

Our Ref: MO:4369
Your Ref:

31 March 2009

The Australian Competition and
Consumer Commission (ACCC)
PO Box 6381
EAST PERTH WA 6892

ACCC
01 APR 2009
PERTH

DOC

Dear Sir/Madam

Form G Exclusive Dealing Notification

House and Land Packages at Lancelin Lagoon Resort, 28 Bootoo St Lancelin

We act on behalf of Lancelin Developments Pty Ltd. ("our Client")

Our Client proposes to offer approximately 65 survey-strata title lots for sale to buyers on the condition that each buyer enters into a building contract with a builder nominated by the Seller to construct a building on the lot purchased.

We believe that this may constitute or involve exclusive dealing under section 47(6) and/or section 47(7) of the Trade Practices Act 1974. Accordingly, our Client wishes to lodge a notification in respect of the proposed conduct.

Notification

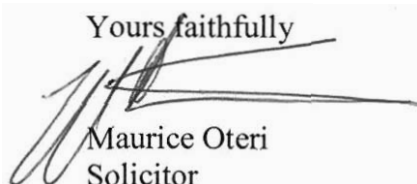
We enclose the following materials for your attention:

1. Form G – Exclusive Dealing Notification ("**Notification**")
2. Our Clients submission identifying the public benefits and limited potential negative impact of the proposed arrangement (and including a copy of the draft special condition which will be inserted in each contract for the sale and purchase of a lot).

3. A cheque for \$100.00 payable to the Australian Competition and Consumer Commission, being the Notification fee in relation to a notice under subsection 93(1) of the Trade Practices Act relating to conduct described in subsections 47(6) and/or 47(7) of that Act ("Third Line Forcing") by proprietary companies.

Please contact me should you require any further information.

Yours faithfully



Maurice Oteri
Solicitor
Encl.

c.c. Mr David Tucker – Australian Development Consultants
90 Marine Terrace, Fremantle WA 6160

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)

N93924 Lancelin Developments Pty Ltd (ACN 129 435 374)

care of 28 Ord Street, West Perth, Western Australia 6004

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

Property Development

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

C/- McDonald Pynt Lawyers, PO Box 697, Fremantle WA 6959

2. Notified arrangement

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

Construction of short stay tourist resort accommodation on land to be sold by the person given the notice, by a single nominated builder.

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

Proposed Project: 'Lancelin Lagoon' located at 28 Bootoo Street, Lancelin, Western Australia 6044.

Condition of purchase of property that Buyer enters into separate building contract with builder nominated by Seller to build short stay tourist resort accommodation on the property.

(See Annexure "A" Section 1.2)

(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)
- Buyers of lots to be used for short stay tourist resort accommodation**
- (b) Number of those persons:
- (i) At present time:
Nil
- (ii) Estimated within the next year:
(Refer to direction 6)
- Sixty Five (65)**
- (c) Where number of persons stated in item 3 (b) (i) is less than 50, their names and addresses:
- None at this stage as no properties sold**
- 4. Public benefit claims**
- (a) Arguments in support of notification:
(Refer to direction 7)
- (i) **The format to construct dwellings on a group of adjoining lots is a more efficient allocation of resources and will have potential construction cost savings that will flow on to the buyers.**
- (ii) **This results in lower unit product costs and improves the ability of the development to compete successfully in the Western Australian market.**
- (iii) **Purchaser security will be enhanced by having the overall project completed to the highest quality (within specifications) in the shortest time and at the lowest cost (within negotiable limits) to buyers.**
- (b) Facts and evidence relied upon in support of these claims:
- It is considered a standard practice that projects of a similar nature are far better constructed by a pre-selected building contractor**
- (See annexure "A" reference Section 3.0 to 3.4 inclusive)**

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)

See Annexure "A" Section 2.0 and 2.1

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)

We do not believe that there is any detriment to the community in general and, in particular, we do not believe that there is any detriment to the achievement of the goal of economic efficiency in the property development, building or tourism industries.

