

# MALLESONS STEPHEN JAQUES

Australian Competition and  
Consumer Commission  
Adjudication Branch  
23 Marcus Clarke Street  
CANBERRA ACT 2601

23 June 2009

Dear Sir

**Delfin Realty (Qld) Pty Ltd third line forcing notification  
Addition to previous notifications N31649-N31704**

We act for Delfin Realty (Qld) Pty Ltd and have been instructed to add further information to the notifications currently on the public register being Delfin Realty (QLD) Pty Ltd & Ors - Notifications - N31649 - N31704 ("existing notification").

We request the addition of a builder, Cooper Connell Pty Ltd in relation to Springfield Lakes and Woodlands. We note that the addition of an extra builder will provide more choice for consumers and so will enhance competition amongst the existing builders. The public benefits are the same as outlined in the existing notification.

Please find enclosed the following documents for your consideration:

- 1 an amended Form G for Delfin Realty (Qld) Pty Ltd; and
- 2 the executive summary to the existing notification.

We note that you are already holding a cheque for \$100 for this application.

Please contact me if you have any queries.

Yours sincerely



Carly Long  
Solicitor  
Direct line +61 7 3244 8130  
Email carly.long@malleasons.com

John Swinson  
Partner

Solicitors

Level 30 Waterfront Place 1 Eagle Street Brisbane QLD 4000 Australia  
DX 311 Brisbane ABN 55 001 462 299 bris@malleasons.com www.malleasons.com  
9948179\_2 / 04-5014-6109

T +61 7 3244 8000  
F +61 7 3244 8999

## Form G

Commonwealth of Australia  
*Trade Practices Act 1974 — subsection 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 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.

PLEASE FOLLOW DIRECTIONS ON BACK OF THIS FORM

**1. Applicant**

- (a) Name of person giving notice:  
(Refer to direction 2)

N94024 **Delfin Realty (Qld) Pty Ltd ACN 003 581 191**

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

**Realtor**

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

**Delfin Realty (Qld) Pty Ltd**

**c/- Danny Carr**

**PO Box 4077**

**Springfield QLD 4300**

**2. Notified arrangement**

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

**See the executive summary attached to this application**

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

**Offering residential lots for sale at Springfield Lakes and Woodlands on the condition that the prospective purchaser acquire home building services from one of a group of specified builders, including Cooper Connaell Pty Ltd. For more information see the executive summary attached to this application**

**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)*

**Residential land purchasers**

- (b) Number of those persons:

- (i) At present time:

**Unknown**

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

**See the executive summary attached to this application**

- (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 the executive summary attached to this application**

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

**See the executive summary attached to this application**

**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)*

**The markets are the residential property market and the home building market. Both are highly competitive. For more information see the executive summary attached to this application**

**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 the executive summary attached to this application**

(b) Facts and evidence relevant to these detriments:

**See the executive summary attached to this application**

**7. Further information**

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

**Danny Carr**

**PO Box 4077**

**Springfield QLD 4300**

**07 3280 2222**

Dated.....

Signed by/on behalf of the applicant

.....  
(Signature)

.....  
(Full Name)

.....  
(Organisation)

.....  
(Position in Organisation)

## **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.

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## **DELFIN LEND LEASE LIMITED -- SUBMISSION IN SUPPORT OF NOTIFICATION**

### **Executive Summary**

- 1 Delfin Lend Lease Limited (ACN 000 966 085) (Delfin) and its related entities manage large scale residential developments for both land they own and land owned by clients. The marketing and sale of lots at these residential developments is significantly assisted by the presence of on-site display homes and "spec" homes.
  
- 2 Delfin invites builders onto the developments to construct display homes in a display village as well as selling lots to builders on which they construct spec homes. The display and spec homes are constructed by builders at their own expense and risk. To encourage builders to make this necessary investment in a development, Delfin entities at times allocate a number of lots to each builder, which can be marketed as "house and land" packages.
  
