

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)

N97197

Brisbane Housing Company Limited (ACN 101263834) – trading as BHC
Creating Liveable Communities (BHC)

Level 2, 35 Astor Terrace
Spring Hill QLD 4000

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

BHC is a not-for-profit organisation that develops and manages affordable housing for Queenslanders in need. BHC offers a range of housing options, including social housing, National Rental Affordability Scheme (NRAS) housing and housing for sale to owner occupiers and/or investors.

With regard to BHC's participation in NRAS, BHC procures and/or develops properties to be included in the scheme and makes them available for purchase by investors who wish to participate in the scheme. BHC then directly provides or arranges property management services for the investor, and directly provides the necessary compliance activities to ensure that the investor receives the full benefit of their participation in the scheme.

BHC is an 'Approved Participant' under the NRAS for, amongst other things, an allocation of 34 lots at projects known as 'Parklane' and 'The Edge'

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

Rebecca Oelkers

Business Development Manager

Brisbane Housing Company Limited

GPO Box 544

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 relevant goods and services are:

1. the sale of residential house and land packages;
2. the supply of property and tenancy management services; and
3. the functions of an NRAS Approved Participant.

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

The NRAS is a government initiative enacted under the *National Rental Affordability Scheme Act 2008 (Cth) (Act)* and the *National Rental Affordability Regulations 2008 (Cth) (Regulations)*. It seeks to address the shortage in affordable rental housing in Australia by offering incentives by way of Federal Government tax offsets and State contributions on condition that new dwellings are offered to eligible low and moderate income earners at at least 20% below the then-current market rent.

An Approved Participant is required by the Act to perform certain property and tenancy management functions including the selection of tenants, periodic assessment of their ongoing eligibility to rent an NRAS property, as well as property maintenance. The Approved Participant can perform these functions by itself, or alternatively, engage a service provider to manage the dwellings on its behalf.

BHC has received approval from the Commonwealth, under the NRAS, to apply a proportion of its NRAS incentives to specified properties at Parklane and The Edge. As a condition of sale to access the NRAS incentives, the purchaser must enter into a 'compliance agreement' with BHC as the Approved Participant pursuant to which the purchaser and BHC undertake respective activities to ensure ongoing compliance with the requirements of NRAS. BHC does not provide all of the property and tenancy services required by the Act. Accordingly, BHC must ensure that purchasers, on acquisition of lots, enter into a tenancy and property management agreement with a suitable service provider in respect of the functions that BHC does not carry out, to ensure all of the requirements of the Act are met.

The proposed conduct the subject of this notification is that as a condition of accessing the BHC NRAS incentives, purchasers are required to enter

into a property management agreement with Ausbuild Property Management Pty Ltd ABN 22 142 375 184.

(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)

Individual persons investing in residential property at Parklane and The Edge for the purpose of participating in the NRAS

- (b) Number of those persons:

- (i) At present time:

Maximum of 34 (equal to the number of lots at Parklane and The Edge which are subject to the proposed arrangement).

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

150

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

Not currently known before purchases are made.

4. Public benefit claims

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

The notified conduct will decrease the likelihood of investor purchasers having their NRAS incentives apportioned, withheld, offset or withdrawn as a result of a breach of the requirements of the NRAS, because the engagement of Ausbuild will ensure that purchasers are engaging the services of a reputable property and tenancy manager experienced in the administration of NRAS. The requirements of NRAS are significantly more complex for a property manager than for standard rental arrangements and it is essential for investors to appoint property managers who can provide a compliant NRAS service.

The notified conduct will also:

1. save investor purchasers time and money by removing the need to identify and engage an alternative, suitably-skilled NRAS property manager;

2. provide purchasers with continuity of service from purchase and construction, right through to completion and property and tenancy management, enabling them to access the expertise of the party who constructed the property on an ongoing basis; and
3. reduce coordination, transaction and administration costs as BHC will not be required to deal with multiple NRAS property managers and to assess the ability of alternative third party property managers to comply with the Act.

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

Reputable provider

Ausbuild and BHC have made considerable efforts to design the required systems and processes in a manner that ensures that Ausbuild will provide a high quality, compliant NRAS property management service for the benefit of investors.

The NRAS requires property and tenancy managers to:

1. assess tenant eligibility and retain tenant records;
2. manage the determination of market rents and the below market rents charge to tenants of approved NRAS allotments;
3. provide property management and maintenance functions;
4. manage the ongoing tenancy of an NRAS allotment;
5. report compliance with tenant eligibility, rent levels and other regulatory requirements under the NRAS to Approved Participants;
6. retain tenancy compliance records for at least five years; and
7. comply generally with state residential tenancy legislation.

BHC does not, for all developments, provide the above services required by the NRAS and as such BHC may elect to appoint a property and tenancy manager.

Through Ausbuild's experience in NRAS management and community housing it has developed a number of resources with which to efficiently administer its services.

