

FILE NO.
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MARS/PRISM:

MAB**MAB Corporation Pty Ltd**

ABN 78 917 049 883

ACN 065 207 230

Level 5, 441 St Kilda Road
Melbourne Victoria 3004 Australia

PO BOX 7657

St Kilda Road Victoria 8004 Australia

Telephone 03 8681 2222**Fax** 03 8681 2100

www.mabcorp.com.au

Australian Competition and Consumer Commission
PO Box 1199
Dixon ACT 2602

18th July 2008

Attention:- General Manager
Adjudication Branch

Dear Sir/Madam;

RE Exclusive Dealing Notification

Pursuant to S93 of the Trade Practices Act, we would wish to lodge the following Exclusive Dealings Notification on behalf of Harbour One Tower Pty Ltd. Enclosed is the filing fee of \$100.00.

We have previously lodged Exclusive Dealings Notifications on behalf of Nolan Properties Investments Pty Ltd (N92351), Nolan Tower Pty Ltd (N40604), NewQuay Stage 2 Pty Ltd (N40603), NewQuay Nodal and Marina Pty Ltd (N40602), Conder Tower Pty Ltd (N92147) and Aquavista Tower Pty Ltd (N92148) which cover the same activities within the general same geographical area.

Await your reply.

Yours faithfully,
MAB Corporation Pty Ltd



Anthony Calvi
Group General Counsel &
Group Company Secretary

For and on behalf of Harbour One Tower Pty Ltd



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: N93521

Harbour One Tower Pty Ltd ("Vendor") (ACN 086 482 724) of Level 5, 441 St Kilda Road Melbourne, Victoria 3004, owner of a property at 369 Docklands Drive Docklands.

Short description of business carried on by that person:

The MAB Group is a Melbourne-based group of companies involved in the development of residential, retail and industrial property. The MAB Group consists of the following related entities:

- MAB Corporation Pty Ltd;
- MAB Docklands Pty Ltd;
- YarraNova Pty Ltd (a joint venture in which MAB Docklands Pty Ltd has a 50% share);
- NewQuay Nodal and Marina Pty Ltd;
- NewQuay Stage 2 Pty Ltd;
- Nolan Tower Pty Ltd and Nolan Properties Investments Pty Ltd;
- Metro Real Estate Services Pty Ltd as trustee for MAB Real Estate Services Trust (ACN 096 688 998) of Level 5 441 St Kilda Road, Melbourne, Victoria 3004, trading as Precinct Management Services ("PMS").
- Conder Tower Pty Ltd
- Aquavista Tower Pty Ltd and
- Harbour One Tower Pty Ltd

Current projects of the MAB Group include the development of the NewQuay precinct of the Melbourne Docklands area, which when completed will be a major

waterfront community comprising residential accommodation, marina facilities, restaurants, cafes, bars and commercial and retail premises.

As the appointed developers and managers of the residential, retail and marina components of NewQuay, the members of the MAB Group have various contractual obligations in relation to the development of the precinct. General contractual obligations arise pursuant to the Precinct Development Agreement between YarraNova Pty Ltd and the Docklands Authority. More specific obligations in relation to the lease, development and management of the Marina and 'nodal' buildings arise pursuant to agreements between NewQuay Nodal and Marina Pty Ltd and the Docklands Authority. Pursuant to these agreements, NewQuay Nodal and Marina Pty Ltd has also been granted the head leases for the nodal buildings.

In addition, various members of the MAB Group have obligations as the registered proprietors and managers of the residential towers that comprise the NewQuay precinct. Relevant for the purposes of this notification, Harbour One Tower Pty Ltd is the registered proprietor of the Harbour One Tower, which include less than 12 retail properties (10 studio offices and 2 retail tenancies).

Harbour One Tower Pty Ltd is responsible for the sale of these retail properties. The management of the properties will be the responsibility of PMS, a company within the MAB Group involved in property management services. PMS provides services in connection with lease administration, rent collection, rent reviews, new leases, outgoings management, car park management, property marketing and promotion, repairs and maintenance, minor capital works, legal representation of landlords, incentive management and tenant performance analysis.

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

C/- Anthony Calvi
MAB Corporation Pty Ltd
(Level 5, 441 St Kilda Road, Melbourne)
PO Box 7657
St Kilda Road
Victoria 8004

2 Notified arrangement

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

Subdivided retail property in the Harbour One Tower of the NewQuay precinct at Melbourne Docklands (the "**Retail Property**").

Property management services of Metro Real Estate Services Pty Ltd as trustee for MAB Real Estate Services Trust (ACN 096 688 998) of Level 5, 441 St Kilda Road, Melbourne, Victoria 3004, trading as Precinct Management Services ("**PMS**").

