



21 October 2013

The General Manager
Adjudication Branch Australian Competition and Consumer Commission
GPO Box 3131
CANBERRA ACT 2601

Via email: adjudication@acc.gov.au

Dear Sir / Madam

RE: EXCLUSIVE DEALING NOTIFICATION – AFFORDABLE HOUSING CONSULTING PTY LTD

Affordable Housing Consulting Pty Ltd (AHC) (ABN 94 134 397 434), is a professional services company and Approved Participant under the National Rental Affordability Scheme.

AHC has developed a scheme for small and individual investors to benefit from incentives offered under the National Rental Affordability Scheme (NRAS). These investors would otherwise be unable to obtain the benefits of NRAS.

With this letter we give 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.

Please find attached our notification and supporting submission.

Should you have any further questions in relation to this matter please do not hesitate to call either myself or Paul Mitchell me on ph: 8232-7623.

Kind regards,
AFFORDABLE HOUSING CONSULTING



Simon Kay
Principal Consultant



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 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)

N97049

Affordable Housing Consulting Pty Ltd (ABN 94 134 397 434)

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

The Applicant is a professional services company and Approved Participant which has been successful if being awarded Federal and State Government grants (“Incentives”) under the National Rental Affordability Scheme (“NRAS”) in the South Australian regional centre of Port Pirie.

The Applicant is further seeking to operate a scheme (“Scheme”) to provide services whereby small and individual investors (“Investors”) may benefit from the Incentives 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
300 Flinders Street
ADELAIDE SA 5000*

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 Investor’s behalf including the supply of Property Management services to the Investor.

These services are predominantly associated with ensuring that the property and its tenants remain compliant with NRAS and consequently paid the annual incentive.

Refer to Annexure "A" for further details.

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

The Applicant requires any Investors who wish to purchase properties with access to the Incentives enter into an agreement for the provision of services which includes the obligation to engage a nominated Property Manager, as determined by the Applicant, to manage the investment property or properties.

Initially, a single Property Manger will be nominated in Port Pirie.

In addition, the agreement provides for the responsibility for administering the Incentive being undertaken by AHC.

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:
(Refer to direction 5)

Investors in the Scheme. That is, property purchasers (Investors) 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 15 (this is the maximum number of Incentives that the Applicant has available under this Scheme in Port Pirie).

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

Up to a maximum of 15 (this is the maximum number of Incentives that the Applicant has available under this Scheme in Port Pirie).

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

The details of the persons is not yet 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:
(Refer to direction 7)

There are a number of public benefits, most of which have been identified Federal and State Governments, to allowing the Scheme to operate in this manner.

The Scheme is governed by legislation which requires significant additional tasks be carried out by the Approved Participant and subsequently the Property Manager which are over and above those traditionally required for such services. These include the assessment of tenants for eligibility, monitoring timing and quantum of rent increases, maintaining additional tenant records and operation of the Applicant's software system (which assists in the implementation of the Scheme).

In order to carefully manage the implementation of the Scheme and ultimately ensure that the Investors are able to access the Incentives on an annual basis the Applicant seeks to maintain a high level of direction (including regular training and auditing) over the Property Manager.

If such a level is not maintained there is a significant risk that the property and its tenants may not meet eligibility criteria and consequently the Incentive may be forfeited.

The forfeiture of the Incentive (which is approximately \$10,000 p.a.) will have a material impact on the majority of Investors and may, in some cases, impact on their ability to service loans for the purchase of the property.

In addition, given that the properties which comprise this Scheme are located in the regional centre of Port Pirie the ability to maintain an acceptable level of direction over multiple Property Managers is severely compromised.

Refer to Annexure "A" for further details.

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

Affordable Housing Consulting is an experienced practitioner in the implementation of the NRAS, having operated in this field since its inception, some 5 years ago, and with more than 700 Incentives under management.

