

Our reference

CAR/MH/MIRV11189-9051129

AUST. COMPETITION &
CONSUMER COMMISSION
SYDNEY

1 6 MAY 2008

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**CORRS
CHAMBERS
WESTGARTH**
lawyers

16 May 2008

By hand delivery

FILE No:

DOC

MARS/PRISM:

Sydney
Melbourne
Brisbane
Perth
Gold Coast

Mr Scott Gregson
General Manager - Adjudication Branch
Australian Competition and Consumer
Commission
Level 7
123 Pitt Street
SYDNEY NSW 2000

Contact
Michael Hilliar (02) 9210 6189
Email: michael.hilliar@corrs.com.au

Partner
Conway Restom

Dear Mr Gregson

Exclusive dealing notification – Landcom

We **attach** on behalf of Landcom:

- an exclusive dealing notification in accordance with section 93(1) of the *Trade Practices Act 1975*; and
- a cheque for \$100 in payment of the applicable statutory lodgement fee.

Yours faithfully
Corrs Chambers Westgarth



Conway Restom
Partner

attachments

FILE No:
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MARS/PRISM:

FORM G

Commonwealth of Australia

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

NOTIFICATION OF EXCLUSIVE DEALING

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 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:

N93414

Landcom ABN 79 268 260 688 of Level 2, Riverbank Corporate Centre, 330 Church Street, Parramatta NSW 2150 (**Landcom**).

Landcom is a State Owned Corporation established under the *State Owned Corporations Act 1989 (NSW)* and the *Landcom Corporation Act 2001 (NSW)*.

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

Developing residential property in Middleton Grange, New South Wales (**Parkbridge Development**).

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

C/- Mrs Frances Wilmore
Manager Legal
Landcom
Level 2
330 Church Street
Parramatta NSW 2150

2. Notified arrangement

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

Landcom is the owner of the Parkbridge property in the Liverpool local government area of New South Wales.

The Parkbridge property is approximately 48 hectares, is defined as Lot 214 in DP1111381 and is approximately 180 metres north of Mclver Avenue, Middleton Grange.

(b) Description of the conduct or proposed conduct:

Landcom has entered into an agreement with Mirvac Homes (NSW) Pty Limited ACN 006 922 998 (**Mirvac**) for the development of the

Parkbridge property. Mirvac proposes to subdivide the Parkbridge property on behalf of Landcom, market the sale of individual lots and enter into contracts with purchasers for the construction and sale of residential dwellings, Landcom will also be a party to the contract.

The agreement between Mirvac and Landcom, which is conditional upon successful notification of the conduct of the Australian Competition and Consumer Commission, is to sell residential lots in the Parkbridge Development either:

- as completed homes; or
- as vacant lots on condition that the purchaser enters into a contract with Mirvac or pre-selected builders (together, **Pre-Selected Builders**) for the construction of a house on the lot (**House and Land Build Contracts**).

Landcom and Mirvac will determine which lots in the development are to be sold as completed homes or subject to a House and Land Build Contract.

Mirvac's offer to sell the residential lots on behalf of Landcom will also involve the purchaser agreeing to enter into a separate contract for the construction of residential improvements on the land with one of a Pre-Selected Builders. The Pre-Selected Builders have been decided on the basis of experience, standard of workmanship and the capability of their designs to meet the complexities of building on smaller lots.

The Pre-Selected Builders are as follows:

1. Eden Brae Pty Limited ACN 083 807 489;
2. Firstyle Pty Limited ACN 087 773 779;
3. Elamond Pty Limited ACN 077 636 385;
4. Casaview Homes Pty Limited ACN 063 937 931; and
5. Mirvac Homes (NSW) Pty Limited ACN 006 922 998.

or any other builder appointed from time to time.

Less than 70 percent of the residential lots into which the Parkbridge Development is eventually subdivided will be subject to the third line forcing arrangement inherent in the House and Land Build Contracts with a Pre-selected Builder.

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:

Those of the general public who are seeking to purchase residential dwellings in the Parkbridge Development.

(b) Number of those persons:

- (i) **At present time:** Nil
- (ii) **Estimated within the next year:** It is intended that the Parkbridge Development will eventually be subdivided into approximately 681 lots to be developed and sold over the next four (4) years.

(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:**

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

- Pre-Selected Builders will compete with one another to secure a House and Land Contract with a purchaser. Purchasers will therefore continue to benefit from competition between Pre-Selected Builders in relation to price, design and services;
- potential customers have an increased range of services (including a complete house and land package), thereby decreasing transaction costs for purchasers (i.e. from purchaser's perspective, Mirvac or the Pre-Selected Builders will do everything except transfer title to the subdivided land); and
- by retaining control of the design and construction of houses on the site, purchasers will be able to select and acquire land which it knows will be suitable within the development;
- Mirvac is able to ensure the creation of a high quality subdivision that is, as far as possible, comprised of houses of a similar and consistent appearance and ensure that the Pre-Selected Builders provide the same high quality standard for the construction of the dwelling;
- to the benefit of purchasers, the value of surrounding residential allotments in the development will be maintained by ensuring quality of construction by Pre-Selected Builders and using approved designs that are consistent with surrounding lots;
- appointment as a Pre-Selected Builder means that builders are more prepared to build display homes at their own expense. All Pre-Selected Builders will be required to build such houses. This will benefit purchasers by enabling them to inspect display homes prior to purchase at no extra cost.

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

There are a number of alternative suppliers in the markets for residential land housing contracts and residential construction services. These markets are highly competitive and the development will not diminish this. There is no obligation on purchasers to only purchase land from Landcom or to only use preferred builders for residential construction services outside the development.

5. Market definition

For the purpose of this notification, Landcom considers that the relevant market is likely to be the residential real estate market in the Sydney Basin.

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 the goods or services in other affected markets:

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;
- there is significant and effective competition between a large number of residential property developers in the metropolitan Sydney area; and
- accordingly, the proposed conduct will not limit the vast range of choices available to prospective purchasers.

Also, because at least 30 percent of the lots in the development will be sold to consumers as completed homes, consumers who wish to purchase a property in the development are free to purchase a lot that is not subject to a House and Land Build Contract.

(b) Facts and evidence relevant to these detriments:

In the Liverpool local government area in which the Middleton Grange property is situated, there are a number of competing residential subdivisions and developments at various stages of development. For example:

- Edmondson Park (Landcom and miscellaneous builders);
- Middleton Grange (Stateland);
- Greenway Views (Australand/Landcom);
- Pavilion (Allam Homes);
- Georges Fair (Boral);

- Ash Road Prestons (Miscellaneous builders and developers); and
- Woodland Glen (Patroni Properties).

7. Further information

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

C/- Mrs Frances Wilmore
Manager Legal
Landcom
Level 2
330 Church Street
Parramatta NSW 2150

Dated: 15 May 2008

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

Frances Wilmore

Frances Wilmore
LANDCOM
330 Church Street
PARRAMATTA NSW 2150

