



# Maddocks

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17/02/2012

**Express Post**  
The Manager  
Adjudication Branch  
Australian Competition and Consumer Commission  
23 Marcus Clarke Street  
CANBERRA ACT 2601

FILE No:	
DOC:	
MARS/PRISM:	

Dear Sir

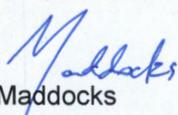
**Third line forcing notification – Ascot Vale (Victoria) Pty Ltd (our client)**

Our client lodged third line forcing application N93624 on 17 October 2008. Our client has now made a minor revision to its sales structure and accordingly, we enclose the following documents for your attention:

1. Form G – notification of exclusive dealing (together with Annexure);
2. existing Form G – notification of exclusive dealing (together with Annexure), lodged on 17 October 2008 with revisions shown in mark up for your ease of reference; and
3. cheque for \$100.00 payable to the Australian Competition and Consumer Commission for the lodging of our client's new notification.

If you have any queries please contact Nathan Lowenstein on 03 8615 0328.

Yours faithfully

  
Maddocks  
enc



## 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 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)

N95730 Ascot Vale (Victoria) Pty Ltd ACN 106 114 121 of Ground Floor, 25  
Cambridge Parade, Manly Queensland 4179 (AV)

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

AV is the registered proprietor of land in Ascot Vale, Victoria, which it has and will continue to subdivide and sell for residential purposes (**Ascot Chase**).

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

C/- Nathan Lowenstein  
Maddocks Lawyers  
140 William 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:

This notice relates to the supply of approximately 300 subdivided lots of land in Ascot Chase (**Lots**) in stages.

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

AV proposes to develop and sell or offer for sale some or all of the 300 Lots in stages on the condition that each purchaser concurrently enters into a 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 AV, to construct a particular house design (as pre-determined by AV for that particular Lot). AV proposes to refuse to sell or offer for sale any of the Lots if purchasers will not comply with the above condition.

See further Annexure A, particularly paragraphs 1-16.

**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 Lots.

- (b) Number of those persons:  
(i) At present time:

No purchasers have yet entered into contracts for the sale of any Lots under the above sales structure.

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

Approximately 100 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:  
*(Refer to direction 7)*

See Annexure A – particularly paragraphs 5, 6, 7 and 26

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

See Annexure A – particularly paragraphs 5, 6, 7 and 26

**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 17-19.

**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 21-25.

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

See Annexure A – particularly paragraphs 21-25.

7. **Further information**

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

Nathan Lowenstein  
Maddocks Lawyers  
140 William Street  
Melbourne Vic 3000  
Tel:: 8615 0328  
Email: nathan.lowenstein@maddocks.com.au

Dated..... 07/02/12 .....

Signed by/on behalf of the applicant

  
.....  
(Signature)

Nathan Lowenstein  
.....  
(Full Name)

Maddocks Lawyers  
.....  
(Organisation)

Associate  
.....  
(Position in Organisation)

**AUST. COMPETITION &  
CONSUMER COMMISSION  
CANBERRA**  
20 FEB 2012

## 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 *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.



## Annexure A

### Introduction

1. Ascot Vale (Victoria) Pty Ltd ACN 106 114 121 (**AV**) is a proprietary limited company involved in the holding and development of property.
2. AV proposes to subdivide and develop approximately 300 lots of land located in Ascot Vale, Victoria (**Ascot Chase**).
3. As at the date of this application 127 lots in the Ascot Chase development have already been sold .
4. Ascot Chase is intended to provide:
  - 4.1 a consistent and appealing appearance; and
  - 4.2 housing choices aimed at reaching a market segment which includes first home buyers, investors, singles, empty nesters, professionals and older people down-sizing; and
5. The development aims to create an environment where purchasers have the comfort of knowing how the surrounding development will appear once completed. This will be facilitated by the required selection of pre-determined design specifications and/or design guidelines that purchasers must comply with.
6. The ability to choose from a select range of design specifications will also mean:
  - 6.1 purchasers are given a choice in the features and design of their home;
  - 6.2 Ascot Chase will achieve consistency in its appearance by ensuring that all houses complement each other; and
  - 6.3 each house in Ascot Chase will be constructed to ensure that the development effectively utilises the land.
7. AV will market some or all of the development as house and land packages.

### Description of the conduct or proposed conduct

8. In order to ensure that Ascot Chase is developed in an orderly and consistent manner, AV proposes the use of a limited number of nominated builders to construct the houses, including but not limited to Comdain Homes Pty Ltd ACN 092 270 918 (**Nominated Builders**).
9. AV proposes to sell or offer for sale the majority of subdivided lots of land in Ascot Chase (**Lots**) on the condition that each purchaser concurrently enters into a building contract, that is a major domestic building contract (within the meaning of the *Domestic Building Contracts Act 1995* (Vic)), with the Nominated Builders to construct a house on the lot purchased in accordance with a pre-determined house design. AV proposes to refuse to sell or offer for sale any of the Lots to purchasers who will not comply with this above condition (**proposed conduct**).
10. The Nominated Builders will not be permitted to alter Ascot Chase's design requirements without AV's consent. The Nominated Builders will be responsible for all construction obligations and liabilities under the building contract.



