

AUST. COMPETITION &
CONSUMER COMMISSION
MELBOURNE
20 APR 2012



Maddocks

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20/04/2012

By Courier

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

FILE No:	
DOC:	
MARS/PRISM:	

Dear Sir/Madam

Exclusive Dealing Notification

We act for Evolve No. 10 Pty Ltd ACN 131 890 965.

Enclosed are:

1. Form G Notification of Exclusive Dealing; and
2. cheque in the sum of \$100.00 payable to Australian Competition and Consumer Commission.

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)

N95828 Evolve No. 10 Pty Ltd ACN 131 890 965 of Suite B, 1 Albert Road,
Melbourne, Victoria 3004 (**Evolve**).

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

Evolve is the registered proprietor of land in Wollert (Summerhill) comprising of Lot E on plan of subdivision PS 638290F Victoria, where it subdivides land for the provision of a residential housing estate. It also engages in the marketing and sale of residential housing product, including house and land packages.

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

Suite B, 1 Albert Road
MELBOURNE, VIC 3004
Phone (03) 9820 1246 Facsimile (03) 9820 1059

2. Notified arrangement

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

The supply at a future date of 10 subdivided lots of residential land, including the marketing and selling thereof at Summerhill constitutes the goods and services which are subject to this notice.

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

Evolve proposes to supply a limited number of undeveloped residential lots to purchasers contingent on the purchasers concurrently entering into a industry standard domestic building contract with registered builder

Burbank Australia Pty Ltd in accordance with the *Domestic Building Contracts Act 1995* (Vic) and who is nominated by Evolve, for the supply of construction services relating to a dwelling design approved by Evolve.

(Refer to direction 4)

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 affected by this condition as referred above.

- (b) Number of those persons:

- (i) At present time:

Nil.

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

10 if all the lots are sold within this period.

- (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)

Resulting from the application of the above conditions, Evolve will be able to achieve the following to benefit the purchasers of the specified lots:

1. Consistency and quality dwelling design, appearance and streetscape, providing for a desirable neighbourhood environment and enables the purchaser greater opportunity to realise a capital gain.
2. Certainty of outcome, both quality and expediency of building construction through the nomination of a reputable builder who has a solid working relationship with Evolve.
3. Evolve will pre-determine dwelling design in consultation with the nominated builder to ensure that each dwelling is positioned on each lot to achieve cost effective and sustainable uses of the land.
4. Net cost benefit to purchasers, including but not limited to the following:

4.1 Attached product will be packaged as a house and land offering, which by its nature, is able to achieve cost benefits through an integrated selling process providing for reduced marketing costs to the vendor and the builder.

4.2 Construction will be undertaken by the nominated builder on a volume basis producing economies of scale cost and construction efficiencies which would not ordinarily be available to a purchaser of a standard residential lot arrangement.

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

Addressed above in section 4(a).

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)

Wollert is situated within the municipality of City of Whittlesea which is designated as a high urban growth zone, containing numerous new land estates and various opportunities for purchasers to buy vacant residential land, or land with a newly constructed dwelling at a range of price points.

The purchaser may also select from a range of other lots available within the same neighbourhood of the development that have no limitation on the purchaser's choice of builder.

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)

1. Purchasers of the specified residential lots in Summerhill, will not have a choice of builder or dwelling design on each of these particular lots as particular house types will be allocated to each lot resulting in a varied organised streetscape and ensuring the capital value of the lots. The negative effect of this facet is neutralised by the design and net cost benefits which are obtained by the purchaser, as referred to above.
2. The proposed conduct will produce a perceived constraint on free market competition with regard to rival builders operating in the same

market and region of Melbourne. However, this will be offset by the continued and future supply of residential lots in Summerhill, approximately 800, for which competing builders have the opportunity to supply construction services, in addition to equivalent opportunities in neighbouring developments.

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

Addressed above in section 6(a)

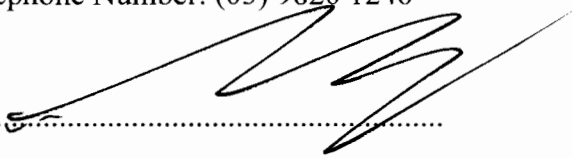
7. Further information

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

Name: Gill Banez

Address: Evolve Development Pty Ltd, Suite B, 1 Albert Road, Melbourne, Victoria 3004

Telephone Number: (03) 9820 1246

Dated.....

Signed by/on behalf of the applicant

.....
(Signature)

.....
(Full Name) **NICHOLAS FRANÇOIS DELUIGUE**

140 William St Melbourne 3000
An Australian Legal Practitioner

.....
(Organisation)

~~within the meaning of the~~
Legal Profession Act 2004.

.....
(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.