- 3 Delfin submits that there are substantial public benefits likely to result from offering a proportion of the lots at its developments as "house and land" packages. The principal benefits include:
  - (a) a reduction in search and transaction costs for purchasers;
  - (b) lower stamp duty for purchasers; and
  - (c) an effective and simple method for consumers to buy into Delfin developments.

Offering "house and land" packages enhances the overall attractiveness and competitiveness of the developments with no, or little, material detrimental impact for purchasers.

### **Background**

- 4 Delfin is a wholly owned subsidiary of Lend Lease Corporation Limited (ACN 000 226 228). Delfin and its related entities are involved in urban community development. Delfin's projects are generally large scale residential developments that include a combination of land, and "house and land", sales. Delfin and its related entities manage projects both for themselves as land owners and for client land owners (Land Owners).
  
- 5 For each development, there is generally a special purpose Delfin entity that acts as the project manager. As at the date of the notifications accompanying this submission,

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Delfin has 15 developments nationally and 15 entities which project manage those developments.

- 6 For each project there is, generally, a wholly owned Delfin subsidiary which is the on-site real estate agent. For Queensland projects, this is usually Delfin Realty (QLD) Pty Limited (ACN 003 581 191). For all other projects, Delfin Realty Pty Limited (ACN 007 708 572) is usually the on-site agent. The real estate agent may act for either or both of the Land Owners and the builders.
- 7 The marketing and sale of lots at each development is significantly improved where:
  - (a) there are display or spec homes on site; and/or
  - (b) trusted builders are provided with an incentive to market the development.
- 8 Delfin entities arrange for the construction of display homes by inviting builders to construct, at the builders' expense and risk, homes at the developments' display villages. To encourage builders to make the necessary investment the Delfin entities allocate a number lots to each builder, thereby giving the builder the assurance, for a period of time, of a minimum number of home building contracts. By contrasts, spec homes are constructed by builders approaching Delfin entities to purchase land on which they construct the spec homes. These builders, by demonstrating a commitment to a development through constructing spec homes, may be compensated by having allocated a number of lots, for a period of time, which can be marketed as house and land packages. The arrangements with builders may be negotiated by the development project manager, a Delfin related entity. Annexure A sets out the project managers for each of Delfin's development.
- 9 The allocated lots are not transferred to builders, but remain in the name of the Land Owner(s) until sale and transfer to a purchaser. The reasons are that this provides flexibility and saves stamp duty. If an allocated lot cannot be sold as a "house and land" package after a specified period of time, the lot can be sold independently.
- 10 The builders can be separated into the following four classes:
  - (a) Builders that have constructed display homes and to whom lots may be allocated.
  - (b) Builders that have purchased lots at a development and constructed "spec" homes. If Delfin considers that such builders have demonstrated a commitment to the development, Delfin may allocate lots to these builders.

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- (c) Builders with whom Delfin has good business relationships resulting from previous dealings and a proven record of marketing residential developments. Delfin entities will consider allocating lots to these builders if they make such a request.
  - (d) New builders that may approach a Delfin entity seeking to become involved with a development.

The lots which are allocated to builders may be marketed as "house and land" packages.

- 11 Annexure A sets out for each of Delfin's developments, as at the date of the notifications accompanying this submission, the Delfin entity that is the project manager, the Delfin entity that is the real estate agent, the Land Owner(s), and the notifying builders to whom lots have been, or may be, allocated (**Builders**). There is no fixed number or pre-determined proportion of allocated lots, but Delfin expects that only a minority (not more than 20%) of the lots at each development will be subject to the notified conduct. Usually, there will be 6 to 7 builders at any one Sydney development and approximately 10 to 15 builders at Melbourne and South East Queensland developments.
- 12 Delfin has authority to lodge notifications of exclusive dealing with the Australian Competition and Consumer Commission (ACCC) on behalf of the following:
  - (a) Delfin related entities that are land owners or realtors;
  - (b) its client land owners; and
  - (c) the Builders listed in Annexure A.
- 13 Delfin has sought from each builder the authority to lodge on its behalf. It will also notify the ACCC of any new builders who become involved with a development once it has their authority to do so. The signed authorities are held by Delfin.
- 14 Delfin and its related entities may engage in similar conduct at other developments in the future. If this is the case, and there is a need to notify the Commission, Delfin may rely upon part or all of this submission as applicable.

