

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)

N99474 Leakes Road Rockbank Pty Ltd ACN 122 773 924
Level 4, 99 Queen Street
Melbourne VIC 3000

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

The Applicant is the registered proprietor of the land contained in Certificates of Title volume 11547 folio 031, volume 11547 folio 032, volume 11547 folio 033, volume 11547 folio 034, volume 11547 folio 036, volume 11547 folio 019, volume 11547 folio 021, volume 11547 folio 022, volume 11649 folio 748, volume 11690 folio 787, volume 11813 folio 456, volume 11695 folio 069, volume 11691 folio 707, volume 11547 folio 027, and any child title derived from those titles.

The Applicant will be subdividing the land into numerous lots on several proposed plans of subdivision (**Lots**), which the Applicant is developing as part of stages 23 to 38 of the residential housing estate known as Woodlea as shown in the attached plan (**Development**).

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

Attention: Mr Nicholas Sparks
Maddocks Lawyers
Level 25, Tower 2
727 Collins Street
MELBOURNE VIC 3008

2. Notified arrangement

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

Lots of residential land at the Development.

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

- 1) In order to ensure that the Development is developed in an orderly and consistent manner, the Applicant proposes supplying, and offering to supply, some of the Lots at the Development on the condition that the purchaser also enters into a domestic building contract directly with a builder nominated by the Applicant from time to time including without limitation:

Trading name	Company name
Eight Homes	Maher Nelson Pty Ltd
Dennis Family Homes	Dennis Family Homes Pty Ltd
Boutique Homes	Dock Land Holdings Pty Ltd
Simonds Homes	Simonds Homes Victoria Pty Ltd
Burbank	Burbank Land Corporation Pty Ltd
Porter Davis	PDH Displays Pty Ltd
Mirvac	Mirvac Home Builders (VIC) Pty Ltd
Long Island Homes	Long Island Properties Pty Ltd
Henley Homes	Henley Arch Pty Limited
Mimosa Homes	Mimosa Australia Pty Ltd and Proedge Group Pty Ltd
Zuccala Homes	GSZ Properties Pty Ltd and JLO Investments Pty Ltd
Sherridon Homes	Sherridon Pty Ltd
JG King Homes	JG King Developments Pty Ltd
Carlisle Homes	Carlisle Homes Land Sales Pty Ltd
Metricon	Metricon Homes Pty Ltd

who are registered builders in accordance with the *Domestic Building Contracts Act 1995* (Vic.) and is a related party of the Applicant (**Nominated Builder**).

- 2) The Applicant proposes refusing to supply some of the Lots at the Development to any potential purchaser who has not already entered into a domestic building contract directly with the Nominated Builder or has not already paid a deposit with a Nominated Builder.

- 3) The proposed conduct will only occur once in respect of any sale (or subsequent sale) of a Lot. It will occur at the time of purchase, when the obligation for the purchaser to engage the Nominated Builder is imposed by either requiring the purchaser to present a copy of the domestic building contract with a Nominated Builder before the Applicant signs the contract of sale or requiring the purchaser to present a copy of the deposit they have made with a Nominated Builder before making a deposit for a Lot.

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 and actual purchasers of the Lots at the Development.

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

- (i) **At present time:**

Nil.

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

200 lots – comprising of 20% of the estimated amount of Lots to be sold within the Development over the next year

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

Not applicable, as any member of the general public are able to purchase a Lot(s).

4. Public benefit claims

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

The Development when completed will ultimately comprise approximately **1000** lots, with lots on the Development being made available for sale to purchasers in stages. The Applicant intends to designate the Nominated Builder for some of the Lots in the Development. Any dwelling constructed on a designated Lot must comply with the design and construction guidelines approved by the Applicant for the Site (**Design Guidelines**).

The Nominated Builder will not be permitted to construct a dwelling that does not comply with the Design Guidelines without the consent

of the Applicant. The Nominated Builder will be responsible for all construction obligations and liabilities under the building contract.

The Applicant has not yet appointed the Nominated Builder. The Applicant considers that the Nominated Builder satisfies the following criteria:

-) strong project management skills;
-) financial means to undertake a project of this size;
-) appropriate insurance policies;
-) registration under the *Building Act* 1993 (Vic);
-) high quality of tradesmen and sub-contractors;
-) price;
-) prior history of adherence to safety requirements;
-) evidence of completing homes on time;
-) strong professional integrity;
-) prior history of building quality homes; and
-) adherence to best practice residential design.

The notified conduct will provide benefits to the public of:

- 1) consistency, quality and integrity of design, appearance and streetscape, providing purchasers with confidence as to:
 - (A) the Development as a desirable neighbourhood environment; and
 - (B) their investment in purchasing a Lot;
- 2) the Applicant nominating the Nominated Builder, with a sound reputation and control of quality at the Lots, which in turn gives purchasers:
 - (A) confidence of compliance with the Design Guidelines;
 - (B) more affordable houses;
 - (C) the comfort of knowing that a reputable builder has been engaged through the Applicant's use of a strict selection criteria to ensure the Nominated Builder meets the standards for the Development; and

- (D) greater certainty in compliance with the various planning laws, precinct controls, any specific site constraints and environmental requirements.
- 3) cost benefits to purchasers, including:
- (A) reduced marketing costs passed on to purchasers through the integrated selling of house and land;
 - (B) construction by the Nominated Builder occurring on a volume basis producing economies of scale; and
 - (C) by selling a Lot to the ultimate purchaser rather than first to a builder and then to the ultimate purchaser, the ultimate purchaser not carrying the effective impact of paying duty on two transactions.

(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 proposed conduct is marketed at purchasers who are seeking real estate zoned residential, or capable of being zoned residential, in or around Rockbank, Melbourne. Rockbank is approximately 29km north west of Melbourne's central business district.

The Development is one of several existing or proposed residential developments in the area north west of Melbourne's central business district, which forms part of the broader metropolitan residential market of Melbourne. There are numerous choices available to potential purchasers of residential properties in the north west metropolitan area, with each development offering different prices, features and amenities.

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 Applicant submits that the notified arrangement involves no public detriments because:

- 1) the real estate market in north west metropolitan Melbourne is highly competitive and, in particular, there are various competing residential developments available throughout the north west of metropolitan Melbourne;
- 2) the Lots represent a small portion of the relevant market; and
- 3) the purchaser enjoys the cost benefits described at item 4(a).
- 4) the potential purchasers have the option of selecting another builder on another Lot within the Development

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

See above.

7. **Further information**

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

Mr Nicholas Sparks
Maddocks Lawyers
Level 25, Tower 2
727 Collins Street
MELBOURNE VIC 3008

T: 03 9258 3523

F: 03 9258 3666

E: nicholas.sparks@maddocks.com.au

Dated:

6 December 2016

Signed by/on behalf of the Applicant

.....
Maddocks Lawyers, for and on behalf of
Leakes Road Rockbank Pty Ltd ACN 122 773 924

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.