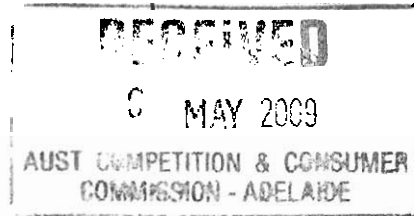


LYNCH MEYER

MEMBER OF THE KENNEDY STRANG LEGAL GROUP



Ref: AMA:587998
Direct Line: 8236 7683
Fax: 8223 4348
amacolino@lynchmeyer.com.au

5 May 2009

Australian Competition and Consumer Commission
Level 2,
19 Grenfell Street
ADELAIDE SA 5000

Via Hand Delivery

Dear Sir/Madam,

Exclusive Dealing Notification
Affordable Housing Consulting Pty Ltd ACN 134 397 434

We act for Affordable Housing Consulting Pty Ltd ACN 134 397 434

Our client is developing a scheme for small and individual Investors to benefit from the National Rental Incentives under the National Rental Affordability Scheme. These small and individual Investors would otherwise be unable to obtain the benefits of these Incentives.

With this letter our client gives notice of proposed conduct of a kind referred to in section 47(6) of the *Trade Practices Act (the Act)*, in accordance with sub-section 93(1) of the Act.

Annexed, please find:

- application fee in the sum of \$100.00; and
- our client's notification and supporting submission.

We note that this application has also been forwarded by email to adjudication@accc.gov.au

Should you have any queries, please contact the writer as you require

Yours faithfully

A handwritten signature in black ink, appearing to read "Alf Macolino", written over a horizontal line.

Alf Macolino
Partner
Lynch Meyer

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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:

N93974 Affordable Housing Consulting Pty Ltd ACN 134397434

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

The Applicant seeks to set up a scheme (“scheme”) to provide services whereby small and individual investors (“Investors”) may benefit from the Federal and State government grants (“Incentives”) being issued under the National Rental Affordability Scheme, which would otherwise be unavailable to them.

Refer to Annexure “A” for further details.

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

The Director

Affordable Housing Consulting Pty Ltd

67 Payneham Road

COLLEGE PARK SA 5069

2. Notified arrangement

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

The supply of administrative and organisational services to Investors for the acquisition and receipt of Incentives on the Investors’ behalf. Refer to Annexure “A” for further details.

(b) Description of the conduct or proposed conduct:

Requirement that Investors also engage suitably accredited Property Managers to manage the investment property or properties. Refer to Annexure “A” for further details.

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:

Investors in the scheme. That is, property owners who seek the services of the Applicant so as to benefit from the Incentives.

(b) Number of those persons:

(i) At present time:

Up to a maximum of 38 (this is the maximum number of Incentives that the Applicant has available to it at present)

(ii) Estimated within the next year:

Either 38 *or* up to a maximum of 388.

The applicant has applied for a further 350 Incentives but has not yet been notified if its further application will be successful or not.

If the Applicant's further application is successful, there will be a maximum of 388 persons to whom the conduct will relate (38 present Incentives plus 350 new incentives).

If it is unsuccessful, then the number of persons to whom the conduct relates will be limited to a maximum of 38.

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

The details of the persons cannot be known as the conduct being notified is only proposed conduct and the marketing of the scheme has not yet commenced.

4. Public benefit claims

(a) Arguments in support of notification:

There are a number of public benefits, most of which have been identified by Federal and State Governments, to allowing the scheme to operate in this manner. Refer to Annexure "A" for the details of these benefits.

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

Refer to 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):

Current Market

Presently, in South Australia, the only other entities which have successfully applied for the Incentives have done so for their own use. These consist primarily of Not for Profit Organisations, large property developers and other organisations with the capital and ability to supply multiple properties for residential investment purposes.

The Applicant is unique in the South Australian market as it is the only recipient of Incentives that will allow small and individual Investors access to the Incentive benefits. Accordingly, there is currently no market in South Australia for the services being offered by the applicant.