11. The proposed conduct will only occur once in respect of any sale (or subsequent sale) of a Lot. It will occur at the time of purchase, when the obligation for the purchaser to engage the Nominated Builders is imposed under the terms of the contract of sale for the purchase of a Lot.
12. The proposed contract of sale has not yet been finalised. It is proposed that the contract of sale for each of the Lots would contain a term to the effect detailed in paragraph 9 above.
13. AV has appointed Comdain Homes Pty Ltd ACN 092 270 918 as a Nominated Builder. AV is undergoing a detailed selection process to finalise the Nominated Builders based upon a selection criteria including:
  - 13.1 strong project management skills;
  - 13.2 financial means to undertake a project of this size;
  - 13.3 appropriate insurance policies;
  - 13.4 registration under the *Building Act 1993 (Vic)*;
  - 13.5 high quality of tradesmen and sub-contractors;
  - 13.6 price;
  - 13.7 prior history of adherence to safety requirements;
  - 13.8 evidence of completing homes on time;
  - 13.9 strong professional integrity;
  - 13.10 prior history of building quality homes; and
  - 13.11 adherence to best practice residential design.
14. The building contract between each purchaser, and the Nominated Builders, is intended to specify, among other things:
  - 14.1 the land upon which the house will be constructed;
  - 14.2 the style of the house (including the building plan and specifications);
  - 14.3 options chosen by the purchaser (eg colour schemes, type of flooring, finishes, fixtures);
  - 14.4 the price payable by the purchaser to the Nominated Builders and the method for review of price (if required);
  - 14.5 timeframes for the construction and completion of the house, including reasonable allowances made by the Nominated Builders for possible delays in construction;
  - 14.6 the Nominated Builder's insurance details; and
  - 14.7 provisions as required by the *Domestic Building Contracts Act 1995 (Vic)* for major domestic building contracts.
15. AV and the Nominated Builders will not be related companies.



**Market definition**

- 16. The proposed conduct is marketed at purchasers who are seeking real estate in or around Ascot Vale, Victoria. Ascot Vale is approximately 5-10km north west of the Melbourne CBD.
- 17. Ascot Chase is one of several existing or proposed residential developments in the area north west 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 north western metropolitan area, with each development offering different prices, features and amenities.

**Public detriments**

- 18. Once AV appoints the Nominated Builders, the proposed conduct will prevent other builders from constructing houses within Ascot Chase.
- 19. While the proposed conduct will restrict the purchaser's choice of builder, any private detriment associated with such a restriction will be offset by the advantages those purchasers will obtain from using the Nominated Builders.
- 20. The proposed conduct is limited to one development in Ascot Vale. The proposed conduct will not prevent other builders from entering the market, particularly given the number of other residential developments occurring in the north western metropolitan area.
- 21. The proposed conduct will not have any detrimental effect on the general public.
- 22. The use of the Nominated Builders and pre-determined house designs will ensure consistency and efficiency in the development leading to cost savings for purchasers and visual harmony within Ascot Chase.

**Public benefits of the proposed conduct**

- 23. The proposed conduct will be of benefit to the public as:
  - 23.1 it will reach a broader market segment of first home buyers, investors, singles, professionals and older people looking to down size. It is aimed at meeting current and future trends in housing which are considered to involve a dramatic increase in demand for inner city housing with access to established community facilities and public transport;
  - 23.2 the pre-determined range of house designs on offer from the Nominated Builders will lead to cost reductions for the purchasers through:
    - 23.2.1 economies of scale and the efficient allocation of resources;
    - 23.2.2 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 a building and construction permission from the local authority.
  - 23.3 pre-determined house designs will ensure:
    - 23.3.1 houses built are appropriate for the size of the Lots;



- 23.3.2 purchasers know that neighbouring lots will be developed to a style that complements the architecture and environment of Ascot Chase;
- 23.4 the Nominated Builders will give purchasers:
  - 23.4.1 more affordable houses;
  - 23.4.2 the comfort of knowing that a reputable builder has been engaged through AV's use of a strict selection criteria to ensure the builder meets the standards for Ascot Chase; and
  - 23.4.3 greater certainty in compliance with the various planning laws, precinct controls, any specific site constraints and environmental requirements;
- 23.5 the Nominated Builders will have the 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;
- 23.6 the use of a major domestic building contract which specifies a timeframe in which to complete the construction of the house will ensure:
  - 23.6.1 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 houses; and
  - 23.6.2 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;
- 23.7 purchasers will be assured that the properties in Ascot Chase are of a high quality and integrated to give consistent architectural qualities and potentially higher resale values.
- 23.8 AV will be able to select desired builders and control built form on the site to ensure **high quality** and consistency of appearance across all Lots.

Signed on behalf of the applicant: .....

Maddocks  
Lawyers