

# Deacons

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BY COURIER

15 August 2003

Australian Competition & Consumer Commission  
Adjudication Branch  
PO Box 1199  
DIXON ACT 2602

**Other Offices**  
Brisbane  
Canberra  
Perth  
Sydney

**Independent  
Affiliated Firms**  
Hong Kong  
Indonesia  
Malaysia  
People's Republic of China  
Singapore  
Taiwan  
Thailand  
Vietnam

Our Ref: RJC: 128212

Dear Sir/Madam

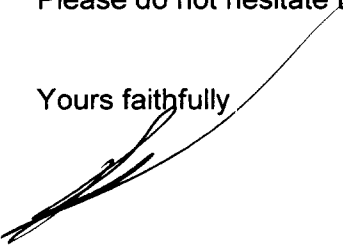
**EXCLUSIVE DEALING NOTIFICATION**

Please find enclosed Form G: Exclusive Dealing for lodgement pursuant to section 93 of the *Trade Practices Act 1974* together with a cheque in the sum of \$100.00.

We note that the number of persons specified in paragraph 3(b)(i) of the form was accurate as at 1 August 2003.

Please do not hesitate to contact me with any queries.

Yours faithfully



Richard Lewis  
Partner  
Deacons  
Direct line: +61 (0)3 8686 6565  
Email: richard.lewis@deacons.com.au

AUST. COMPETITION &  
CONSUMER COMMISSION  
CANBERRA  
20 AUG 2003

COMMONWEALTH OF AUSTRALIA  
*Trade Practices Act 1974 – Subsection 93(1)*

**EXCLUSIVE DEALING:**

**NOTIFICATION**

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 in subsection 47(2), (3), (4), (5), (6) or (7), or paragraph 47(8) (a), (b), or (c) or 9(a), (b), (c) or (d), of that Act in which the person giving notice engages or proposes to engage.

1. (a) Name of person giving notice:

**Mont Park Development Company Pty Limited ACN 086 587 608.**

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

**Selling residential property in Macleod, Victoria for development. The development involves the preservation of heritage buildings, the conservation of certain features of the local environment and the staged construction of detached housing.**

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

**C/- Mr Steven Papadopoulos  
Director  
Mont Park Development Company Pty Limited  
1 Martin Place  
SYDNEY NSW 2000**

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

**See Annexure "A"**

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

**See Annexure "A"**

- 
3. (a) Class or classes of persons to which the conduct relates:

**Purchasers of residential allotments in Precinct 2 and Precinct 3 of the Springthorpe Development.**

- (b) Number of those persons:

- |      |                                 |            |
|------|---------------------------------|------------|
| (i)  | At present time:                | <b>34</b>  |
| (ii) | Estimated within the next year: | <b>255</b> |

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

**Glenda Pearl Ashby, 19 Dobell Drive, Eltham, Victoria 3095**

**Jann Lauri and Alexander Lauri, 5 Glen Katherine Drive, Eltham, Victoria 3095**

**Brenda Sue Newnham, 30 Maling Road, Canterbury, Victoria, 3126**

**Jennifer Kennedy, 20 Ferndale Road, Glen Iris, Victoria, 3146**

**Julie Ann Hoyne, 6 Penny Lane, Mount Eliza, Victoria, 3930**

**Debra Marie Harris, 5 Fleming Court, Research, Victoria, 3095**

**Matthew Francis Incani and Shelley Lenore Maffescioni, 4/26 Arden Crescent, Rosanna, Victoria, 3084**

**Mark Henry Denver and Jennifer Arlene Edwards, 27 Fran Street, Glenroy, Victoria, 3046**

**Tina Condello and Rocco Condello, 18H Pivunna Road, Reservoir, Victoria, 3073**

**Sharon Ann McCrorie, 15 Oldfield Place, Epping, Victoria, 3076**

**Alexander Monda, 46 Quinn Street, Preston, Victoria 3072**

**Michael James Deeble and Jennifer Marie Deeble, 55 Brown Street, Heidelberg, Victoria 3084**

**Carolo Anthony Montagner, 273 Gilbert Road, West Preston, Victoria, 3072**

**Evan Zannis and Vicky Zannis, 7 Oakden Drive, Bundoora, Victoria, 3083**

**Manuela Di Paola, 4 Milton Street, Macleod, Victoria 3085**

**Peter Shatilko and Denise Kathy Shatilko, 4 Bernard Crescent, Bundoora, Victoria, 3083**

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**Rochelle Hwang, 69 Dundas Street, Preston, Victoria, 3072**