- (b) Description of the conduct or proposed conduct:

The Docklands Authority was established by the Victorian Government in 1991 to develop and promote the Docklands area in Melbourne. Pursuant to statute, the Docklands Authority is charged with the following functions:

- to oversee and coordinate the development by others of Docklands;
- to encourage and promote the involvement of the private sector in the development of Docklands;
- to ensure that Docklands is developed as a place of character and quality in which to work, live and visit, creating both a tourism asset and a boost to the prosperity of Victoria;
- to ensure that Docklands is an integrated community that is developed in a manner responsive to and complementary with the characteristics of the area and Melbourne; and
- to take or promote measures to create an appealing destination and environment that will encourage people to live and work in the area and that will attract visitors.

Pursuant to the Precinct Development Agreement between Docklands Authority and YarraNova Pty Ltd, these functions also form the general objectives of the MAB Group's development of the NewQuay precinct. The MAB Group generally, and Harbour One Tower Pty Ltd in relation to the Harbour One Tower, therefore play an important and continuing role in assisting Docklands Authority to fulfil its statutory functions in relation to the NewQuay precinct.

Harbour One Tower Pty Ltd intends to sell the freehold of the Retail Properties to enhance the ability of the MAB Group to develop the NewQuay precinct to its full potential. However, in order to comply with the ongoing obligations under the Precinct Development Agreement, it is necessary for Harbour One Tower Pty Ltd to impose certain quality standards and other controls on the way in which the purchasers of the Retail Properties can lease and sell these properties. These controls include ensuring that NewQuay is well maintained, clean and secure, that there is consistency and integration between the residential, retail and marina components of the development and that there is an appropriate, quality tenancy mix in the restaurants, bars, cafes and retail stores in the NewQuay precinct.

To ensure the objectives of the Precinct Development Agreement are met as well as compliance with other planning laws and precinct controls, Harbour One Tower Pty Ltd proposes to:

- (A) sell or offer for sale the Retail Properties to purchasers on condition that purchasers:
- comply with various covenants and other obligations relating to the terms on which purchasers lease or operate the Retail Properties;
 - acquire the property management services of PMS in accordance with a Property Management Agreement for a term of 6 years with a further 3 year option (the "**Property Management Agreement**"); and

- agree that they will novate the Property Management Agreement to any subsequent purchaser for the unexpired term of that agreement (if any), if they sell the Property.
- (B) refuse to sell or offer for sale the Retail Properties for the reason that the purchaser:
- has not agreed to comply with the covenants and other obligations relating to the terms on which the purchaser leases or operates the Property;
 - has not acquired or has not agreed to acquire the property management services of PMS in accordance with the Property Management Agreement; or
 - has not agreed to novate the Property Management Agreement to any subsequent purchaser for the unexpired term.

Pursuant to the Property Management Agreement, PMS will provide property management services to all purchasers of the Retail Properties, including:

- lease administration, rent collection, rent reviews and new leases;
- outgoing management promotion and marketing of the NewQuay Retail Properties and the precinct generally;
- repairs, maintenance and minor capital works;
- security and cleaning services;
- legal representation of landlords, incentive management and tenant performance analysis; and
- real estate services on sale of the Property.

In addition to these general property management services, PMS will be responsible for enforcing the covenants and other obligations imposed under the contract of sale or lease (as the case may be).

PMS will also provide services in relation to the retail-area and NewQuay precinct as a whole. For example, PMS will manage the car parks, the retail-area public toilets and waste-disposal, as well as the maintenance of the precinct's public areas for the Docklands Authority.

The MAB Group has sought to match the term of the Property Management Agreement (6 years plus option to renew for 3 years) with the time it expects it will take to complete the construction and development of the NewQuay precinct and to establish the area as a quality waterfront community.

The proposed conduct will be of benefit to the public as it will:

- provide the MAB Group with the ability to control and coordinate the quality and composition of the retail sector of the NewQuay precinct. This will ensure an appropriate tenancy mix and enhance the overall quality of the precinct. It will also ensure consistency of management between the Retail

Properties and the residential and marina components of the NewQuay precinct over which the MAB Group also has management responsibilities. It is hoped these measures will encourage visitors and promote tourism to the Docklands area;

- ensure that the NewQuay precinct is developed as an integrated community which complements the greater Docklands area and metropolitan Melbourne. The MAB Group will aim to achieve this through co-ordinated marketing of the NewQuay precinct to encourage visitors to the restaurants, cafes and retail stores;
- ensure compliance with the various planning laws and precinct controls imposed in respect of the NewQuay precinct by the Docklands Authority and/or Melbourne City Council (e.g. waste disposal; loading bay restrictions);
- provide owners and tenants with coordinated property management services, which should produce consistency of service, economies of scale and increased buying power in relation to shared services (eg security, cleaning, marketing, maintenance) and consequently reduced outgoings on the part of tenants and/or owners;
- provide owners and tenants with coordinated security and maintenance, thereby enhancing the safety and appearance of the NewQuay precinct. This will promote NewQuay and the Docklands area as an attractive and safe location to reside, work and visit;
- raise public awareness of the Docklands area and help change the existing negative perception of the area which some of the public may hold; and
- provide a managed approach to the sale of any Retail Property at NewQuay and ensure that new purchasers are provided with consistent and accurate information about their obligations. It will also maintain the quality and consistency of the NewQuay precinct through the ongoing provision of services by PMS to subsequent purchasers for the term of the Property Management Agreement.

