

Memorandum

AUST. COMPETITION &
CONSUMER COMMISSION
SYDNEY

30 MAR 2012

cbp
Lawyers

FILE No:

DOC:

MARS/PRISM:

To Rego
From CZP
Subject **Lodgement at ACCC**
Re: St Marys Land Limited - Colpon Holdings and Fowler Homes
Date 30 March 2012
Matter Number 113543

Could you please attend at the ACCC and lodge the two **attached** Form G - Notification of Exclusive Dealings. Also **attached** is cheque in favour of ACCC in the sum of \$200 (being \$100 for each application).

Regards



Level 20
175.

Form G

AUST. COMPETITION &
CONSUMER COMMISSION
SYDNEY

3 0 MAR 2012

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):

N95787 St Marys Land Limited ACN 088 278 602 (SML)

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

Land sales.

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

30 The Bond, 30 Hickson Road, Millers Point New South Wales 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 proposed sale of residential land and homes at the former Australian Defence Industries site being approximately 1,406 hectares of land located in St Marys, NSW known as "Ropes Crossing".

Ropes Crossing will comprise approximately 5,000 residential housing lots. It will be developed in stages over 15 to 20 years. It also involves the subdivision of land, the establishment of regional parks and regional open space.

Parts of Ropes Crossing have already been cleared, subdivided and sold under different arrangements.

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

SML is the owner of Ropes Crossing.

SML proposes to enter into an option agreement (or similar) with preferred investors giving those investors the exclusive right to nominate a purchaser to purchase a vacant lot from SML and for that investor to arrange for a preferred builder to enter into a building contract with the purchaser for the construction of a residential building on the lot.

As SML has granted development rights over parts of Ropes Crossing to Lend Lease Real Estate Investments Limited in its capacity as trustee of the Lend Lease Communities Fund 1 ABN 99 340 219 768 (LLREI), in most cases LLREI will also be a party to the option agreement.

Preferred builders are likely to consist of approximately 10 to 15 builders approved by SML and LLREI on the basis of experience and standard of workmanship. Each preferred builder will not be related to SML or LLREI.

After a purchaser is nominated by the investor, the purchaser must enter into two separate contracts:

- (i) **Land Sale Contract:** between the purchaser and SML and, in most cases, LLREI - for the sale of the residential lot, and
- (ii) **Building Contract:** between the purchaser and the builder only - for the construction of the residential home on the residential lot.

The proposed conduct by the applicant might be third line forcing that contravenes sections 47 of the *Trade Practices Act 1974* (Cth).

Section 47(6)

Without limitation, the applicant may be a corporation that:

- supplies, or offers to supply, rights in relation to, or interests in, real property;
- supplies, or offers to supply, rights in relation to, or interests in, real property at a particular price; or
- gives or allows, or offers to give or allow, a discount, allowance, rebate or credit in relation to the supply or proposed supply of rights in relation to, or interests in, real property by the corporation;

on the condition that the person to whom the corporation supplies or offers or proposes to supply the rights in relation to, or interests in, real property or, if that person is a body corporate, a body corporate related to that body corporate will acquire building services of a particular kind or description directly or indirectly from a pre determined builder not being a body corporate related to the corporation

Section 47(7)

Further, without limitation, the applicant may be a corporation that refuses:

- to supply rights in relation to, or interests in, real property to a person;
- to supply rights in relation to, or interests in, real property at a particular price to a person; or
- to give or allow a discount, allowance, rebate or credit in relation to the supply of rights in relation to, or interests in, real property to a person;

for the reason that the person or, if the person is a body corporate, a body corporate related to that body corporate has not acquired, or has not agreed to acquire, building services of a particular kind or description directly or indirectly from a builder not being a body corporate related to the corporation.

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 residential lots at Ropes Crossing.

