

18 November 2004

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The Australian Competition
and Consumer Commission (ACCC)
PO Box 6381
EAST PERTH WA 6892

Dear Sirs

**FORM G – EXCLUSIVE DEALING NOTIFICATION RELATING TO CONDUCT
UNDER SUBSECTION 47(6) AND/OR 47(7) OF THE TRADE PRACTICES ACT -
HOUSE AND LAND PACKAGES AT MARINERS COVE, CITY OF MANDURAH,
WESTERN AUSTRALIA**

We act for Esplanade (Mandurah) Pty Ltd ACN 008 851 616 (“EMP”).

Our client proposes to offer 26 residential lots for sale to buyers on the condition that each buyer enters into a building contract with Dale Alcock Homes Pty Ltd ACN 009 217 887 (“DAH”) to construct a dwelling on the lot purchased.

We believe that this may constitute exclusive dealing under section 47(6) of the Trade Practices Act 1974. Accordingly, our client wishes to lodge a notification in respect of this proposed conduct.

Notification

We **enclose** the following materials for your attention:

1. Form G – Exclusive Dealing Notification (“**Notification**”).
2. Our client’s submission identifying the public benefits and limited potential negative impact of the proposed arrangement (and including a copy of the draft special condition which will be inserted in each contract for the sale and purchase of a lot).
3. A cheque for \$100.00 payable to the Australian Competition and Consumer Commission, being the Notification fee in relation to a notice under subsection 93(1) of the Trade Practices Act relating to conduct described in subsections 47(6) and/or 47(7) of that Act (“Third Line Forcing”) by proprietary companies.

If you have any further queries in relation to the Notification, please contact Peter Young at your earliest convenience.

Yours faithfully
PETER YOUNG & ASSOCIATES


Peter Young

Encl.

Form G

Commonwealth of Australia
Trade Practices Act 1974 — Sub-section 93(1)
**EXCLUSIVE DEALING
NOTIFICATION**

To the Australian Competition and Consumer Commission:

Notice is hereby given, in accordance with sub-section 93(1) of the *Trade Practices Act 1974*, of particulars of conduct or of proposed conduct of a kind referred to in sub-section 47(2), (3), (4), (5), (6) or (7), or paragraph 47 (8) (a), (b) or (c) or (9) (a), (b), (c) or (d) of that Act in which the person giving notice engages or proposes to engage.

(PLEASE READ DIRECTIONS AND NOTICES ON BACK OF FORM)

1. (a) Name of person giving notice Esplanade (Mandurah) Pty Ltd ACN 008 851 616

(See Direction 2 on the back of this form)

(b) Short description of business carried on by that person
Residential Land Development

(c) Address in Australia for service of documents on that person
C/- Peter Young & Associates, Lawyers of Level 10,
111 St George's Terrace, Perth WA 6000

2. (a) Description of the goods or services in relation to the supply or acquisition of which this notice relates
Sale of Land

(b) Description of the conduct or proposed conduct
Condition of purchase of land that buyer engages nominated
builder to construct a dwelling on the land (see Annexure "A")
(See Direction 4 on the back of this Form)

3. (a) Class or classes of persons to which the conduct relates
Buyers of residential properties in the Peel Region of
Western Australia

(b) Number of those persons--

(i) At present time Nil

(ii) Estimated within the next year Approximately 26

(c) Where number of persons stated in item 3 (b) (i) is less than 50, their names and addresses
Not known

4. Names and address of person authorised by the person giving this notice to provide additional information in relation to this notice. Peter Young of Peter Young & Associates, Lawyers of Level 10, 111 St Georges Terrace, Perth WA 6000. Ph: 9422-8999, Fx: 9422-8900. Ref: 04080

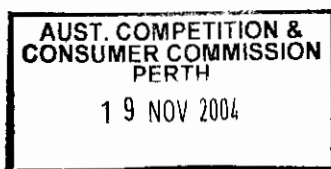
Dated 17 November 2004

Signed by/on behalf of the applicant giving notice

Kent Haustead
(Signature)

Kent Haustead
(Full Name)

Development Manager
(Description)



DIRECTIONS

1. If there is insufficient space on this form for the required information, the information is to be shown on separate sheets, numbered consecutively and signed by or on behalf of the person giving the notice
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. In item 1(b), describe that part of the business of the person giving the notice in the course of which the conduct is engaged in.
4. If particulars of a condition or of a reason of the type referred to in sub-section 47(2), (3), (4), (5), (6), (7), (8) or (9) of the *Trade Practices Act 1974* have been reduced in whole or in part to writing, a copy of the writing is to be provided with the notice.
5. In item 3 (a), describe the nature of the business carried on by the persons referred to in that item.
6. In item 3(b) (ii), state an estimate of the highest number of persons with whom the person giving the notice is likely to deal in the course of engaging in the conduct at any time during the next year.