As such, the AHC is fully aware of the pitfalls and risks for Property Managers which may potentially compromise an Investor's ability to access the Incentive and believes it prudent, in protecting the individual Investors, to ensure a higher level of direction and management is warranted.

Maintaining a regulated number of Property Managers ensures that they can be appropriately trained and audited.

Refer to Annexure "A" for further details.

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

The properties included in the scheme are located in the South Australian regional centre of Port Pirie.

Investors are more than likely going to be South Australians, given their understanding of the aforementioned locality however interstate Investors are not precluded.

Competitors

Presently, in South Australia, the majority of other entities which have successfully applied for 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 hold multiple properties for residential investment purposes.

A number of other organisations operate Scheme similar to that proposed by the Applicant, in that they provide small or individual Investors access to the Incentive's benefits.

Questus Limited and Community Housing Limited are the other main competitors in South Australia.

However, the Applicant's Scheme is fundamentally different to that of Questus in that:

- *They are limited to the use of only one Property Manager; and*
- *Investors cannot withdraw from the Scheme at any stage.*

Alternatives to the Scheme

If 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 be qualified 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:
(Refer to direction 9)

The investors do 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 nominated in each locality.

As it is mandatory to use a nominated Property Manager, it is likely that the Property Manager may look to charge an increased price for their management services (as a result of limited competition). However, this is mitigated by the following means:

- The Property Manager selected will be required to maintain services and associated fees and charges which are consistent with industry standards for properties which may not necessarily incorporate an Incentive;*
- It is envisaged that initially one Property Manager will be nominated however this may be opened up should the Applicant secure additional Incentives in that locality;*
- Appended to the agreement between the Applicant and the Investor is a copy of the Property Management Agreement with the nominated Property Manager which provides full disclosure of all fees and charges applicable over the life of the agreement. As such, the Investor is able to assess the implications of entering the agreement with full disclosure; and*
- There will be a commercially regulated "cap" on the amount the Property Manager 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 property 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:

*Paul Mitchell
Director
Affordable Housing Consulting
Level 2 / 300 Flinders Street
Adelaide SA 5000*

*Telephone: (08) 8232 7623
e-mail: paul.mitchell@nras.com.au*

Dated *21/10/13*

Signed by/on behalf of the applicant



(Signature)

Paul Mitchell
(Full Name)

Affordable Housing Consulting Pty Ltd
(Organisation)

Director
(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.

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 moderated income households.

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 approximately \$10,000 per dwelling per annum from the Federal and State Government s for those dwellings which are rented to low and moderate income household sat 20% or more below current market rates.

Other requirements of the NRAS are that for an application to be successful there must be a commitment to rental of the dwelling for a period of 10 years. However, an individual dwelling need not remain in the scheme for the full duration, and may be replaced by another suitable dwelling.

The scheme can be summarised as follows:

Commonwealth and State: Scheme Guidelines

- Annual Incentive for each new dwelling of approximately \$10,000 (\$7,500 Commonwealth and \$2,500 State funded);
- Duration 10 years;
- Commonwealth component paid to the Investor as a refundable tax offset;
- Indexed effective July each year to the rental component of the CPI;
- Tenant(s) must meet eligibility criteria based on income;
- Dwelling must be new; and
- Must be rented at no more that 80% of market rent.

Commonwealth Assessment

- The proposal meets demonstrated need;
- The proposal addresses priority areas of interest to the State;
- The proposal delivers accessibility and sustainable rental outcomes;
- The consortium has demonstrated capacity and experience; and
- 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 NRAS, which would otherwise not be available to them.

The Investor's properties are owned by the Investor. However, they are contractually bound to the Applicant for the purpose of obtaining the government Incentive (pursuant to the National Rental Affordability Scheme Act 2008 – "Act").

The net result will be that Investors derive income/profit from the rental properties than they would otherwise have had if they had been rented normally.

Incentives are awarded to the Approved Participant (as defined by the Act), in this case the Applicant, who maintains an interest in the properties in the Scheme, whilst the actual legal and beneficial ownership is still held by the Investor.

