

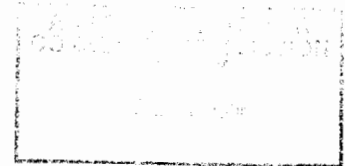
N 31621 & N92515
N31622 & N92516

Freehills

7 June 2006

Our ref PG:34G
Phone +61 2 9322 4378
Email Patrick.Gay@freehills.com
Matter no 81055835
Doc no Sydney\005080983

Australian Competition Consumer Commission
Level 7, Angel Place
123 Pitt Street
Sydney NSW 2000



Dear Sir/Madam

The Austral Brick Company Pty Limited and Newthorpe Pty Ltd - Third Line Forcing Notifications

We act for The Austral Brick Company Pty Limited (**Austral**) and Newthorpe Pty Ltd (**Newthorpe**). Please find enclosed related, but separate, notifications of conduct which may constitute third line forcing under section 47 of the *Trade Practices Act*, 1974. The notifications relate to selling of houses and land in "house and land" packages at Eastwood, NSW.

Two types of possible third line forcing conduct have been described in each Form G notification. Accordingly, we enclose two separate cheques for \$200.00, being the relevant lodgement fees.

On 8 December 2004, Clarendon Homes (NSW) Pty Limited filed a third line forcing notification with the Commission (Notification N31350) in respect of related conduct. The legal immunity provided by that notification commenced on 22 December 2004. Both that notification and the attached notifications relate to "house and land" packages at Eastwood, NSW.

It has taken some years for the Eastwood subdivision project to be developed. It has recently come to the attention of Austral, as the owner of the land and Newthorpe, as the developer, that their proposed conduct may also require notification.

A copy of a pro-forma Austral land sale contract is attached at Confidential Annexure "A". We draw the Commission's attention to clause 54 of the "Annexure to the Contract for Sale of Land". As this document contains confidential information we request that it not be posted on the Commission's website.

If you require any additional information, please do not hesitate to contact me.

Yours faithfully
Freehills



Patrick Gay
Senior Associate

Encl



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.

(PLEASE READ DIRECTIONS AND NOTICES ON BACK OF FORM)

1. (a) **Name of person giving notice**The Austral Brick Company Pty Limited (ACN 000 005 550) (**Austral**)

(See Direction 2 on the back of this Form)

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

Austral is engaged in the development and sale of land.

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

c/o Megan Tamsett, General Manager – Property and Development, The Austral Brick Company Pty Limited, 738-780 Wallgrove Road, Horsley Park NSW 2164

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 subdivided land at Eastwood, NSW in association with the sale of “house and land” packages.

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

Austral proposes to offer land parcels to the public as part of a house and land package.

Austral proposes to:

(i) supply land on the condition that purchasers acquire, or agree to acquire, building and/or development related services from certain other parties; and

(ii) refuse to supply land for the reason that potential purchasers have not acquired, or have not agreed to acquire, building and/or development related services from certain other parties.

Please see attached submission for additional information.

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

The conduct relates to actual and potential house and land purchasers purchasing land and building services in the Eastwood subdivision.

(b) **Number of those persons**

More than 50.

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

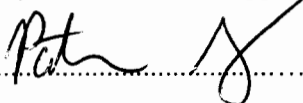
Not applicable

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

Patrick Gay
c/o Freehills
Level 32
MLC Centre
Martin Place
Sydney NSW 2000

Dated 7 June 2006

Signed by/on behalf of the applicant giving notice


.....

Patrick Gay

Solicitor

[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.

**EXCLUDED FROM
PUBLIC REGISTER**

Confidential Annexure "A"
Not to be included on Commission website

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.

(PLEASE READ DIRECTIONS AND NOTICES ON BACK OF FORM)

1. (a) **Name of person giving notice**Newthorpe Pty Ltd (ACN 111 744 640) (**Newthorpe**)

(See Direction 2 on the back of this Form)

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

Newthorpe is a joint venture company whose shares are owned equally by The Austral Brick Company Pty Limited (**Austral**) and Investa Residential Developments Pty Limited (**Investa**). Newthorpe is the developer of land at Eastwood, New South Wales, which is currently owned by Austral.

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

c/o Mark Dibben, Development Manager, Investa Residential Developments Pty Limited, Level 6, 126 Phillip Street, Sydney NSW 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 and land at Eastwood, NSW in association with the sale of "house and land" packages.

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

Newthorpe proposes to provide development related services (eg subdivision, title transfer and land preparation services) to members of the public as part of a "house and land" package.

Newthorpe proposes to:

- (i) supply development related services on the condition that persons acquire, or agree to acquire, land and/or building services from certain other parties; and
- (ii) refuse to supply development services for the reason that persons have not acquired, or have not agreed to acquire, land and/or building services from certain other parties.

Please see attached submission for additional information.

(See Direction 4 on the back of this Form)

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

The conduct relates to actual and potential house and land purchasers purchasing land and building services in the Eastwood subdivision.

(b) **Number of those persons**

More than 50

(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**

Patrick Gay
c/o Freehills
Level 32
MLC Centre
Martin Place
Sydney NSW 2000

Dated 7 June 2006

Signed by/on behalf of the applicant giving notice



Patrick Gay

Solicitor

[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
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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.

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

1. Background

- 1.1 Austral proposes to sell land as a component of a “house and land” package on a land subdivision at Eastwood, NSW. Newthorpe (a joint venture company whose shares are owned equally by Austral and Investa) is the developer of that land.
- 1.2 Purchasers of “house and land” packages will be required to enter into separate contracts including: a contract for the sale of land with Austral and a building services contract with Clarendon Homes (NSW) Pty Limited (Clarendon).¹ (Clarendon is a subsidiary of Investa). The sale of land in the Eastwood subdivision will be conditional upon the purchaser having entered into, or agreeing to enter into, a building services contract with Clarendon and/or obtaining, or agreeing to obtain development related services (eg subdivision, title transfer and land preparation services) from Newthorpe. Newthorpe will provide development related services on the condition that persons have entered into, or have agreed to enter into, a sale of land contract with Austral and/or a building services contract with Clarendon.
- 1.3 The Eastwood subdivision is expected to comprise approximately 200 lots, to be developed over a period of 6 years.

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** may constitute exclusive dealing within sections 47(6) and 47(7) of the *Trade Practices Act 1974* (Cth). Austral and Newthorpe submit 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 Eastwood subdivision of 200 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 in 2004, approximately 25,000 lots will be released for residential development in the Sydney region by 2010. This project represents less than 1% of that supply; and
 - (c) in the Sydney region there are considerable choices of residential developments for purchasers. It is a highly competitive environment for developers, land owners and builders.

¹ A third line forcing notification has previously been lodged by Clarendon (Notification N31350).

- 3.3 The proposed conduct offers significant benefits to purchasers in that:
- (a) as the builder does not need to apply its resources in purchasing 200 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 not have to bear the cost of 'double' stamp duty as there is a single transfer of land from Austral to the purchaser, avoiding an intermediate transfer to the builder. If an intermediate transfer took place the resulting stamp duty would be passed on to the ultimate purchaser;
 - (c) as the transfer of title is effected prior to the commencement of the building services, stamp duty is payable only on the land value; and
 - (d) 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

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