(See Annexure "A" Section 4.0)

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

There are no facts where no detriment is raised

7. Further information

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

**Maurice Oteri of McDonald Pynt Lawyers care of PO Box 697,
Fremantle, Western Australia 6979**

Telephone: (08) 9335 7171 Facsimile: (08) 9335 7177

Email: mauriceo@mpcl.com.au

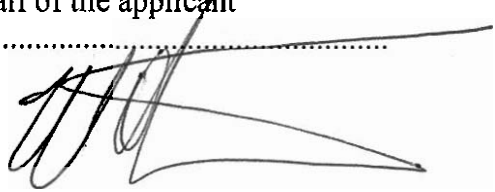
Dated.....31.03.09.....

Signed by/on behalf of the applicant

.....
(Signature)

Maurice Oteri

(Full Name)



McDonald Pynt Lawyers

.....
(Organisation)

Solicitor.....

(Position in Organisation)

ANNEXURE "A"

SUBMISSION BY LANCELIN DEVELOPMENTS PTY LTD IN SUPPORT OF NOTIFICATION OF EXCLUSIVE DEALING FORM G.

1.0 BACKGROUND

Lancelin Developments Pty Ltd ("Lancelin Developments") has a contract to purchase land located in Bootoo Street Lancelin in the Shire of Gingin Western Australia. Lancelin Developments proposes to purchase and develop the land which located adjacent to the Lancelin Lagoon Beach, to be developed and sold to buyers of strata and survey-strata title properties to be used for tourism purposes.

The development is a tourism and holiday location comprising various short stay tourist accommodation and other common facilities to be used by guests to the Resort.

Purchasers of individual strata properties will let their properties to tourists for short stay accommodation.

Although the properties will be owned by individual proprietors, the intention is that the Resort will be operated as an integrated resort.

The Resort is intended to provide an attractive and consistent presentation throughout. This will be enhanced by the use of complementary designs, finishes and colour schemes for all of the buildings in the Resort. In addition to the individual strata titled properties, there will be various central facilities in the common property areas, including a swimming pool. These common facilities will be available to all guests at the Resort.

The development is consist of approximately 65 strata titled lots each of which will be allocated a particular type of tourist accommodation unit (i.e. a unit, townhouse) appropriate to that particular lot. This design is intended to ensure, amongst other things, an attractive resort environment and a range of types of accommodation for buyers (and tourists) within the development.

1.1 Attached is a plan of the proposed Resort.

The development concept has been driven by a desire to create an integrated and high quality resort where buyers will have the comfort of knowing what the surrounding area will look like when completed. This vision is to be enhanced by using selected designs, finishes and colour schemes for all of the buildings in the development. The designs have addressed specific site constraints to create, for the benefit of buyers of the lots and the tourist occupants, an attractive integrated resort environment.

1.2 Description of the Conduct or Proposed Conduct — Item 2 of Form G

Under the terms of the proposed sale contract each buyer of a survey strata title lot will be required to enter into a separate building contract with a nominated builder ("the Nominated Builder") pursuant to which the Nominated Builder shall construct the unit on the lot purchased.

The building contract between each of the buyers and the Nominated Builder will be in a form to be agreed between the seller and the Nominated Builder.

The proposed conduct will only occur once in respect of each lot, at the time of purchase of the lot, when the obligation for the buyer to engage the Nominated Builder is imposed under the terms of the contract for the sale and purchase of the lot.

The requirement that the buyers enter into the building contract may constitute exclusive dealing under subsections 47(6) and/or 47(7) of the Trade Practices Act 1974 and our client wishes to notify in respect of this proposed conduct.

1.3 Potential Third Line Forcing

In order to ensure that the Resort is developed as an attractive, integrated resort environment featuring high quality and varied forms of tourist accommodation, it is intended that a single builder nominated by Lancelin Developments will be engaged to construct the various dwellings.

Lancelin Developments will engage the nominated builder directly for the construction of the apartments and townhouses to be built on the lots at the Resort and buyers of those lots will buy both the land and completed dwelling from Lancelin Developments.

However, buyers of the lots will be required to enter into a separate building contract with the nominated builder for the construction of the unit on their lots after settlement. This submission is provided in support of Lancelin Developments notification in respect of any potential third line forcing involved in this arrangement. The requirement that individual buyers (of the unit lots) enter into a building contract with a nominated builder will be included in each unit buyer's sale contract to buy the lot. The proposed condition is as follows:

"Contemporaneously with signing the Contract, the Buyer must enter into a building contract pursuant to which the Builder is engaged to construct the Dwelling on the Property in accordance with these Special Conditions."