Nationally, the Applicant is only aware of one other competitor Questus Limited-ASX code QSS, (“Questus”) which also provides a mechanism for its Incentives to be accessed by small and individual Investors.

However, the Applicant’s scheme is fundamentally different to Questus’ as in the Applicant's scheme;

- the Investors can bring in their properties from anywhere;
- the Investors retain control over the property or properties; and
- the Investors can withdraw at any stage.

Questus’ scheme is set up as a Managed Investment Scheme and the properties need to be purchased from the promoter. The Investors in Questus’ scheme have no ability to withdraw from the scheme and exercise no control over how their property is managed.

Alternatives to Applicant’s Scheme

If the Investors want to access the Incentives, then there are no alternatives available to them that do not require an accredited Property Manager be used. That is, they need a Property Manager to qualify for receipt of the Incentives.

The Investors have the option of not placing their property or properties within the Applicant’s scheme and, instead, simply letting them as private residential investments. If they choose to do this, they may also choose whether or not to use a property manager.

However, should the Investor seek to benefit from the Incentives, then they will be required to use a Property Manager, irrespective of whether it is through the Applicant’s scheme, or another, similar scheme.

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 Investors do not have a choice of whether they use a Property Manager or not. However, as this is a restriction imposed by legislation, the Applicant has no alternative other than to cause Investors to enter into a property management agreement with a Property Manager.

As it is mandatory to use a Property Manager, it is likely that the Property Manager may look to charge an increased price for their management services. However, this is mitigated by the following means;

- there will be an unlimited number of Property Managers available (competition), provided that they become accredited. It is envisaged that initially there will be a “pool” of 4 or 5 Property Management companies already suitably accredited from which Investors can choose to use. However, should an Investor wish to use an alternative Property Manager, then it will be open for that Property Manager to become accredited and to join the “pool”.
- There will be a commercially regulated “cap” on the amount the Property Managers can charge as the investment must remain profitable and competitive for the Investor to choose to remain in the scheme. If the rates charged by the Property Managers are too high, then the Investors will “pull out” of the scheme and lease their properties by other means.

(b) Facts and evidence relevant to these detriments:

Refer to Annexure “A” for further details.

7. Further information

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

Mr Alf Macolino,

Lynch Meyer Lawyers

GPO Box 467

ADELAIDE SA 5001

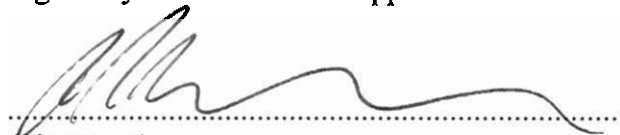
Telephone: (08) 8223 7600

Facsimile: (08) 8223 4348

e-mail: amacolino@lynchmeyer.com.au

Dated 5 May 2009

Signed ~~by~~ on behalf of the applicant



(Signature)

Daniel John Roach

(Full Name)

Lynch Meyer Lawyers (Solicitors for the Applicant)

(Organisation)

Solicitor

(Position in Organisation)

Annexure “A”

Background

The National Rental Affordability Scheme (NRAS)

The NRAS is a national government established scheme to stimulate the supply of new affordable rental dwellings. The aim of the scheme is to provide affordable rental accommodation to low and moderate income households. It is considered a new investment opportunity in the Australian market.

It is aimed primarily at governments, the business sector and not-for-profit organisations to provide a commercially attractive mechanism for increasing the supply of affordable private rental housing. The scheme provides a mechanism whereby, for successful applicants, they may receive a substantial financial incentive (“Incentive”) of \$8,000 per dwelling per year from the Federal and State governments for those dwellings which are rented to low and moderate income households at 20% or more below current market rates.

Other requirements of the scheme are that for an application to be successful there must be a commitment of a minimum 20 dwellings over 10 years. However, an individual dwelling need not remain in the scheme for the full duration, and may be replaced by other suitable dwellings.

