

FILE No:	Level 36
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BLAKE DAWSON WALDRON

L A W Y E R S

Mr Tim Grimwade
General Manager, Adjudications
Australian Competition and Consumer Commission
470 Northbourne Avenue
DICKSON ACT 2602

Tel + 61 2 9258 6000
Fax + 61 2 9258 6999

DX 355 Sydney

Locked Bag N6
PO Grosvenor Place
Sydney NSW 2000
Australia

Partner
Peter Armitage
Telephone (02) 9258 6119

Contact
Richard Westmoreland
Telephone (02) 9258 6353

Our reference
PJA:RHW:02-1359-5270

16 March 2004

Dear Mr Grimwade

Boral Recycling Pty Ltd
Boral Bricks Pty Ltd
Notification of potential third line force in relation to Moorebank land development

We act for Boral Recycling Pty Ltd (**Boral Recycling**) and Boral Bricks Pty Ltd (**Boral Bricks**) (together, the **Applicants**). On behalf of the Applicants we enclose the following:

1. Form G Exclusive Dealing Notification by Boral Bricks;
2. Form G Exclusive Dealing Notification by Boral Recycling; and
3. Our cheque for \$1200 made payable to the Commission (this amount has been calculated on the basis that the notification by Boral Recycling relates to conduct in the same market as the conduct notified by Boral Bricks).

These notifications arise out of essentially the same facts and circumstances as previously notified to the Commission by CPG Australia Pty Ltd in November of last year in notification N91312.

We set out submissions in support of the notifications below.

Background

Boral Bricks has for many years manufactured building bricks from a property located at Moorebank, in the western suburbs of Sydney. Boral Bricks has now relocated its manufacturing operations and wishes to realise the value of the Moorebank Land.

Boral Bricks therefore proposes to enter into an exclusive arrangement with Moorebank (Urbex) Investments Pty Ltd and CPG Moorebank Pty Ltd (together, the **Moorebank**

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JV) and Boral Recycling for the development of this land as a planned and integrated residential development (the **Moorebank Development**).

It is proposed that each of Boral Recycling and the Moorebank JV will carry out particular development works on the Moorebank land and that the Moorebank JV will then market house and land packages in the Moorebank Development.

In order for the Moorebank JV to sell house and land packages to consumers in its own right it would be necessary for Boral Bricks to transfer the Moorebank land to the Moorebank JV and for the Moorebank JV to then, in turn, transfer the land to purchasers. This would have two effects:

1. It would create a double stamp duty obligation; and
2. It would increase the capital costs associated with the Moorebank Development.

Both of these effects would increase the cost of the house and land packages able to be sold at the Moorebank Development.

Boral Bricks and the Moorebank JV therefore propose instead to offer purchasers two linked contracts – one by which consumers will purchase the land component of packages direct from Boral Bricks, and one by which they will purchase the house to be built on that land from the Moorebank JV or an entity associated with the Moorebank JV.

As a condition of appointing the Moorebank JV to work with them in relation to the integrated development proposals, Boral Bricks and Boral Recycling will also require that the Moorebank JV and its related entities and contractors purchase construction materials to be used in the Moorebank Development from Boral Bricks or from entities related to Boral Bricks.

It may be argued that the arrangements described above constitute third line forcing within the meaning of sections 47(6) and 47(7) of the *Trade Practices Act*. In the balance of this letter we have referred to these arrangements collectively as the **joint venture arrangements**.

Public benefits

The joint venture arrangements are likely to create material public benefit by:

1. facilitating the creation of a well planned, integrated residential development; and
2. reducing the costs at which house and land packages in this development will be able to be offered to the public.

Competition analysis

The joint venture arrangements may affect the markets described below.

- Market for residential housing. The Applicants believe that sales of residential building allotments are likely to form part of a broader residential housing market. At a minimum, it is clear that general residential housing prices will completely constrain prices able to be charged for building land.

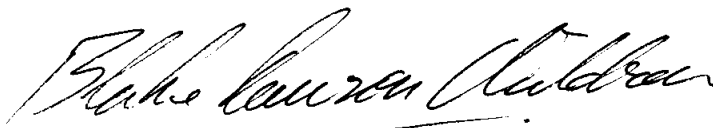
Even if a very narrow product and geographic market definition is adopted, CPG Australia Pty Ltd estimated in the submission accompanying notification N91312 that the proposed Moorebank Development is likely to represent less than 3% of residential lots released for sale in western Sydney over the next 5 years.

The Applicants therefore believe the joint venture arrangements could not have the effect of lessening competition in any properly defined market for residential housing or residential land. Indeed, if the arrangement have any effect, it is likely that the cost savings they create mean that their primary effect will be to place downward pressure on prices and therefore increase, rather than decrease, competition.

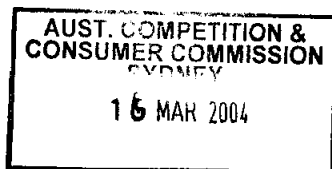
- Market for building services. For the reasons described above, the applicants believe that the joint venture arrangements will also not be likely to lessen competition in the highly competitive market for building services.
- Markets for construction materials. On any plausible market definition, the proportion of any market for construction materials affected by the joint venture arrangements is likely to be so small as to be incapable of having any discernible effect on competition.

The Applicants accordingly submit that the joint venture arrangements will be likely to create material public benefit without lessening competition in any market.

Yours faithfully



Blake Dawson Waldron



FORM G

Regulation 9

COMMONWEALTH OF AUSTRALIA

Trade Practices Act 1974 - Sub-section 93(1)

EXCLUSIVE DEALING

NOTIFICATION

To the Australian Competition and Consumer Commission:

Notice is hereby given, in accordance with sub-section 93(1) of the *Trade Practices Act 1974*, of particulars of conduct or of proposed conduct of a kind referred to in sub-sections 47(6) or (7) of that Act in which the person giving notice proposes to engage.

