

25 May 2007

Our reference
LEDG.MDEA.1784755

The General Manager
Adjudication Branch
Australian Competition and Consumer Commission
470 Northbourne Avenue
DICKSON ACT 2602

FILE No:
DOC:
MARS/PRISM

Dear Sir/Madam

Third line forcing notification - Hamton (Sandringham Development) Pty Ltd

We act for Hamton (Sandringham Development) Pty Ltd (**Hamton**), a Melbourne based company involved in the development of residential property in Victoria.

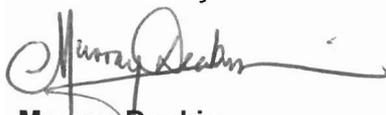
Hamton proposes to develop and sell or offer for sale 36 subdivided allotments of land located at 170-171 Beach Road, Sandringham, Victoria on the condition that each purchaser concurrently enters into a separate building contract with a builder nominated by Hamton to construct one of 13 townhouse designs.

Accordingly, we enclose for lodgement on behalf of Hamton:

1. Form G – notification of exclusive dealing;
2. Annexure A to that form containing Hamton's supporting submissions; and
3. a cheque for \$100 for payment of the lodgement fee.

Please do not hesitate to contact me if you have any questions in relation to this notification.

Yours faithfully



Murray Deakin
Partner

encl

29 MAY 2007

Form G

Commonwealth of Australia
Trade Practices Act 1974 – Sub-section 93(1)
NOTIFICATION OF EXCLUSIVE DEALING

To the Australian Competition and Consumer Commission:

Notice is hereby given, in accordance with subsection 93(1) of the *Trade Practices Act 1974*, of particulars of conduct or of 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:
(Refer to direction 2)

N92932

Hamton (Sandringham Development) Pty Ltd ACN 120 473 289 of Level 7, 607 St Kilda Road, Melbourne, Victoria, 3004 (**Hamton**).

- (b) Short description of business carried on by that person:
(Refer to direction 3)

Hamton is a Melbourne based proprietary limited company involved in the development of residential property.

Hamton proposes to develop and sell 36 subdivided allotments of land located at 170-171 Beach Road, Sandringham, Victoria, to construct a townhouse estate (**Sandringham townhouse complex**).

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

C/- Murray Deakin
Middletons Lawyers
Level 26, 52 Martin 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:

This notice relates to the supply of 36 subdivided allotments of land in the Sandringham townhouse complex.

- (b) Description of the conduct or proposed conduct:
(Refer to direction 4)

Hamton proposes to develop and sell or offer for sale each of the 36 subdivided allotments of land located within the Sandringham townhouse complex (**Allotment**) on the condition that each purchaser concurrently enters into a separate building contract, that is a major domestic building contract (within the meaning of the *Domestic Building Contracts Act 1995* (Vic)), with a builder nominated by Hamton, to construct one of 13 townhouse designs (as pre-determined by Hamton for that particular Allotment) on the lot, after settlement of the Allotment.

Hamton proposes to refuse to sell or offer for sale any of the Allotments if purchasers do not or are unwilling to comply with the above condition.

See further Annexure A, particularly paragraphs 1-18.

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:
(Refer to direction 5)

Purchasers of the subdivided allotments of land in the Sandringham townhouse complex.

- (b) Number of those persons:

- (i) At present time:

No purchasers have yet entered into contracts for the sale of any Allotments .

- (ii) Estimated within the next year:
(Refer to direction 6)

Nil.

- (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:
(Refer to direction 7)

See Annexure A – particularly paragraphs 7, 8, 9 and 28-30.

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

See Annexure A – particularly paragraphs 7, 8, 9 and 28-30.

5. Market definition

Provide a description of the market(s) in which the goods or services described at 2 (a) are supplied or acquired and other affected markets including: significant suppliers and acquirers; substitutes available for the relevant goods or services; any restriction on the supply or acquisition of the relevant goods or services (for example geographic or legal restrictions):

(Refer to direction 8)

See Annexure A – particularly paragraphs 19-22.

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 goods or services in other affected markets:
(Refer to direction 9)

See Annexure A – particularly paragraphs 23-27

- (b) Facts and evidence relevant to these detriments:

See Annexure A – particularly paragraphs 23-27.