The scheme can be summarised below;

Commonwealth & State: Scheme Guidelines

- Annual incentive for each new dwelling \$8,000 (\$6,000 Commonwealth and \$2,000 State funded)
- Duration of 10 years
- Paid to the applicant as a refundable tax offset
- Indexed effective July each year to rental component of CPI
- Recipient must be the applicant
- Must have formal arrangements with consortium members
- Dwellings must be new
- Must be rented to eligible tenants at no more than 80% of market rent
- Property Managers must be used to manage the tenancies

The applicant has currently been offered 38 National Rental Incentives. Its application was assessed according to the following criteria;

Commonwealth Assessment: Weighted Criteria

- The proposal meets demonstrated need
- The proposal addresses priority areas of interest (including a 20 dwelling minimum and addresses especially high rental stress or delivers innovation in affordable housing)
- The proposal delivers accessibility and sustainable rental outcomes
- The consortium has demonstrated capacity and experience
- The proposal is financially viable

The Applicant's Scheme

The applicant seeks to set up a scheme whereby small and individual investors ("Investors") may benefit from the Federal and State government Incentives being issued under the National Rental Affordability Scheme, which would otherwise be unavailable to them.

The investors' properties are owned by the investors. However they are contractually bound to the applicant for the purpose of obtaining government Incentives.

The net result will be that both the investors and the applicant derive greater income/profit from the rental properties than they would have had they been rented normally.

The Incentives will not be offered on an individual basis and an applicant requires a minimum number of properties/investors before it will be offered the Incentives.

Accordingly, an interest in the properties in the scheme is nominally held by the Applicant's company, while the actual legal and beneficial ownership is still held by the Investors.

The Incentives are paid to the Applicant. The Applicant receives income from the Investors by way of an initial payment (\$2,200) as well as a management fee (10% of the Incentives) taken directly from the Incentives.

The balance of the Incentive is then distributed to the Investors, resulting in a net increased profit to the Investors (when compared with leasing the property normally).

The Applicant will enter into contractual arrangements with a developer/builder, Investors (property owners), suitable tenancy management companies ("Property Managers"), and suitable tenants. The arrangement will also require contractual relationships separately between some of these parties.

The roles and responsibilities of each party are;

Applicant's responsibilities

- Develop a proposal that complies with the NRAS, meets the weighted criteria and best addresses priority areas of concern such that the proposal is attractive to the Commonwealth in a competitive tendering process.
- Ensure dwellings comply with the scheme.
- Oversee the tenancy management process to ensure that it is compliant.
- Maintain a tenancy eligibility process that is auditable by the Commonwealth
- Submit the Annual Statement of Compliance to FaHCSIA (the Commonwealth Government department responsible for the administration of the scheme).
- Submit its tax return with its tax credit to receive the tax refund
- Distribute the National Rental Incentive to property owners by an independent trust account manager;
 - This is equal to the National Rental Incentive (NRI) of \$8,000 less a 10% fee = \$7,200.
 - If the property is not compliant for the full year, then the NRI will be reduced on a pro-rata basis.
 - Each Incentive per property is calculated individually.
- Replace properties when existing participants (Investors) elect to withdraw.

- Provide adequate disclosure to the property developer making the land available, its selling agents and potential Investors to understand how the Applicant's business model works and the implications for Investors.
- Fee structure;
 - \$2,200 establishment, payable at commencement of renting out the property,
 - 10% of the National Rental Incentive as it relates to each property
 - Exit fee, the greater of;
 - \$600 x years remaining, or
 - \$2,200
 (This fee covers the cost to replace the property with another eligible property)

Property Developer Responsibilities

- Identify potential Investors to be allocated to the NRAS proposal
- Identify how allotments will meet the weighted criteria
- Adequately promote the Applicant's scheme to the Investors
- As allotments are sold and owners choose to participate in NRAS, provide plans to the Applicant as evidence of meeting the weighted criteria.

Investors' Responsibilities

- Whilst participating in NRAS, ensure the property is rented to eligible tenants and complies with state legislation such as the Building Code and Residential Tenancies Act.
- Comply with the rules of NRAS which is achieved via the allocation of the property management to a trained, approved and registered Property Manager to;
 1. Assess market rent for that property
 2. Charge rent at 80% of market rent
 3. Ensure the property is tenanted to eligible tenants
 4. Provide necessary information to make the annual Incentive claim (rent, vacancy and tenant income)
- Pay the establishment fee to the Applicant.
- If withdrawing from participation, provide advice to that effect and pay exit fees.
- Comply with relevant State and Commonwealth legislation as it relates to renting residential property.