As a result of the notified conduct, purchasers will benefit from having a reputable property manager in Ausbuild who is experienced in the unique requirements of NRAS as well as the more general obligations under

residential property laws, and who has immediate access to potential tenants that alternative property managers may not otherwise have access to.

Community Benefits

The notified conduct will also result in significant efficiencies in the administration of the NRAS. Allowing BHC to deal with one property and tenancy manager will enable it to avoid duplication of coordination, administration and effort and focus on ensuring the effective performance of those services by one provider. This will lead to a superior outcome for investors and tenants.

Also, capitalising on the experience of Ausbuild and combining it with the experience of BHC in administering and complying with NRAS will ensure more affordable rental housing is provided to the local community by furthering the objectives of the NRAS which include:

1. stimulating the supply of up to 50,000 new affordable rental dwellings;
2. to reduce rental costs for low and moderate income households by making dwellings available at a rate that is at least 20% below the prevailing market rate; and
3. to encourage large-scale investment and innovative delivery of affordable housing.

In addition, the utilisation of one property and tenancy manager for the whole of the lots at Parklane and The Edge will lead to:

1. a coordinated platform for dealing with and reporting to the Department of Social Services and local government on the delivery of NRAS at Parklane and The Edge;
2. uniform advertising and tenancy arrangements in relation to Parklane and The Edge; and
3. a concentration of knowledge on specific issues with respect to the NRAS at Parklane and The Edge.

Efficiencies for purchasers

As a result of the efficiencies identified above and the acknowledged experience of BHC and Ausbuild, the notified conduct will likely result in cost and time efficiencies for purchasers in not having to seek out and determine an appropriate property and tenancy services manager themselves.

Furthermore, the uniform advertising and tenancy arrangements stemming from using the one property manager will make it easier to manage the lots and result in time and cost efficiencies which will make the lots more attractive to potential purchasers.

Efficiencies for tenants

Having a single, experienced NRAS property and tenancy services manager at Parklane and The Edge will have further benefits for potential tenants as they will only have to approach and deal with one property manager to assess their eligibility and allocate them suitable housing.

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 relevant markets or market segments, for the purposes of this notification may comprise:

1. the market for the supply and acquisition of residential investment properties in Parklane and The Edge; and
2. provision of NRAS specific property and tenancy management service providers in Brisbane and potentially Queensland and nationally.

The notified conduct represents only a very small proportion of the NRAS properties available to investors. As at June 2013, the (now) Department of Social Services report shows that there are almost 38,500 NRAS incentives available nationwide, with almost 11,000 available in Queensland alone. There are at least 38 other NRAS providers in Queensland in addition to BHC, should investors wish to opt into an alternative arrangement that offers them the ability to appoint their own property manager. In addition (according to the June 2013 DSS report), there are approximately 350 alternative NRAS incentives available in the suburbs surrounding Parklane and The Edge, meaning that investors have plenty of alternatives in that respect also.

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 notified conduct may marginally reduce competition in the market for NRAS property and management services in Brisbane by limiting the choice of NRAS property and tenancy management services provided at Parklane and The Edge.

However, there already exists a substantial breadth of providers within NRAS, and the very small number of properties affected by the notified conduct means any impact on competition will be negligible.

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

As BHC does not provide the property and management services itself, purchaser investors must enter into a services arrangement with a third party to ensure compliance with the Act.

It is arguable that the requirement that investor purchasers who enter into an NRAS agreement with BHC also enter into a property and tenancy management agreement with Ausbuild is a third line force.

However, there is little or no detriment in giving investor purchasers less choice over which third party property manager they go to as by requiring purchasers to enter into a management agreement with Ausbuild, BHC is ensuring they are using a reputable provider in the delivery of NRAS property and tenancy management services and has wider public benefits in ensuring more affordable housing is available.

Any reduction in competition in any relevant market is likely to be negligible, and far outweighed by the benefits outlined above.

Other NRAS property managers will still have lots in other locations in Brisbane (and indeed in Queensland and nationally) that they can manage, and investors who do not wish to deal with Ausbuild for any reason could still purchase NRAS eligible lots in other areas.

7. Further information

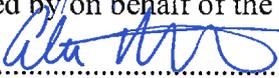
- (a) Name, postal address and contact telephone details of the person authorised to provide additional information in relation to this notification:

Rebecca Oelkers

Business Development Manager
Brisbane Housing Company Limited
GPO Box 544, Brisbane, 4001
(07) 3307 3000

Dated 13/1/2014

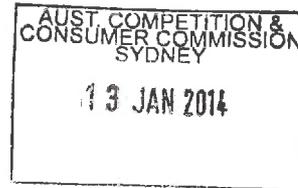
Signed by/on behalf of the applicant


(Signature)

ALEXANDER HUTCHENS
(Full Name)

MCCULLOUGH ROBERTSON LAWYERS
(Organisation)

SENIOR ASSOCIATE
(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.