

**Form G**

Commonwealth of Australia

*Competition and Consumer Act 2010 - sub-section 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.

**1. Applicant**

(a) Name of person giving notice:

N99579 Springfield Land Corporation (No.2) Pty Ltd (ACN 056 462 205) ("**SLC2**") and  
N99580 Mirvac Queensland Pty Ltd (ACN 060 411 207) ("**Mirvac**").

(b) Short description of business carried on by that person:

SLC2 and Mirvac are the registered owner of properties at Brookwater, and carry on the business of selling properties for residential use. Brookwater is a premium residential golf community which surrounds a Greg Norman designed championship golf course. It is part of the Greater Springfield precinct, located approximately 25 km from the Brisbane CBD. SLC2 is a subsidiary of Springfield Land Corporation, which is the master developer of Greater Springfield.

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

C/o Kathryn Finlayson  
Special Counsel  
Minter Ellison  
1 Eagle Street  
BRISBANE QLD 4000

**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 land at Brookwater.

The supply of residential construction services at Brookwater.

(b) Description of the conduct or proposed conduct:

SLC2 and Mirvac will offer to sell properties at Brookwater on the condition that the purchaser enter into a contract for residential construction services on the relevant property with a specified 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:  
Purchasers and potential purchasers of land at Brookwater.
- (b) Number of those persons:
- (i) At present time:  
N/A
- (ii) Estimated within the next year:  
More than 50
- (c) Where number of persons stated in item 3(b)(i) is less than 50, their names and addresses:  
N/A

**4. Public benefit claims**

- (a) Arguments in support of notification:  
SLC2 and Mirvac submit that the notified conduct gives rise to the public benefits described in the **attached** submission.
- (b) Facts and evidence relied upon in support of these claims:  
Please refer to **attached** submission.

**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):

There are three relevant markets:

- (a) the market for the supply of residential land in South East Queensland;
- (b) the market for the supply of residential house and land packages in South East Queensland; and
- (c) the market for the supply of residential construction services in South East Queensland.

**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:

SLC2 and Mirvac submit that the notified conduct will result in little, if any, public detriment.

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

Please refer to **attached** submission.

**7. Further information**

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

C/o Kathryn Finlayson  
Special Counsel  
Minter Ellison  
1 Eagle Street  
BRISBANE QLD 4000

Dated 17 February 2017

Signed by/on behalf of the applicant

  
.....  
(Signature)

Kathryn Finlayson  
.....  
(Full Name)

Minter Ellison Lawyers  
.....  
(Organisation)

Special Counsel  
.....  
(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

**NOTIFICATION UNDER SECTION 93(1) OF THE *COMPETITION AND CONSUMER ACT 2010***

**SUPPORTING SUBMISSION**

**1. Background**

- 1.1 Springfield Land Corporation (No 2) Pty Ltd and Mirvac Queensland Pty Ltd (the '**Developers**') are the registered owner of properties at Brookwater and carry on the business of selling properties for residential use.
- 1.2 Brookwater is part of the Greater Springfield precinct, located approximately 25 km from the Brisbane CBD. One of the Developers, Springfield Land Corporation (No.2) Pty Ltd is a related entity of Springfield Land Corporation Pty Ltd ('**SLC**'), which is the master developer of Greater Springfield.
- 1.3 Greater Springfield covers an area of 2,860 hectares (7,067 acres).<sup>1</sup> It comprises six suburbs (Springfield, Springfield Central, Springfield Lakes, Brookwater, Augustine Heights and Spring Mountain), a purpose-built, 390 hectare Central Business District with a 24 hectare park, a university campus, a health and wellness precinct and a large-scale shopping centre. Currently, Greater Springfield is home to more than 32,000 residents. In 2030, the applicant expects that Greater Springfield will have an equivalent population of approximately 138,000.
- 1.4 The Brookwater precinct consists of approximately 2,000 properties, of which approximately 953 have been sold. SLC is the master developer and Brookwater Realty Pty Ltd ('**BRPL**') is the selling agent for the majority of Brookwater. BRPL's responsibilities include advertising and managing the sale of residential land and house and land packages on behalf of the Developers.

