

# Freehills

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Our ref SS:Frank Poeta  
Phone 08 9211 7893  
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Matter no 80901244  
Doc no Perth\003915160

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

Dear Mr Grimwade

## **Mirvac Mandurah Pty Ltd and Mirvac Homes (WA) Pty Ltd notifications lodged under section 93 of the Trade Practices Act 1974**

We act for the Mirvac Mandurah Pty Ltd (**Mirvac Mandurah**) and Mirvac Homes (WA) Pty Ltd (**Mirvac Homes**) and enclose a notification on behalf of each of those companies in respect of proposed conduct which may raise issues under the third-line forcing provisions of the *Trade Practices Act (1974)* (Cth) (the **Act**). The notification concerns proposed conduct of Mirvac Mandurah and Mirvac Homes.

### **1 Enclosures**

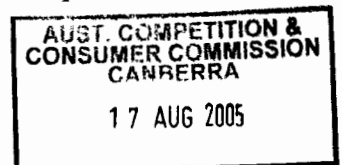
We enclose:

- a completed Form G in respect of the notification;
- a cheque for \$200 being the fee for lodgement of the notification by each of Mirvac Mandurah and Mirvac Homes.

### **2 Background and 'Meadow Springs' residential development**

Mirvac Mandurah is the owner of land that is the subject of this notification. Mirvac Mandurah is developing a residential development known as 'Meadow Springs' in the Mandurah region near Perth, Western Australia (the **Meadow Springs development**). Mirvac Mandurah and Mirvac Homes are related companies forming part of the Mirvac Fini group in WA.

The Meadow Springs development has been carefully designed to attract discerning prospective purchasers, with an emphasis on quality design and lifestyle benefits. Mirvac Mandurah and Mirvac Homes have prepared design guidelines and covenants applicable to every block to ensure residential properties will meet a high standard for quality. The Meadow Springs development



incorporates education facilities, retail shopping areas, lifestyle and health services, office space, sports facilities, parkland and lakes.

The Meadow Springs development will comprise of approximately 1,840 lots. Approximately 342 of these lots will be the subject of "house and land packages" and those lots will be released progressively in batches of 20 to 30 lots. Approximately 361 lots at Meadow Springs, which are not the subject of "house and land packages", have already been sold to buyers.

Mirvac Mandurah will be selling the 342 lots in question as "house and land" packages, progressively in batches of 20 to 30 lots. Any person wanting to buy one of those lots will only be able to do so if they enter into two contracts, namely, one with Mirvac Mandurah for the purchase of the lot, and another contract, with Mirvac Homes, for the construction of a house on the lot. Although we are mindful that this arrangement is arguably not a contravention of section 47(6) because it involves a single package of the nature discussed in *ACCC v IMB Group* (2002) ATPR (Digest) 46-221, our client nonetheless wishes to adopt the prudent course of notifying the conduct.

### **3 Benefits of the 'house and land' packages**

Mirvac Mandurah and Mirvac Homes operate in highly competitive residential property markets. In particular, the 342 lots involved are an extremely small percentage of the total number of lots (approximately 8,000) sold in the Perth and Mandurah areas last year, and our client expects that similar numbers of lots will be sold this year, by a wide range of vendors. Even if only the Mandurah region is taken into account, our client estimates that in excess of 1,100 residential lots will be available for sale during the course of the next year.

Mirvac Mandurah and Mirvac Homes believe the overall attractiveness and competitiveness of the Meadow Springs development will be enhanced by offering certain lots as 'house and land' packages.

Anticipated benefits and efficiencies likely to result from the arrangement, when compared to a situation where no land in the Meadow Springs development is offered as a 'house and land' package, include:

- (a) increased choice for purchasers. Mirvac Mandurah and Mirvac Homes believe the 'house and land' package option will be attractive to some purchasers. It has the advantage of saving the purchaser time and cost in searching for an appropriate builder and gives them confidence that compliance with the local design guidelines will be achieved;
- (b) Mirvac Mandurah will be better able to ensure the quality of the building workmanship on these lots through an ongoing relationship with Mirvac Homes. A consistent high quality of workmanship benefits not only the individual purchasers, but the entire Meadow Springs development;
- (c) Mirvac Homes will be able to take advantage of volume discounts on materials and will be able to reduce overall labour costs through the consolidation of work. The relevant markets are highly competitive and to some extent reduced building costs are likely to be passed on to consumers;
- (d) Mirvac Homes will have a detailed knowledge of the building guidelines and other requirements specific to the Meadow Springs development. This

will result in additional efficiencies and will reduce the possibility of disputes arising regarding compliance with design guidelines and/or covenants.

The combination of increased choice, improved quality, reduced costs and increased efficiency for Mirvac Homes and purchasers achieved by the arrangement will enhance the overall attractiveness and competitiveness of the Meadow Springs development. The arrangement is designed to give consumers an option that they may find attractive at a competitive price.

