

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)

N100047 The Ivanhoe Grammar School.

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

The Applicant is the owner of the land in respect of which this notification relates.

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

The Ivanhoe Grammar School c/- Russell Kennedy Lawyers, Level 12, 469 La Trobe Street, Melbourne, Victoria 3000 (attention Mark McKinley).

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 "The Ivy", located at the rear of 730 Bridge Inn Road, Doreen ("The Ivy"). When completed, The Ivy will comprise approximately 350 residential lots (some of which have already sold and settled as vacant land, on which purchasers are to have dwellings constructed) with public open space. The Ivy has been and will be developed in stages, which will have spanned several years, and is likely to take up to another 12-18 months to be completed. This notification concerns the sale of lots 801-806 on PS803942T ("**Allocated Lots**"). No other lots in The Ivy have been subject to the conduct referred to in this notice, other than in relation to lots 631-636 on PS801249U (pursuant to third line forcing notification N99720 with a

different preferred builder for those lots). Any future conduct of this nature in relation to other parts of The Ivy would need to be the subject of a separate notification.

(b) Description of the conduct or proposed conduct:

1. The Applicant proposes to set aside the specified Allocated Lots within The Ivy which are to be sold to purchasers on the following basis:
 - a. the purchaser buys an Allocated Lot from the Applicant; and
 - b. the purchaser will be required to enter into a building contract with a specified builder ("**Preferred Builder**") to construct a dwelling on an Allocated Lot ("**Dwelling**"). This is likely to be for a fixed price.
2. The Preferred Builder in relation to the Allocated Lots is SOHO Living Australia Pty Ltd ACN 147 394 367 / ABN 14 147 394 367. This builder has been selected by the Applicant on the basis of experience and standard of workmanship in other dwellings. The Preferred Builder is not and will not be related to the Applicant.
3. All Dwellings:
 - a. will be the subject of a building contract between the relevant purchaser and the Preferred Builder under which the Preferred Builder will be required to construct a Dwelling – the Applicant will not carry out any residential building work; and
 - b. may be marketed for sale by a selling agent.
4. After a purchaser is found, the purchaser must enter into two separate contracts, namely:
 - a. a land sale contract between the Applicant as vendor, and the purchaser as purchaser of the land; and
 - b. a building contract between the purchaser and the Preferred Builder only (ie not the Applicant), for the construction of the Dwelling on the Allocated Lot.
5. The proposed conduct by the Applicant may be third line forcing that contravenes section 47 of the *Competition and Consumer Act 2010* (Cth). The Applicant does not concede

that the proposed conduct is third line forcing, but wishes to obtain certainty and obtain confirmation pursuant to the approval sought by this application.

6. Section 47(6):

Without limitation, the Applicant may be a corporation that:

- A. supplies, or offers to supply, rights in relation to, or interests in, real property goods or services;
- B. supplies, or offers to supply, rights in relation to, or interests in, real property goods or services at a particular price; or
- C. 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.

7. Section 47(7):

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

- A. to supply rights in relation to, or interests in, real property goods or services to a person;
- B. to supply rights in relation to, or interests in, real property goods or services at a particular price to a person; or
- C. 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.

(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 the Allocated Lots at The Ivy.

- (b) Number of those persons:

- (i) At present time:

Nil.

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

6.

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

The identity of the potential or actual purchasers of the Allocated Lots is not known at this time, given that none of those Allocated Lots have yet been marketed or sold.

4. Public benefit claims

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

The proposed conduct will benefit the public because:

1. a purchaser will have the benefit of a new home in a residential estate;
2. 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 dwelling;
3. purchasers will have greater certainty of the quality of work as the Preferred Builder has a proven track record and will be the specified builder in each of the land sale contracts for the Allocated Lots, given that the proposed form of dwellings on

some of those lots include party walls or built-form along boundaries;

4. as the Preferred Builder does not need to buy the Allocated Lots, they may devote their resources to building a superior quality product; and
5. it will give the Preferred Builder a reasonable volume of work. This will enable the Preferred Builder to generate an increase in supplies and give the Preferred Builder an opportunity to reduce costs. The purchasers will benefit from this as the Applicant expects associated cost savings by the Preferred Builder will be passed on to purchasers.

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

1. 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. The proposed conduct will therefore not decrease competition in the Victorian residential housing market.
2. A purchaser is under no obligation to purchase land from the Applicant or to use the Preferred Builder for the construction of a dwelling outside the Allocated Lots.
3. A purchaser has the option to purchase:
 - a. a residential lot within The Ivy, other than an Allocated Lot, and to choose the purchaser's own preferred builder; or
 - b. a dwelling from any builder to be built on a lot outside The Ivy.

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)

1. The relevant market is the Victorian market, north-east of Melbourne, for the supply of:
 - a. residential house and land packages, and

b. residential construction services.

2. The market referred to above is extremely competitive and is fragmented with many builders operating in the area north-east 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 The Ivy is an example of such conduct.
3. There are a large number of residential estates north-east of Melbourne which offer strong competition to The Ivy in relation to the supply of residential house and land 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:

1. purchasers avoid the uncertainty of overall costs on construction of a house;
2. it offers purchasers the convenience of entering into one arrangement only in terms of buying land and building a dwelling;
3. purchasers avoid any additional costs associated with building a house (eg design fees, architectural fees); and
4. purchasers have the option to purchase other vacant land from the Applicant (in other parts of The Ivy, subject to vacant land stock still being available) 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:

1. A purchaser will have an opportunity to consider and review all of the factors before they determine what product is suitable for them.
2. 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 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:

Mark McKinley
Russell Kennedy Lawyers
Level 12, 469 La Trobe Street
Melbourne, Victoria 3000

Dated..... 2 NOVEMBER 2017

Signed ~~by~~ on behalf of the applicant

.....
(Signature)

Mark McKinley
(Full Name)

Russell Kennedy Lawyers
(Organisation)

Principal
(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.