

Our reference
CAR/MM/MIRV11189-9043734

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AUST. COMPETITION &
CONSUMER COMMISSION
SYDNEY
13 NOV 2007

13 November 2007

By hand delivery

Mr Scott Gregson
General Manager
Adjudication Branch
Australian Competition and Consumer
Commission
Level 7, 123 Pitt Street
Sydney NSW 2000

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| FILE No: |
| DOC: <i>BC 10/11/07</i> |
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Sydney
Melbourne
Brisbane
Perth
Gold Coast

Contact
Mark McCowan (02) 9210 6080
Email: mark.mccowan@corrs.com.au

Partner
Conway Restom

Dear Mr Gregson

Exclusive dealing notification – AustralianSuper Property Pty Ltd

We act for Mirvac Spring Farm Pty Limited (**Mirvac Spring Farm**).

Mirvac Spring Farm and AustralianSuper Property Pty Limited (**AustralianSuper**) are co-owners as tenants in common of land in Spring Farm, New South Wales, which they plan to subdivide and develop for residential use. A portion of the lots into which the property is eventually subdivided will be sold as vacant land on condition that the purchaser enter into a contract with Mirvac Homes (NSW) Pty Limited (**Mirvac Homes**) for the construction of a house on the land.

In the language of subsections 47(6) and (7) of the *Trade Practices Act 1974 (TPA)*, the sale of the land on this basis will result in AustralianSuper:

- supplying, or offering to supply, an interest in land on the condition that the person to whom the AustralianSuper supplies will acquire building services from Mirvac Homes; or
- refusing to supply an interest in land to a person for the reason that the person has not acquired, or has not agreed to acquire, building services from Mirvac Homes.

Enclosed for the Australian Competition and Consumer Commission's consideration is an exclusive dealing notification in accordance with section 93(1) of the TPA lodged on behalf of AustralianSuper, together with a cheque in the amount of \$100 in payment of the lodgement fee. The document has been entered into by officers of Mirvac Limited pursuant to a power of attorney granted by AustralianSuper.

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13 November 2007
Australian Competition and Consumer Commission
**Exclusive dealing notification – AustralianSuper Property
Pty Ltd**

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lawyers

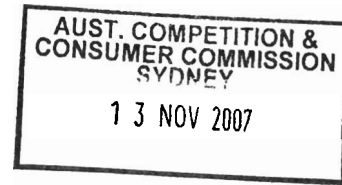
Please contact Mark McCowan on (02) 9210 6080 if you have any queries.

Yours faithfully
Corrs Chambers Westgarth



Conway Restom
Partner

attachments



FORM G

Commonwealth of Australia

Trade Practices Act 1974 –sub-section 93(1)

NOTIFICATION OF EXCLUSIVE DEALING

To the Australian Competition & Consumer Commission:

Notice is hereby given, in accordance with sub-section 93(1) of the *Trade Practices Act 1974*, of particulars of conduct or proposed conduct of a kind referred to in subsections 47 (2), (3), (4), (5), (6), (7), (8) or (9) of that Act in which the person giving notice engages or proposes to engage.

1. Applicant

(a) Name of person giving notice:

AustralianSuper Property Pty Limited (ACN 109 911 588)
of Level 33, 50 Lonsdale Street, Melbourne (**AustralianSuper**) N93216

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

Superannuation fund manager

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

C/- Corrs Chambers Westgarth
Governor Phillip Tower
1 Farrer Place
SYDNEY NSW 2000

2. Notified arrangement

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

- various residential lots in the Sydney basin;
- contracts for the construction of residential dwellings; and
- marketing and sale of residential lots with contracts for the construction of a residential dwelling.

(b) Description of the conduct or proposed conduct:

AustralianSuper, together with Mirvac Spring Farm Pty Limited (ACN 112 980 971) of level 26, 60 Margaret Street, Sydney (**Mirvac Spring Farm**), are the co-owners as tenants in common of property in Spring Farm in the Camden local government area of New South Wales.

The Spring Farm property is approximately 45 hectares, is comprised in Folio Identifier 22/543966 and is located at Richardson Road, Spring Farm.

Mirvac Spring Farm and AustralianSuper have entered into a Development Services Agreement to undertake the development of the Spring Farm property and intend to subdivide and develop the land for residential use.

Mirvac Spring Farm and AustralianSuper propose, subject to successful notification of the conduct of the Australian Competition and Consumer Commission, to sell residential lots in the development either:

- as vacant land; or
- as completed homes; or
- as vacant lots on condition that the purchaser enter into a contract with Mirvac Homes (NSW) Pty Ltd for the construction of a house on the lot (**House and Land Build Contracts**).

Mirvac Spring Farm will determine which lots in the development are to be sold as vacant land, completed homes or subject to a House and Land Build Contract. However, less than 50 percent of the residential lots into which the Spring Farm property is eventually subdivided will be subject to the third line forcing arrangement inherent in the House and Land Build Contracts.

