

Michael Panegyres

From: Michael Panegyres
Sent: Thursday, 19 March 2009 8:10 AM
To: 'adjudication@acc.gov.au'
Cc: 'Will Eyres'
Subject: Exclusive Dealing Notification - Kununurra
Attachments: KUNUR 2009-03-19 Application To ACCC For Immunity From Prosecution Under Third Line Forcing Lakeside Park 4 Lots Reserved For House & Land Packages Form G & Annexure A.pdf

Dear Sir/Madam,

We act for LandCorp and **attach** an exclusive dealing notification. The lodgment fee of \$100 will be sent by post together with a paper copy of the notification.

If you have any queries, please do not hesitate to contact us.

Regards,

Michael Panegyres

Solicitor

Pullinger Readhead Lucas

t +61 8 9320 4922

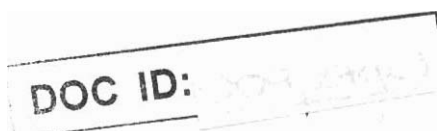
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ACCC

24 MAR 2009

PERTH

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.

PLEASE FOLLOW DIRECTIONS ON BACK OF THIS FORM

1. Applicant

- (a) Name of person giving notice:
(Refer to direction 2)

N93898 Western Australian Land Authority trading as LandCorp.....
.....

- (b) Short description of business carried on by that person:
(Refer to direction 3)

Development and sale of land in Western Australia
.....

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

Level 3
Wesfarmers House
40 The Esplanade
Perth WA 6000

2. Notified arrangement

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

See Annexure A attached
.....

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

See Annexure A attached
.....
.....
.....

(Refer to direction 4)

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:
(Refer to direction 5)

See Annexure A attached
.....

- (b) Number of those persons:

- (i) At present time:

Not known
.....

- (ii) Estimated within the next year:
(Refer to direction 6)

Not known
.....

- (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:
(Refer to direction 7)

Please see attached Annexure A
.....

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

Please see attached Annexure A
.....

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):
(Refer to direction 8)

Please see attached Annexure A
.....

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:
(Refer to direction 9)

Please see attached Annexure A

.....

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

Please see attached Annexure A

.....

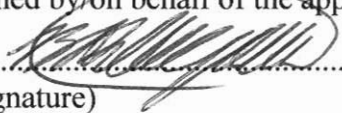
7. Further information

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

Dr Ben Killigrew
Level 3, Wesfarmers House
40 The Esplanade
Perth WA 6000
08 9482 7506

Dated.....17/3/2009.....

Signed by/on behalf of the applicant


.....
(Signature)

Dr Ben Killigrew

.....
(Full Name)

LandCorp

.....
(Organisation)

Regional Manager - Pilbara

.....
(Position in Organisation)

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.

ANNEXURE A

1. The Western Australian Land Authority (trading as LandCorp) is established pursuant to the Western Australian Land Authority Act ("**LandCorp**").
2. The object of LandCorp's Act includes the provision of residential land in a range of localities to meet the social and economic needs of the State of Western Australia.
3. LandCorp is developing a residential estate in Karratha at Baynton West Estate, with the first two stages comprising 192 single residential lots ranging in size from approximately 300-750 square metres. Karratha is a regional town which is located approximately 1,560 kilometres north of Perth and features a population of approximately 12,500 people.
4. LandCorp is committed to keeping the entry-level base price of land, and where possible housing in the Baynton West Estate, as low and affordable as possible to encourage first home buyers and families to settle permanently in the region. LandCorp is also committed to achieving the highest standards for residential development, encouraging new builders and introducing new innovative building practices and building materials to the Pilbara within this estate.
5. LandCorp has identified 30 lots in the Baynton West Estate out of the 192 lots in which it proposes to offer to selected builders to construct innovative residences.
6. LandCorp will appoint a panel of selected builders ("**Panel Builders**") to develop these lots in accordance with LandCorp's requirements. The Panel Builders will be chosen on the basis of satisfying LandCorp's requirements in accordance with Item 4 above.
7. It is proposed that the Panel Builders will be able to market (in conjunction with LandCorp) "house and land packages" on these 30 residential lots. It will be a condition at the sale of those lots by LandCorp that the purchaser enters into a building contract with the Panel Builder who has nominated the particular lot that the purchaser is interested in purchasing. Prime facie, this proposal may amount to third line forcing under the provisions of the Trade Practices Act.
8. It is considered that the likely benefit to the public from the proposed conduct will outweigh the likely detriment to the public from the proposed conduct in that:

- (a) the conduct will encourage the Panel Builders to design homes of a high standard and which meet detailed design guidelines and are priced to attract first home buyers. Without the likelihood of being awarded the construction contracts for these 30 lots, the Panel Builders may not have incurred the cost of developing designs for these lots, especially those around 300sqm in size that are new to the Pilbara; and
 - (b) Panel builders have completed display homes in LandCorp's Nickol West Estate. These homes had to be innovative in use of materials and incorporate climate responsive design. Enabling these builders to market and sell house and land packages will ensure that the buildings are of high quality, meet relevant design guidelines, are in accordance with LandCorp's principles. It is also likely that buildings will be priced to encourage first home buyers to buy land in the Baynton West Estate.
- 9. It is considered that the proposal will not have the effect of substantially lessening competition in the market for residential land and/or building services in Karratha or in the vicinity of the Baynton West Estate in that only a small number (30) lots will be sold as house and land packages. The remaining 162 lots will comprise approximately 52 'general release' lots to the public, 50 lots to local businesses and 21 lots to Native Title claimant groups, with the remaining 69 lots to be allocated to various government agencies and potentially an architecture competition.;
- 10. LandCorp has worked with a number of builders in Karratha and will choose the Panel Builders for their product quality and form, ability to construct in a timely manner, commitment to develop innovative new housing and price competitiveness.
- 11. LandCorp will not receive any fee, commission or other financial reward in relation to the building contracts to be entered into between the Panel Builders and buyers of the lots.