#### **Promotion and sale of house and land packages**

- 15 Delfin and its client Land Owners operate in highly competitive residential property markets. The home building market in which Builders operate is also highly

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competitive as well as fragmented with many builders operating in each geographic region.

- 16 The majority of residential lots at each development will be marketed and sold as unallocated lots. For these lots, purchasers will have complete freedom in selecting the builder of their choice and, subject to the development's design covenants, will be able to choose any home design. However, the attractiveness and marketability of the Delfin developments will be significantly improved if the developments have display or spec homes on site. Delfin believes that having homes at each of its developments is a very efficient way to attract prospective purchasers and sell residential lots. Delfin also considers that the marketing and sale of residential lots is significantly improved if Builders are actively promoting its developments. The incentive for Builders to act as promoters of a development is the allocation of lots to Builders which are to be sold as house and land packages.
- 17 There are a variety of ways in which Delfin entities may allocate lots to Builders, and this may vary at each development. The ways in which lots may be allocated include the following:
- (a) Builders may be allocated specified lot numbers in the development; or
  - (b) Builders may be guaranteed or assured a minimum number of unspecified lots in the development.

If a Builder is allocated specified lot numbers and a purchaser wishes to have that Builder construct a home on a different lot in the development, the Builder may be allowed to switch its allocated lot to provide greater flexibility to both purchasers and Builders.

- 18 A purchaser will be offered, or required to acquire, a "house and land" package as a result of the purchaser either:
- (a) contacting a Delfin entity about a particular lot they wish to purchase where the lot happens to have been allocated to a Builder; or
  - (b) contacting a Builder about a particular home they would like constructed at a Delfin development.

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19 Where a prospective purchaser approaches a Delfin entity seeking to purchase a lot that has been allocated to a Builder, the Delfin entity (acting as agent for the Land Owner(s)) may:

- (a) supply or offer to supply the selected lot;
- (b) supply or offer to supply the selected lot at a particular price; or
- (c) give or allow or offer to give or allow a discount, allowance, rebate or credit in relation to the supply or proposed supply of the selected lot,

to the prospective purchaser on the condition that the prospective purchaser acquires home building services from a specified builder or from one of a group of specified builders.

20 Delfin may also:

- (a) refuse to supply the selected lot;
- (b) refuse to supply the selected lot at a particular price; or
- (c) refuse to give or allow a discount, allowance, rebate or credit in relation to the supply or proposed supply of the selected lot,

to a prospective purchaser for the reason that the prospective purchaser has not acquired, or has not agreed to acquire, home building services from a specified builder or from one of a group of specified builders.

21 Where a prospective purchaser approaches a Builder, prior to purchasing a lot, seeking to acquire home building services from the Builder, the Builder may:

- (a) supply or offer to supply home building services;
- (b) supply or offer to supply home building services at a particular price; or
- (c) give or allow a discount, allowance, rebate or credit in relation to the supply or proposed supply of home building services,

to a prospective purchaser on the condition that the prospective purchaser acquires a specified lot, or a lot from a specified group of lots, from a Delfin entity (acting as agent for the Land Owner(s)).

22 Builders may also:

- (a) refuse to supply home building services;

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- (b) refuse to supply home building services at a particular price; or
  - (c) refuse to give or allow a discount, allowance, rebate or credit in relation to the supply, or proposed supply, of home building services,

to a prospective purchaser for the reason that the prospective purchaser has not acquired, or has not agreed to acquire, a specified lot or a lot from a specified group of lots, from a Delfin entity.

