification, we, on the Applicant's behalf, have enclosed with this letter:

- (a) a completed Form G;
- (b) a cheque in the amount of \$100 payable to the Australian Competition and Consumer Commission; and
- (c) a detailed submission in support of the Notification in Attachment A.

Should you have any queries with respect to the Notification, please contact David Walker by telephone at (0)2 8083 0446 or by email at david.walker@holdingredlich.com.au.

Yours sincerely


HOLDING REDLICH



Form G

Commonwealth of Australia

Trade Practices Act 1974 — subsection 93 (1)

NOTIFICATION OF EXCLUSIVE DEALING

To the Australian Competition and Consumer Commission:

Notice is hereby given, in accordance with subsection 93 (1) of the *Trade Practices Act 1974*, of particulars of conduct or of proposed conduct of a kind referred to subsections 47 (2), (3), (4), (5), (6), (7), (8) or (9) of that Act in which the person giving notice engages or proposes to engage.

1. Applicant

(a) Name of person giving notice:

Bradcorp Wilton Park Pty Limited (ACN 086 388 212) (**Bradcorp**) N93222

(b) Short description of business carried on by that person:

Bradcorp is involved in the business of large scale community developments, residential property sales, project management and co-ordination and other property development.

(c) Address in Australia for service of documents on that person:

c/o David Walker
Partner
Holding Redlich
Level 65, MLC Centre, 19 Martin Place
Sydney, NSW, 2000

2. Notified arrangement

(a) Description of the goods or services in relation to the supply or acquisition of which this notice relates:

The Community Management Statement (**Residential CMS**) which governs a community title scheme which will comprise approximately 1,165 residential lots and community property (comprising approximately 120 Ha of environmentally sensitive bushland) known as Bingara Gorge at Wilton, NSW (**Residential Scheme**).

The Residential CMS is a legal instrument which contains by-laws required under the *Community Land Management Act 1989* and the *Community Land Development Act 1989*, both of which govern the subdivision of land under community title. When a person purchases a lot in the Residential Scheme, they become a member of the residential community association and their participation in the residential community association will be governed by the Residential CMS.

(b) Description of the conduct or proposed conduct:

The Residential CMS is intended to be used as a key mechanism to create a contractual basis upon which purchasers of one of 1,165 new residential dwellings in precincts within the residential community association of the Residential Scheme (**Precinct Development Lot**) can be billed individually for the sewer services they receive to their Precinct Development Lot.

Stream Essential Services Pty Limited (**STP Operator**) will provide sewerage and recycled water services to each Precinct Development Lot (**STP Services**). The STP Operator is a 100% subsidiary of the developer, DLL Wilton Pty Limited (**DLLW**).

Under By-law 19.4 of the Residential CMS, when a purchaser acquires a Precinct Development Lot, they will be taken to be in a contractual relationship with the STP Operator for the provision of the STP Services to their Precinct Development Lot.

Purchasers of Precinct Development Lots will not be permitted to install their own individual or private septic systems separately from the STP Services provided by the STP Operator.

Bradcorp will not sell a block of land in the Residential Scheme to a prospective purchaser who will not agree to be bound by By-law 19.4 of the Residential CMS.

Refer to Attachment A for further details.

3. Persons, or classes of persons, affected or likely to be affected by the notified conduct

(a) Class or classes of persons to which the conduct relates:

The class of persons to which the relevant conduct relates are the persons who will be prospective registered proprietors, lessees, occupiers or mortgagors in possession of Precinct Development Lots (**Owners and Occupiers**) in the Residential Scheme.

(b) Number of those persons:**(i) At present time:**

None, as the settlement of the land sales will not commence until late 2007. There are over 30 current exchanged contracts with purchasers of Precinct Development Lots that will be governed by the Residential CMS which include this arrangement.

(ii) Estimated within the next year:

It is estimated that there will be at least 100 Precinct Development Lot sales over the next 12 months.

(c) Where number of persons stated in item 3(b)(i) is less than 50, their names and addresses:

Not applicable.

4. Public benefit claims**(a) Arguments in support of notification:**

Bradcorp is requiring that Owners and Occupiers enter into a contract with the STP Operator to ensure that there is the safe and sanitary disposal of sewage within all parts of the Residential Scheme. This is necessary to protect residents from environmental and health hazards.

The concept of having a centralised sewer service for the development is already supported in the rezoning documentation and in existing Council approvals.

