

22 November 2013

BY OVERNIGHT COURIER

Australian Competition and Consumer Commission
23 Marcus Clarke Street
CANBERRA ACT 2601

FILE No:
DOC:
MARS/PRISM:

Dear Sirs

Lend Lease Communities (Australia) Ltd - Mayfield

We act for Lend Lease Communities (Australia) Ltd.

We enclose a notification of exclusive dealing duly signed by our client for your consideration. We also enclose our cheque in the sum of \$100.00 being the lodging fee on the notification.

Please acknowledge receipt in due course.

If you have any queries, please contact Wai Hwoon Low of this office.

Yours faithfully
RUSSELL KENNEDY

Enclosure(s)



JXC 3130995v1 JXC

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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)

N97120

Lend Lease Communities (Australia) Ltd ACN 000 966 085.

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

The Applicant is the owner and the developer of the land in respect of which this notification relates.

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

Level 4, 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 residential development site known as "Mayfield", located off 1555 South Gippsland Highway, Cranbourne East, Victoria ("**Mayfield**"). When completed, Mayfield will comprise approximately 507 residential lots, with public open space. Mayfield continues to be developed in stages over several years, and is likely to take up to 5 years to be completed.

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

1. The Applicant proposes to set aside specified lots within Mayfield ("**Allocated Lots**") which are to be sold to purchasers on the following basis:

- (i) The purchaser buys an Allocated Lot from the Applicant;
- (ii) The purchaser will be required to enter into a building contract with a specified builder ("**Preferred Builder**") to construct a dwelling on an Allocated Lot ("**Dwelling**") for a fixed price; and
- (iii) The purchaser will be required to enter into an agreement with a nominated mortgage broker or manager ("**Mortgage Manager**") pursuant to which the Mortgage Manager will arrange for the purchaser to borrow from a specified lender ("**Lender**") a loan in an

amount sufficient to fund up to 95% of the value of the purchase price of the Allocated Lot and the construction cost of the Dwelling ("Loan").

2. Provided the purchaser agrees to purchase the Allocated Lot and to construct the Dwelling on the basis described in paragraph 1 above ("**Package**"), the Applicant and the Preferred Builder will fund the interest ("**Subsidised Interest**") payable by the purchaser on that part of the Loan which has been drawn down, from the date of the first draw down until the earlier of the date practical completion of the Dwelling has been achieved or the occupancy permit of the Dwelling has been achieved.
3. The Subsidised Interest will, in the first instance, be paid to the Mortgage Manager. Pursuant to the agreement referred to in paragraph 1(iii) above between the Mortgage Manager and the purchaser, the Mortgage Manager is obligated to remit the Subsidised Interest to the Lender for the benefit and account of the purchaser.
4. The Subsidised Interest will be paid for by the Applicant and the Preferred Builder, although the amounts payable by the Applicant and the Preferred Builder may be different. The amounts ultimately to be borne by the Applicant and the Preferred Builder will be determined by the parties. However, only the Applicant will enter into an agreement with the Mortgage Manager to pay the Subsidised Interest to Mortgage Manager for the ultimate benefit of the purchaser. In other words, it is the Applicant who has the primary obligation to pay the Subsidised Interest to the Mortgage Manager.
5. Only a small number of builders will be selected to participate in the Package. The Preferred Builders will be selected on the basis of experience and standard of workmanship. The Preferred Builder will not be related to the Applicant.
6. Only a very small number of lenders will be selected to participate in the Package. The Lenders will be authorised deposit-taking institutions as defined in the *Banking Act 1959* (Cth).
7. The proposed conduct by the Applicant may be third line forcing that contravenes sections 47 of the *Competition and Consumer Act 2010* (Cth).
8. **Section 47(6):**

Without limitation, the Applicant may be a corporation that:

- (iv) supplies, or offers to supply, rights in relation to, or interests in, real property goods or services;
- (v) supplies, or offers to supply, rights in relation to, or interests in, real property goods or services at a particular price; or
- (vi) 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 goods or services 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 goods or services or, if that person is a body corporate, a body corporate related to that body corporate will acquire goods or building services of a particular kind or description directly or indirectly from a pre determined builder another person not being a body corporate related to the corporation

9. **Section 47(7):**

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

- (i) to supply rights in relation to, or interests in, real property goods or services to a person;
- (ii) to supply rights in relation to, or interests in, real property goods or services at a particular price to a person; or
- (iii) 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 goods or services of a particular kind or description directly or indirectly from a builder another person 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 Mayfield.

