



H I C K E Y
L A W Y E R S

Our Ref: Mr Bolic:crh:238337-14

20 December 2005

The Australian Competition and Consumer Commission
P O Box 1199
DICKSON ACT 2602

By Express Post

Dear Sir/Madam,

RE: NOTIFICATION OF THIRD LINE FORCING
RE: BALÉ PORT DOUGLAS

FILE No
DATE
MARS/PRISM

Corporate Centre
cnr Bundall Rd & Slatyer Ave
Bundall Queensland Australia
Box 5559 GCMC Bundall
Queensland 9726 Australia
ABN 12 585 546 109

Tony Hickey
LL.B(Hons) | OWNER

Mark Lacy
B.Com, LL.B | OWNER

Jamie Bolic
B.Ec(Hons), LL.B(Hons) | OWNER

Joe Welch
LL.B | OWNER

I act for MFS Bale Resorts Pty Ltd.

I enclose:

1. a Form G Exclusive Dealing Notification;
2. cheque for the application fee in the amount of \$100.00.

The notification relates to a development known as "Balé, Port Douglas".

You have previously issued a Notification (Third Line forcing notification No. N914 14) in respect of the same development for the previous seller of the land, Port Douglas Developments Pty Ltd as Trustee of the Port Douglas 1 Development Trust. Port Douglas Developments Pty Ltd as Trustee has sold its interest in the land to MFS Bale Resorts Pty Ltd and so a new application has been made in the name of MFS Bale Resorts Pty Ltd.

Yours faithfully
HICKEY LAWYERS

Jamie Bolic
Partner

Direct Email: bolicj@hickeylawyers.com.au
Direct Line: 5556 7425

Enc.

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Hickey Lawyers wishes you and your family a safe Christmas and a Happy New Year

Our office will be officially closed from 5 p.m. Friday 23rd December until 8 a.m. Tuesday 3rd January 2006. However during this period we will have staff taking calls and transacting all necessary business

**AUST. COMPETITION &
CONSUMER COMMISSION**

22 DEC 2005

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 engages or proposes to engage.

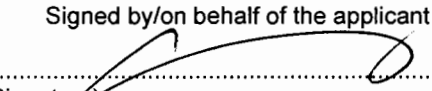
(PLEASE READ DIRECTIONS AND NOTICES ON BACK OF FORM)

1. (a) Name of person giving notice – MFS BALÉ RESORTS PTY LTD ACN 114 259 353 ("the Developer")
 (See Direction 2 on the back of this form)
- (b) Short description of business carried on by that person - Property development
- (c) Address in Australia for service of documents on that person - C/- Ray Group Pty Ltd, 34 – 36 Glenferrie Drive, Robina, Qld, 4226
2. (a) Description of the goods or services in relation to the supply or acquisition of which this notice relates
 - The supply of residential land to be created from the land currently described as Lot 109 on CP SR591, County of Solander, Parish of Salisbury, Title Reference 50461834, located at Port Douglas Road, Port Douglas, Queensland ("the Land").
 - The supply of housing construction services.
- (b) Description of the conduct or proposed conduct - Requiring purchasers of the Developer's Land ("Purchaser") to execute a building contract with Balé Homes Queensland Pty Ltd ACN 109 605 843 in respect of the construction of a residential dwelling on the Land purchased by the Purchaser.
 (See Direction 4 on the back of this Form)
3. (a) Class or classes of persons to which the conduct relates - Actual and potential purchasers of the Land.
- (b) Number of those persons –
 - (i) At present time - Nil
 - (ii) Estimated within the next year – The conduct will relate to approximately 80 residential allotments and therefore approximately 80 persons.
- (c) Where number of persons stated in item 3 (b) (i) is less than 50, their names and addresses - Not applicable
4. Names and address of person authorised by the person giving this notice to provide additional information in relation to this notice.....

Jamie Bolic
 Partner
 Hickey Lawyers
 P O Box 5559
 GOLD COAST MC QLD 9726

Dated 13.11.12, 2005

Signed by/on behalf of the applicant giving notice

(Signature) 

MICHAEL CHRISTODOULOU KING
 (Full Name)

DIRECTOR
 (Description)

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 I(a), not the name of the person giving the notice, and the notice is to be signed by a person authorised by the corporation to do so.
3. In item I(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 subsection 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 subsection 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 subsection 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.