Tenancy and Property Management

The Property Manager must

- Be registered with the Real Estate Institute of South Australia.
- Assess tenant eligibility
- Arrange for the assessment of market rent in years 1, 4 and 7
- Manage on-going tenancy and tenant selection
- Arrange for Property management and maintenance
- Report on compliance

Tenants

The tenants will be required to show annually that they maintain eligibility within the requirements of the Scheme. They will also be liable to pay rent at 80% of the current market rates.

There is a very large pool of potential tenants, estimated to exceed 1.5 Million and depending on their circumstance, have income limits ranging from \$40,501 to \$82,855.

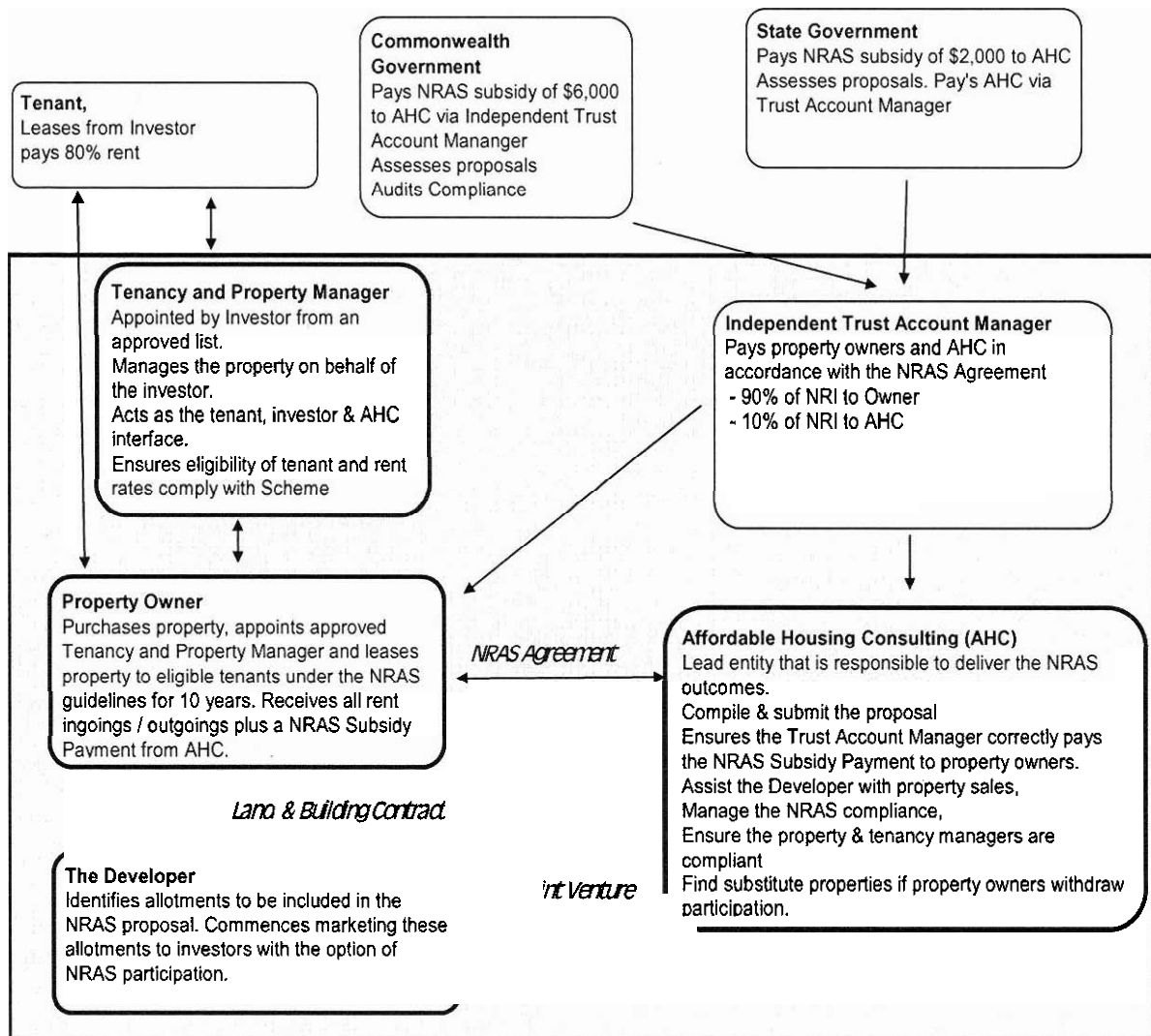
Tenant Income Limits for Eligibility

Household Type	Income limit
Single Person	\$40,501
Couples or sole parent with 1 child	\$55,991
Couples or sole parent with 2 children	\$69,423
Couples or sole parent with 3 children or more	\$82,855

Tenant incomes may increase by 25% before a sitting tenant becomes no longer eligible. An ineligible tenant will have a 12 month grace period before the tenant will be required to vacate the property.

The proposal may be shown diagrammatically as follows;

Proposed Structure for the NRAS Proposal



Notified Arrangement

The Applicant will supply administrative and organisational services to Investors for the acquisition and receipt of Incentives, for the benefit of the Investors.

In doing so, for the Investors to remain eligible, there is a requirement that Investors also engage suitably accredited Property Managers to manage the investment property or properties.

These relationships are described above.

The Applicant cannot allow Investors to manage their own property or properties, as this will prohibit their entitlement to the Incentives.

Accordingly, the Applicant is only offering its services on the condition that the Investors also engage suitably qualified Property Managers.

Public Benefits

The public benefits of the scheme are:

- Commonwealth and state government policy to provide affordable housing is significantly enhanced by widening the potential pool of investors able to participate in the scheme.
- The scheme provides a mechanism whereby individual and small investors can participate in the scheme and derive the financial benefit of the Commonwealth and State government grants. There is otherwise a requirement for a minimum number of properties to be provided for eligibility to be a recipient under the scheme, which would otherwise make this investment prohibitive.