NOTICE

If this notification is in respect of conduct of a kind referred to in sub-section 47(6) or (7) or paragraph 47(8)(c) or (9) (d) of the *Trade Practices Act 1974* ("the Act"), it comes into force at the end of the period prescribed for the purposes of subsection 93(7a) of the Act ("the prescribed period") unless the Commission gives a notice under sub-section 93A(2) of the Act within the prescribed period, or this notification is withdrawn.

The prescribed period is 21 days (if this notification is given on or before 30 June 1996) or 14 days (if this notification is given after 30 June 1996), starting on the day when this notification is given.

If the Commission gives a notice under sub-section 93A(2) of the Act within the prescribed period, this notification will not come into force unless the Commission, after completing the procedures in section 93A of the Act, decides not to give a notice under subsection 93(3A) of the Act. The notification comes into force when that decision is made.

If this notification is in respect of conduct of a kind referred to in subsection 47(2), (3), (4) or (5), or paragraph 47(8)(a) or (b) or (9)(a), (b) or (c), of the Act, it comes into force when it is given.

ANNEXURE "A"
Description of the Conduct or Proposed Conduct – Item 2(b) of Form G

Under the terms of the proposed Special Conditions of Sale ("Sale Contract") each buyer of one of the 26 lots which form part of Stage 9 of the Mariners Cove development ("Mariners Cove") will be required to enter into a separate building contract with Dale Alcock Homes Pty Ltd ("the Builder") pursuant to which the Builder shall construct a dwelling on the lot purchased. The other 29 lots in Stage 8 are not the subject of this Notification.

The requirement that the buyers enter into the building contract may constitute exclusive dealing under subsections 47(6) and/or 47(7) of the Trade Practices Act 1974. Esplanade (Mandurah) Pty Ltd wishes to notify in respect of this proposed conduct.

The building contract between each of the buyers and the Builder will be in the form of the standard lump sum Housing Industry Association contract.

The proposed conduct will only occur once in respect of each lot, at the time of purchase of the lot, when the obligation for the buyer to engage the Builder is imposed under the terms of the contract for the sale and purchase of the lot.

SUBMISSIONS

BACKGROUND

Esplanade (Mandurah) Pty Ltd ACN 008 851 616 (“EMP”) is the owner of land in the City of Mandurah in Western Australia. EMP plans to create a residential development on the land to be known as Stage 9 of the estate commonly known as Mariners Cove.

Stage 9 of Mariners Cove will comprise 55 lots of which 26 vacant freehold lots which will be allocated either a “cottage” dwelling or a more “traditional” residential dwelling appropriate to that particular lot. This design is intended to ensure, amongst other things, an attractive streetscape and a range of homes for buyers within the development.

The other 29 vacant freehold lots in Stage 9 are not subject to the same development proposal.

The development concept has been driven by a desire to create an integrated and high quality community where buyers will have the comfort of knowing what the surrounding area will look like when completed. This vision is to be enhanced by using selected designs, finishes and colour schemes for all of the buildings in the development. The designs have addressed specific site constraints (eg. passive solar, energy and water efficiency and views) and the homes will be located around a central park in order to create, for the benefit of buyers of the lots, an attractive integrated community environment.

The individual house designs will be agreed between EMP and the proposed builder, Dale Alcock Homes Pty Ltd ACN 009 217 887 (“DAH”). DAH will construct all 26 of the dwellings in this part of the 9th stage of the Mariners Cove development.

DAH has no interest in the land owned by EMP and is not a related party to EMP. EMP and DAH will promote the marketing and sale of the house and land packages in consultation and conjunction with each other. However, each will act in its own interests in maximising the quality, value and overall “saleability” of (in EMP’s case) the lots and (in DAH’s case) the dwellings to be constructed on the lots.

Potential Third Line Forcing

In order to ensure that this part of Mariners Cove is developed as an attractive, integrated community environment featuring high quality homes around the central park, it is intended that a single builder will be engaged to construct each residential dwelling. These submissions are provided in support of EMP’s notification in respect of any potential third line forcing involved in this arrangement.