Ultimately, the service infrastructure developed for the performance of the STP Services (**STP**) is a community asset that is paid for by the Owners and Occupiers. It is necessary for there to be a contractual mechanism to recover the cost of servicing the sewerage needs of the Precinct Development Lots, so that the residential community can maintain and operate the STP and have the STP Services performed.

Critical mass and economies of scale are also fundamental to operating the STP on an economical basis to ensure that the STP Services are provided at a reasonable cost for residents. As the STP Services are not a metered service, it is impractical to make allowances for any Precinct Development Lots that might claim not to require such a service.

Refer to Attachment A for further details.

(b) Facts and evidence relied upon in support of these claims

Refer to Attachment A.

5. Market definition

Provide a description of the market(s) in which the goods or services described at 2(a) above are supplied or acquired and other affected markets including: significant suppliers and acquirers; substitutes available for the relevant goods or services; any restriction on the supply or acquisition of the relevant goods or services (for example geographic or legal restrictions):

There is no dominant provider of residential properties in the Wilton area. If a potential buyer wishes to purchase a lot in the wider region, there are numerous choices available. Apart from the numerous new developments, there are also established homes and redevelopment opportunities on offer in the area.

Refer to Attachment A for further details.

6. Public detriments

(a) Detriments to the public resulting or likely to result from the notification, in particular the likely effect of the notified conduct on the prices of the goods or services described at 2(a) above and the prices of goods or services in other affected markets:

There are no detriments to the public resulting or likely to result from the notification.

The nature of a community scheme requires purchasers of Precinct Development Lots to accept the nature of the common facilities and to accept the common future choices made together in meetings of the residential community association.

By making the choice to purchase a Precinct Development Lot in the Residential Scheme, purchasers are choosing to accept the STP Services in the form and subject to the limitations that have been determined by the developer to be the most advantageous for the members of the Residential Scheme as disclosed in the Residential CMS.

Refer to Attachment A.

(b) Facts and evidence relevant to these detriments

Refer to Attachment A.

7. Further information

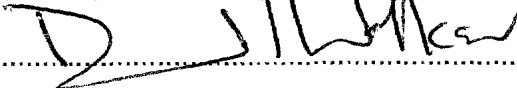
(a) Name, postal address and contact telephone details of the person authorised to provide additional information in relation to this notification:

c/o David Walker
Partner
Holding Redlich
Level 65, MLC Centre, 19 Martin Place
Sydney, NSW, 2000

Telephone: (02) 8083 0446

Dated 19 November 2007

Signed by/on behalf of the applicant


.....

(Signature)

DAVID WALKER
.....

(Full Name)

HOLDING REDLICH LAWYERS
.....

(Organisation)

PARTNER
.....

(Position in Organisation)

ATTACHMENT A

Submission to the Australian Competition and Consumer Commission in Support of Notification under section 93(1) of the *Trade Practices Act 1974* (Cth)

Introduction

1. This submission is in support of the notification lodged by Bradcorp Wilton Park Pty Limited (ACN 086 388 212) (**Bradcorp**) under section 93(1) of the *Trade Practices Act 1974* (**Act**) in relation to conduct falling within sections 47(6) and 47(7) of the Act.
2. The tests to be applied by the Commission are set out at section 93(3A)(b) of the Act, which requires that the Commission assesses whether the public benefits associated with the relevant conduct outweigh any likely public detriment.

Bradcorp

3. Bradcorp is part of Bradcorp Group. The Bradcorp Group has expertise in building and developing urban housing projects throughout Australia.
4. Bradcorp has been established as the special purpose developer of a project known as Bingara Gorge being developed at Wilton, NSW (**Project Land**).
5. The Project Land is being developed in accordance with a State Development Agreement between the NSW Minister for Planning and Bradcorp dated 14 September 2005.
6. Bradcorp, as the land owner, has appointed DLL Wilton Pty Limited (**DLLW**) as the developer of the first phase of the Project Land, being the eastern portion of the Project Land, under the Project Development Agreement between the Bradcorp, Delfin Lend Lease Limited and DLLW dated 15 August 2005 (**PDA**).

DLLW

7. DLLW is a part of the Lend Lease Group. The Lend Lease Group has expertise in building and developing urban housing projects throughout Australia.
8. DLLW has been established as the special purpose developer of the Project Land for the purposes of the PDA.