**Leigh David Bernoth and Jacqueline Kaye Bernoth, 217 Rosanna Road,  
Rosanna, Victoria 3084**

**Carlo Anthony Montagner, 273 Gilbert Road, West Preston, Victoria, 3072**

**Katherine Anne Ferrara and Gerard Salvatore Ferrara, 48 Federick Street,  
Brunswick, Victoria 3056**

**Lindy Bogoevski, 118 Nott Street, Port Melbourne, Victoria, 3205**

**Denise Rae Colin and George Bernard Colin, 13 Grange Road,  
Alphington, Victoria, 3078**

**Cheng Leong Khoo, 16B Eglinton Street, Kew, Victoria, 3101**

**Paul Graeme Sherburn and Lorenza Sherburn, 9 Carthew Grove, Preston  
West, Victoria, 3072**

**Ian Street and Christine Street, 57 Paas Place, Williamstown, Victoria,  
3016**

**Kevin John Emery and Marread Louise Hofer, 20 Luton Way, Bundoora,  
Victoria, 3083**

**John Parks and Sharon Parks, 14 Cremean Avenue, Ivanhoe, Victoria,  
3079**

**Gabrielle Arrowsmith and Paul Arrowsmith, 143 Hutton Street,  
Thornbury, Victoria, 3071**

**Bruce Kenneth Jerrett and Serena Jane Henry, 126 Keon Street,  
Thornbury, Victoria, 3071**

**Tracey Burnell, 2/16 Salisbury Avenue, Ivanhoe, Victoria, 3079**

**Chris Dimopolous and Mary Dimopolous, 1/20 Vincent Street, MacLeod,  
Victoria, 3085**

**Richard Shotton and Anne Shotton, 2/23 Cedric Street, Ivanhoe, Victoria  
3079**

**George Dzolis & Helen Dzolis, 57 Dawson Street, Tullamarine, Victoria,  
3043**

**Margaret Treloar & Mark Treloar, 37 Quinn Street, Heidelberg, Victoria,  
3084**

- 
4. Name and address of person authorised by the person giving this Notice to provide additional information in relation to this Notice:

**Mr Steven Papadopoulos  
Director  
Mont Park Development Company Pty Limited  
1 Martin Place  
SYDNEY NSW 2000**

**Dated**

**Signed on behalf of the person giving this notice**



.....  
**(Signature)**

.....  
**(Steven Papadopoulos)**

.....  
**(Director)**

## ANNEXURE "A"

### 1. **Description of the goods or services in relation to the supply or acquisition of which this notice relates:**

This notice relates to a development on approximately 73 hectares of disused land by Mont Park Development Company Pty Limited ("**MPDC**") in Macleod, Victoria (the "**Springthorpe Development**"). The Springthorpe Development is a housing estate offering residential allotments in various price bands. It is planned that the Springthorpe Development will be constructed in separate precincts. Most residential allotments in precinct 1, which comprised 87 residential allotments ("**Precinct 1**"), have been sold.

On 15 May 2000, MPDC lodged with the Australian Competition and Consumer Commission ("**Commission**") a notification of exclusive dealing in relation to Precinct 1 ("**Precinct 1 Notification**"). The Commission decided not to make any enquiries concerning the notified conduct (Commission reference: N40409). A copy of the Precinct 1 Notification is attached in Annexure B.

MPDC has begun selling residential allotments in precinct 2 and intends to begin selling residential allotments in precinct 3 shortly ("**Precincts 2 and 3**"). Precinct 2 comprises approximately 106 residential allotments and precinct 3 comprises approximately 149 residential allotments. MPDC has already sold 34 residential allotments in precinct 2.

MPDC assigned to Macquarie Syndicate Nominee Pty Ltd ("**MSNPL**") the role of developing Precincts 2 and 3. MSNPL appointed Urban Pacific Limited ("**UPL**") as development manager of Precinct 2 and 3. UPL's role includes managing the clearing of the Springthorpe Development site and subdividing the site into residential allotments. UPL is also responsible for managing the construction and provision of related infrastructure such as roads, electricity, other utilities, trees, footpaths and guttering.

