

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)

N100027 Frasers Property Bahrs Scrub Pty Ltd (ACN 121 453 585) (**Frasers**)

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

Frasers is or is entitled to be the registered proprietor of approximately 156 hectares of land at Bahrs Scrub, QLD (**Land**).

Frasers is subdividing the Land and selling the lots on the Land in stages for the provision of a residential housing estate (**Brookhaven**).

Frasers markets and sells land and engages in the marketing and selling of residential housing products.

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

Level 3/154 Melbourne Street
South Brisbane QLD 4101

- (d) Electronic address for service of documents on the applicant (this is optional and does not replace the need to provide an address in Australia at paragraph (c)):

N/A

2. Notified arrangement

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

The sale of lots on the Land in association with home building packages.

The subdivision will be completed in stages and, once completed, there will be at least 1,633 new lots in Brookhaven. This notification concerns offering residential lots for sale that will be allocated to Partner Builders (as described in paragraph 2(b)) within Brookhaven over the life of the development.

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

Frasers will offer to purchasers (being members of the public) land for sale in Brookhaven as part of a 'house and land package' (including townhouses). Frasers proposes supplying and offering to supply lots on the basis that the purchaser intends to enter into a domestic building contract directly with a specified partnered builder (**Partner Builder**).

Frasers intends to allocate only some of the available lots on the Land to the Partner Builders (**Allocated Lots**). The Allocated Lots will be promoted and offered for sale by Frasers on the basis that the builder allocated to the subject lot will construct the purchaser's dwelling.

If purchasers do not intend to engage the specific Partner Builder allocated to a lot, they will have the option of purchasing:

- a standard lot where a purchaser can engage a builder of their choice; or
- a packaged lot that is offered with the option of either engaging the nominated Partner Builder (as for an Allocated Lot) or engaging any other builder of the purchaser's choice,

(**Unallocated Lots**).

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 Allocated Lots in Brookhaven.

- (b) Number of those persons:

- (i) At present time:

Nil.

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

Up to 92

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

Not applicable.

4. Public benefit claims

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

Frasers submits that:

- (1) Frasers estimates that less than half of the lots which will be made available for purchase in the next year will be Allocated Lots.
- (2) There are currently up to 15 Partner Builders. Partner Builders are registered builders and:
 - a. are selected on the basis that they:
 - i. are reputable and well established;
 - ii. are active with sufficient volume in South East Queensland;
 - iii. provide value for money;
 - iv. provide variety of choice in housing product offerings; and
 - b. have undertaken a 'preliminary covenant/design process' for packages on Allocated Lots meaning that they are familiar with and understand the Brookhaven Design Guidelines that residences in Brookhaven must conform to and must also include in their building costs certain minimum standard inclusions.

The applicant submits that that the notified conduct will result in a number of public benefits:

- (3) The Allocated Lots will be available to the purchasers, as a house and land package, at competitive prices for the following reasons:
 - a. the Partner Builders do not need to purchase lots prior to building and therefore do not need to pass on the associated holding costs to the purchaser; and
 - b. there is a single transfer of the lot from the developer to purchasers and therefore a builder does not need to pass on stamp duty costs if it initially purchased the lot from the developer.
- (4) Offering lower pricing should encourage greater price competition as other house and land vendors should be encouraged to lower prices to compete.
- (5) The building packages offered are assessed to be in accordance with the Brookhaven Design Guidelines. These guidelines provide greater quality control and ensure design coordination of individual houses throughout providing a superior visual appearance and preserving the resale value of each house in Brookhaven. This also minimises the risk of potentially significant and costly design amendments to meet the Brookhaven Design Guidelines.
- (6) Purchasers will be provided with greater certainty of overall costs for the construction of a home on their lot by purchasing under a house and land package where the total 'turnkey' cost can be better understood when they sign the

contract (this includes costings or cost assumptions for minimum standard inclusions in accordance with the Brookhaven Design Guidelines such as soil classification, fencing and landscaping).

- (7) Purchasers will save time and money in identifying an appropriate builder for their lot and/or architect to design the dwelling. Partner Builders for the Allocated Lots will be familiar with the Brookhaven development and requisite Brookhaven Design Guidelines.
 - (8) Purchasers can have greater confidence about the quality and value of their home as the Allocated Lots are pre-assessed against the Brookhaven Design Guidelines and the Partner Builders have been pre-selected on the basis of experience and providing value for money (see further paragraph 4(a)(2) above).
- (b) Facts and evidence relied upon in support of these claims:
- (1) The relevant markets (identified below) are very competitive:
 - a. There are a number of other developers in South East Queensland which offer or have offered house and land packages, including Metricon, Springfield Land Corporation, Mirvac, Lendlease, and Devine.
 - b. Developers/ land owners in South East Queensland also offer land for sale alone without the requirement to enter into a building contract with a specified builder.
 - c. There are residential developments offering ready-built houses and purchasers can still buy established second-hand homes from other vendors.
 - d. There are many competing small, medium and large firms supplying residential construction services in South East Queensland.
 - (2) A purchaser is under no obligation to purchase land from Frasers or to use the Partner Builders for the construction of a residential home outside Brookhaven. Further, purchasers who purchase Unallocated Lots within Brookhaven are able to use a builder of their own choice to construct a dwelling on their lot.

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 markets relating to the proposed conduct are the South East Queensland markets for the supply of:

- (1) residential land;
- (2) residential house and land packages; and
- (3) residential construction services.

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 the notified conduct will result in little, if any, public detriment.

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

The applicant makes the above submission on the following basis:

- (1) As noted above at 4(b)(1), the identified markets are very competitive. A purchaser has many options. Purchasers can purchase house and land packages from Frasers or a number of other developers with or without choice of builder. Purchasers can purchase land from Frasers, other developers or land owners and engage a builder of their choice. Purchasers can also purchase existing new and second-hand homes.
- (2) Prior to entering into the contract for the sale of land with Frasers, purchasers of Allocated Lots will be made aware that the lot has been allocated to a Partner Builder for the construction of the home and of the condition that the purchaser will enter into a contract with a Partner Builder.
- (3) Potential purchasers of Allocated Lots can choose to purchase an Unallocated Lot in the event that they do not wish to engage the Partner Builder associated with the Allocated Lot.
- (4) Frasers believes the notified conduct would not adversely impact prices in the relevant South East Queensland markets.
- (5) Overall, the public benefits described at paragraph 4 above would outweigh any potential public detriment.

7. Further information

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

Scott Ullman

Frasers Property Australia

Level 3/154 Melbourne Street

South Brisbane QLD 4101

Dated 27/10/2017.....

Signed by/on behalf of the applicant



(Signature)

Scott Ullman.....

(Full Name)

Frasers Property Bahrs Scrub Pty Limited.....

(Organisation)

Development 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.
10. If an address is to be provided in this form, an electronic address may be provided in addition to the address required.