- (b) Number of those persons:
- (i) At present time:
0
 - (ii) Estimated within the next year (Refer to direction 6):
100
- (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):
The proposed conduct will benefit the public because:
- (i) A purchaser's overall costs will be reduced as they will not be required to:
 - (A) expend additional money in identifying and considering the services of other builders, and
 - (B) enter into a number of separate contracts for the design and construction of a residential building.
 - (ii) Purchasers will have greater certainty of the quality of work as preferred builders have a proven track record.
 - (iii) It will also give builders a reasonable volume of work. This will enable a specified builder to generate an increase in supplies and therefore giving the builders an opportunity of reducing costs. The purchasers will benefit from this as SML and LLREI expect associated cost savings by the builders will be passed on to purchasers.
- (b) Facts and evidence relied upon in support of these claims:
- (i) There are several other developers in the NSW market which offer house and land packages and require purchasers to enter into residential house and land contracts.
 - (ii) The proposed conduct will not decrease competition in the NSW residential housing market.
 - (iii) A purchaser is under no obligation to purchase land from SML or LLREI or to use a preferred builder for the construction of a residential home outside Ropes Crossing.

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):

- (a) The relevant markets is the New South Wales market in South West Sydney for the supply of:

- (i) residential house and land packages, and
 - (ii) residential construction services.
- (b) Both of the markets referred to above are extremely competitive and are fragmented with many builders operating in South West Sydney. These markets compete frequently for purchasers in their respective markets, including by competitive offers, conditions and incentives from time to time. The development of Ropes Crossing is an example of such conduct.
- (c) There are a large number of residential estates in South West Sydney which offer strong competition to Ropes Crossing in relation to the supply of residential land and housing packages.

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 proposed conduct will have little, if any, public detriment as:

- (i) home buyers avoid any additional costs associated with building a house (eg design fees, architectural fees)
- (ii) home buyers have the option to purchase other vacant land from either SML or LLREI or others.

SML considers that the proposed conduct will not have an anti-competitive effect in the relevant market.

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

A purchaser will have an opportunity to consider and review all factors before they determine what product is suitable for them.

Purchasers can choose to obtain land, house and land packages and residential construction services from the number of other land owners, developers and builders in the NSW market.

7. Further information

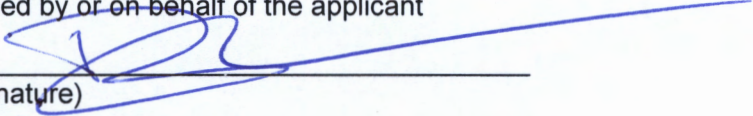
- (a) Name, postal address and contact telephone details of the person authorised to provide additional information in relation to this notification:

Brendan Maier
Partner
Colin Biggers & Paisley
Level 42, 2 Park Street
SYDNEY NSW 2000

AUST. COMPETITION &
CONSUMER COMMISSION
SYDNEY
30 MAR 2012

Dated 21 March 2012

Signed by or on behalf of the applicant



(Signature)

Brendan Paul Maier

(Full Name)

Colin Biggers & Paisley

(Organisation)

Solicitor for the applicant

(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 *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.

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on the condition that the person to whom the corporation supplies or offers or proposes to supply the rights in relation to, or interests in, real property or, if that person is a body corporate, a body corporate related to that body corporate will acquire building services of a particular kind or description directly or indirectly from a pre determined builder not being a body corporate related to the corporation

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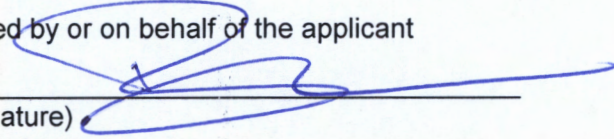
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Partner
Colin Biggers & Paisley
Level 42, 2 Park Street
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30 MAR 2012

Dated 21 March 2012

Signed by or on behalf of the applicant



(Signature)

Brendan Paul Maier

(Full Name)

Colin Biggers & Paisley

(Organisation)

Solicitor for the applicant

(Position in Organisation)

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