The strategy adopted for the sale of the residential allotments in Precincts 2 and 3 is similar to the conduct described in the Precinct 1 Notification. When a purchaser enters into a contract of sale with MPDC to acquire a residential allotment in Precincts 2 and 3, it is a condition of that contract that the purchaser enters into a second, collateral contract with one of a panel of builders ("**Preferred Builders**") for the construction of a house on the residential allotment. The Preferred Builders have been chosen because of their ability to deliver the desired outcomes in terms of design and quality. The preferred builders for the 87 residential allotments in Precinct 1 were Stonehaven Homes (Vic) Pty Ltd, Fasham Johnson Pty Ltd, Darnley Homes Pty Ltd, Lazare Pty Ltd, and UPL (who sub-contracted the construction work to Rustic Builders Pty Ltd). The Preferred Builders for Precincts 2 and 3 are the same builders used for Precinct 1 (note however that Rustic Builders Pty Ltd is now a Preferred Builder in its own right) plus Inform Design & Construction Pty Ltd and CPG Developments Pty Ltd. UPL also has the right to construct houses on residential allotments in Precincts 2 and 3. It is not intended that this right will be exercised. It is envisaged that the only circumstance whereby this right may be exercised is if, for

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some reason, after most other residential allotments in Precincts 2 and 3 were sold, a purchaser could not be found for a particular allotment. UPL may then decide to construct a house on that allotment, as it would otherwise remain undeveloped.

To assist potential purchasers, each of the Preferred Builders may build a display home on the Springthorpe Development site. (6 of the 7 Preferred Builders have already built display homes).

In Precinct 1, each residential allotment was allocated a particular preferred builder and house design and the residential allotments were more or less evenly distributed amongst the preferred builders so that in any given street or part of Precinct 1, purchasers were effectively given a choice of builders. This even distribution of residential allotments amongst preferred builders ensured that economies of scale were generated by each preferred builder for the benefit of purchasers. All house designs were pre-approved by an independent town architect. There were approximately 30 – 40 designs available to purchasers but control was exercised by MPDC (through an independent town architect) as to which design was available to a particular residential allotment.

To improve the choice of purchasers and competition between the Preferred Builders, only approximately 50% of residential allotments in Precincts 2 and 3 have been specifically allocated a particular house design and Preferred Builder. Purchasers of the balance of the residential allotments ("**Non-Allocated Allotments**") have a choice of a number of the Preferred Builders and their pre-approved house designs and a number of forward built homes built speculatively by the Preferred Builders.

Purchasers of Non-Allocated Allotments can select from up to 50 pre-approved house designs. MPDC (through an independent town architect) will still maintain control over the designs available to purchasers of particular residential allotments. The availability of designs is dependent on factors such as the size and shape of the lot, whether the lot contains trees that must be preserved and the location and size of such trees, and other lot attributes such as views or aspect.

## **2. Description of the proposed conduct:**

### **2.1 Background**

MPDC is a wholly owned subsidiary of UPL, which in turn is a wholly owned subsidiary of Macquarie Bank Limited, a public listed Australian company. MPDC was incorporated specifically for the Springthorpe Development.

### **2.2 Proposed Conduct**

The Commission is referred to the conduct described in paragraph 2.2 of the Precinct 1 Notification. MPDC is repeating this conduct in relation to Precincts 2 and 3 save for the following changes that MPDC has implemented to improve purchaser choice and competition between Preferred Builders:

- (1) purchasers of Non-Allocated Allotments can select from a number of designs and from a number of Preferred Builders and from the Preferred Builders' forward built homes;

- 
- (2) purchasers of Non-Allocated Allotments can select from up to 50 pre-approved designs;
  - (3) as the Preferred Builders are now competing for a purchaser's business in relation to the Non-Allocated Allotments, there is greater choice for purchasers.
  - (4) purchasers can choose their own internal colour scheme (whereas MPDC retained control of internal colour schemes in Precinct 1); and
  - (5) MPDC has appointed 7 Preferred Builders (previously 5).

**2.3 Public Benefit**

MPDC refers to the benefits described in paragraph 2.3 of the Precinct 1 Notification and believes that they are equally applicable to Precincts 2 and 3. MPDC refers to the decision of the Commission in the Precinct 1 Notification to not make any enquiries concerning the notified conduct. MPDC submits that the changes described in paragraph 2.2 above increase the benefit to the public compared to the benefits of the conduct the subject of the Precinct 1 Notification as purchasers have a greater choice of builder and design and there is greater competition between builders.

The fact that 5 of the Preferred Builders were also builders for Precinct 1 improves the economies of scale benefits for purchasers of residential allotments in Precincts 2 and 3. For example, each of those Preferred Builders has built a display home, each has a full-time site supervisor that is solely dedicated to the Springthorpe Development and each is familiar with the Springthorpe Development.

