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COMMISSION - ADELAIDE

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)

N99249 Riverside Park Pty Ltd (ACN 007 873 029) of 24 Moorfield Terrace, Allenby Gardens, South Australia 5009 (**Applicant**)

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

The Applicant is the registered proprietor of the residential land development known as "Riverside", at Certificate of Title Volume 5124 Folio 65 (**Riverside**).

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

24 Moorfield Terrace, Allenby Gardens, South Australia 5009

2. Notified arrangement

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

Contracts for the sale and purchase of land forming part of the Riverside development.

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

1. The Applicant is the registered proprietor of Riverside.
2. The Applicant has entered into a development agreement with Galbraith Nominees Pty Ltd of 25 North Terrace, Hackney, South Australia 5069 (ACN 007 648 160) (**Developer**) whereby the Developer was appointed to carry out a master-planned development of Riverside and procure the construction by Construction Services

Australia Pty Ltd (ACN 007 641 787) (**Builder**) of pre-designed and pre-specified homes on the subdivided allotments.

3. The Developer will subdivide Riverside into allotments and market them to members of the general public as house and land packages. Allotments will be sold on the condition that the relevant purchaser agrees to enter into a contract with the Builder to construct a pre-designed and pre-specified residential dwelling on that allotment (**Proposed Restriction**).
4. The Builder is a related entity of the Developer.
5. The Builder will have exclusive right to construct residential dwellings on the allotments at Riverside.
6. In each case, this Proposed Restriction will only operate until the construction of the specified home is complete and will only occur once with respect to each allotment.

(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)

Purchasers of residential allotments forming part of Riverside.

- (b) Number of those persons:

- (i) At present time:

Nil

- (ii) Estimated within the next year:

(Refer to direction 6)

Up to 102 purchasers (the development will comprise 102 residential allotments).

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

N/A

4. Public benefit claims

- (a) Arguments in support of notification:

(Refer to direction 7)

The proposed development, conducted as described above, will benefit the public in the following ways:

1. purchasers will be able to purchase new homes in a new and modern master-planned residential estate;
2. normal pre-construction and construction time-frames will be reduced due to efficiencies of scale and consistency, and the pre-approval of custom-designed and pre-specified homes;
3. purchasers will have their overall cost of “shopping” and transacting reduced as they will not be required to expend funds on:
 - 3.1. identifying, considering and negotiating the services of another builder; and
 - 3.2. negotiating and entering into a number of separate contracts for the design and construction of a dwelling;
4. the overall cost to purchasers will be reduced in comparison to other residential developments as a result of:
 - 4.1. the Builder not being required to acquire land and pay stamp duty on that acquisition, thereby enabling it to pass that those savings to purchasers;
 - 4.2. reduced marketing costs; and
 - 4.3. reduced construction costs, because of construction occurring on a volume basis (economies of scale);
5. the Builder will not be concerned with the purchase of the allotments and will be able to focus its attention and resources on the construction of a superior quality product;
6. potential reduction in the amount of stamp duty that will be payable by purchasers, as it will be calculated on the unimproved land value only (as it is anticipated that construction will not begin until the purchaser contracts with the Applicant and subsequently with the Builder in accordance with the Proposed Restriction);
7. the Builder will have a large volume of work, which:
 - 7.1. provides greater certainty as to the performance of the Builder and assurance that the houses to be constructed on the allotments will reach completion; and
 - 7.2. provides significantly more opportunity, through economies of scale, for the Builder to reduce costs and pass savings onto the purchaser of an allotment;
8. the Builder:
 - 8.1. has strong project management skills;

- 8.2. has a history of constructing high quality residential dwellings and low fault rates;
 - 8.3. has a track record of completing projects expeditiously and on time;
 - 8.4. has the resources and financial means to undertake the project (demonstrated by consistently building more than 1000 homes per year);
 - 8.5. has the necessary staff, resources, skill and experience to undertake the project;
 - 8.6. has the appropriate licences, registrations and permits to undertake the project; and
 - 8.7. has taken out appropriate insurance policies, in the circumstances;
9. purchasers, by virtue of the items listed in paragraph 8 and the Builder's sound reputation, can be assured of:
- 9.1. compliance with industry guidelines, standards and planning laws;
 - 9.2. affordable housing;
 - 9.3. consistently high quality housing by virtue of the capacity to control and standardise construction; and
 - 9.4. uniformity in housing appearance and integrity;
10. the design, appearance and quality of the homes at Riverside will be consistent and of a high standard, providing confidence as to the desirability of the neighbourhood environment and the quality of the purchaser's investment.

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

See above.

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 market consists of purchasers of residential dwellings in the inner metropolitan area of Adelaide, South Australia. That market is extremely competitive. A significant number of builders and developers

frequently develop and sell homes, both built on vacant or subdivided blocks in established areas and in new residential estates, in the inner suburbs of Adelaide. They do so with competitive offers and incentives. There are currently numerous competing developments within the 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)

The proposed development is unlikely to give rise to a significant public detriment, as:

1. Riverside represents a very small portion of the overall land available in inner metropolitan Adelaide for residential purposes;
2. purchasers enjoy the benefits described in item 4;
3. potential purchasers are not deprived of the opportunity to purchase land, an established home or a house and land packages at another location;
4. the Proposed Restriction does not have an anti-competitive effect on the market for residential properties in Adelaide's inner suburbs;
5. the real estate market in the inner suburbs surrounding Adelaide is highly competitive and there are various competing residential developments (as alternatives) available to potential purchasers; and
6. the proposed development will not substantially negatively affect the housing prices in the area surrounding Riverside.

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

The following facts evidence the above claims in (a):

1. purchasers will have an opportunity to consider and evaluate whether the product offered by the Applicant is suitable for them;
2. there is no obligation on purchasers to purchase an allotment at Riverside and they may purchase elsewhere;
3. the Proposed Restriction only affects those who choose to purchase an allotment (and they will be made aware of the Proposed Restriction before making that choice);
4. the proposed conduct would not restrict the choice of consumers, given the significant number of local and substantially similar developments; and

5. the proposed conduct affects a small portion of the residential housing market in suburban Adelaide.

7. Further information

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

David Luu
25 North Terrace
HACKNEY SA 5069
Tel: (08) 8366 0000

Dated..... 8th August 2016

Signed by/on behalf of the applicant

Melissa Hayes
.....
(Signature)

MELISSA EMILY HAYES
.....
(Full Name)

RIVERSIDE PARK PTY LTD
.....
(Organisation)

DIRECTOR
.....
(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.