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04 February 2014

**BY EMAIL: [adjudications@acc.gov.au](mailto:adjudications@acc.gov.au)**

The General Manager  
Adjudications Branch  
Australian Competition and Consumer  
Commission  
GPO Box 3131  
Canberra ACT 2601

ashurst

FILE No:
DOC:
MARS/PRISM:

Dear Sir / Madam

**Form G notification of third line forcing conduct**

On behalf of Henley Arch Pty Ltd, we **enclose** a Form G "Notification of Exclusive Dealing Conduct". We will today deliver to your Melbourne office a hard copy of the enclosed document, together with a cheque for the \$100 lodgement fee.

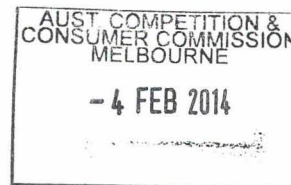
We note that the proposed conduct described in the notification was separately notified to the Australian Competition and Consumer Commission by Lend Lease Communities (Laurimar Park) Ltd on 29 November 2013 (see Notification N97121 on the ACCC's authorisations and notifications register).

Please contact Alice Muhlebach on (03) 9679 3492 or Alyssa Phillips on (07) 3259 7352 should you have any queries in relation to this matter.

Yours faithfully

*Ashurst Australia*

**Ashurst Australia**



AUSTRALIA BELGIUM CHINA FRANCE GERMANY HONG KONG SAR INDONESIA (ASSOCIATED OFFICE) ITALY JAPAN PAPUA NEW GUINEA  
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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:**

N97220

Henley Arch Pty Ltd (**Henley Properties**).

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

Henley Properties operates in Victoria, Queensland, South Australia and New South Wales, under a number of different brands. Henley Properties enters into home building contracts with customers in each of those States.

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

Alice Muhlebach, Partner  
Ashurst Australia  
Level 26, 181 William Street  
Melbourne VIC 3000

### 2. Notified arrangement

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

The proposed conduct relates to the supply of new houses which Henley Properties will construct for its customers as part of a combined product comprising the supply of a house, land and finance services to purchasers.

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

Henley Properties proposes to supply, or offer to supply, customers with a new house with specified features that Henley Properties will construct at a fixed price, on condition that the customers also acquire land and mortgage management services as part of an "all-in-one" package. The packages that are described in this notification relate to the Laurimar Park residential development in Victoria, but the conduct may also be extended to other Lend Lease developments in Victoria.

Henley Properties notes that the proposed "all-in-one" packages at Laurimar Park are the subject of a current notification to the Australian Competition

and Consumer Commission (ACCC) by Lend Lease dated 29 November 2013, which the ACCC allowed to stand (see Notification N97121 on the ACCC's authorisations and notifications register).

Each package will comprise:

- a. a residential lot of land located within the Laurimar Park development (located off Yan Yean Road, Doreen, Whittlesea, Victoria), which will be supplied by Lend Lease Communities (Laurimar Park) Ltd (**Lend Lease**);
- b. a new house that will be constructed on the residential lot pursuant to a building contract with Henley Properties; and
- c. the provision of mortgage management services which will be supplied by Mortgageport Management Pty Ltd (**Mortgageport**). Specifically, Mortgageport will arrange for the customer to borrow from a specified lender a loan in an amount sufficient to fund up to 95% of the value of the purchase price of the residential lot and the construction cost of the house.

Mortgageport will also pay the interest payable by the customer 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 that practical completion of the house has been achieved, or an occupancy permit has been obtained for the house. These payments will be funded by Henley Properties and Lend Lease.

Customers who wish to acquire a new fixed price house from Henley Properties pursuant to this offer will therefore also need to:

- a. acquire a specified residential lot within Laurimar Park from Lend Lease; and
- b. acquire specified mortgage management services from Mortgageport.

Laurimar Park will comprise approximately 2,500 residential lots with public open space, schools, retail centre and other retail shops. The offer described above will only relate to certain specified residential lots within Laurimar Park.