**2. Notified Conduct**

- 2.1 The Developers wish to enter into contracts to sell properties at Brookwater on the condition that the purchaser enter into:
- (a) a contract for residential construction services on the relevant property with a specified builder; and
  - (b) a tripartite deed with the builder and SLC.
- BRPL, on behalf of the Developers, will market properties at Brookwater to potential purchasers on these terms.
- 2.2 Generally, a purchaser of a property at Brookwater will be required to enter into three contracts:
- (a) a contract for the sale of the land, between the Developers as seller and the purchaser as buyer;
  - (b) a contract for residential construction services to construct the house on that land, between the specified builder and the purchaser; and

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<sup>1</sup> <http://www.greaterspringfield.com.au/us/key-facts-about-springfield/>

- (c) a tripartite deed with the specified builder and SLC.
- 2.3 It will be a condition of the contract for the sale of the land that the purchaser enter into the contract for residential construction services with the builder who has been allocated the particular lot the purchaser is interested in purchasing.
  - 2.4 It will also be a condition of the contract for the sale of the land that the purchaser enters into a tripartite deed with the builder and SLC. The purpose of the deed is to provide SLC a right to "step in" in the event of default by the purchaser or the builder and require the builder to construct the dwelling or permit SLC to take over construction.
  - 2.5 The purpose of this notification is not to benefit any specific builder, but to facilitate the sale of combined house and land packages at Brookwater. At the time of notification, there are several building firms from whom the Developers may require purchasers to acquire construction services. These firms are listed in **Annexure A** to this submission.
  - 2.6 It is not intended that any one builder will be nominated to construct homes at every site in Brookwater owned by the Developers. It is also likely that other builders will be specified by the Developers as nominated builders from whom purchasers will be required to acquire construction services from time to time.

### 3. Affected Markets

- 3.1 The Developers submit that the proposed conduct is potentially relevant to three markets:
  - (a) the market for the supply of residential land in South East Queensland;
  - (b) the market for the supply of residential house and land packages in South East Queensland; and
  - (c) the market for the supply of residential construction services in South East Queensland.
- 3.2 Each of these markets is very competitive:
  - (a) in the market for the supply of residential land, Greater Springfield competes against all other property developers offering land for sale for the construction of residential homes. In particular, there are numerous master planned communities in South East Queensland which actively compete with Greater Springfield, including Stockland's 'Augustine Heights' development, Australand's 'The Springs' development, Investa's 'Brentwood Forest' development, Devine's 'Mountview' development and Lend Lease's 'Fernbrooke Ridge' development;
  - (b) in the market for the supply of residential house and land packages in South East Queensland, there are numerous other developers and builders who actively compete, including Devine, Metricon and Ausbuild. These developers and builders provide competitive house and land packages, inclusions and incentives from time to time in order to attract purchasers;
  - (c) in the market for the supply of residential construction services in South East Queensland, there are numerous large and small construction firms who compete to provide residential construction services.