**Dated**

**Signed on behalf of the person giving this notice**



.....  
**(Signature)**

.....  
**(Steven Papadopoulos)**

.....  
**(Director)**



## ANNEXURE "B"

FORM G

Regulation 9

### COMMONWEALTH OF AUSTRALIA

*Trade Practices Act 1974 – Subsection 93(1)*

#### EXCLUSIVE DEALING:

#### NOTIFICATION

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 in subsection 47(2), (3), (4), (5), (6) or (7), or paragraph 47(8) (a), (b), or (c) or 9(a), (b), (c) or (d), of that Act in which the person giving notice engages or proposes to engage.

1. (a) Name of person giving notice:

**Mont Park Development Company Pty Limited ACN 086 587 608.**

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

**Developing residential property in Macleod, Victoria (the "Springthorpe Development"). The Springthorpe Development involves the preservation of heritage buildings and the staged construction of detached housing.**

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

**C/- Mr Peter Vlitas  
Project Director  
Level 2  
448 St Kilda Road  
MELBOURNE VIC 3004**

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

**See Annexure "A"**

(b) Description of the conduct or proposed conduct:

**See Annexure "A"**

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3. (a) Class or classes of persons to which the conduct relates:

**Members of the public who acquire a residential allotment in the Springthorpe Development.**

(b) Number of those persons:

(i) At present time: **Zero**

(ii) Estimated within the next year: **100**

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

Not applicable.

4. Name and address of person authorised by the person giving this Notice to provide additional information in relation to this Notice:

**Mr Peter Vlitas  
Project Director  
Level 2  
448 St Kilda Road  
MELBOURNE VIC 3004**

**Dated**

**Signed on behalf of the person giving this notice**

.....

**(Signature)**

.....

**(Full Name)**

.....

**(Description)**

## ANNEXURE "A"

### 1. Description of the goods or services in relation to the supply or acquisition of which this notice relates:

This notice relates to the proposed development of approximately 73 hectares of disused land by Mont Park Development Company Pty Limited ("MPDC") in Macleod, Victoria (the "Springthorpe Development").

MPDC proposes to develop the Springthorpe Development as a housing estate offering residential allotments in various price bands. To this end, MPDC has lodged a development plan for the Springthorpe Development with the City of Darebin.

The Springthorpe Development is conditional upon the City of Darebin approving the development plan. If the development plan is approved, the development site will be developed as separate precincts over a period of six-and-a-half years. Each precinct will be developed in various stages. This notification relates only to the development of the first precinct of the Springthorpe Development.

MPDC's role in the Springthorpe Development is limited to clearing the development site, subdividing the site into residential allotments and selling the residential allotments to purchasers. MPDC is not involved in the construction of houses on residential allotments.

When a purchaser enters into a contract with MPDC to acquire a residential allotment, the purchaser will be required to enter into a second, collateral, contract with a builder for the construction of a house on the residential allotment. It will be a condition of the contract of sale that the purchaser enter into the construction contract (the "Construction Contract").

The contract of sale will stipulate that the builder with whom the purchaser must enter into the Construction Contract will be one of a panel of builders. The panel is likely to consist of approximately five or six preferred builders selected by MPDC on the basis of their experience and the high standard of their workmanship ("Preferred Builders").

The Preferred Builders have not yet been determined or appointed. MPDC is, however, currently engaged in negotiations with prospective Preferred Builders to ascertain their suitability to be appointed as Preferred Builders.

To assist potential purchasers, each of the Preferred Builders will be required to build display houses on the Springthorpe Development site and to forward-build houses on a speculative basis. Purchasers will be required to enter into a Construction Contract with the builder allocated to each residential allotment.

Residential allotments will be evenly distributed amongst the Preferred Builders so that in any given street or part of the Springthorpe Development purchasers will effectively have a choice of builders. This even distribution of residential allotments amongst Preferred Builders will also ensure that economies of scale can be generated by each Preferred Builders for the benefit of purchasers.

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MPDC will retain for itself the right to design the houses for approximately one third of the residential allotments in each precinct. MPDC will also be responsible for providing related infrastructure including roads, electricity, other utilities, trees, footpaths and guttering.