- (b) Number of those persons:

- (i) At present time:

Nil.

- (ii) Estimated within the next year:

(Refer to direction 6)

Not exceeding 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) the purchaser will have the benefit of a new home in a residential estate for a fixed price;
- (ii) the interest payable by a purchaser on the Loan will be paid for by the Applicant and the Preferred Builder from the date of first drawdown until such time as the Dwelling has reached practical completion or an occupancy permit has been issued (whichever is earlier). The savings to the purchaser would enable the purchaser to continue to fund the purchaser's existing mortgage (if any), rent another dwelling during the construction of the Dwelling, or simply to enable the purchaser to increase the purchaser's capacity to save for the Dwelling;

- (iii) the purchaser will be provided with assistance in the purchaser's application for a Loan;
 - (iv) the purchaser would avoid the uncertainty of overall costs on construction of a dwelling;
 - (v) the purchaser would have the convenience of entering into a "one stop shop" arrangement in terms of buying land, building a dwelling, and procuring the necessary loan to finance the acquisition and the construction;
 - (vi) the purchaser's overall costs will be reduced as the purchaser will not be required to:
 - (A) expend additional money in identifying and considering the services of other builders or lenders; or
 - (B) enter into a number of separate contracts for the design and construction of a residential building;
 - (vii) the purchaser will have greater certainty of the quality of work as the Preferred Builders would have a proven track record;
 - (viii) as the Preferred Builder will not have to buy the Allocated Lots, it may devote its resources to building a superior quality product.
 - (ix) the Preferred Builders will likely acquire a reasonable volume of work. This will enable a Preferred Builder to generate an increase in supplies and give the Preferred Builder the opportunity of reducing costs. Purchasers will benefit from this as the Applicant expects associated cost savings by the Preferred Builders will be passed on to purchasers; and
 - (x) as the Preferred Builder will be familiar with the Allocated Lot before the time the construction of the Dwelling is to commence, the Preferred Builder will have the opportunity to design the Dwelling to best suit the size, shape and location of the Allocated Lots. The purchasers will benefit from early commencement of construction, and also from a Dwelling that is well suited to the size, shape and location of the Allocated Lot.
- (b) Facts and evidence relied upon in support of these claims:
- (i) There are several other developers in the Victorian market which offer house and land packages and require purchasers to enter into residential house and land contracts. The proposed conduct will therefore not decrease competition in the Victorian residential housing market.
 - (ii) A purchaser is under no obligation to purchase land from the Applicant or to use any of the Preferred Builders for the construction of a dwelling outside Mayfield.
 - (iii) A purchaser has the option to purchase:
 - (A) a residential lot within Mayfield, other than an Allocated Lot, and to choose the purchaser's own preferred builder; or
 - (B) a dwelling from any builder to be built on a lot outside Mayfield.

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 market is the Victorian market, south east of Melbourne, for the supply of:
 - (i) residential house and land packages, and
 - (ii) residential construction services.
- (b) The market referred to above is extremely competitive and are fragmented with many builders operating in the area south east of Melbourne. These markets compete frequently for purchasers in their respective markets, including by competitive offers, conditions and incentives from time to time. The development of Mayfield is an example of such conduct.
- (c) There is a large number of residential estates south east of Melbourne which offer strong competition to Mayfield 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) purchasers avoid the uncertainty of overall costs on construction of a house;
- (ii) it offers purchasers the convenience of entering into a "one stop shop" in terms of buying land, building a dwelling, and procuring the necessary loan to finance the acquisition;
- (iii) purchasers avoid any additional costs associated with building a house (eg design fees, architectural fees);
- (iv) purchasers have the option to purchase other vacant land from the Applicant or other parties.

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

- (b) Facts and evidence relevant to these detriments:
 - (i) A purchaser will have an opportunity to consider and review all factors before they determine what product is suitable for them.
 - (ii) 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 Victorian 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:

Wai-Hwoon Low
Principal
Russell Kennedy Lawyers
Level 12, 469 La Trobe Street
Melbourne 3000

Dated.....*18 NOVEMBER 2013*.....

Signed by/on behalf of the Applicant Lend Lease Communities (Australia) Ltd

(Signature).....

JOHN DAVID CLARK

(Full Name).....

Lend Lease Communities (Australia) Ltd

(Organisation).....

Director

(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.