For the purposes of this clause, "Contract" means the contract for the sale and purchase of the lot, "Buyer" means the buyer named in the Contract, "Builder" means the registered builder nominated by Lancelin Development to build all of the dwellings at the Resort, "Dwelling" means the unit as designed by the Seller's consultants, "Property" means the individual strata lot to be purchased by the Buyer and "Special Conditions" means the special conditions to the Contract including the plans and specifications for the unit.

The agreement between each buyer and the nominated builder will specify the dwelling to be constructed by the builder and the specifications, standards and deadlines for the construction of the dwelling. It will also specify the price payable to the builder and the method of review of the price (if required). It is proposed to use a standard form agreement such as the Master Builders Association of Western Australia's home building works contract for this purpose.

2.0 BRIEF SUMMARY OF THE MARKET

The geographic market relevant to Lancelin Developments application covers the Turquoise Coast Western Australia between Moore River and Dongara and includes the popular towns of Guilderton, SeaBird, Ledge Point, Lancelin Cervantes, Jurien Bay, Port Denison and tourist attractions such as the Pinnacles.

All of the coastal towns in this region comprise a wide geographic area and include a variety of tourist developments, residential and holiday homes, vacant lots and house and land packages. There is no dominant provider of residential or tourist properties in the area. There are numerous choices available to potential buyers (see further comments on competition below).

2.1 Existing Competition

There is currently ample competition for tourist properties in along the Turquoise Coast and the surrounding areas. As an emerging growing region in Western Australia, there is a continuing strong demand for tourism accommodation. That demand extends to accommodation units which are located within and form part of a fully integrated resort.

Developers are active in the region. Apart from resorts, hotels and motels, there are also private homes and bed and breakfast accommodation styles on offer. The buyers will be able to compare the price of the 'house and land' packages for the units with those of existing holiday homes, vacant lots and other tourist resorts or complexes to ensure that the prices at the Resort have not been inflated by the use of a single builder.

The buyers will also be able to compare the prices and choose between the unit types at the Resort which can be bought as completed dwellings for a single package price from Lancelin Developments and the unit lots with separate construction arrangements direct with the builder.

The potential buyers will have a genuine choice, based on quality and price, whether or not to purchase one of the 'unit' lots in the Resort together with the requirement to enter into a separate contract with the nominated builder for the construction of the unit on the lot.

Given the size of the local property market compared to the number of unit lots involved in this development, any adverse impact on competition would be minimal. Accordingly, there is negligible anti-competitive detriment caused by obliging a buyer of a strata title lot in the Resort (allocated for a unit type dwelling) to use the nominated builder.

3.0 BENEFITS FROM CONDUCT

We set out below some of the public benefits arising from the proposed conduct. We believe that the following benefits are of value to the community generally and achieve efficiency and progress in the property development, building and local tourism industries.

Efficiency and Competitiveness

By using one selected builder to construct dwellings on a group of adjoining lots there is a more efficient allocation of resources. This results in lower unit product costs and improves the ability of the development to compete successfully in the Western Australian market.

3.1 Consumer Protection

The proposed conduct promotes equitable dealings in the industry because all of the costs are disclosed up front. The land and building component is clearly disclosed in the land sale contract.

The use of a nominated builder on a specific group of lots and a standard building contract for all of the dwellings on the land enables the supply of better information to the buyers before the purchase of the land so that they can make informed choices about both the land and building contracts. It also enables easy comparisons to be made with the costs of purchase of land and the cost of a separate building contract or other "house and land" packages available on the market.

3.2 Improved Construction, Logistics, Quality and Reduced Costs

It is not desirable to have multiple builders on site at the Resort for a variety of reasons. If multiple builders were to build on adjoining lots within the Resort at the same time, construction costs for the dwellings could be increased due to the double handling and coordination issues that would result.

It is difficult to control the quality of the total Resort if there is a wide range of builders on site. By choosing a reputable builder to build all the dwellings in the development, the developer is protecting the investment of the buyers because all the dwellings will be built to the specified quality and finish.