3. Persons, or classes of persons, affected or likely to be affected by the notified conduct

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

Those of the general public who are seeking to purchase residential dwellings in metropolitan Sydney.

(b) Number of those persons:

(i) At present time: Nil

(ii) Estimated within the next year: It is intended that the Spring Farm property will eventually be subdivided 457 lots.

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

Not applicable.

4. Public benefit claims

(a) Arguments in support of notification:

The proposed conduct will be of benefit to the public for the following reasons:

- the release and development of new residential land estates has been recognised by the NSW Government as an important public policy objective and the development of the Spring Farm property will contribute to the achievement of this objective. AustralianSuper lacks the expertise to

conduct a development of this nature on its own and the assurance of housing construction contracts was necessary to make the Mirvac Group's participation in the project financially viable; and

- by retaining control of the design and construction of houses on the site, Mirvac Spring Farm and AustralianSuper are able to ensure the creation of a high quality subdivision that is, as far as possible, comprised of houses of a similar and consistent appearance.

(b) Facts and evidence relied upon in support of these claims:

In December 2004, the New South Wales Government announced a new land release plan and designated the South West Sydney and North West Sydney Growth Centres as areas for land release. The Growth Centres Commission was established in July 2005 under the *Growth Centres (Development Corporations) Act 1974* to coordinate the new land release. The South West Sydney Growth Centre includes land in the Liverpool, Camden and Campbelltown local government areas. Whilst the Spring Farm land is not located in the South West Sydney Growth Centre, it is located in the Camden Local Government area and serves the policy objectives of the Growth Centres Commission.

Sydney's housing shortage has been well publicised and appears to be worsening. For example, the Australian Bureau of Statistics June quarter 2007 Dwelling Unit Commencements publication (Number 8750.0 dated 13 September 2007) indicates that new housing starts in New South Wales in the June quarter fell by 20 percent to their lowest level since at least 1984.¹

5. Market definition

For the purpose of this notification, AustralianSuper considers that the relevant market is likely to be the residential real estate market in the Sydney Basin.

6. Public detriments

(a) Detriments to the public resulting or likely to result from the notification, in particular the likely effect of the notified conduct on the prices of the goods or services described at 2(a) above and the prices of the goods or services in other affected markets:

The proposed conduct will not lessen competition in the markets for the relevant products and services as:

- the property market in metropolitan Sydney is highly competitive and the land subject to House and Land Build

¹ See [http://www.ausstats.abs.gov.au/ausstats/subscriber.nsf/0/A5D2C99E8DA5D36FCA25735400177B71/\\$File/87500_jun%202007.pdf](http://www.ausstats.abs.gov.au/ausstats/subscriber.nsf/0/A5D2C99E8DA5D36FCA25735400177B71/$File/87500_jun%202007.pdf)

Contracts will compete with a large number of alternative residential developments and dwellings;

- there is significant and effective competition between a large number of residential property developers in the metropolitan Sydney area; and
- accordingly, the proposed conduct will not limit the vast range of choices available to prospective purchasers.

Also, because at least 50 percent of the lots in the development will be sold to consumers as either vacant land or as completed homes, consumers who wish to purchase a property in the development are free to purchase a lot that is not subject to a House and Land Build Contract.

(b) Facts and evidence relevant to these detriments:

In the Camden local government area in which the Spring Farm property is situated, there are a number of competing residential subdivisions and developments at various stages of development. For example:

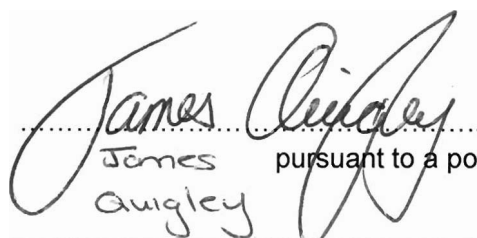
- Landcom Garden Gates, Mount Annan (vacant land)
- AV Jennings, Mount Annan (house and land);
- AV Jennings, The Ridges at Elderslie (house and land);
- Cornish, Spring Farm (house and land); and
- Landcom, Spring Farm (vacant land).

Further information

(a) Name, postal address and contact details of the persons authorised to provide additional information in relation to this notification:

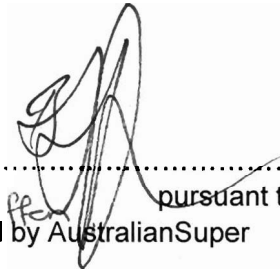
C/- Mark McCowan
Corrs Chambers Westgarth
Governor Phillip Tower
1 Farrer Place
SYDNEY NSW 2000
Phone: (02) 9210 6080
Fax: (02) 9210 6611

Dated: 12 November 2007 Signed by/on behalf of the person giving this notice.


James Quigley
pursuant to a power of

AUST. COMPETITION &
CONSUMER COMMISSION
SYDNEY
13 NOV 2007

attorney granted by AustralianSuper

A handwritten signature in black ink, appearing to be 'P. Hen', written over a horizontal dotted line.

.....
granted by AustralianSuper pursuant to a power of attorney