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

- the proposed conduct will only affect the Retail Properties in the Harbour One Tower of the NewQuay precinct (less than 12 properties) which represent a very small percentage of the retail properties available for purchase and lease in the greater Melbourne area;
- while other property managers and real estate agents will not be able to provide management and related services to the purchasers of the Retail Properties during the term of the Property Management Agreement, there are numerous other owners and vendors of retail properties within retail developments and shopping centres in the greater Melbourne area which require these services.

The applicant considers that the benefits of the proposed conduct, as outlined above, will outweigh any possible detriment considered to arise from the conduct.

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:

Purchasers (initial and subsequent) of the subdivided retail properties in the Harbour One Tower of the NewQuay precinct.

(b) Number of those persons:

(i) At present time:

Harbour One Tower Pty Ltd is selling 12 Retail Properties from August 2008. The proposed conduct will relate to all persons purchasing the Retail Properties.

(ii) Estimated within the next year:

Depending upon the success of the sales program, a maximum of 12 Retail Properties.

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

The Retail Properties have not yet been offered for sale and therefore the purchasers' details are not known.

4 Public benefit claims

(a) Arguments in support of notification:

The proposed conduct will be of benefit to the public and will not give rise to any detriment.. In brief, the proposed conduct will

- ensure consistency of management between the Retail Properties and the residential and marina components of the NewQuay precinct over which the MAB Group also has management responsibilities;
- ensure compliance with the various planning laws and precinct controls imposed in respect of the NewQuay precinct by the Docklands Authority and/or Melbourne City Council (e.g. waste disposal; loading bay restrictions);
- provide owners and tenants with coordinated property management services, which should produce consistency of service, economies of scale and increased buying power in relation to shared services (eg security, cleaning, marketing, maintenance) and consequently reduced outgoings on the part of tenants and/or owners; and
- provide owners and tenants with coordinated security and maintenance, thereby enhancing the safety and appearance of the NewQuay precinct.

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

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

- the proposed conduct will only affect the Retail Property owned by the Vendor. This represents a very small percentage of the retail properties available for purchase in the greater Melbourne area; and
- while other property managers and real estate agents will not be able to provide management and related services to the purchaser of the Retail Property during the term of the Property Management Agreement, there are numerous other owners and vendors of retail properties within retail developments and shopping centres in the greater Melbourne area which require these services.

5 Market definition

Provide a description of the market(s) in which the goods or services described at 2 (a) 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):

The relevant markets in which the proposed conduct will occur are the Melbourne retail property market and the Melbourne property management services market.

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:

The proposed conduct will not result in any detriments to the public.

- (b) Facts and evidence relevant to these detriments:

See 4 (a) and (b) above.

7 Further information

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

See 1 (a) and (b) above.

Dated 18/07/08

Signed by/on behalf of the applicant



(Signature)

(Full Name)

Anthony Calvi

(Organisation)

Harbour One Tower Pty Ltd

(Position in organisation)

Company Secretary and
Company Solicitor.

DIRECTIONS

1. In lodging this form, applicants must include all information, including supporting evidence that they wish the Commission to take into account in assessing their notification.

Where there is insufficient space on this form to furnish the required information, the information is to be shown on separate sheets, numbered consecutively and signed by or on behalf of the applicant.
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. Describe that part of the business of the person giving the notice in the course of the which the conduct is engaged in.
4. If particulars of a condition or of a reason of the type referred to in section 47 of the *Trade Practices Act 1974* have been reduced in whole or in part to writing, a copy of the writing is to be provided with the notice.
5. Describe the business or consumers likely to be affected by the conduct.
6. State an estimate of the highest number of persons with whom the entity giving the notice is likely to deal in the course of engaging in the conduct at any time during the next year.
7. Provide details of those public benefits claimed to result or to be likely to result from the proposed conduct including quantification of those benefits where possible.
8. Provide details of the market(s) likely to be affected by the notified conduct, in particular having regard to goods or services that may be substitutes for the good or service that is the subject matter of the notification.
9. Provide details of the detriments to the public which may result from the proposed conduct including quantification of those detriments where possible.

