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16 March 2011

Australian Competition and Consumer Commission
Level 35, The Tower
360 Elizabeth Street
Melbourne Central
MELBOURNE VIC 3000

FILE No:
DOC:
MARS/PRISM:

Dear Sir/Madam,

Notification of Exclusive Dealing

Pursuant to S93 of the Trade Practices Act, we enclose Notification of Exclusive Dealing for lodgement on behalf of The Quays Towers Pty Ltd. Enclosed is the filing fee of \$100.00.

We await your reply.

Yours faithfully
MAB Corporation Pty Ltd

Anthony Calvi
Group General Counsel &
Group Company Secretary

For and on behalf of The Quays Towers Pty Ltd



Form G

Commonwealth of Australia

Competition and Consumer Act 2010 - 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 *Competition and Consumer Act 2010*, of particulars of conduct or of 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.

PLEASE FOLLOW DIRECTIONS ON BACK OF THIS FORM

1. Applicant

(a) Name of person giving notice

(Refer to direction 2)

N95321 The Quays Towers Pty Ltd (formerly Lot 1B Pty Ltd) ACN 142 130 809
(Vendor) of Level 5, 441 St Kilda Road, Melbourne, Victoria 3004.

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

(Refer to direction 3)

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

- 1) MAB Corporation Pty Ltd;
- 2) MAB Docklands Pty Ltd;
- 3) YarraNova Pty Ltd (a joint venture in which MAB Docklands Pty Ltd has a 50% share);
- 4) NewQuay Nodal and Marina Pty Ltd;
- 5) NewQuay Stage 2 Pty Ltd;
- 6) Nolan Tower Pty Ltd and Nolan Properties Investments Pty Ltd;
- 7) Metro Real Estate Services Pty Ltd as trustee for MAB Real Estate Services Trust, trading as Precinct Management Services and Docklands Apartments Grand Mercure (**DAGM**);
- 8) Conder Tower Pty Ltd;
- 9) Aquavista Tower Pty Ltd;
- 10) Harbour One Tower Pty Ltd; and
- 11) The Quays Towers 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 Victorian Urban Development Authority (as successor to the Docklands Authority) (**VicUrban**). 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 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, YarraNova Pty Ltd has entered into a contract with VicUrban under which it is entitled to become the registered proprietor of the Quays Towers, among other properties (**Head Contract**). Prior to settlement of the purchase of the Quays Towers from VicUrban, YarraNova Pty Ltd will nominate the Vendor as purchaser of the Quays Towers. Settlement of the Vendor's purchase of the Quays Towers will not occur until several conditions are met, including the Vendor obtaining VicUrban's approval of its design documentation and environmental management plan, all other required authority approvals and funding approval for the development (among other things).

The Quays Towers is being developed by the MAB Group as a mixed-use (but mostly residential) development, being two residential towers sitting above a ground floor + 6 level podium. It is anticipated that the Quays Towers will have a total of approximately 613 apartments, of which approximately:

- 1) 96 residential or short-stay apartments will be built in the podium (**Podium Apartments**);
- 2) 242 residential apartments will be built in the north tower across 27 levels; and
- 3) 275 residential apartments will be built in the south tower up to 32 levels above ground.

The Vendor will be responsible for the sale of these apartments. It is anticipated that the Quays Towers will be developed in two stages, the first being development of the podium and the south tower and the second being the development of the north tower (which will only proceed if, among other things, the sales program for the first stage is successful).

On 5 November 2010, the Vendor lodged a notification (N95117) in relation to approximately 114 apartments on levels 2 to 15 (inclusive) of the south tower (**Lower Level Apartments**). That notification related to the Vendor's proposal to allow purchasers of the Lower Level Apartments to use them

as serviced apartments, if and when they want to, provided that those serviced apartments are serviced by the operator as determined by the owners corporation. On 16 November 2010, the ACCC informed the Vendor that the ACCC did not at that stage intend to take any further action in relation to that notified conduct. The Vendor now wishes to offer Podium Apartments for sale subject to a similar condition.

It is anticipated that the operator of the serviced apartments will initially be a MAB Group business, DAGM, but thereafter the operator will be determined by the owners corporation (in accordance with its rules). It is expected that the serviced apartment operator will provide services in connection with lease administration, rent collection, rent reviews, new leases, outgoing management, property marketing and promotion, repairs and maintenance, minor capital works, legal representation of landlords, incentive management and tenancy behaviour/performance analysis.

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

c/- Anthony Calvi
General Counsel and Company Secretary
MAB Corporation Pty Ltd
(Level 5, 441 St Kilda Road, Melbourne)
PO Box 7657
St Kilda Road
Victoria 8004

Notified arrangement

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

The supply of subdivided residential apartments in the ground floor + 6 level podium building of the Quays Towers of the NewQuay precinct at the Docklands in Melbourne (described above as the Podium Apartments).