The State component of the Incentive is paid to Applicant. The Applicant receives an income from the Investor by way of an initial establishment fee (\$2,200) and annual management fee (10% of the total Incentive), the latter of which is taken from the Incentive with the balance passed on to the Investor.

The Commonwealth component of the Incentive is paid by way of a refundable tax offset claimed via the Investor's annual tax return.

The Applicant will enter into contractual arrangements with the Investor, nominated tenancy management companies ("Property Managers") and ultimately 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

- Ensure dwellings comply with the conditions upon which the Incentives are offered by the Commonwealth government;
- Oversee the tenancy management process to ensure that the property and its tenants remain compliant;
- Maintain a tenancy eligibility process that is auditable by the Commonwealth;
- Submit the Annual Statement of Compliance to the Commonwealth;
- Distribute the State component of the Incentive to Investors by an independent trust account manager; and
- The applicant in this case has chosen to contract these responsibilities to an experienced NRAS practitioner in Affordable Housing Consulting.

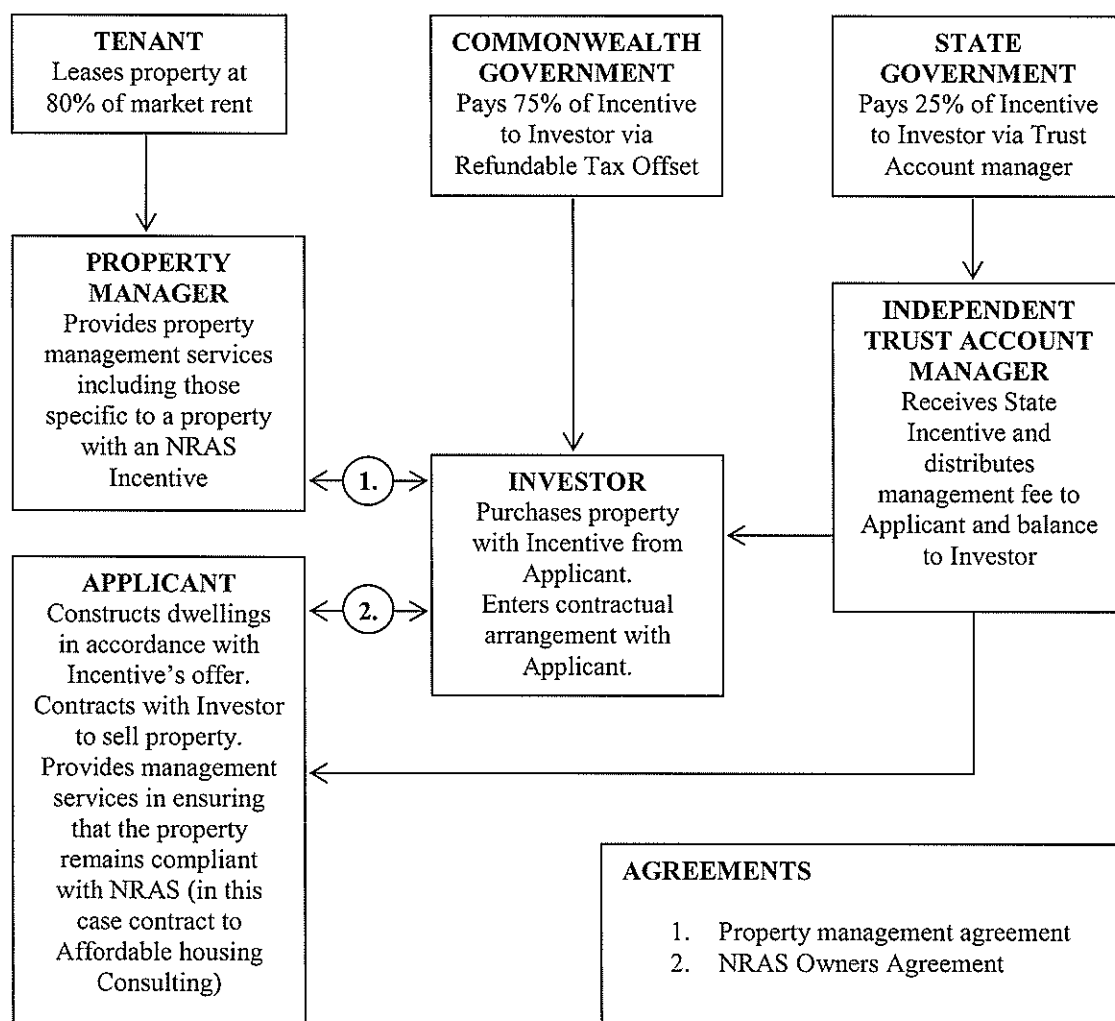
Investor responsibilities

- Whilst participating in NRAS, ensure that 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 the Scheme which is achieved via the allocation of the property management to a trained, approved and register Property Manager, as nominated by the Applicant, to:
 - Assess market rent for that property;
 - Charge rent at no more than 80% of market rent;
 - Ensure that the property is tenanted by eligible tenants;
 - Maintain necessary records to ensure that the Applicant can prepare and submit the Annual Statement of Compliance and thus access the Incentive (including rent records, vacancy records and tenant income records);
- Pay the establishment fee to the Applicant;
- If withdrawing from participation in the Scheme, provide advice to the Applicant and, where appropriate, pay exit fees; and
- Comply with relevant State and Commonwealth legislation as it relates to renting residential property.

Property Manager's responsibilities

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

Proposed Structure of the Scheme



Notified Arrangement

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

In doing so, for the Investors to ensure access to the Incentive, there is a requirement that the Investor engages the services of the a nominated Property Manager to manage the investment property.

These relationships are described above.

