

YOUR REFERENCE:
OUR REFERENCE: HK:SA:120150

**KALUS
KENNY**
L A W Y E R S

3 May 2012



BY EXPRESS POST AND BY FACSIMILE NO: (02) 6243 1211

The General Manager
Adjudication Branch
Australian Competition and Consumer Commission
GPO Box 3131
CANBERRA ACT 2601

FILE No:
DOC:
MARS/PRISM:

Dear Sir/Madam,

**Re: Form G
Exclusive Dealing Notification**

We act on behalf of 54 Percy St Pty Ltd ACN 146 387 297.

Please find **enclosed** Form G Exclusive Dealing Notification.

We also **enclose** our cheque in the sum of \$100.00, in payment of your lodging fees.

Kindly acknowledge receipt.

If you have any queries, please do not hesitate to contact the writer.

Yours faithfully
KALUS KENNY

**Steven Apostolou
Senior Associate**

Enc

Property | Corporate | Business | Finance | Commercial Litigation
Insolvency | Dispute Resolution | Asset & Risk Protection | Estate Planning
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G:\CLIENTS\CLIENT\DAVIDSON, A\PERCY ST, NEWTOWN\120150 - General Sale - 54 Percy Street,
Newtown\ACCC Notification\Letter to ACCC 03.05.12.doc

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Form G

Commonwealth of Australia
Competition and Consumer Act 2010 — subsection 93 (1)

EXCLUSIVE DEALING NOTIFICATION

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.

1. Applicant

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

N95850 54 Percy St Pty Ltd ACN 146 387 297 of Level 1, 85 Union Street, Armadale, Victoria, 3143 as the owner of the land to be subdivided ("the Applicant").

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

The Applicant is the registered proprietor of the land known as 54 Percy Street, Newtown, Victoria, 3220 ("the Land"). The Applicant will carry on the business of developing the Land by subdividing the Land into residential townhouse lots ("the Development") for the proposed marketing and on-sale as "townhouse and land" packages.

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

Care of Kalus Kenny Lawyers, Suite 3, Level 3 The Como Centre, 299 Toorak Road, South Yarra, Victoria, 3141.

2. Notified arrangement

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

The Applicant proposes to supply approximately 24 subdivided lots of residential land to consumers, where the land component will be developed, marketed and sold by the Applicant and the buildings (townhouses) to be erected thereon are to be constructed by a registered builder, namely, JG King Project Management Pty Ltd A.C.N. 095 695 079 of Unit 12, 75 Lorimer Street, South Bank, Victoria, 3006 ("the Builder").

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

The Applicant proposes to subdivide the Land into approximately 24 residential lots to be offered for sale to the public.

It is proposed that consumers will purchase a “townhouse and land” package by purchasing a residential lot from the Applicant and entering into an industry standard domestic building contract with the Builder for the construction of a predetermined range of pre-designed townhouses in accordance with the Planning Permit issued, which design is specific to each subject lot.

The proposed conduct will involve the supply or offer to supply a subdivided residential lot on the Land only if the purchaser, within 10 days of entering into a contract to purchase the subdivided lot, enters into a building contract with the Builder for the construction of the “permitted” townhouse on the lot.

The building contract will be entered into independently of the contract for the sale of the subdivided lot to the purchaser and will be between the purchaser and 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:

Proposed purchasers of residential townhouse lots within the Development.

(b) Number of those persons:

(i) At present time: Nil.

(ii) Estimated within the next year: 24.

(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:

The proposed conduct will benefit purchasers of lots in the Development, for the following reasons:

(i) Pricing/Cost of Building Works:

The Applicant has worked closely with the Builder to ensure the pricing of the “townhouse and land” packages will be competitive. The Applicant selected the Builder based on pricing, capacity to perform and experience.

Each building contract will be on a fixed cost basis, subject to any variations required or requested by the purchasers.

The volume of construction to be undertaken by the Builder, will produce economies of scale and construction efficiencies, allowing the Builder to offer a reduced price. Accordingly, the pricing to be offered by the Builder

is likely to be less than that which would be available from individual builders.

