

8 December 2004

AURORA PLACE 88 PHILLIP STREET SYDNEY
GPO BOX 521 SYDNEY NSW 2001 AUSTRALIA
DX 117 SYDNEY www.minterellison.com
TELEPHONE +61 2 9921 8888 FACSIMILE +61 2 9921 8123

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AUST. COMPETITION &
CONSUMER COMMISSION
SYDNEY
- 8 DEC 2004

Mr Scott Gregson
General Manager, Adjudications Branch
Australian Competition & Consumer Commission
PO Box 1199
DICKSON ACT 2602

FILE No:
DOC:
MARS/PRISM:

Dear Mr Gregson

Clarendon Homes (NSW) Pty Limited - third line forcing notification

We act for Clarendon Homes (NSW) Pty Limited. Please find enclosed, a notification of conduct constituting third line forcing, lodged under section 93(1) of the *Trade Practices Act 1974*, and a cheque for the lodgement fee of \$100.

Clarendon Homes (NSW) Pty Limited wishes to sell houses in association with land packages as detailed in the enclosed Form G.

If you require any further information, please contact Claire Webb on (02) 9921 4149.

Yours faithfully
MINTER ELLISON

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Ross Patterson
Partner

Contact: Claire Webb Direct phone: +61 2 9921 4149 Direct fax: +61 2 9921 8219
Email: claire.webb@minterellison.com
Partner responsible: Ross Patterson Direct phone: +61 2 9921 4482
Our reference: 20-4765291

MINTER ELLISON GROUP AND ASSOCIATED OFFICES

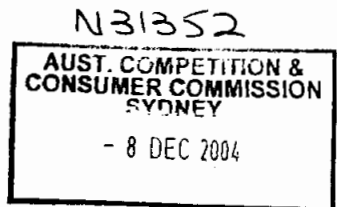
SYDNEY MELBOURNE BRISBANE CANBERRA ADELAIDE PERTH GOLD COAST DARWIN
HONG KONG SHANGHAI BANGKOK JAKARTA SAN FRANCISCO LONDON
AUCKLAND WELLINGTON

LIABILITY IS LIMITED BY THE SOLICITORS SCHEME UNDER THE PROFESSIONAL STANDARDS ACT 1994 (NSW)

Form G

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-section 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 engaged or proposes to engage.

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

Clarendon Homes (NSW) Pty Limited ACN 003 892 706 ('Clarendon').

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

Clarendon is a subsidiary of CPG Australia Pty Limited ACN 002 937 206 ('CPG') and is engaged in the development of land and building of houses.

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

David Flanagan, Manager, Acquisitions and Finance, CPG Developments Pty Ltd, Level 15, 56 Pitt Street, Sydney, New South Wales, 2000.

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

This notice relates to the sale of houses by Clarendon in association with land packages, in respect of a parcel of land to be subdivided at Little Bay, New South Wales.

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

Clarendon proposes to offer houses to the public as part of a house and land package. The customer will acquire building services from Clarendon on condition that the customer acquires the land upon which the building services are to be performed directly from a third party vendor, Landcom ABN 79 268 260 688.

The offer will be promoted by Little Bay Developments Pty Limited ACN 101 169 000, a company owned by Clarendon and Landcom.

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

The conduct relates to actual and potential house and land purchasers, purchasing building services from Clarendon on land in the Little Bay subdivision.

(c) **Number of those persons:**

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

Nil.

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

30

(c) **Where the number of persons stated in item 2(c)(i) is less than 50, their names and addresses:**

Not applicable.

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

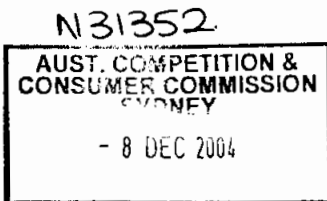
David Flanagan, Manager, Acquisitions and Finance, CPG Developments Pty Ltd, Level 15, 56 Pitt Street, Sydney, New South Wales, 2000.

DATED 7/12/04

SIGNED on behalf of the applicant



David Flanagan
Manager, Acquisitions and Finance



**SUBMISSION BY CLARENDON
IN SUPPORT OF A NOTIFICATION UNDER SECTION 93(1)
OF THE TRADE PRACTICES ACT 1974**

1. Background

- 1.1 Clarendon wish to sell houses to be erected on a proposed land subdivision at Little Bay, New South Wales, owned by a third party vendor, Landcom ABN 79 268 260 688.
- 1.2 Purchasers will be required to enter into two separate contracts: a building agreement with Clarendon and a contract for the sale of land with Landcom. The sale of the building services under the building agreement will be conditional upon the purchaser entering into an agreement for the purchase of land with Landcom.
- 1.3 The Little Bay subdivision is expected to comprise approximately 52 lots, to be developed over a period of 2 years. It is proposed that this offer be made available to the public from the middle of 2005.

2. Market

- 2.1 The market in which the proposed conduct relates is the residential real estate market in the Sydney region.

3. Analysis of the Conduct

- 3.1 The conduct described in **Form G** is exclusive dealing within sections 47(6) and 47(7) of the *Trade Practices Act 1974* (Cth). Clarendon submits that there is no likely detriment to the public resulting from that conduct.
- 3.2 The proposed conduct does not have the effect of substantially lessening competition in the relevant market in that:
- (a) the proposed Little Bay subdivision of 52 lots represents a small proportion of residential real estate available for development in the Sydney region;
 - (b) based on information supplied by the Urban Development Institute of Australia, approximately 25,000 lots will be released for residential development in the Sydney region over the next six years. This project represents less than 0.5% of that supply.
- 3.3 The proposed conduct offers significant benefits to purchasers in that:
- (a) as Clarendon does not need to apply its resources in purchasing 52 lots, it can undertake a far larger project than would otherwise be the case, resulting in superior quality control in overall project imaging and better design co-ordination of individual houses on adjoining lots under a single Master Plan;
 - (b) purchasers will have better information and certainty about the entire development as it will be totally under Clarendon's control;
 - (c) purchasers will not have to bear the cost of 'double' stamp duty as there is a single transfer of land from Landcom to the purchaser, avoiding an intermediate transfer to Clarendon. If an intermediate transfer took place the resulting stamp duty would be passed on to the ultimate purchaser;

- (d) as the transfer of title is effected prior to the commencement of the building services, stamp duty is payable only on the land value;
- (e) as a consequence the entire development will be a superior quality Master Plan community, and new house and land packages will be available to purchasers at more affordable prices.

4. Conclusion

- 4.1 For the reasons stated above, Clarendon submits that the proposed conduct provides benefits to the public and will have no anti-competitive effect and therefore no public detriment.
- 4.2 Further, on 20 November 2003 CPG lodged a third line forcing notification with the Australian Competition and Consumer Commission ('Commission') in respect of almost identical conduct at a subdivision of land at Moorebank, New South Wales (notification No. N91312). Legal immunity provided by the notification commenced on 4 December 2003 and the notification is currently on the Commission's public register.