

Our Ref: BPM.ECV.150567



8 April 2015

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

By Email [adjudication@acc.gov.au](mailto:adjudication@acc.gov.au)  
By Express Post

Dear Sirs

**Applications for Notification of Exclusive Dealing**  
**Applicant: St Marys Land Limited ABN 32 088 278 602 (SMLL)**

Please find attached:

1. a completed Form G notification of exclusive dealing for SMLL; and
2. EFT receipt for lodgement fee in the amount of \$100 payable to ACCC Administered receipts account.

Please let us know if the application is approved or contact us if you would like to discuss.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Brendan Maier'.

**Brendan Maier**  
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JU9SYWB19Q

# 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):

N98223 St Marys Land Limited ABN 32 088 278 602 (**SMLL**)

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

Land sales

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

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 a site in Jordan Springs in New South Wales being the subdivision of Lot 3997 in DP 1179646, approximately 223 hectares of land known as "Jordan Springs".

Jordan Springs will comprise approximately 2,500 residential homes. It has been developed in stages and is expected to be completed in 2017. It also involves the subdivision of land and the establishment of open space and recreation areas.

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

SMLL proposes to enter into an agreement with its preferred builder, Ancon Development Group Pty Limited ACN 002 965 344 (**Preferred Builder**), giving the builder the exclusive right to construct residential homes on allocated residential lots. After a lot has been allocated to the builder, no other builder may build on it.

The Preferred Builder is selected on the basis of experience and standard of workmanship. The Preferred Builder is not related to SMLL.

All homes will be:

- (i) constructed by the Preferred Builder - SMLL will not do any residential building work, and
- (ii) marketed by SMLL.

After a purchaser is found, the purchaser must enter into two separate contracts:

- (i) **Land Sale Contract:** between the purchaser and SMLL - for the sale of the residential lot, and
- (ii) **Building Contract:** between the purchaser and the Preferred Builder only - for the construction of the residential home on the residential lot.

The proposed conduct by the applicant might be third line forcing that contravenes sections 47 of the *Competition and Consumer Act 2010* (Cth).

#### **Section 47(6)**

Without limitation, the applicant may be a corporation that:

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

#### **Section 47(7)**

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

- to supply rights in relation to, or interests in, real property to a person;
- to supply rights in relation to, or interests in, real property at a particular price to a person; or
- 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 services of a particular kind or description directly or indirectly from a builder 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 Jordan Springs.

- (b) Number of those persons:

- (i) At present time:

0

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

18

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

Not available.

#### 4. Public benefit claims

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

The proposed conduct will benefit the public because:

- (i) A purchaser will have the benefit of a new home in an reduced time frame as the builder can commence construction of the residential home as soon as a lot is registered and settlement has taken place.
  - (ii) A purchaser's overall costs will be reduced as they will not be required to:
    - (A) expend additional money in identifying and considering the services of other builders, and
    - (B) enter into a number of separate contracts for the design and construction of a residential building.
  - (iii) The builder will not be required to pay stamp duty on the purchase of the residential lot so that this cost will not be passed on to the purchaser.
  - (iv) Purchasers will have greater certainty of the quality of work as the Preferred Builder has a proven track record.
  - (v) As the builder does not need to buy the residential lots it may devote its resources to building a superior quality product.
  - (vi) It will also give the builder a reasonable volume of work. This will enable the builder to generate an increase in supplies and therefore giving the builder an opportunity of reducing costs. The purchasers will benefit from this as SMLL expect associated cost savings by the builder will be passed on to purchasers.
- (b) Facts and evidence relied upon in support of these claims:
    - (i) There are several other developers in the New South Wales (**NSW**) market which offer house and land packages and require purchasers to enter into residential house and land contracts.
    - (ii) The proposed conduct will not decrease competition in the NSW residential housing market.
    - (iii) A purchaser is under no obligation to purchase land from SMLL or to use the Preferred Builder for the construction of a residential home outside of Jordan Springs.

#### 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 markets is the NSW market for the supply of:
  - (i) residential house and land packages, and
  - (ii) residential construction services.
- (b) Both of the markets referred to above are extremely competitive and are fragmented with many builders operating in NSW. These markets compete frequently for purchasers in their respective markets, including by competitive offers, conditions and incentives from time to time. The development of Jordan Springs is an example of such conduct.
- (c) There are a large number of residential estates in NSW which offer strong competition to Jordan Springs 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) home buyers avoid the uncertainty of overall costs on construction of a house;
- (ii) home buyers avoid any additional costs associated with building a house (eg design fees, architectural fees); and
- (iii) home buyers have the option to purchase other vacant land from other land owners or developers.

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

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

A purchaser will have an opportunity to consider and review all factors before they determine what product is suitable for them.

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 NSW market and surrounding areas.

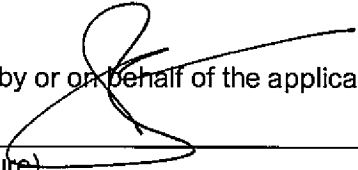
## 7. Further information

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

Brendan Maier  
Partner  
Colin Biggers & Paisley  
Level 42, 2 Park Street  
SYDNEY NSW 2000

Dated 9/4/15.

Signed by or on behalf of the applicant

  
\_\_\_\_\_  
(Signature)

Brendan Paul Maier  
\_\_\_\_\_  
(Full Name)

Colin Biggers & Paisley  
\_\_\_\_\_  
(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.