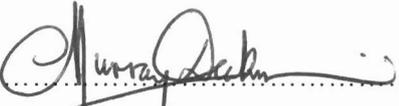
7. Further information

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

Murray Deakin
Partner
Middletons Lawyers
Level 26, 52 Martin Place
Sydney NSW 2000
T: 02 9513 2335
F: 02 9513 2399

Dated: 25 May 2007

Signed on behalf of the applicant:



Murray Charles Deakin
Middletons
Partner

DIRECTIONS

1. In lodging this form, applicants must include all information, including supporting evidence that they wish the Commission to take into account in assessing their notification. Where there is insufficient space on this form to furnish the required information, the information is to be shown on separate sheets, numbered consecutively and signed by or on behalf of the applicant.
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. Describe that part of the business of the person giving the notice in the course of the which the conduct is engaged in.
4. If particulars of a condition or of a reason of the type referred to in section 47 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. Describe the business or consumers likely to be affected by the conduct.
6. State an estimate of the highest number of persons with whom the entity giving the notice is likely to deal in the course of engaging in the conduct at any time during the next year.
7. Provide details of those public benefits claimed to result or to be likely to result from the proposed conduct including quantification of those benefits where possible.
8. Provide details of the market(s) likely to be affected by the notified conduct, in particular having regard to goods or services that may be substitutes for the good or service that is the subject matter of the notification.
9. Provide details of the detriments to the public which may result from the proposed conduct including quantification of those detriments where possible.

Annexure A

Introduction

1. Hamton (Sandringham Development) Pty Ltd ACN 120 473 289 (**Hamton**) is a joint venture between Hamton Pty Ltd and Gersch and Partners formed to develop residential property in Victoria.
2. Hamton proposes to subdivide and develop into a townhouse complex 36 allotments of land located at 170-171 Beach Road, Sandringham, Victoria (**Sandringham townhouse complex**).
3. Hamton intends to lodge a planning permit in late May for the subdivision and townhouse development and would anticipate receiving the permit around 6 to 9 months after that.
4. Subject to planning, construction of the Sandringham townhouse complex is expected to commence in the next 18 months to 2 years.
5. Subject to a final survey, it is anticipated that around 4000m² of land will be subdivided into lot sizes averaging 180m² each. The proposed plan of subdivision is **attached**.
6. A copy of the site plans, elevation plans and landscape plan is **attached**.
7. The Sandringham townhouse complex is intended to provide:
 - (a) an attractive and consistent appearance throughout;
 - (b) more compact housing choices for affordable living aimed at reaching a market segment which includes first home buyers, investors, singles, empty nesters, professionals and older people down-sizing; and
 - (c) low maintenance townhouses in a secure complex, which includes communal internal security access roadways and landscaped areas.
8. The development aims to create an integrated and high quality complex where purchasers will have the comfort of knowing what the surrounding area and townhouses will look like when completed. This will be facilitated by the use of a selection of 13 pre-determined designs, finishes, fixtures and colour schemes for all townhouses in the Sandringham townhouse complex.
9. Additionally, the ability to choose from a select range of townhouse sizes, finishes and fixtures means:
 - (a) purchasers are given a choice in the features and design of their home;
 - (b) the building of the townhouses will be in accordance with the planning permit sought;
 - (c) the Sandringham townhouse complex will be able to achieve consistency in its appearance by ensuring that the townhouses complement each other and the common property in terms of its aesthetic qualities; and
 - (d) the townhouses will be constructed to ensure that the development is able to effectively utilise the space available.
10. Hamton will market the development as house and land packages