The Applicant cannot allow Investors to manage their own property, nor engage a Property Manager not nominated by the Applicant, as this may put at risk access to the Incentive.

Accordingly, the Applicant is only offering its services on the condition that the Investor also engages a Property Manager which has be trained (initially and on an ongoing basis) in the specific requirements of NRAS.

Public Benefits

The public benefits of the Scheme are:

- Provision of affordable rental housing for low and moderate income tenants in regional centres across South Australia;
- Provide an Incentive for private Investors to invest in a more affordable housing options;
- Provide access to the NRAS for smaller and individual Investors as opposed to large corporate and institutional investors; and
- Provide a stimulus for construction activity in State and more specifically some smaller regional centres.

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

- They have contractual rights;
- They can opt out of the scheme at any time;
- They still exercise substantial control over their property and can instruct the Property Manager as they see fit;
- The far majority of property investors utilise the services of a Property Manager (as opposed to doing it themselves);
- They are not affected by the decisions of other investors;
- Full disclosure of fees and charges associated with property management services are provided at the time of executing the agreement with the applicant; and
- Property managers are selected by the Applicant based on their ability to meet the specific requirements of NRAS, a demonstrated level of service and competitive and comparable industry rates.

The Applicant submits that:

- The public benefits of the Applicant's Scheme far outweigh the perceived public detriments;
- The proposed notified conduct provides a prudent safety mechanism to protect the Investor from falling outside of the requirements of the NRAS and as a direct result forfeiting their Incentive;
- The perceived public detriment is limited:
 - In the number of Investors who chose to join the Scheme (max 50);
 - As Investors can opt out of the Scheme if the investment becomes unprofitable;
 - Full disclosure is provided before the Investor executes any agreements; and
 - Other similar competitors offering NRAS properties likewise require that Investors utilise Property Managers.
- The Applicant's action is restricted by legislation and competitors would similarly carry the requirement of the notified conduct; and

- The Applicant's Scheme facilitates the provision of affordable housing being funded by small and individual Investors who could not normally access the Incentives on offer. This is only possible with the proposed notified conduct.