- 23 If lots are marketed or sold as “house and land” package, purchasers will be required to enter into two separate contracts – one with the Land Owner(s) and one with the Builder.

### **Public benefits**

- 24 Delfin, the Land Owners, and the Builders submit that substantial public benefits are likely to result from the sale of a proportion of residential lots at each development as “house and land” packages, when compared to a situation where no house and land packages are available.

- 25 There will be a reduction in the search and transaction costs for purchasers. Purchasers will be able to assess on site a range of home designs offered by Builders for their preferred lot and select a home design. Without giving Builders access to lots there would be no display or spec homes for purchasers to select from at each development. It is the assurance of receiving a reasonable volume of home building work that makes the establishment of display and spec homes at the Builders’ expense a feasible proposition. The presence on site of display and spec homes saves purchasers time and money that would otherwise be spent on assessing alternative individual proposals from a variety of builders off-site. In addition to the Builders that have on-site homes, purchasers will have access to a pool of reputable Builders who have been successfully involved in other Delfin developments. Also, purchasers will be assured that all Builders have a good knowledge of the design guidelines/covenants and other requirements specific to the development and that the dwelling they select is appropriate for their chosen lot.

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- 26 The ability to offer purchasers a range of on-site housing designs, without having to sell a significant portion of lots to builders, reduces stamp duty costs for purchasers. The reduction in stamp duty will arise for the following reasons:
- (a) purchasers will not have to bear the cost of "double" stamp duty, because there is a single transfer of land from the land owner to the purchaser, avoiding an intermediate transfer to the builder. If an intermediate transfer took place, the stamp duty paid by the builder would be passed on by the builder in the subsequent sale to the ultimate purchaser; and
  - (b) because the transfer of title is in respect of the undeveloped land, stamp duty is payable only on the land value, a significant saving for purchasers.
- 27 There are likely to be lower building costs for purchasers. Economies of scale can be generated by the Builders particularly in relation to the acquisition of building supplies and the supply of labour. These economies of scale should reduce Builders' construction costs resulting in lower costs for purchasers. Builders will also be able to supply their services to purchasers of unallocated lots which will generate competition amongst builders delivering lower costs and better services for purchasers.
- 28 Allocating lots to Builders and giving them an incentive actively to market a Delfin development, reduces the advertising and marketing cost to Delfin entities. The involvement of Builders generates efficiencies in the marketing and sales of residential lots.
- 29 If Delfin entities were not able to allocate lots to Builders, they are far less likely to invest in display and spec homes and purchasers would not enjoy the benefits outlined above. The alternative of requiring Builders to purchase all lots on which they construct homes is unattractive to purchasers, Builders and Land Owners. Purchasers would be faced with a situation where a significant number of particular lots are locked in with particular builders as well as being exposed to substantially higher stamp duty. Builders would face significantly higher risks and increased holding costs in investing in a larger amount of land before they have a purchaser for the "house and land" package. These consequences for Builders means that there would be no display homes and at most only a very small number of spec homes. The substantial reduction in on-site homes reduces the marketability of a development for Land Owners. The financial consequences and inflexibility for purchasers, Builders and Land Owners do not make this a viable option.

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### **Public detriments**

- 30 In the regions where the Delfin developments are located, there are considerable residential development choices for purchasers. It is a highly competitive environment for developers, land owners and builders. For these reasons, Delfin, the Land Owners and the Builders submit that there will be no or little material detrimental impact from the proposed conduct.

### **Conclusion**

- 31 Overall, the benefits to be achieved from offering house and land packages at the developments outweigh any detriment. The combination of greater choice, financial savings, increased quality and improved efficiencies for purchasers, Land Owners and Builders achieved by the proposed conduct will enhance the overall attractiveness and competitiveness of the developments.