## **2. Description of the conduct or proposed conduct:**

### **2.1 Background**

MPDC is a wholly owned subsidiary of Urban Pacific Limited ACN 081 119 495 ("UPL"), which in turn is a wholly owned subsidiary of Macquarie Bank Limited ACN 008 583 542, a public listed Australian company. MPDC was incorporated specifically for the Springthorpe Development.

### **2.2 Proposed Conduct**

After the Springthorpe Development site has been cleared and subdivided into residential allotments, MPDC will sell those residential allotments as vacant land to purchasers. The purchasers will then be required to build their house using the Preferred Builder allocated to the residential allotment chosen by the purchaser.

To ensure maximum quality and design results for houses being built on residential allotments, MPDC will retain a degree of control over the future use to which residential allotments are put. That will be achieved by a contractual relationship between MPDC and each builder. This will ensure that residential allotments are not left undeveloped in the Springthorpe Development and that residential allotments are not developed in an architectural style that is incongruous with the architectural style determined by MPDC for the precinct or any part of the precinct.

MPDC considers that undeveloped residential allotments or houses built otherwise than in accordance with the style determined by MPDC for the Springthorpe Development will diminish the aesthetic appeal of the estate. They will also diminish the value of surrounding residential allotments developed by other purchasers and unsold residential allotments being marketed by MPDC.

The control over residential allotments retained by MPDC will be exercised by requiring purchasers, as a condition of the contract for the sale of residential allotments, to enter into a Construction Contract with a particular builder to build a house according to a particular design on the residential allotment. This requirement is intended to avoid the problem of residential allotments being acquired and then left undeveloped for long periods of time.

To avoid architectural styles which are incongruous with the prevailing architectural style of the estate being used, MPDC will require purchasers to enter into a Construction Contract for a particular allocated house design. Each of the Preferred Builders will have been scrutinized by MPDC to ensure their professional integrity, the quality of their craftsmanship, their experience in residential building and their reliability to complete such projects.

Preferred Builders will be required to build display houses on the Springthorpe Development. Building display houses is a considerable expense to the builders, but is important for marketing residential allotments. Display houses also benefit

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purchasers who are able to see products they may eventually acquire. Builders are only prepared to build display houses if they can be confident of receiving a minimum volume of work.

MPDC does not propose to build houses itself on its residential allotments. If it did, it could sell residential allotments and houses as a single package. Under these circumstances no issue of third line forcing would arise.

By requiring purchasers of residential allotments to engage a Preferred Builder, MPDC is effectively able to offer house and land packages. MPDC can ensure quality houses are built by reputable and experienced builders. Offering large quantities of building work to builders will also enable substantial economies of scale to be generated, which MPDC strongly anticipates will be passed on to purchasers, making housing more affordable to purchasers.

### 2.3 Public Benefit Test

MPDC submits that the benefit to the public from its possible future conduct will outweigh any likely detriment occurring as a consequence of the possible future conduct. MPDC's reasons are:

#### **Costs / Benefits to Purchasers**

The requirement that purchasers select a Preferred Builder should ensure a reasonable volume of work to each builder. This in turn will enable builders to generate considerable economies of scale, particularly in relation to the purchase of supplies.

Although it is impossible to quantify the benefits of the economies of scale these benefits are real and substantial and will be passed onto consumers, enabling MPDC to offer high quality housing at affordable rates. Benefits of economies of scale accrue in relation to almost every aspect of the development, including acquisition of building materials and the retention of gardeners for landscaping.

The likelihood of a Preferred Builder receiving a minimum volume of work also makes builders more prepared to build display houses at their own expense. This confers a benefit on purchasers, as purchasers are able to see the product they are purchasing before they commit themselves to a Construction Contract. Builders would not be prepared to build display houses unless they enjoyed "preferred builder" status.

#### **Structural Benefits**

Under the proposal each house and residential allotment in the Springthorpe Development will be able to have maximum integrated architectural, ecological and aesthetic interface. For example, features such as storm water drains, solar alignment and privacy can be co-ordinated to maximise the benefit to each purchaser.

Because of the small size of the first precinct of the Springthorpe Development and the limited number of residential allotments situated on that precinct, approximately 120 houses, the number of builders who could participate in the construction of houses and produce an acceptable economic return is limited. For this reason, the detriment to builders not on the panel of preferred builders is also limited.

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Any attempt to open the development of residential allotments to builders who are not on the panel, however, would effectively prevent any significant economies of scale being generated for the benefit of consumers.

**Dated**

**Signed on behalf of the person giving this notice**

.....

**(Signature)**

.....

**(Full Name)**

.....

**(Description)**