**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:**

The persons likely to be affected by the proposed conduct are actual or potential acquirers of residential lots and residential homes (and associated finance) at Laurimar Park.

**(b) Number of those persons:**

**(i) At present time:**

Nil.

**(ii) Estimated within the next year:**

Henley Properties expects that the number of persons likely to be affected by the proposed conduct over the next year would not exceed 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:**

The proposed "all-in-one" packages are an innovative and pro-competitive product that competing builders, land developers and finance companies could readily offer to customers without any negative impact on competition for houses, land or financial services.

Henley Properties expects that the proposed conduct will result in a number of public benefits. In Henley Properties' view, the key benefits are as follows:

- a. The customer would have the convenience of entering into an "all-in-one" arrangement in terms of buying land, building a house, and procuring the necessary loan to finance the acquisition and the construction, and would avoid the need to acquire those components separately.
- b. The customer will have the benefit of a new home in a residential estate. The fixed price offer means that the customer is aware of the total cost of constructing the house upfront, and can plan and budget accordingly.
- c. The customer will not have to pay interest on his or her loan from the date of the first draw down until the house has reached practical completion or an occupancy permit has been issued (whichever occurs first).
- d. The customer will be provided with assistance in applying for a loan, and processing the relevant mortgage documentation.
- e. The offer may stimulate increased competition between:
  - Lend Lease and other land developers;
  - Henley Properties and other home builders; and/or
  - Mortgageport and other mortgage brokers and managers,

and lead to an increase in similar offers being made to consumers.

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

The proposed conduct will provide consumers who are considering acquiring land and constructing a new house with an additional option (ie the convenience of an "all-in-one" package).

The proposed conduct does not remove or limit any of the other options available to such consumers, who will remain free to acquire land, building services and/or mortgage management services from Lend Lease, Henley Properties and/or Mortgageport independently, or from other competing providers.

Henley Properties is not aware of anything that would prevent other land developers, home builders and/or mortgage managers from offering an equivalent package to customers.

**5. Market definition**

**(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):**

- a. The market(s) in which new residential houses are constructed for consumers in Victoria.
- b. The market(s) in which residential lots of land and/or house and land packages are supplied to consumers living in Victoria

These markets are highly competitive, with a significant number of competing builders and residential land developments throughout Victoria.

**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:**

Henley Properties does not believe that there will be any public detriments resulting, or likely to result, from the proposed conduct.

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

- a. A customer is under no obligation to acquire land from Lend Lease, building services from Henley Properties or mortgage management services from Mortgageport.
  - There are a large number of residential developments in Victoria (other than Laurimar Park) where customers can purchase either land, or house and land packages, independently of the proposed conduct.
  - There are a large number of home builders in Victoria with whom customers can enter into building contracts for construction of a new house.
  - There are a large number of mortgage brokers and managers in Victoria who can provide customers with mortgage management services. This includes lenders such as retail banks, who will provide loan services directly to customers without use of an intermediary.
- b. Even within the Laurimar Park development specifically, there will be a number of residential lots that customers can purchase outside of the proposed offer. Customers that purchase those lots will then have the option to use Henley Properties or another builder to construct a house on the land.
- c. There are several other developers in Victoria that already offer house and land packages.
- d. Henley Properties is not aware of anything that would prevent other land developers, home builders and/or mortgage managers from offering an equivalent package to customers.
- e. A purchaser will have an opportunity to consider and review all factors before they determine what product is suitable for them.

**7. Further information**

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

Alice Muhlebach, Partner  
Ashurst Australia  
Level 26, 181 William Street  
Melbourne VIC 3000

**Dated:**

**Signed by/on behalf of the applicant**



**(Signature)**

Alice Muhlebach

.....  
**(Full Name)**

Ashurst Australia

.....  
**(Organisation)**

Partner

.....  
**(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.