Description of the Project Land

9. The major component of the Project Land is a community title scheme comprising residential lots and community property (**Residential Scheme**). There may be additional community title schemes for golf, retail and industrial uses within the Project Land. Each community association is governed by a Community Management Statement (**CMS**). Some of the community associations will be further divided into precincts governed by Precinct Management Statements (**PMS**).
10. The first phase of the Residential Scheme will comprise the development of 1,165 new residential dwellings in precincts within the residential community association (**Precinct Development Lots**). The residential part of the Project Land will have an eventual population of approximately 3,500 residents (**Community Association**). The rights of the Precinct Development Lot owners within the Community Association are governed by the CMS (**Residential CMS**).
11. The Residential CMS contains by-laws and plans that regulate the management and operation of the Precinct Development Lots within the Community Association.
12. The terms of the Residential CMS are binding on each person who is a registered proprietor, lessee, occupier or mortgagor who is in possession, of a Precinct Development Lot within the Community Association (**Owners and Occupiers**).
13. Each community association within the Project Land, including the Community Association, will be required to subscribe for CA Class Shares in the company, Bingara Gorge Facilities Management Pty Ltd (**BG Facilities**). BG Facilities is an umbrella entity that, ultimately on completion of the development of the Project Land and the land to the west of the Project Land, will be wholly owned by the community associations for the sole benefit of the members of those community associations.

STP

14. The Project Land is being developed on the basis that it incorporates a self-sufficient sewerage and recycled water service dedicated to the service and benefit of each of the lot owners and the community associations within the Project Land, including the Owners and Occupiers.
15. Stream Essential Services Pty Limited (**STP Operator**), a company associated with DLLW, will provide the sewerage and recycled water services (**STP Services**) to each lot owner of each community association within the Project Land, including the Owners and Occupiers.

16. The STP Services are proposed to be provided in phases via differing forms of service infrastructure that correspond to the demand arising from the actual stage of construction of houses on the Project Land. The phases are:
- (a) **Phase 1:** This is the period until the first 20 houses are occupied. During this period, sewage will be transferred by gravity to a central pump station and removed off-site for treatment by a licensed sewerage contractor;
 - (b) **Phase 2:** This is the period between the occupation of the first 20 houses until the occupation of up to 100 houses. The STP Operator will construct an interim sewerage rising main from the pump station to the ultimate sewage treatment site. Interim Biolytix sewage treatment infrastructure will be installed to treat the effluent; and
 - (c) **Phase 3:** This is the period from the occupation of the 100th house. A sewage treatment plant will then be commissioned on the sewage treatment site and any obsolete infrastructure de-commissioned.
17. BG Facilities will enter into an agreement with the STP Operator for the provision of the STP Services (**STP Agreement**).
18. Each community association within the Project Land will also enter into a General Services Agreement with BG Facilities for the provision of a variety of services (**GSA**). Included in the services to be provided under the GSA are the following services that relate to sewerage and recycled water provision:
- (a) the provision of infrastructure to enable the provision of the STP Services to the Owners and Occupiers and to the community property of the community association. BG Facilities may sub-contract this responsibility to the STP Operator;
 - (b) the provision of the STP Services direct to the community association for its Owners and Occupiers and for the community property of the community association. The provision of these services may be procured from the STP Operator;
 - (c) on behalf of and as agent for the community association and the Owners and Occupiers, negotiation with the STP Operator, on an annual basis, the terms and conditions, including pricing and delivery, upon which the STP Operator will provide the STP Services to the Owners and Occupiers and to the community property of the community association; and

- (d) the operation and maintenance of irrigation equipment to distribute recycled water within the community property of the community association, including to parks and within other landscaped areas of the Project Land, through easements or licences in public or private land.

19. Core terms of the STP Agreement are:

- (a) BG Facilities and the STP Operator must, on an annual basis, negotiate the terms and conditions, including pricing and delivery, upon which the STP Operator will provide the STP Services to the Owners and Occupiers and to the community property of the community association;
- (b) for so long as DLLW and the STP Operator are related bodies corporate, the terms and conditions (including as to price) as agreed under (a) above must be affirmed as being reasonable by an independent third party expert;
- (c) if DLLW and the STP Operator cannot agree on the terms and conditions (including as to price), they must be determined by an independent third party expert; and
- (d) in the event that the STP Operator defaults under the STP Agreement, BG Facilities may terminate the STP Agreement and the provision of the STP Services will revert to BG Facilities.