The requirement that individual buyers enter into a building contract with the builder will be included in each buyer’s sale contract to buy the lot. The proposed condition is as follows:

“The Buyer must, prior to settlement of the sale and purchase of the Property, enter into a building contract which appoints the Builder to construct the residential dwelling on the Property in accordance with the approved Design and quality standards of the Estate.”

For the purposes of this clause, “Buyer” means the buyer named in the contract, “Builder” means DAH, “Property” means the individual freehold lot to be purchased by the Buyer, “Estate” means Stage 9 of Mariners Cove and “Design” means an approved design for the particular lot.

The agreement between each buyer and the builder will specify the dwelling to be constructed by the builder and the specifications, standards and deadlines for the construction of the dwelling. It will also specify the price payable to the builder and the method of review of the price (if required).

BRIEF SUMMARY OF THE MARKET

The geographic market relevant to EMP's application covers the Peel Region of Western Australia which comprises the districts of the City of Mandurah, the Shire of Murray and the Shire of Waroona. Stage 9 of Mariners Cove is located on Hudson Drive, Dudley Park in the City of Mandurah.

Given the geographic range of the Peel Region and the amount and variety of residential lots, homes and house and land packages, there is no dominant provider of residential properties in the region. According to the Metropolitan Development Program published by the Department for Planning and Infrastructure in 2004, it is estimated that 1200 lots will be developed in 2004/2005 within the Peel Region. If a potential buyer wishes to purchase a freehold lot within an estate development in the Peel Region, there are numerous choices available. Apart from the numerous new developments, there are also established homes and redevelopment opportunities on offer in the area.

For your reference, we **enclose** a copy of an extract from the Metropolitan Development Program 2004/2005 to 2008/2009 showing the results of the developers' land and dwelling intentions survey 2004 in respect of the Peel sector.

BENEFITS FROM CONDUCT

We set out below some of the public benefits arising from the proposed conduct. We believe that the following benefits are of value to the community generally and achieve efficiency and progress in the residential development industry.

Efficiency and Competitiveness

By using a single builder to construct all of the houses there is a more efficient allocation of resources. This results in lower unit product costs and improves the ability of the development to compete successfully in Western Australian market. There is extensive use of single builders on a site in this type of development because of the cost savings and resulting lower prices.

Consumer Protection

The proposed conduct promotes equitable dealings in the industry because all of the costs are disclosed up front. The land and building component of each house and land package is clearly disclosed in the sales contract.

As each building contract will be set at a fixed price, the builder will not be entitled to increase the price to the buyer unless the buyer requests a variation to the design. Should the buyer seek a variation, the builder will quote the cost of the variation to the buyer and obtain the buyer's approval to that cost, before undertaking the variation.

The use of a single builder and a standard building contract for all of the dwellings on the land enables the supply of better information to the buyers before the purchase of the land so that they can make informed choices about both the land and building contracts. It also enables easy

comparisons to be made with the costs of purchase of land and the cost of a separate building contract or other house and land packages available on the market.

Each building contract will be in the form of the standard lump sum Housing Industry Association contract which is the most commonly used contract in Western Australia for the construction of dwellings. This form of contract affords the level of consumer protection generally expected by consumers in dealings with builders of residential buildings.

Existing Competition

There is currently ample competition for residential properties in Mandurah and the surrounding areas. The buyers will be able to compare the price of the Mariners Cove house and land packages with those of existing houses, vacant lots and other house and land packages to ensure that the Mariners Cove prices have not been inflated by the use of a single builder.

Any impact on competition would be negligible given the size of the property market compared to the number of lots involved in this development. The 26 lots involved represent only 2.1% of the vacant lot market in the Peel Region (as estimated by the Department for Planning and Infrastructure). If established homes are also considered, then EMP's potential market share as a result of this development is negligible.

Accordingly, there is negligible anti-competitive detriment caused by obliging a purchaser of a freehold lot in the estate to use the nominated builder. There are many other sources of supply of residential properties (either vacant or with established homes). The potential buyers will have a genuine choice, based on quality and price, whether or not to purchase a lot in the estate together with the dwelling to be constructed on the lot.