(ii) Infrastructure and Common Area Works:

Infrastructure and common area works are required to be carried out prior to, during and after the construction of the townhouses. These infrastructure works would be impossible to manage if more than one builder was on site.

As the Development will contain common areas and given that party (common) walls will need to be constructed between townhouses, the construction works will need to be carried out in one line and it would be unmanageable if different builders were engaged to carry out the construction works.

The interaction between buildings, given the party walls, common boundaries, common properties, infrastructure etc. would make it unmanageable to engage more than one builder.

(iii) Consistency of Development

It is important to have consistency and quality of dwelling design, appearance and streetscape and to provide for a desirable localised neighbourhood and environment that enables a purchaser a greater opportunity to maintain the value of the purchaser's investment.

The Planning Permit issued in relation to the Development is prescriptive as to what may be constructed on each lot, and the selected range of pre-designed townhouses will ensure compliance with the requirements of the Planning Permit.

Certainty of outcome, both in terms of appearance, quality and expediency will be achieved through the nomination of the Builder, who is reputable and experienced.

(iv) Other Benefits

A purchaser will only be committed under the contract to purchase a subdivided lot if it is satisfied with the intended quality, delivery and price of the townhouse to be constructed by the Builder. The design and specifications of the proposed townhouse will be made available to a purchaser before they enter into a contract to purchase a subdivided lot in the Development.

The Owners Corporation and purchasers will have contractual rights against one builder for any defects or issues (with respect to an individual townhouse, the common area and/or infrastructure works), as opposed to contractual rights against many builders.

The Builder has specific experience with developments of this kind having previously undertaken a number of similar townhouse developments.

An alternative means of carrying out the Development would be for the Applicant to engage one builder to construct all townhouses in the

Development and sell as a completed product. In effect this is what is occurring, except that the purchaser of the lot will contract directly with the Builder to carry out construction.

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

See item 4(a) above.

5. Public detriments

(a) **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):**

The market in which the proposed conduct will occur is the market for the acquisition of suburban residential land with the Geelong Metropolitan Area, more particularly, within the City of Greater Geelong and its surrounding geographic areas

(b) **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:**

No detriments are apparent, save that purchasers of residential lots in the Development will not have a choice of builder and a limited choice (governed by the Planning Permit) in relation to dwelling design.

The purchasers will however have the ability to “shop around” and satisfy themselves that the prices and the products offered are competitive prior to purchasing a subdivided lot in the Development.

The proposed conduct should not be perceived as constraining free market competition amongst builders, as the Applicant engaged the Builder based on pricing, capacity to perform, experience and practical necessities arising from the nature of the Development as attached or semi-detached townhouses.

Given:

- (i) there are a large number of competitors in the residential property market; and
- (ii) the suburban market in the Geelong Metropolitan Area is very competitive;

prospective purchasers are free to purchase land elsewhere, including in areas in close proximity to the Development.

The proposed conduct:

- (i) will not substantially lessen competition within the market, given:

there are only approximately 24 lots which are the subject of the notified conduct; and

the Builder was selected based on pricing, capacity to perform and experience; and

- (ii) is not such that the likely benefit will be outweighed by the likely detriment to the public.

As mentioned in paragraph 4(a)(iv), if the Applicant engaged one builder to construct all townhouses in the Development and sell as a completed product the outcome would be the same for the purchaser. In effect this is what is occurring, except that it is the purchaser of the lot who will contract directly with the Builder to carry out construction.

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

See item 6(a) above.

6. Further information

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

Mr H Kalus
Kalus Kenny Lawyers
Suite 3, Level 3 The Como Centre,
299 Toorak Road, South Yarra, Victoria, 3141.
Telephone: (03) 9826 2622.

(solicitor for the Applicant)

Dated: The 30th day of APRIL 2012

Signed for and on behalf of the Applicant
54 Percy St Pty Ltd ACN 146 387 297

(Signature)



Adam Raphael Davidson
(Full Name)

54 Percy St Pty Ltd ACN 146 387 297
(Organisation)

Sole Director and Sole Company Secretary
(Position in Organisation)