20. The constitution of BG Facilities contains provisions that enable the Board of BG Facilities to require holders of CA Class Shares to provide additional share capital to BG Facilities in the event that the STP Agreement is terminated.

Residential CMS

21. The Residential CMS contains the following relevant conditions:

- “19.4 The registered proprietor at any time of a *Precinct Development Lot*:
- (a) is taken to be in a contractual relationship with the *STP Operator* on the terms set out in the form of the agreement from time to time adopted by the *Community Association* for the purposes of this by-law 19.4 (**STP Agreement**); and
 - (b) must, if so requested by the *STP Operator*, execute and enter into a written agreement with the *STP Operator* in the form of the agreement referred to in by-law 19.4(a).

- 19.5 The *Community Association* has the power under this by-law 19.5 to include in the form of the agreement referred to in by-law 19.4, provisions to the effect that:
- (a) the fee for providing the relevant *Service* can be invoiced directly to the person to whom the *Service* was provided by the person who provided the *Service*; and
 - (b) if a person to whom the relevant *Service* is provided does not promptly pay the invoiced fee for such provision, the *Community Association* may on demand pay the invoiced fee to the person who provided the *Service* and then recover the amount so paid from the person who has not paid the invoiced fee.
- 19.12 An *Owner or Occupier of a Precinct Development Lot* must not install or allow to remain in their lot a private Sewerage disposal service, eg, a septic system.
- 19.13 An *Owner or Occupier of a Precinct Development Lot* must ensure that their lot:
- (a) is and remains connected to the *STP Sewerage Service*; and
 - (b) is not connected to any service for the removal of Sewerage other than the *STP Sewerage Service* or to any private Sewerage disposal service installed in their lot.
- 19.14 An *Owner or Occupier of a Precinct Development Lot* must ensure that their lot is and remains connected to the *STP Recycled Water Service*."
22. The Residential CMS attaches to specific parts of the Project Land that are designated as residential Precinct Development Lots.

Description of the relevant conduct

23. To ensure that the whole Project Land, including the Residential Scheme and each individual Precinct Development Lot, retains its integrity and remains environmentally safe and sanitary, DLLW and Bradcorp have drafted the Residential CMS so that purchasers of Precinct Development Lots are required to connect to and remain connected to the STP Services to the exclusion of all other forms of sewerage removal or treatment services, including private septic systems.
24. Bradcorp and DLLW will sell Precinct Development Lots to each purchaser on the condition that they agree that by purchasing the Precinct Development Lot they will be taken to be in a contractual relationship with the STP Operator for the provision of the STP Services to their Precinct Development Lot and will execute a contract with the STP Operator formalising this if the STP Operator so requests. This condition is set out in the by-laws contained in the Residential CMS and becomes binding on the

purchaser of the Precinct Development Lot upon execution of the Contract of Sale for the Precinct Development Lot.

25. The Contract of Sale for each Precinct Development Lot will be executed by each of Bradcorp, DLLW and the purchaser. Bradcorp is a party as it is the legal owner of the Project Land upon which the Residential CMS sits. DLLW is a party as it has been delegated all of the obligations to implement the Contract of Sale on behalf of itself and Bradcorp in accordance with the PDA.
26. Under the Residential CMS, Bradcorp requires that the STP Operator be the sole provider of the STP Services for Owners and Occupiers and that Owners and Occupiers:
 - (a) connect to the STP Services;
 - (b) remain connected to the STP Services;
 - (c) not connect to any service for the removal of sewage other than the STP Services; and
 - (d) not install or maintain private systems of sewage disposal, such as septic systems.
27. By agreeing to be bound to the Residential CMS, all Owners and Occupiers:
 - (a) are taken to be in a contractual relationship with the STP Operator for the provision of the STP Services on the terms set out in the form of the agreement from time to time adopted by the Community Association; and
 - (b) will be required, if requested by the STP Operator, to execute and enter into a written agreement with the STP Operator for the provision of the STP Services.
28. To protect the STP Operator, BG Facilities guarantees to the STP Operator that if Owners and Occupiers who receives the STP Services do not promptly pay the invoiced fee for the services, BG Facilities, on demand, pay the invoiced fee to the STP Operator and then recover the amount paid from those Owners and Occupiers.
29. Bradcorp and DLLW will not sell a Precinct Development Lot to a prospective purchaser who does not agree to these conditions.
30. The requirement that the Owners and Occupiers exclusively contract with the STP Operator for the STP Services breaches sections 47(6) and 47(7) of the Act, as it is conduct commonly known as third line forcing.