- The scheme will result in an increase in affordable rental accommodation for low to moderate income families.
- The NRAS scheme has to date been underutilised by superannuation funds and large institutions and banks whom the Commonwealth Government wanted to invest in the scheme, and the applicant's scheme provides a mechanism to enable "mum and dad investors" to fill the void. This is consistent with the fact that the majority of residential rental accommodation in Australia is owned by "mum and dad investors".
- It enables the developer to meet the affordable housing requirements required and enforced by the Land Management Corporation in respect of recent releases of land on the South Australian market to satisfy the latent demand for both affordable housing, and housing for the public who do not qualify for affordable housing.
- It generates employment in the applicant, the developer, the property manager and associated building trades and consultants involved in the maintenance and management of the houses which are part of the scheme.

Investors in the scheme are not significantly affected by the notified proposed conduct as:

- They have contractual rights
- They can opt out of the scheme easily and at any time
- They still exercise substantial control over their own property, as they can choose which Property Manager to engage and instruct the Property Manager as they see fit
- They are not affected by decisions of other investors
- Competition between multiple Property Managers will ensure that the rates charged to Investors remain commercially attractive

The Applicant submits that;

- The public benefits of the Applicant's scheme far outweigh the perceived public detriments;
- The perceived public detriment is limited;
 - in number to the amount of Investors who choose to join the scheme (up to a maximum of a possible 388);
 - as there will be competition between Property Managers;
 - as Investors can opt out if the investments appear unprofitable.
- The Applicant's scheme is restricted by legislation so that, should there be any similar schemes, these too would also carry the requirement of the notified conduct;
- The Applicant's scheme actually provides greater range and volumes of affordable housing and increases competition with the other Incentive recipients. This is only possible with the notified conduct.