

# 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)

N98371 Lend Lease Communities (Calderwood) Pty Limited (ACN 079 989 674) of  
The Bond 30 Hickson Road Millers Point NSW 2000 (**Lend Lease  
Communities**)

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

Property development - subdivision and sale of residential land lots

(Refer to direction 3)

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

Level 2, 88 Phillip Street, Parramatta NSW 2124

## 2. Notified arrangement

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

- sale of house and land packages in a new housing development by Lend Lease Communities known as “Calderwood Valley” (**Calderwood Valley Development**). The lots are located within Lot 6 in DP 259137, also known as 248-268 North Macquarie Road, North Macquarie, New South Wales (**Land**).

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

The proposed conduct involves offering for sale residential lots in Calderwood Valley Development to purchasers on the condition that the purchaser enters into a building contract with a builder (nominated by Lend Lease Communities) for the construction of a dwelling on the land.

## **Background**

### **Proposed development and 'house and land' package sales**

Lend Lease Communities is the owner of the Land which is part of the Calderwood Valley Development.

Lend Lease Communities is proposing to subdivide the Land (being approximately 40 hectares) to create unregistered lot 1383 in DP1206167 which will then be further subdivided to create approximately 49 residential land lots (**Residential Lots**).

Lend Lease Communities has entered into:

- a) a Put and Call Option with Edgewater Homes Pty Ltd (ACN 141 446 102) (**Edgewater Homes**) with respect of 10 of the Residential Lots; and
- b) a Put and Call Option with Connect Homes Pty Limited (ACN 150 758 188) (**Connect Homes**) with respect of 5 of the Residential Lots,

(each a **Put and Call Option Deed**).

Pursuant to the Put and Call Option Deed, Edgewater Homes and Connect Homes (each a **Selected Builder**) may nominate a third party purchaser to purchase the lot or lots the subject of the Put and Call Option Deed.

If the Selected Builder nominates a third party purchaser to purchase the lot or lots, then the purchaser must enter into a building contract with the Selected Builder for the construction of a dwelling by the Selected Builder on the lot (**Building Contract**). Once the Building Contract has been entered into, the purchaser may then enter into a contract with Lend Lease Communities for the purchase of the land and the construction of the dwelling on the land (**House and Land Contract**).

Under the House and Land Contract, Lend Lease Communities is selling the land as well as the dwelling on the land, with an acknowledgement from the purchaser that the dwelling is being constructed by the Selected Builder and not Lend Lease Communities.

Although the House and Land Contract does not expressly condition the buyer to enter into a building contract with the Selected Builder, the third party purchaser can only enter into the House and Land Contract provided that the purchaser signs a building contract with the Selected Builder to build a dwelling on the lot. In this way, Lend Lease Communities will be offering the Residential Lots which are the subject of the Put and Call Option Deed to the public as 'house and land' packages.

The Selected Builders were considered by Lend Lease Communities to be the most suitable based on the necessary skills, capabilities and capacity to create a consistent and aesthetically pleasing development by Lend Lease Communities. The Selected Builders are required to meet a high standard of design and comply with Lend Lease Communities' specifications. Pursuant to the Put and Call Option, Lend Lease Communities has allowed the Selected Builder to obtain early access to the land to commence construction of the dwelling. This arrangement allows the building works to commence after the land is registered but before the House and Land Contract has completed. This arrangement will benefit the purchaser(s) in that it means that the purchaser does not need to pay the balance purchase monies until the dwelling is constructed.

**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)

Potential purchasers of the 15 Residential Lots, the subject of the Put and Call Option Deed.

- (b) Number of those persons:

- (i) At present time:

Nil

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

15 potential purchasers

- (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 purpose of requiring potential purchasers to engage the Selected Builder is to ensure that all homes are constructed in accordance with the same criteria and standards set by Lend Lease Communities, thereby creating consistency of design and quality throughout the Calderwood Valley Development.

By retaining control of the design and construction of these properties, Lend Lease Communities aims to create a consistent and aesthetically pleasing development based on high quality and design standards. This will in turn protect and enhance the value of the properties within the Calderwood Valley Development.

Lend Lease Communities will work closely with each Selected Builder to ensure that the houses will comply with the Calderwood Valley Development's design guidelines. Lend Lease Communities will also be able to control the environmental and social objectives of the Calderwood Valley Development and to ensure compliance by the Selected Builders.

The following public benefits are also likely to result from this arrangement:

1. a reduction in the search time and transaction costs for potential purchasers in regards to finding a builder;
2. lower building costs for potential purchasers due to economies of scale generated by the Selected Builders in relation to the acquisition of building supplies and supply of labour;
3. a competitive price for the house and land package. Lend Lease Communities is able to negotiate more competitive prices with the Selected Builders than if individual purchasers were to negotiate with the builder; and
4. ensures that there is a certain level of consistency throughout the Calderwood Valley Development which may result in a higher resale value for each residential home.

Accordingly, Lend Lease Communities submits that the proposed 'house and land' arrangement will be an effective and simple method for consumers to buy quality-constructed homes in the Calderwood Valley Development.

- (b) Facts and evidence relied upon in support of these claims:
- Annexure A: Draft Plan of Subdivision

## 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)*

For the purposes of this notification, Lend Lease Communities considers that the relevant market is likely to be the residential real estate market and the home building market within the geographical vicinity of the subject property, that is, in suburban Sydney. It is a highly competitive market.

## 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)*

Lend Lease Communities submits that the proposed conduct is unlikely to cause any detriment to the public at large. As discussed above, Lend Lease Communities considers that the overall effect of the notified behaviour will be to provide the buyer with the construction of a home at a lower cost.

The potential buyers will be able to compare the price of the property in the Calderwood Valley Development with those of existing houses, vacant lots and other "house and land" packages to ensure that the prices have not been inflated by the use of the Selected Builder.

Lend Lease Communities also submits that any adverse impact on competition would be negligible given the size of the property market and the number of properties involved in this development.

Overall, Lend Lease Communities submits that the notified behaviour will not limit the vast range of choices available to potential buyers based on quality and price and potential buyers will have a genuine choice whether or not to purchase the 'house and land' package offered by Lend Lease Communities.

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

In the Shellharbour/Illawarra region, where the Calderwood Valley Development is situated, there is a number of competing residential subdivisions and developments currently selling 'house and land' packages.

**7. Further information**

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

Cameron Sheather  
Special Counsel  
Holding Redlich  
Level 65, MLC Centre, 19 Martin Place, Sydney NSW 2000

Dated..... 10 July 2015 .....

Signed by/on behalf of the applicant

.....  
(Signature)

.....  
(Full Name)

.....  
(Organisation)

.....  
(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.