31. For the purpose of this notification, Bradcorp considers that the relevant market is the residential real estate market in the Wollondilly, Camden and Campbelltown local government areas of NSW.

Public Benefits

32. The relevant conduct is of benefit to the public for the following reasons:
- (a) it ensures that there is a safe and sanitary disposal of sewage waste in the Project Land by a single reputable operator of the sewerage treatment and recycled water plant;
 - (b) it ensures that the STP Services will be provided throughout the Project Land by one system and by one operator in a consistent manner;
 - (c) it minimises any risks associated with individual private septic systems within the Project Land that are not serviced by the STP Operator, including risks of:
 - water leakage, leading to wastage of a precious community and environmental resource;
 - sewage leakage into the ground, causing contamination of land and water systems, including neighbouring land;
 - cost and practical difficulties of repairing faulty or leaking individual private septic tanks;
 - frustration and dissatisfaction of affected residents in the Community Association; and
 - health risks, including possible disease;
 - (d) it ensures that the STP Operator will have the knowledge of the Project Land site constraints and will be able to take into account the environmental requirements of the individual lots in providing the STP Services; and
 - (e) it will ensure that the provision of the STP Services complies with all municipal, state and federal laws.
33. The system of sewage removal to be used by the STP Operator in the STP Services is an environmentally sound method.

No Public Detriment

34. The relevant conduct does not result in any public detriment for the following reasons:
- (a) the deemed contractual relationship between STP Operator and the recipients of the STP Services (and the Community Association's payment guarantee) is necessary to ensure that the STP Operator is in a financial position to comply with its obligations under the STP Agreement;
 - (b) the relevant conduct is not designed as a way for Bradcorp, DLLW or any of their associates to gain profit at the expense of Owners and Occupiers. In particular:
 - the STP Operator will be providing the STP Services on an arm's length basis as the STP Operator will:
 - (i) use its own capital to design, build and maintain the infrastructure necessary to provide the STP Services;
 - (ii) be required to negotiate annually with BG Facilities as agent for the community associations within the Project Land the terms and conditions, including price and delivery, that it will provide the STP Services to Owners and Occupiers with the protection that the terms will be affirmed by an independent third party expert for so long as DLLW and the STP Operator are related bodies corporate or if no agreement is reached;
 - (iii) recover a portion of its capital expenditure from Owners and Occupiers as part of the fee for the provision of the STP Services but only to the extent that the independent third party expert agrees is commercially fair and reasonable;
 - (iv) given the involvement of independent third party expert review, be limited in charging a price that is a market price or better for the provision of equivalent services; and
 - (v) only make a profit either from the margin it negotiates in the price for the provision of the STP Services or from efficiency gains that it implements, subject always to the minimum operations

limitations that will be imposed on the STP Operator by the STP Agreement; and

- whilst the shares in the STP Operator will be able to be sold to a third party, the obligations of the STP Operator will not change on such a sale as the STP Agreement will govern the manner in which the STP Operator continues to provide the STP Services;
- (c) if the STP Operator gets into financial difficulty, the terms of the STP Agreement will require the transfer of any infrastructure for the STP Services to BG Facilities, who will then be able to call on each community association within the Project Land to provide the necessary financial backing to continue to operate the STP Services. This ensures that there will be continued integrity of supply and financial support from the very people who are being supplied the STP Services, the Owners and Occupiers;
- (d) the relevant conduct has been adopted by Bradcorp and DLLW to minimise any potential environmental damage, health risks or inconvenience to the Owners and Occupiers and the other residents of the Residential Scheme. In particular:
- the Residential Scheme has been designed and developed to a high environmental level with the intention that environmentally minded purchasers consider buying lots;
 - central to the sales pitch is that there will be a high level of environmentally friendly services, including sewerage removal services;
 - sewage removal services can only be achieved within this standard if they are centrally and consistently provided by one operator in one system;
 - the standard cannot be achieved if Owners and Occupiers are permitted to remove or treat their sewage outside of the STP Services; and
 - the community property within the Residential Scheme will comprises approximately 120 Ha of environmentally sensitive bushland; and
- (e) the property market in the area is highly competitive and the land packages offered by Bradcorp and DLLW in the Residential Scheme will compete with an array of alternative residential developments and dwellings, including the offerings of other residential property developers. The adoption of a single,