

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)

N99779 Barwon Rise Pty Ltd ACN 142 004 653
Level 12, St Kilda Road
484 St Kilda Road
MELBOURNE VIC 3004 (**Barwon Rise**) AND

N99780 Armstrong Creek Land Pty Ltd ACN 145 624 540
Level 12, St Kilda Road
484 St Kilda Road
MELBOURNE VIC 3004 (**Armstrong Creek**)

(together, the **Applicants**)

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

- (i) Armstrong Creek is the registered proprietor of land contained in Certificate of Title volume 11633 folio 503, known as 542-586 Barwon Heads Road, Charlemont;
- (ii) Barwon Rise is the purchaser under a contract of sale dated 17 December 2014 to purchase the land contained in Certificates of Title volume 11626 folios 675, 676 and 677, known, respectively, as:
- a) 520-540 Barwon Heads Road, Charlemont;
 - b) 220-226 Reserve Road, Charlemont; and
 - c) 228-262 Reserve Road, Charlemont,

of which ownership of the land in Certificate of Title volume 11626 folio 676 transferred to Barwon Rise Pty Ltd on 22 April 2016,

(collectively known as the **Land**),

The Applicants will be subdividing the Land into numerous lots on several proposed plans of subdivision (**Lots**), which the Applicants are developing as part of the residential housing estate known as 'Watermark' (**Development**).

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

Attention: Catherine Marino
Maddocks Lawyers
727 Collins Street
Tower Two, Level 25
MELBOURNE VIC 30008

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 Applicants propose supplying, and offering to supply, some or all of the Lots at the Development on the condition that the purchaser enters into a domestic building contract directly with the appointed builder(s) who is a registered builder in accordance with the *Domestic Building Contracts Act 1995* (Vic) (**Nominated Builder(s)**).
- 2) The Applicants propose refusing to supply some or all of the Lots at the Development to any potential purchaser who does not agree to enter into a domestic building contract directly with the 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 under the terms of the contract of sale for the purchase of the Lot.

- 4) It is proposed that purchasers of a Lot will on the date of sale or prior to the date sale of the contract with the Applicants, simultaneously enter into a domestic building contract with the Nominated Builder.

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)

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- (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 550 lots, with lots on the Development being made available for sale to purchasers in stages. The Applicants intend to designate the Nominated Builder for some or all of the Lots in the Development. Any dwelling constructed on a designated Lot must comply with the design and construction guidelines approved by the Applicants for the Site (**Design Guidelines**).

The Nominated Builder will not be permitted to alter the Design Guidelines without the consent of the Applicants. The Nominated Builder will be responsible for all construction obligations and liabilities under the building contract.

The Applicants have not yet appointed the Nominated Builder. The Applicants consider 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 Applicants 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 Applicants' 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 is not carrying the effective impact of paying duty on two transactions.

As a consequence of the proposed conduct, the development at the Land to be undertaken by the Applicants, is likely to be able to proceed to finality more efficiently and at lower cost, thereby enabling the Applicants to offer lots to homes buyers at lower prices. This will result in an increase in the supply of housing at affordable prices.

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

In the areas surrounding the Land and in south west Geelong generally, there is a wide range of subdivisions similar to the proposed Development.

The proposed conduct will not decrease competition in the Victorian residential housing market.

Please also 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 Charlemont, Geelong. Charlemont is approximately 10km south west of Geelong's central business district.

The Development is one of several existing or proposed residential developments in the area south west of Geelong's central business district, which forms part of the broader metropolitan residential market of Geelong. There are numerous choices available to potential purchasers of residential properties in the south 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 Applicants do not consider that there to be any detriment to the public at large because:

- 1) the real estate market in south west metropolitan Geelong is highly competitive and, in particular, there are various competing residential developments available throughout the south west of metropolitan Geelong;
- 2) the Lots represent a small portion of the relevant market; and
- 3) the purchaser enjoys the cost benefits described at item 4(a).

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

The Applicants make the above submission on the following basis:

- 1) consumers can purchase vacant land from a number of different property developers in the area either with or without a choice of builder;
- 2) consumers can purchase established second-hand houses in the area;
- 3) the area is growing rapidly; and
- 4) the government is supporting the offering of affordable housing options in Victoria.

7. Further information

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

Catherine Marino
Maddocks Lawyers
727 Collins Street
Tower Two, Level 25
MELBOURNE VIC 3008

T: 03 9258 3013
F: 03 9258 3666
E: catherine.marino@maddocks.com.au

Dated: 28 July 2017

Signed by/on behalf of the Applicants

Maddocks

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Maddocks Lawyers, for and on behalf of
Barwon Rise Pty Ltd ACN 142 004 653 and
Armstrong Creek Land Pty Ltd 145 624 540



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.