



COOPER GRACE WARD

LAWYERS

AUST COMPETITION &
CONSUMER COMMISSION
BRISBANE

20 AUG 2014

Our ref: LMD2:MRF 10129549

20 August 2014

Australian Competition and Consumer Commission
Level 24
400 George Street
BRISBANE QLD 4000

Level 21, 400 George Street
Brisbane 4000 Australia

GPO Box 834, Brisbane 4001

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ABN 95 591 906 639

BY DELIVERY

Dear Sir/Madam

Exclusive dealing notification - FKP Lifestyle Pty Ltd ACN 005 867 596

We act on behalf of FKP Lifestyle Pty Ltd.

Please find enclosed:

1. exclusive dealing notification on behalf of our client; and
2. cheque in the sum of \$100 in respect of your lodgement fee.

Please contact Leanne Doxey of our office should you require further information.

Yours faithfully

COOPER GRACE WARD


Leanne Doxey
Senior Associate
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Marcus Ford
Partner

LMD210129549 7228577v1

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)

N97699

FKP Lifestyle Pty Ltd ACN 005 867 596 (FKP).

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

FKP (in conjunction with related parties) carries on the business of developing residential land including the development of **Rochedale Estates, Rochedale Qld (Rochedale Estates)**.

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

c/- Cooper Grace Ward Lawyers (Attention: Marcus Ford)
GPO Box 834
BRISBANE QLD 4001

2. Notified arrangement

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

The goods to which this notice relates is the proposed sale of residential terrace home and land packages at Rochedale Estates.

The development at Rochedale Estates commenced in 2010, and to date approximately 450 residential lots have been created and sold (in stages 1A, 1B, 1C, 1D1, 2A and 2B).

A further 200 lots are currently under construction and sales are continuing of unregistered stages 2C, 3A, 3B, 3C.

Upon completion, Rochedale Estates will comprise around 1300 residential lots.

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

FKP is the owner of registered lot 9970 on SP103273 in Rochedale Estates which is an englobo terrace lot parcel comprising stage 1d2 (**Properties**).

FKP proposes to enter into put and call option agreements with Pivotal Properties (Aust) Pty Ltd ACN 156 478 287 (**Pivotal**) pursuant to which it intends to give Pivotal the exclusive right to construct residential terrace homes on 61 residential lots to be created from the Properties ("**proposed arrangement**").

Under the proposed arrangement, a purchaser entering into a contract to purchase one of the 61 particular lots (proposed lots 1062-1122) will do so on the basis that the purchaser also enters into a building contract with Sandsky Developments Pty Ltd ACN 082 566 194 (**Sandsky**) to construct the terrace home on that lot.

Sandsky is a related company to Pivotal.

(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)

The class of persons likely to be affected by the proposed arrangement are consumers seeking to purchase residential land in Rochedale Estates from the date of the date of authorisation by the ACCC until all specified lots are sold.

- (b) Number of those persons:

- (i) At present time:

Unknown. Lots in Rochedale Estates are available to the general public.

There are also various other developers offering land for sale in the suburb of Rochedale.

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

Unknown.

- (c) Where number of persons stated in item 3 (b) (i) is less than 50, their names and addresses:

Unknown at this stage.

4. Public benefit claims

- (a) Arguments in support of notification:
(Refer to direction 7)

- Purchasers of specified lots will:

- receive the benefit of obtaining a new terrace home in a residential estate for a fixed price;
 - will not be required to expend further time or costs in obtaining separate services for design and construction of a residential terrace dwelling;
 - Individual sales of terrace houses are impractical; the same builder needs to construct adjoining lots due to the attached (adjoining wall) construction method.
 - Pivotal/Sandsky will not be required to pay duty on the purchase of the 61 proposed residential lots, and as such, this cost will not be passed onto the purchasers.
 - The proposed arrangement will provide Pivotal/Sandsky with certainty of volume of work providing it with the opportunity to decrease its supply costs.
- (b) Facts and evidence relied upon in support of these claims:
- There is no obligation on the purchaser either to purchase land from FKP, or to use Sandsky for the construction of a home outside of these 61 specific lots within Rochedale Estates.
 - The proposed arrangement will not decrease competition in the relevant market as there is a wide variety of product the relevant market (both within Rochedale Estates and surrounding estates).

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)*

The market likely to be effected by the proposed arrangement is the market for residential homes in Rochedale, Queensland.

There are a number of suppliers in the market referred, with a number of developers and builders operating in Rochedale, Queensland. The other suppliers in this market offer strong competition to Rochedale Estates regarding the supply of residential house and land 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)

FKP considers that there would be a negligible public detriment resulting from the proposed arrangement in the relevant market.

FKP does not consider that the proposed arrangement will have any negative effect on the prices of home and land packages in the notified market.

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

- The proposed arrangement will have a negligible effect on competition because consumers will only be required to use Sandsky to build their home at Rochedale Estates in relation to 61 specified lots. Not all lots in Rochedale Estates will be sold on the condition that the purchaser uses Sandsky.
- The proposed arrangement in no way limits the genuine choice of consumers as there are many other suppliers in the market from which consumers can choose to obtain building services for the building of their home at Rochedale Estates.
- Purchasers of the specified lots will avoid the uncertainty of overall costs for the construction of a home on their lot through the purchase of a terrace home package.

7. Further information

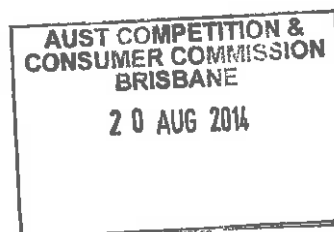
- (a) Name, postal address and contact telephone details of the person authorised to provide additional information in relation to this notification:

c/- Marcus Ford
Cooper Grace Ward Lawyers
Level 21 400 George Street,
Brisbane QLD 4000

Dated: 20 August 2014

Signed by/on behalf of the applicant

.....
(Signature) Marcus Ford
Partner, Cooper Grace Ward Lawyers



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.