The use of one builder on a group of adjoining lots promotes industrial harmony and safety on site by allowing safe and consistent work practices.

By pre-designing the dwellings for the lots, shorter building time frames will be available for buyers as building licences can be obtained relatively quickly and the builder will have already determined the most efficient method of construction of the houses individually and as a group.

In addition, issues such as earth works and site preparation for the dwellings can be considered in more detail as part of the land development process. This reduces the overall costs and again assists in enabling building time frames to be accelerated. It also avoids potential variations and resulting increased costs for buyers where the builder may otherwise not understand the specific site conditions of the property. Where one builder is building a number of dwellings adjacent to each other, there are further cost and time savings as one trade is able to move from one building to the next and the materials can be easily sourced and transferred as required.

Local governments also prefer a single builder in developments of this type because this means they only have to deal with one builder in relation to the issue of building licences, inspections and clearances. Security, maintenance and other issues can all be dealt with by a single builder if that builder is in control of the site as a whole. It can be a problem for the local government in strata titled or other individually owned developments where each individual accommodation unit is owned by a different proprietor. To attend to complaints and deal with security issues and other problems or regulations applying to the construction of the units is far more time consuming and inefficient.

3.3 Buyers' Preference

We believe that buyers prefer this type of "product" because they make a substantial stamp duty saving by settling on the land prior to construction of the dwelling commencing. However, they are still able to buy a "finished" product built to the plans and specifications prepared and marketed by the seller of the land.

Buyers are comfortable knowing that there is a certainty of standards in the product they are purchasing. Similarly, buyers appreciate the time, money and expertise which has been spent by the developer and the builder in preparing specific designs to suit the individual lots and choosing colours, tiles, floor coverings, fencing, landscaping and other aspects of the homes.

3.4 Environmental and Community Aims

Retaining the uniform style of the Resort will ensure that it is compatible with the local environment and it is this aspect of the development which will give it its integrated feel and attract people to the Resort and the area, thereby benefiting the local economy by increasing expenditure in the area which generally leads to increased employment in that area.

Using a nominated builder enables minimal disruption to the adjacent tourist accommodation and the local area and provides an ease of access to, and security of, the lots during construction.

The designs of the dwellings to be built on the lots address specific site constraints and have, therefore, been able to take into account the environmental requirements of the Resort and the individual lots. The design of the dwellings and the retention of existing trees aim at ensuring that the Resort is environmentally friendly and complies with all of the environmental requirements of the Shire of Gin gin and the Department for Planning and Infrastructure.

It helps to ensure that individual owners do not construct dwellings or undertake work which would be detrimental to the environment and the community as a whole. For example, the nominated builder will be briefed to ensure that protecting the existing trees on the site is a priority. Similarly, by ensuring that earthworks and site preparations are carried out to a consistent standard and with an awareness of the other works being carried out in the Resort as a whole, the development of the land is less likely to cause environmental damage or inconvenience to the owners and the other residents of and visitors to the area.

4.0 LIMITED PUBLIC DETRIMENT

Apart from the reduction in the number of effective competitors for the construction of unit dwellings within the Resort, we have not identified any significant public detriment arising from the buyers entering into standard building contracts with a single builder.

We do not believe that there is any detriment to the community in general and, in particular, we do not believe that there is any detriment to the achievement of the goal of economic efficiency in the property development, building or tourism industries.

The use of one builder should not impact on the cost or quality of the dwellings because the dwellings will be built to prices; plans and specifications agreed to by buyers prior to construction of the building. There should not be any increase in the restrictions on entry to the market for other builders as there are already numerous developments of this type occurring in Western Australia and more are planned.

Further, we do not believe that the proposed conduct will have a negative impact on competition by other market participants in that the ability to innovate effectively and conduct these developments efficiently is enhanced (not reduced) by the use of a single builder.

5.0 CONCLUSION

In summary, there are substantial public benefits arising from having each buyer of one of the units lots enter into a building contract with one nominated builder. Therefore, we submit that any detriment which might arise will be outweighed by the public benefits outlined above.

We are happy to provide any additional information you require or discuss any aspect of the development at your convenience.



Architects sketch of the resort looking west to the Indian Ocean

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.