(b) Description of the conduct or proposed conduct

VicUrban was established by the Victorian Government in 1991 to develop and promote the Docklands area in Melbourne. Pursuant to section 10 of the *Docklands Act 1991* (Vic), VicUrban is charged with a number of functions relating to the area, including amongst others:

- 1) to develop the docklands area;
- 2) to promote and encourage the involvement of the private sector in that development;
- 3) to oversee and co-ordinate the development by others of the docklands area;
- 4) to take, support or promote measures to encourage people to live and work in the area;
- 5) to take, support or promote measures to create in the area an attractive environment: and

- 6) to promote, ~~assist in~~ and co-ordinate the economic, cultural and social development of the docklands area.

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

To help fulfil the above functions, particularly those of encouraging people to live in the area, creating an attractive environment, and promoting social development, and for the other public benefit reasons described in part 4 below, the Vendor proposes to engage in the following conduct:

- A. The Vendor will sell or offer for sale Podium Apartments on condition that, if and when the owner of a Podium Apartment uses it as a serviced apartment, the serviced apartment is operated by:
 - a. DAGM; or
 - b. if another operator is nominated by the owners corporation at any time, that operator.
- B. The Vendor will also refuse to sell or offer for sale Podium Apartments where a potential purchaser will not agreed to the condition described in paragraph A. above.

There will also be a requirement that the owner of a Podium Apartment from time to time ensures that subsequent purchasers agree to the condition described in paragraph A. above.

(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)

Persons wishing to purchase the Podium Apartments.

(b) Number of those persons

(i) At present time

None.

(ii) Estimated within the next year

(Refer to direction 6)

There will be approximately 96 Podium Apartments. The number of persons likely to be affected by the notified conduct within the next year will depend upon the success of the sales program, but will

not exceed the number of purchasers of the approximately 96 apartments.

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

The Podium Apartments have not yet been offered for sale.

4. Public benefit claims

(a) Arguments in support of notification

(Refer to direction 7)

The Vendor is proposing to offer the Podium Apartments for sale and allow the owners to use them as serviced apartments if and when they wish to do so. However, because of the following public benefits there will only be one operator of those serviced apartments:

- 1) the standards of the serviced apartments in the podium will be consistent if there is only one operator, and those standards will be of a good quality because the owners corporation will be able to replace the operator if its standards are inadequate;
- 2) it is likely that the operator will have an on site presence, and if so there will be a higher level of service to the owners of serviced apartments and visitors who use them from time to time;
- 3) economies of scale resulting in lower costs for the owners of serviced apartments;
- 4) the security and safety of residents of the Quays Towers will be enhanced if there is only one authorised operator of the serviced apartments, particularly because there will be greater control over the access of visitors to the towers; and
- 5) the enhanced and consistent quality standards of the serviced apartments, and better security and safety for all residents, will mean that overall the Quays Towers and the surrounding area will be a more attractive place to live in and visit, which is generally of public benefit but also in furtherance of the objectives and functions of VicUrban as legislated by the Victorian government.

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

The conduct proposed in this notification will only affect up to approximately 96 apartments in the podium in the Quays Towers of the NewQuay precinct at the Docklands in Melbourne. If taken together with the similar conduct previously notified in notification N95117, the total number of affected apartments will be a maximum of approximately 210 apartments in the Quay Towers.

Also, the owners corporation will be able to appoint (and replace) the serviced apartment operator for those apartments, so whilst there will only be one operator at any one time, the position will be open to competition.

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)

The market in which the Podium Apartments are being sold is the Melbourne residential property market, or perhaps more particularly the Melbourne residential apartment property market.

There are some legal restrictions on the Vendor's ability to develop and sell the Quays Towers apartments, as described in part 1(b) above. Also, foreign acquirers must comply with FIRB requirements.

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)

It is unlikely that there will be any public detriment resulting from this proposal, and even if there is any public detriment, it would be outweighed by the many public benefits. As noted in part 4(b) above, the conduct will only affect a very small number of apartments, and the owners corporation will be able to appoint (and replace) the serviced apartment operator.

(b) Facts and evidence relevant to these detriments

See part 4(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

Anthony Calvi
General Counsel and Company Secretary
MAB Corporation Pty Ltd
(Level 5, 441 St Kilda Road, Melbourne)
PO Box 7657
St Kilda Road
Victoria 8004

Dated *16th March* 2011

Signed by/on behalf of the applicant

[Handwritten Signature]
.....
(Signature)

Anthony Cali
.....
(Full name)

The Quays Towers P/L
.....
(Organisation)

Company Secretary
.....
(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 *Competition and Consumer Act 2010* 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.