The proposed conduct

11. In order to ensure the Sandringham townhouse complex is developed in an orderly and consistent manner, Hamton proposes the use of a single nominated builder to construct the townhouses (**Nominated Builder**).
12. Hamton proposes to sell or offer for sale each of the subdivided allotments of land in the Sandringham townhouse complex (**Allotments**) on the condition that each purchaser concurrently enters into a separate building contract, that is a major domestic building contract (within the meaning of the *Domestic Building Contracts Act 1995 (Vic)*), with the Nominated Builder to construct a townhouse on the lot purchased in accordance with one of a selection of 13 pre-determined townhouse designs, after settlement of the allotment. Hamton proposes to refuse to sell or offer for sale any of the Allotments if purchasers do not or are unwilling to comply with this above condition.
13. The proposed conduct will only occur once in respect of each Allotment. It will occur at the time of purchase of the Allotment when the obligation for the purchaser to engage the Nominated Builder is imposed under the terms of the contract for sale and purchase of the Allotment.
14. The proposed contract for sale has not yet been drafted. Subject to the proposed conduct being duly notified and cleared under section 93 of the *Trade Practices Act 1974*, it is proposed that the contract of sale for each of the Allotments would contain a term to the effect detailed in paragraph 13 above.
15. At this stage, Hamton has not appointed its Nominated Builder. Hamton is undergoing a selection process to identify a Nominated Builder based upon a selection criteria which includes:
 - (a) strong project management skills;
 - (b) financial means to undertake a project of this size;
 - (c) appropriate insurance policies;
 - (d) appropriate registration under the *Building Act 1993 (Vic)*;
 - (e) quality tradesmen and sub-contractors;
 - (f) price;
 - (g) availability;
 - (h) evidence of completing homes on time;
 - (i) knowledge of the site/complex;
 - (j) strong professional integrity;
 - (k) prior history of building quality homes; and
 - (l) adherence to best practice residential design.
16. The building contract between each purchaser and the Nominated Builder will be in the form of a major domestic building contract to be agreed between Hamton and the Nominated Builder and is intended to specify, among other things:
 - (a) the land upon which the townhouse will be constructed on;

- (b) the style of the townhouse (including the building plan and specifications), chosen by the purchaser from a range of 13 available designs;
 - (c) options chosen by the purchaser (eg colour schemes, type of flooring, finishes, fixtures);
 - (d) the price payable by the purchaser to the Nominated Builder and the method of review of the price (if required);
 - (e) timeframes for the construction and completion of the townhouse, including reasonable allowances made by the Nominated Builder for possible delays in construction;
 - (f) the Nominated Builder's insurance details;
 - (g) a condition which gives the Nominated Builder the ability to allow the purchaser or the purchaser's contractor to undertake works on the Allotment, while the site is in control of the Nominated Builder, if the purchaser or the purchaser's contractor complies with and maintains a safe system of work in accordance with the occupational health and safety conditions provided by the Nominated Builder; and
 - (h) provisions as required by the *Domestic Building Contracts Act 1995 (Vic)* for major domestic building contracts.
17. Hamton and the Nominated Builder will not be related companies.
18. Hamton will not receive any financial benefit from the Nominated Builder in respect of each individual building contract entered into between the purchaser and the Nominated Builder.

Market definition

19. The proposed conduct the subject of Hamton's notification is directed at purchasers of real estate around the Sandringham area in Victoria. Sandringham is about 15km south of the Melbourne CBD, on the Port Phillip Bay beachfront.
20. In addition to the Sandringham townhouse complex, there are a number of other residential developments which are currently on the market or under construction in the Sandringham area. Examples of these developments in Sandringham or its immediate environs include:

Development Location	Development Type
Beach Road, Brighton	60 townhouses by Wentworth Constructions
Glenville Street, Hampton	20 apartments
15 Beach Road, Sandringham	Apartments by Wentworth Constructions
53 Beach Road, Sandringham	Apartments
233 Beach Road, Black Rock	Apartments
229 Beach Road, Black Rock	Apartments

21. The proposed Sandringham townhouse development is one of several existing or proposed residential developments in the area south of Melbourne's CBD, which forms part of the broader metropolitan residential market of Melbourne. There are numerous choices

available to potential purchasers of residential properties in the Melbourne bayside or metropolitan area, with each development offering different prices, features and amenities.

22. It is intended that the Sandringham townhouse complex will provide an affordable alternative to those which are built on larger traditional blocks of land.

Public detriments

23. Once Hamton appoints the Nominated Builder, the proposed conduct will prevent other builders from constructing townhouses within the Sandringham townhouse complex. However, it is anticipated that Hamton's selection process will engender real competition between builders who wish to be appointed as the Nominated Builder for the Sandringham townhouse complex.
24. While the proposed conduct will restrict the purchasers' choice of builder, it is submitted that any private detriment associated with such a restriction is wholly offset by the advantages those purchasers obtain from using a single Nominated Builder (see paragraph 28 below).
25. It is important to appreciate that the proposed conduct is limited to one townhouse development in Sandringham. The proposed conduct will not erect any barriers to entry for other builders in the market, particularly given the number of other residential developments occurring in the Sandringham (and more generally, Melbourne) area.
26. Hamton does not believe the proposed conduct will have any detrimental effect on the general public.
27. The use of a single Nominated Builder and pre-determined townhouse designs will ensure consistency and efficiency in the development leading to cost savings to purchasers and visual harmony within the Sandringham townhouse complex.