#### **4. Public Benefits**

- 4.1 The applicant submits that the proposed conduct will result in a number of public benefits:
- (a) it enhances competition in the markets for the sale of residential land and house and land packages by enabling the Developers (through BRPL marketing on its behalf) to offer house and land packages in the Brookwater precinct that will conform to similar standards of workmanship and consistency in design. It will also enable a nominated builder to market combined house and land packages at Brookwater to potential purchasers;
  - (b) it provides certainty for purchasers as to the price for the specified house and land package;
  - (c) it will save purchasers' time and money, which would otherwise be spent in identifying and engaging a suitable builder and identifying and engaging an architect/designer to design the house;
  - (d) while purchasers will be able to negotiate with the builder for variations to the design or fit-out of the house, they will be assured that the design is suitable for the block they are purchasing and will not require significant (and costly) design amendments;
  - (e) it will provide purchasers greater certainty around the quality of work as the nominated builders are builders with whom BRPL, SLC and/or the Developers have a relationship, have a proven track record in delivering successful projects and will be required to meet certain construction covenants;
  - (f) it will enhance SLC's and the Developers' ability to control the continuity of design and construction of Greater Springfield and ensure maintenance of a quality product that enhances both SLC's and the Developers' reputation as providers of high quality housing at Greater Springfield; and
  - (g) it will add to the amenity of the Brookwater area by ensuring that houses are developed to the standards identified above and preventing purchasers from acquiring and holding vacant land in the Brookwater precinct for speculative purposes.

#### **5. Public Detriments**

- 5.1 The applicant submits that the proposed conduct will have little, if any, public detriment.
- 5.2 Purchasers will be made aware of the requirement to purchase residential construction services from a particular builder and, if necessary, of the requirement to enter into the tripartite deed, before signing a contract to acquire the land which has been allocated to that builder.
- 5.3 The proposed conduct does not restrict the terms and conditions upon which the builder may supply residential construction services. Purchasers are free to negotiate with the builder for variations to the design or fit-out of the house. The only restriction is that the purchaser must contract with the nominated builder to build the house.

5.4 The markets identified above are very competitive. A purchaser who does not wish to acquire a property at Brookwater on the terms described in this notification can choose to acquire property and construction services (either separately or as a bundle) from a wide variety of developers and other suppliers throughout South East Queensland.

**6. Conclusion**

6.1 For the reasons outlined above, the Developers submit that there are public benefits arising from the proposed conduct which will outweigh any detriment to the public.

**Annexure A: Building firms from whom the Developers may require purchasers to acquire construction services**

| <b>Builder</b>                               | <b>Parent/related company (if relevant)</b> |
|--|---|
| Civil Steel Homes Pty Ltd                    |   |
| Indigo Homes Pty Ltd                         |   |
| IVM Constructions Pty Ltd                    |   |
| Diverse Constructions Pty Ltd                |   |
| Innova Projects Pty Ltd                      |   |
| Evermore Properties Pty Ltd                  |   |
| Stronach Building Group Pty Ltd              |   |
| Davbuilt Constructions Pty Ltd               |   |
| HK Developments Pty Ltd                      |   |
| Bella Qld Properties Pty Ltd                 |   |
| Metricon                                     | Metricon Homes Qld Pty Ltd                  |
| Gallery Building Group Pty Ltd               |   |
| Willex Projects Pty Ltd                      |   |
| McCarthy Homes Pty Ltd                       |   |
| Heisig Constructions (Qld) Pty Ltd           |   |
| BMW Homes Pty Ltd                            |   |
| Gavmic Homes Pty Ltd                         |   |
| Ausbuid Pty Ltd                              |   |
| Davenport Constructions Pty Ltd              |   |
| Sekisui House Australia Holdings Pty Limited |   |
| Scott Russell Constructions Pty Ltd          |   |
| Rycon Constructions Pty Ltd                  |   |
| DTL Constructions Pty Ltd                    |   |
| Maddison Constructions Pty Ltd               |   |
| Contrast Constructions Pty Ltd               |   |
| Adenbrook Homes Pty Ltd                      |   |
| Henley Properties / Plantation Homes         | Henley Properties (Qld) Pty Ltd             |
| Paramount Constructions (QLD) Pty Ltd        |   |
| Spartan Hall Construction Services Pty Ltd   |   |
| DJ Builders and Son Pty Ltd                  |   |
| Steve Parcell Building Services Pty Ltd      |   |
| Bush & Beach Homes Pty Ltd                   |   |
| Costa Constructions (Qld) Pty Ltd            |   |