#### **4 Absence of anti-competitive detriment**

We submit that the arrangement is on such a small scale as to be incapable of causing any anti-competitive detriment in the markets for residential property (and home construction) in the Perth/Mandurah, or Mandurah, areas.

As noted above, there are very large numbers of other residential lots available for prospective purchasers who do not wish to avail themselves of the proposed arrangement, and these lots are an insignificant proportion of the total likely market for residential land.

Our client submits that the arrangements are pro-competitive in nature, and will have no anti-competitive detriment at all.

Please feel free to contact Frank Poeta on 9211 7893 should you require further information or wish to discuss this matter.

Yours sincerely  
Freehills  
per



Frank Poeta  
Senior Associate

## FORM G

Regulation 9

[Front of Form]

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 engages or proposes to engage.

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(PLEASE READ DIRECTIONS AND NOTICES ON BACK OF FORM)

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

Mirvac Mandurah Pty Ltd (**Mirvac Mandurah**) and Mirvac Homes (WA) Pty Ltd (**Mirvac Homes**)

(See Direction 2 on the back of this Form)

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

Mirvac Mandurah carries on the business of property development and Mirvac Homes carries on the business of construction of residential buildings.

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

c/- Frank Poeta  
Senior Associate  
Freehills  
250 St Georges Terrace  
Perth WA 6000

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

Sale of 'house and land' packages in a residential development known as 'Meadow Springs' in the Mandurah region in Perth, Western Australia (the **Meadow Springs development**). This includes:

- the supply of land;
- the supply of building and related services.

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

Mirvac Mandurah proposes to offer for sale residential lots in the Meadow Springs development on condition that purchasers will enter into a contract with Mirvac Homes to construct a house on the lots.

Notes:

- the covering letter to this notification contains additional information regarding the relevant proposed conduct.

(See Direction 4 on the back of this Form)

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

Persons wishing to acquire 'house and land' packages in the Meadow Springs development.

Builders seeking to secure contracts to construct residential buildings.

The Meadow Springs development will comprise approximately 1,840 lots in total. These lots will be sold in stages. However, not every lot in the Meadow Springs development will be sold as a 'house and land' package. Approximately 342 lots in the Meadow Springs development will be the subject of "house and land packages" and these lots will be released progressively in batches of 20 to 30 lots. Approximately 361 lots have already been sold which do not comprise 'house and land' packages.

(b) **Number of those persons**

(i) **At present time**

None. 'House and land' packages in the Meadow Springs development have not been sold at this time.

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

Approximately 342 persons (being the persons who will purchase the 342 "house and land package" lots in the Meadow Springs development) and an unknown number of builders.

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

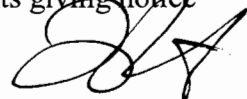
The names and addresses of purchasers of 'house and land' packages in the Meadow Springs development, and of builders potentially affected, are not available at this time.

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

Frank Poeta  
Senior Associate  
Freehills  
250 St Georges Terrace  
PERTH WA 6000

Dated 16 August 2005

Signed on behalf of the  
applicants giving notice



.....  
(Signature)

FRANCO A POETA

.....  
(Full Name)

SOLICITOR

.....  
(Description)

[Back of Form]

**DIRECTIONS**

1. If there is insufficient space on this form for the required information, the information is to be shown on separate sheets, numbered consecutively and signed by or on behalf of the person giving the notice
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. In item 1(b), describe that part of the business of the person giving the notice in the course of which the conduct is engaged in.
4. If particulars of a condition or of a reason of the type referred to in sub-section 47(2), (3), (4), (5), (6), (7), (8) or (9) of the *Trade Practices Act 1974* have been reduced in whole or in part to writing, a copy of the writing is to be provided with the notice.
5. In item 3 (a), describe the nature of the business carried on by the persons referred to in that item.
6. In item 3(b) (ii), state an estimate of the highest number of persons with whom the person giving the notice is likely to deal in the course of engaging in the conduct at any time during the next year.

**NOTICE**

If this notification is in respect of conduct of a kind referred to in sub-section 47(6) or (7) or paragraph 47(8)(c) or (9)(d) of the *Trade Practices Act 1974* ("the Act"), it comes into force at the end of the period prescribed for the purposes of sub-section 93(7A) of the Act ("the prescribed period") unless the Commission gives a notice under sub-section 93A(2) of the Act within the prescribed period, or this notification is withdrawn.

The prescribed period is 21 days (if this notification is given on or before 30 June 1996) or 14 days (if this notification is given after 30 June 1996), starting on the day when this notification is given.

If the Commission gives a notice under sub-section 93A(2) of the Act within the prescribed period, this notification will not come into force unless the Commission, after completing the procedures in section 93A of the Act, decides not to give a notice under sub-section 93(3A) of the Act. The notification comes into force when that decision is made.

If this notification is in respect of conduct of a kind referred to in sub-section 47(2), (3), (4) or (5), or paragraph 47(8)(a) or (b) or (9)(a), (b) or (c), of the Act, it comes into force when it is given.