

# Arnold Bloch Leibler

Lawyers and Advisers

25 October 2012

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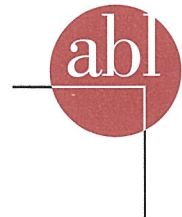
By Hand

The Adjudication Branch  
Australian Competition and Consumer  
Commission  
Level 35, The Tower  
360 Elizabeth Street  
Melbourne Central  
Melbourne VIC 3000

Your Ref  
Our Ref SJJ MDL  
File No. 011463227

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MELBOURNE  
SYDNEY

Dear Sir / Madam

## Abbotcrest Pty Ltd Exclusive Dealing (Third Line Forcing) Notification

We act for Abbotcrest Pty Ltd.

We **enclose**, by way of notice under section 93 of the *Competition and Consumer Act 2010* (Cth):

- 1 a Form G in respect of a third line forcing notification; and
- 2 a cheque in the sum of \$100.00.

Please do not hesitate to contact us if you have any queries or require any further information.

Yours faithfully

**Matthew Lees**  
Partner

Enc

**Partners**  
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**Consultants**  
Allan Fels AO

# Form G

Commonwealth of Australia

*Competition and Consumer Act 2010 — 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 *Competition and Consumer Act 2010*, 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.

PLEASE FOLLOW DIRECTIONS ON BACK OF THIS FORM

### 1. Applicant

#### (a) Name of person giving notice:

*(Refer to direction 2)*

N96223      Abbotcrest Pty Ltd (ACN 122 648 588)  
32 Coventry Street  
South Melbourne VIC 3205

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

*(Refer to direction 3)*

Intrapac Projects Pty Ltd and its related entities, in conjunction with joint venture partner Brencorp Keysborough Pty Ltd and its related entities are currently developing a 42 stage residential development in Keysborough, Metropolitan Melbourne known as Somerfield (**Estate**).

Abbotcrest Pty Ltd (**Applicant**) (a related entity of Intrapac Projects Pty Ltd) is the registered proprietor of real property lots (Lot 1 on Title Plan 394173 (Certificate of Title Volume 08698 Folio 280) and Lot 2 on Plan of Subdivision 645843Y (Certificate of Title Volume 11337 Folio 002)) in the Estate (**Lots**). The Lots are known as Aura Park at Somerfield (**Site**) and represent two stages (stages 23 and 24) of the Estate.

The Site is currently vacant and is zoned Residential 1 Zone. The Applicant has lodged a planning permit application to subdivide the Site into 104 individual residential lots. The Applicant intends to offer these individual residential lots on the Site for sale to the public.

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

Mr Matthew Lees  
Arnold Bloch Leibler  
Level 21  
333 Collins Street  
Melbourne VIC 3000

**2. Notified arrangement**

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

Lots of residential land at the Site.

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

*(Refer to direction 4)*

The Applicant proposes supplying, and offering to supply, each Lot at the Site on the condition that the purchaser and Latitude 37 Projects Pty Ltd (ACN 118 131 507) (**Builder**) enter into a building contract for the construction of a house on the acquired Lot in accordance with the Aura Park Somerfield Master Plan. The building contract will be a Master Builders Association of Victoria building contract for the construction of a house and generally in accordance with a form of building contract to be attached to the contract between the Applicant and the purchaser.

The Applicant proposes refusing to supply such lots at the Site to potential purchasers who do not agree to enter into a building contract directly with the Builder.

**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)*

Potential and actual purchasers of lots at the Site.

- (b) **Number of those persons:**

- (i) **At present time:**

Nil.

- (ii) **Estimated within the next year:**

*(Refer to direction 6)*

1,000.

- (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)*

- i. The Applicant is committed to developing a housing precinct with architecturally-designed dwellings at a lower price point than that

currently offered in the market. The Builder has been chosen by the Applicant with a view to satisfying that objective.

- ii. Dwellings constructed on the Site must comply with specifications approved by the Applicant. Having one nominated builder perform all works serves to ensure that dwellings are consistent in both appearance and quality. This will enhance the development's overall aesthetic, making the development more desirable as a residence or investment.
- iii. Following discussions with numerous builders, the Builder was selected for its skill in building smaller, medium density products. The Builder is committed to constructing in a timely manner and is also able to deliver, in the Applicant's opinion, the product for the best value.
- iv. The Builder has extensive, award-winning experience in similar medium density developments. This enhances the value of the development at the Site.
- v. The Builder worked closely with the Applicant during the development's design and planning stages, having prepared town planning documentation, working drawings, marketing floor plans and images. The Builder's thorough knowledge of the Site makes it well-placed to deliver the product being marketed to purchasers.
- vi. Having one Builder enables the Applicant to better and more efficiently control the quality of dwellings on the Site. This in turn provides comfort for purchasers that plans and specifications will be complied with.
- vii. The overall development and sale process of the Site is more efficient, resulting in cost benefits which can be passed on to purchasers. It also reduces marketing costs through the integrated selling of house and land.
- viii. Construction by the Builder occurs on a volume basis, producing economies of scale and in turn reducing the building costs borne by purchasers.
- ix. Given that the Estate is not yet fully developed, there is incentive for the Builder to deliver a competitive, quality product on lots at the Site in the hope of securing future business at the Estate.
- x. Selling the lot to the ultimate purchaser rather than first to the Builder and second to the ultimate purchaser avoids the impact that two dutiable transactions would otherwise have on lot prices.

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

See the matters set out in section 4(a) above.

**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 sale of real estate zoned or capable of being zoned residential in metropolitan Melbourne, Victoria.

**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)*

The Applicant submits that the notified arrangement involves no detriments to the public.

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

The Applicant submits that the notified arrangement involves no detriments to the public, based on the following.

- i. The real estate market in metropolitan Melbourne is highly competitive and there are various competing residential developments available.
- ii. The Site represents only a small portion of the relevant market.
- iii. Further, the Site represents only a small portion of a larger, master-planned development at the Estate. The Site is two stages (stages 23 and 24) of a 42-stage development in Keysborough. The Estate consists of approximately 1,728 lots, whereas the Site consists of only 104 lots. To date, none of the other lots sold at the Estate have been offered or sold as “house and land packages” where a specific builder was nominated.
- iv. The purchaser enjoys the benefits described at paragraph 4(a).

**7. Further information**

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

Mr Matthew Lees  
Arnold Bloch Leibler  
Level 21  
333 Collins Street  
Melbourne VIC 3000

mlees@abl.com.au  
(03) 9229 9999

Dated 25 October 2012

Signed by/on behalf of the applicant

Matthew Lees

(Signature)

MATTHEW DAVID LEES

(Full Name)

ARNOLD BLOCH LEIBLER

(Organisation)

PARTNER

(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 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 *Competition and Consumer Act 2010* 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.