Public benefits of the proposed conduct

28. The proposed conduct will be of benefit to the public as:
- (a) it will reach a broader market segment of first home buyers, investors, singles, professionals, empty nesters and older people looking to down size. It is aimed at meeting future trends in housing which are considered to involve a dramatic increase in demand for more compact housing;
 - (b) purchasers will be able to choose from a range of 13 townhouse designs offered;
 - (c) a pre-determined range of townhouse designs on offer from the Nominated Builder will lead to potential cost reductions for the purchasers through:
 - (i) economies of scale and the efficient allocation of resources;
 - (ii) reducing the time purchasers would otherwise need to:
 - (A) assess alternative building proposals from a variety of potential builders;
 - (B) wait for a builder's availability to commence construction; and
 - (C) wait for the issuing of building and construction permission from the local authority.
 - (d) pre-determined townhouse designs will ensure:

- (i) townhouses built are appropriate for the size of the Allotments;
 - (ii) purchasers know that neighbouring lots will be developed to a style that complements the architecture and environment of the Sandringham townhouse complex;
- (e) a Nominated Builder will give purchasers:
- (i) more affordable townhouses;
 - (ii) the comfort of knowing that a reputable builder has been engaged through Hamton's use of a strict selection criteria to ensure the builder meets the standards for the Sandringham townhouse complex; and
 - (iii) greater certainty in compliance with the various planning laws, precinct controls, any specific site constraints and environmental requirements;
- (f) the Nominated Builder will have a degree of assurance of receiving a volume of building work and therefore will be more likely to give further certainty to the construction price and discounts available to the purchaser;
- (g) the use of a major domestic building contract which specifies a timeframe in which to complete the construction of the townhouse will ensure:
- (i) the development is completed within a certain period of time and will minimise the length of construction noise and disturbance to the occupiers of the townhouses; and
 - (ii) purchasers are protected by the provisions in the *Domestic Building Contracts Act 1995*, which aims to maintain proper and fair building standards of building works and enable purchasers to access insurance funds if the building works are incomplete or defective; and
- (h) purchasers will be assured that that the properties in the Sandringham townhouse complex are of a high quality and integrated to give it consistent architectural qualities that potentially allows them to maintain higher resale values for the property.

Conclusion

29. The proposed conduct will be of public benefit and not substantially lessen competition in the markets for the residential land and/or building services in Sandringham or the surrounding suburbs in the Melbourne area as:
- (a) there is an adequate supply of land and development in Melbourne and its surrounding areas giving potential purchasers of residential land a range of alternative choices;
 - (b) there is an adequate supply of developments in the areas surrounding Sandringham and Melbourne for builders to compete for work;
 - (c) the proposed contracts of sale would provide a public benefit by reason that the land and townhouse would be less expensive when compared with a purchaser building a similar townhouse in the surrounding area on larger lots. The coordination between Hamton and the Nominated Builder may avoid the incurring of unnecessary costs of engaging external contractors at normal industry prices;

- (d) the coordination between Hamton and the Nominated Builder will also assist in reducing the time for completion of the townhouses (and therefore minimise disturbance) than would otherwise be the case, through the consistency of design, the ability to use trades to carry out work on more than one townhouse at a time and the set completion times for construction;
- (e) a Nominated Builder and pre-determined townhouse designs will make it possible to maintain consistency of the finish of the property to a high standard; and
- (f) the coordination of the appearance and environment within the Sandringham townhouse complex will likely result in attracting purchasers of similar backgrounds and assist the higher retention of the resale value of the townhouses.

30. Hamton considers that the public benefits of the proposed conduct, as outlined above, will outweigh any possible public detriment considered to arise from the conduct.

Signed on behalf of the applicant:



Murray Charles Deakin
Middletons
Partner

PROPOSED PLANS ARE NOT INCLUDED ON THE PUBLIC REGISTER