**SUBMISSIONS TO THE AUSTRALIAN COMPETITION AND CONSUMER
COMMISSION IN RELATION TO A PROPOSAL BY MFS BALÉ RESORTS PTY LTD
ACN 114 259 353 ("DEVELOPER") IN RESPECT OF THE DEVELOPMENT
PROPOSED TO BE KNOWN AS BALÉ PORT DOUGLAS, PORT DOUGLAS ROAD,
PORT DOUGLAS, QUEENSLAND**

1. PROPOSAL DETAILS

- 1.1 The Developer proposes to undertake a residential land development comprising of approximately 80 residential land allotments at Port Douglas Road, Port Douglas on land currently described as Lot 109 on CP SR591, County of Solander, Parish of Salisbury, Title Reference 50461834. The development is proposed to be known as "Balé Port Douglas".
- 1.2 The development will comprise of residential land allotments and a small commercial component comprising of a health spa, gymnasium and associated recreational facilities.
- 1.3 The Developer proposes to enter into a contract of sale with each Purchaser to sell to that Purchaser a vacant allotment. This contract will require the Purchaser to contemporaneously enter into and execute a building contract with Balé Homes Queensland Pty Ltd ACN 109 605 843 ("Builder"). The building contract will provide for the Builder to carryout the construction of a dwelling on the allotment purchased by the purchaser on the terms and conditions stated in the building contract.
- 1.4 The sale of the allotments will be marketed on the basis of one complete "house and land" package.
- 1.5 The Developer has prepared designs for the dwellings to be constructed on each allotment.
- 1.6 Completed dwellings in the Development may be used for a "management rights business" whereby the Purchaser's will make available their dwelling to be occupied by members of the public for short to medium term stays ("Management Rights Business"). This Management Rights Business will be conducted by a professional manager from premises within the Development. Purchasers who make their dwelling available for the Management Rights Business will receive rental income from the letting of the dwelling. The dwellings will be marketed particularly to holiday makers.

2. PUBLIC BENEFIT

- 2.1 The Developer submits that the proposed conduct will provide the following public benefits:
 - (a) The association between the Developer and Builder will produce a development that contains dwellings of a uniform, consistent and appropriate nature for the purposes of the Development and the Management Rights Business.
 - (b) The residential dwellings to be constructed on the allotments are of a unique design and character with specialised fixtures, fittings and finishes. The Builder has specialist skills to complete the dwellings to the standard and quality required by the building covenants that affect the Land. The specialised nature of the dwellings demands that one

builder be in control of all construction activities to achieve an appropriate outcome.

- (c) The requirement for each Purchaser to engage the same builder will produce cost savings and time efficiencies for a Purchaser in that there will be economies of scale achieved through the construction of a bulk number of dwellings at the same time - therefore, Purchasers will obtain benefits from the competitive pricing able to be achieved where the Builder will be constructing all dwellings. In addition, the nature and constraints of the construction site means that practically, only one builder can operate at a time on the construction site. Given the nature and constraints of the construction site, efficient development will only be achieved through close coordination and control of the construction process which can only be achieved through having one builder.
- (d) Purchasers will obtain benefits from all dwellings (in a particular stage of the Development) being constructed at the same time as all dwellings will be completed at approximately the same time which will allow dwellings in the relevant stage of the Development to be let out for the purposes of the Management Rights Business. Purchasers will therefore receive rental income quicker and the Development will be a more attractive destination for holiday makers if all construction activity is completed at the same time. If there was more than one builder in the Development it is unlikely that these benefits will arise and the image of the Development as a holiday destination will suffer if construction activities are not undertaken in a coordinated and controlled environment (which can only be offered by one builder).
- (e) As a consequence of the above, the Development will be a superior quality master planned community comprising of dwellings of a high standard that are suitable for the purposes of the Management Rights Business.

3. CONCLUSION

For the reasons stated above, the Developer submits that the proposed conduct provides benefits to the public and will have no anti-competitive effect and therefore no public detriment.