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30 June 2016

**BY HAND**

Melbourne office  
Australian Competition & Consumer Commission  
Level 35, The Tower  
360 Elizabeth Street  
Melbourne Central  
Melbourne Vic 3000

FILE No:
DOC:
MARS/PRISM:

Dear Sir/Madam

**Applicant: 335 Grices Road Pty Ltd**  
**Lots 401A, 408A, 419-423 on PS727701Q and Lots 501-510 on PS727710P, Stages 4 & 5,**  
**Kilora, 335 Grices Road, Clyde North, Victoria 3978**

We enclose the following for your attention:

- 1 Form G, Notification of Exclusive Dealing on behalf of the Applicant; and
- 2 A cheque in the amount of \$100 for the associated lodgement fee.

Please contact Natalie Wlasiuk or Mark McKinley if you have any queries.

Yours faithfully  
**RUSSELL KENNEDY**

Enclosure(s)

# 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)

N99177 335 Grices Road Pty Ltd ACN 154 057 128 ("**Applicant**").

- (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:

335 Grices Road Pty Ltd c/- Russell Kennedy Lawyers, Level 12, 469 La Trobe Street, Melbourne VIC 3000

## 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 the residential development site known as Kilora Park, at 335 Grices Road, Clyde North, Victoria ("**Kilora**"). When completed, Kilora will comprise approximately 350 dwellings, with public open space and retail shops. Kilora will be developed in stages over several years, and is likely to be completed within the next 36 months. This notification concerns the sale of lots 401A, 408A and 419-423 (inclusive) on PS727701Q and 501-510 (inclusive) on PS727710P ("**Allocated Residential Lots**").

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

1. This third line forcing notification is the same or substantially similar to the third line forcing notification made by the Applicant in registration number N98366, however this application:
  - a. is made pursuant to a development agreement dated 20 June 2016 (which is the same or substantially similar to, and with the same parties as, the development agreement referred to in the notification for third line forcing notification registration number N98366 made by the Applicant; and

- b. relates to different Allocated Residential Lots within the Kilora development.
2. Pursuant to a development agreement dated 20 June 2016 between the Applicant and Henley Properties (Qld) Pty Ltd ACN 068 886 000 ("**Henley**"), Henley was appointed to carry out the development and other works in relation to Kilora.
  3. Henley proposes to enter into an agreement with Henley Arch Pty Ltd ACN 007 319 930 ("**Builder**"), giving the Builder the exclusive right to construct residential homes on the Allocated Residential Lots. No other builder may build on the Allocated Residential Lots.
  4. The Builder is related to the Applicant.
  5. All homes will be constructed by the Builder – the Applicant will not carry out any residential building work.
  6. After a purchaser is found, if the construction of the residential home on an Allocated Residential Lot is not already complete, then the purchaser must enter into a:
    - (i) Land Sale Contract: between the Applicant as vendor, and the purchaser as purchaser. The Land Sale Contract between the Applicant and a purchaser of an Allocated Residential Lot will provide that the Vendor will cause the Builder to construct a residential home on the Allocated Residential Lot. In this regard, the Builder will be given the exclusive right to build residential homes on the Allocated Residential Lots; and
    - (ii) Building Contract: between the purchaser and the Builder only, for the construction of the residential home on the Allocated Residential Lot; or
    - (iii) Henley itself may enter into a Building Contract with the Builder and cause the Builder and the purchaser to enter into a novation deed.
  7. The proposed conduct by the Applicant might be third line forcing that contravenes sections 47 of the *Competition and Consumer Act 2010* (Cth).
  8. Section 47(6):
 

Without limitation, the Applicant may be a corporation that:

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

## 9. Section 47(7):

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

- (i) to supply rights in relation to, or interests in, real property goods or services to a person;
- (ii) to supply rights in relation to, or interests in, real property goods or services at a particular price to a person; or
- (iii) 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 goods or services of a particular kind or description directly or indirectly from a builder another person 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 (being the Allocated Residential Lots) at Kilora.

- (b) Number of those persons:

- (i) At present time:  
Nil.
- (ii) Estimated within the next year:  
(Refer to direction 6)  
Not exceeding 25

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

Identity unknown at this time.

### 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 a residential estate for a fixed price.
- (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 nature of the construction on the Allocated Residential Lots is such that Council may require the construction on each of the Allocated Residential

Lots to occur simultaneously. This may be due to party-party easements burdening each of the residential lots.

- (iv) The Builder will not be required to pay stamp duty on the purchase of the Allocated Residential Lots so that this cost will not be passed on to the purchaser by the Builder.
  - (v) Purchasers will have greater certainty of the quality of work as the Builder has a proven track record.
  - (vi) As the Builder does not need to buy the residential lots, it may devote its resources to building a superior quality product.
  - (vii) 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 the Applicant expects 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 Victorian 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 Victorian residential housing market.
  - (iii) A purchaser is under no obligation to purchase land from the Applicant or to use the Builder for the construction of a residential home outside the specified Allocated Residential Lots.

## 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 market is the Victorian market for the supply of:
  - (i) residential house and land packages, and
  - (ii) residential construction services.
- (b) The market referred to above is extremely competitive and are fragmented with many builders operating in this area of Melbourne. These markets compete frequently for purchasers in their respective markets, including by competitive offers, conditions and incentives from time to time. The development of Kilora is an example of such conduct.
- (c) There is a large number of residential estates in Melbourne which offer strong competition to Kilora 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) it offers home buyers the convenience of entering into one arrangement only (being one contract of sale and either a building contract or deed of novation as explained in 2(b), above);
- (iii) home buyers avoid any additional costs associated with building a house (eg design fees, architectural fees); and
- (iv) home buyers have the option to purchase other vacant land from the Applicant or others parties.

The Applicant 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 competitive Victorian market.

**7. FURTHER INFORMATION**

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

John Corcoran, Chairman or Mark McKinley, Senior Associate  
Russell Kennedy Lawyers  
Level 12, 469 La Trobe Street  
Melbourne 3000

Dated..... 30 JUNE ..... 2016

Signed by/on behalf of the Applicant

.....  
(Signature)

MARK MCKINLEY  
.....  
(Full Name)

Russell Kennedy 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.