1. (a) **Name of person giving notice:**

Boral Bricks Pty Ltd (ABN 66 082 448 342) (**Boral Bricks**)

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

Manufacture and sale of concrete and clay masonry products.

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

Boral Bricks Pty Ltd
c/- Blake Dawson Waldron
225 George Street
Sydney NSW 2000

Attention: Richard Westmoreland

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

The sale of residential land, the construction of residential housing and related infrastructure and the supply of construction materials.

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

Boral Recycling Pty Ltd (ACN 000 061 843) (**Boral Recycling**) and Boral Bricks propose to enter into a strategic alliance with Moorebank (Urbex) Investments Pty Ltd (ACN 107 817 710) and CPG Moorebank Pty Ltd (ACN 107 832 913) (together, the **Moorebank JV**) in relation to the development of a parcel of land owned by Boral Bricks at Moorebank, New South Wales (the **Moorebank Land**).

In furtherance of this arrangement –

- Boral Bricks proposes to make it a condition of sale of parcels of this land that the purchaser must acquire building materials and services (ie, to

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build a house on the land) from the Moorebank JV or entities associated with or nominated by the Moorebank JV; and

- As a condition of appointing the Moorebank JV to work with Boral Bricks and Boral Recycling in relation to the development and marketing of the Moorebank Land, Boral Bricks requires that the Moorebank JV must purchase (and must procure that its related entities and contractors purchase) construction materials to be used in developing the Moorebank land and building houses on that land from Boral Bricks or entities related to Boral Bricks.

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

Purchasers of subdivisions of the Moorebank Land.

The Moorebank JV and its related entities and contractors involved in development and sale of the Moorebank Land.

(b) **Number of those persons -**

(i) **At present time:**

2

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

200

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

Moorebank (Urbex) Investments Pty Ltd:

Level 1,
25 Cambridge Parade,
MANLY, QLD 4179

Attention: Company Secretary (Mr Kenneth Bird)

Facsimile: (07) 3393 4181

CPG Moorebank Pty Ltd:

Unit 2, Ground Floor,
21 Solvent Circuit,
BAULKHAM HILLS NSW 2153

Attention: Company Secretary (Mr Stephen Murray)

Facsimile: (02) 8850 9055

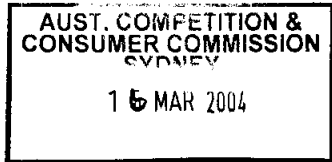
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4. **Name and address of persons authorised by the person giving this notice to provide additional information in relation to this notice**

Richard Westmoreland
Senior Associate
Blake Dawson Waldron
225 George Street
Sydney NSW 2000

Phone: (02) 9258 6353
Facsimile: (02) 9258 6999

Dated: *16 March 2004*



Signed on behalf of the person giving this notice

Peter Stays

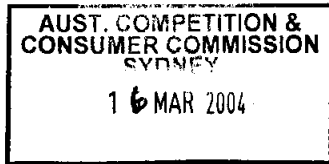
(Signature)

PETER JAMES ARMITAGE

(Full Name)

PARTNER - BLAKE DAWSON WALDRON

(Title)



FORM G

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COMMONWEALTH OF AUSTRALIA

Trade Practices Act 1974 - Sub-section 93(1)

EXCLUSIVE DEALING

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1. (a) **Name of person giving notice:**
Boral Recycling Pty Ltd (ACN 000 061 843) (**Boral Recycling**)
- (b) **Short description of business carried on by that person:**
Property development.
- (c) **Address in Australia for service of documents on that person:**
Boral Recycling Pty Ltd
c/- Blake Dawson Waldron
225 George Street
Sydney NSW 2000
Attention: Richard Westmoreland
2. (a) **Description of the goods or services in relation to the supply or acquisition of which this notice relates:**
The sale of residential land, the construction of residential housing and related infrastructure and the supply of construction materials.
- (b) **Description of the conduct or proposed conduct:**
Boral Recycling and Boral Bricks Pty Ltd (ABN 66 082 448 342) (**Boral Bricks**) propose to enter into a strategic alliance with Moorebank (Urbex) Investments Pty Ltd (ACN 107 817 710) and CPG Moorebank Pty Ltd (ACN 107 832 913) (together, the **Moorebank JV**) in relation to the development and sale of a parcel of land owned by Boral Bricks at Moorebank, New South Wales (the **Moorebank Land**).

As a condition of appointing the Moorebank JV to work with Boral Bricks and Boral Recycling in relation to the development and sale of the Moorebank Land, Boral Recycling requires that the Moorebank JV must purchase (and must procure that its related entities and contractors purchase) construction materials to be used

2.

in developing the Moorebank land and building houses on that land from Boral Bricks or entities related to Boral Bricks.

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

The Moorebank JV and its related entities and contractors involved in development and sale of the Moorebank Land.

(b) **Number of those persons -**

(i) **At present time:**

2

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

Not known

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

Moorebank (Urbex) Investments Pty Ltd:

Level 1,
25 Cambridge Parade,
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Attention: Company Secretary (Mr Kenneth Bird)

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Richard Westmoreland
Senior Associate
Blake Dawson Waldron
225 George Street
Sydney NSW 2000

Phone: (02) 9258 6353

Facsimile: (02) 9258 6999

3.

Dated: *16 March 2004*



Signed on behalf of the person giving this notice

Peter Armitage
.....
(Signature)

PETER JAMES ARMITAGE
.....
(Full Name)

PARTNER, BLAKE DAWSON WALDRON
.....
(Title)