

Our reference
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27 April 2007

Mr Scott Gregson
General Manager
Adjudication Branch
Australian Competition and Consumer
Commission
PO Box 1199
Dickson ACT 2602

Contact
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Partner
Kathryn Edghill

Dear Mr Gregson

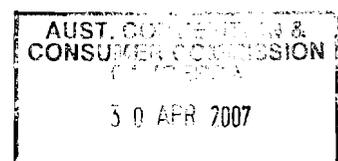
Exclusion dealing notification

Enclosed for your consideration is an exclusive dealing notification lodged on behalf of CRI Pty Limited together with cheque in respect of the lodgement fee applicable to the notification.

Yours faithfully
Corrs Chambers Westgarth



for **Kathryn Edghill**
Partner



FORM G

Commonwealth of Australia

Trade Practices Act 1974 –sub-section 93(1)

EXCLUSIVE DEALING: NOTIFICATION

To the Australian Competition & Consumer Commission:

Notice is hereby given, in accordance with sub-section 93(1) of the *Trade Practices Act 1974*, of particulars of conduct or proposed conduct of a kind referred to in sub-section 47(6) or (7) of that Act in which the person giving notice engages or proposes to engage.

1. (a) **Name of person giving notice:** *N92897*
CRI Pty Limited (ACN 124 792 043) of 460 Church Street, North Parramatta NSW 2151 (CRI).
- (b) **Short description of business carried on by that person:**
CRI is a wholly owned subsidiary of McIntosh Bros Pty Ltd (in liquidation) (ACN 000 024 395) acting by its liquidator Michael Ronald Parslow of Moore Stephens Sydney West, Level 6, 460 Church Street, North Parramatta NSW 2151 (**McIntosh Bros**). McIntosh Bros is a family company and land owner. As described in section 2(b) below, CRI has been incorporated to acquire and develop land currently owned by McIntosh Bros.
- (c) **Address in Australia for service of documents on that person:**
Mr Ian Charles McIntosh, Director
'Denbigh' Northern Road
Cobbitty NSW 2570
2. (a) **Description of the goods or services in relation to the supply or acquisition of which this notice relates:**
- various residential lots in the Sydney basin;
 - contracts for the construction of residential dwellings; and
 - marketing and sale of residential lots with contracts for the construction of a residential dwelling.
- (b) **Description of the conduct or proposed conduct:**
McIntosh Bros is the current owner of the Denbigh property in the Camden local government area of New South Wales. The property is

of approximately 500 hectares and is located at 421 The Northern Road, Cobbitty, NSW. The property is currently comprised of Lot 2 in Deposited Plan 1014583 (Title Search Folio Identifier 2/1014583).

McIntosh Bros has entered into a Project Delivery Agreement with Mirvac Homes (NSW) Pty Limited ACN 006 922 998 of Level 5, 40 Miller Street, North Sydney, NSW 2060 (**Mirvac Homes**)(**Agreement**) for the purpose of subdividing and developing the Denbigh property for residential use.

The Agreement contemplates that McIntosh Bros will transfer the portion of the Denbigh property that is to be developed to CRI and that the Agreement will then be novated by the parties to the effect that CRI and Mirvac Homes will implement the development project.

The Agreement is conditional upon the successful lodgement of this ACCC Notification.

The Agreement provides, amongst other things, that the Denbigh property will be subdivided to form at least 750 residential lots to be offered for public sale. The Denbigh property may, depending upon the decision of the Management Committee (to be established by Mirvac Homes and McIntosh Bros) and the grant of zoning and other regulatory consents, be subdivided into approximately 2400 residential lots.

The Agreement stipulates that the residential lots may be sold by CRI either:

- as vacant lots;
- as house and land packages within a display village on the site; or
- as vacant lots on condition that the purchaser enter into a contract with Mirvac Homes for the construction of a house on the lot (**House and Land Build Contracts**).

It is, therefore, likely that a proportion of the residential lots into which the Denbigh property is eventually subdivided will not be subject to the third line forcing arrangement inherent in the House and Land Build Contracts and will be sold as vacant lots.

The Denbigh property is of considerable heritage significance and is listed on the State Heritage Register.¹ The property was the subject of an original 1812 land grant and Denbigh Homestead, which is located on the property, was built in the early 19th century. Prior to its entry into liquidation, McIntosh Bros was controlled by members of the McIntosh family, who are descendants of Charles McIntosh, who first leased the property in 1868. His descendants purchased the property in 1886. The Project Objectives, as described in the Agreement,

¹ See http://www.heritage.nsw.gov.au/07_subnav_02_2.cfm?itemid=5051541 for a description of the heritage significance of the property

include the following: *"To create an urban outcome which is strongly influenced by the rural character and heritage values of Denbigh and meets the social, economic and environmental needs of the community."*

The proposed conduct will not lessen competition in the markets for the relevant products and services as:

- the property market in metropolitan Sydney is highly competitive and the land subject to House and Land Build Contracts will compete with a large number of alternative residential developments and dwellings. In particular, in the Camden local government area, in which the Denbigh property is situated, there are a number of competing residential subdivisions and developments at various stages of development. Accordingly, the proposed conduct will not limit the vast range of choices available to prospective purchasers;
- there is significant and effective competition between a large number of residential property developers in the metropolitan Sydney area.

The proposed conduct will be of benefit to the public for the following reasons:

- by retaining control of the design and construction of houses on the site, Mirvac Homes and McIntosh Bros are able to ensure the creation of a high quality subdivision that is consistent with the heritage significance of the Denbigh property and homestead. In order to achieve the Project Objectives described above, Mirvac Homes intends to develop a new range of housing products for construction on the Denbigh property. These houses will be sympathetic to the heritage nature of the site;
- the release and development of new residential land estates has been recognised by the NSW Government as an important public policy objective and the development of the Denbigh property will contribute to the achievement of this objective. The Growth Centres Commission, which was established in July 2005 under the *Growth Centres (Development Corporations) Act 1974* (NSW) to coordinate the release of greenfield land in NSW, has identified the area in which the Denbigh property is situated as an area for new land release.² Moreover, McIntosh Bros lacks the expertise to conduct a development of this nature on its own and the assurance of housing construction contracts was necessary

² See http://www.gcc.nsw.gov.au/media/4402/8_southweststageone_21august.pdf

to make Mirvac Homes' participation in the project financially viable.

For these reasons, the benefits from the proposed conduct will outweigh any possible detriment considered to arise from the proposed conduct.

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

Those of the general public who are seeking to purchase residential dwellings in metropolitan Sydney.

(b) Number of those persons –

(i) At present time: Nil.

(ii) Estimated within the next year: Although this may not occur within the next 12 months it is intended that the Denbigh property will eventually be subdivided into between 750 and 2400 lots.

(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:

C/- Mr Michael Parslow
Moore Stephens Sydney West
Level 6, 460 Church Street
North Parramatta NSW 2151

Dated: 18 April 2007

Signed by/on behalf of the person giving this notice.



Mr Ian McIntosh, Director CRI Pty Limited