Compliance with Subdivision Approval

Stage 9 of Mariners Cove is the subject of a subdivision approval granted by the Department for Planning and Infrastructure on advice from the City of Mandurah. The approval is for an integrated single residential development which has restrictions imposed on it due to the local planning guidelines. In order for EMP to ensure that the development is integrated and built in the manner approved by the Department for Planning and Infrastructure on advice from the City of Mandurah, EMP requires one builder who will maintain the integrity of the development.

The City of Mandurah will also benefit from having a single builder in this development because this means that it only has to deal with one builder in relation to approvals, building licences and dealing with any neighbour issues which arise during construction.

Improved Construction, Logistics, Quality and Reduced Costs

As the development is of a small lot nature with reduced and, in some instances, zero side boundary setbacks, it is not desirable to have more than one builder on site at the estate because there are limited areas for the storage of materials. If multiple builders were to build on lots within the estate at the same time, construction costs for the houses could be increased due to the double handling and coordination issues that would result.

It is difficult to control the quality of the total estate if there is more than one builder on site. By choosing a reputable builder to build all the homes in the development, the developer is protecting the investment of the buyers because all the homes will be built to the specified quality and finish.

The use of one builder also promotes industrial harmony and safety on site by allowing safe and consistent work practices.

By pre-designing the homes for the lots, shorter building time frames will be available for buyers as building licences can be obtained relatively quickly and the builder has already determined the most efficient method of construction of the houses individually and as a group.

In addition, issues such as earth works and site preparation for the homes have been considered in more detail as part of the land development process. This reduces the overall costs and again assists in enabling building time frames to be accelerated. It also avoids potential variations and resulting increased costs for buyers where the builder may otherwise not understand the specific site conditions of the property.

If one builder is building a number of homes adjacent to each other, there are further cost and time savings as one trade is able to move from one house to the next and the materials can be easily sourced and transferred as required.

Buyers' Preference

Our experience in the industry is that buyers prefer this type of "product" because they make a substantial stamp duty saving by settling on the land prior to construction of the house commencing. However, they are still able to buy a "finished" product built to the plans and specifications prepared and marketed by the seller of the land.

Buyers are comfortable knowing that there is a certainty of standards in the product they are purchasing. Similarly, buyers appreciate the time, money and expertise which has been spent by the developer and the builder in preparing specific designs to suit the individual lots and choosing colours, tiles, floor coverings, fencing, landscaping and other aspects of the homes which many buyers do not wish to spend time and energy doing themselves. Essentially, this can take all of the design headaches and a lot of the "pain" out of the building process for buyers of vacant land.

Environmental and Community Aims

Retaining the uniform style of this part of Mariners Cove will ensure that it is compatible with the local environment. It is this aspect of the development which will give it its communal feel and attract people to the estate and the area, thereby benefiting the local economy by increasing employment and expenditure.

Using a common builder enables minimal disruption to the development of the remainder of Mariners Cove and the local area and provides an ease of access to, and security of, the 26 lots during construction.

The designs of the houses to be built on the lots address specific site constraints and have, therefore, been able to take into account the environmental requirements of the estate and the individual lots. The use of passive solar, energy and water efficiency and the maximisation of views from each lot aim at ensuring that the estate is environmentally friendly and complies with all of the environmental requirements of the City of Mandurah, the Department for Planning and Infrastructure and the Department of Environment.

It helps to ensure that individual owners do not construct homes or undertake work which would be detrimental to the environment and the community as a whole. Similarly, by ensuring that

earthworks and site preparations are carried out to a consistent standard and with an awareness of the other works being carried out in the estate as a whole, the development of the land is less likely to cause environmental damage or inconvenience to the owners and the other residents of the area.

LIMITED PUBLIC DETRIMENT

Apart from the reduction in the number of effective competitors for the construction of homes within the estate, we have not identified any significant public detriment arising from the buyers entering into standard building contracts with a single builder.

We do not believe that there is any detriment to the community in general and, in particular, we do not believe that there is any detriment to the achievement of the goal of economic efficiency in the industry.

The use of a single builder should not impact on the cost or quality of the dwellings because the dwellings will be built to prices, plans and specifications agreed to by buyers prior to construction of the building. There should not be any increase in the restrictions on entry to the market for other builders as there are already numerous developments of this type occurring in Western Australia and more are planned. Further, we do not believe that the proposed conduct will have a negative impact on competition by other market participants in that the ability to innovate effectively and conduct these developments efficiently is enhanced (not reduced) by the use of a single builder.

CONCLUSION

In summary, there are substantial public benefits arising from all of the buyers entering into a building contract with DAH for the construction of each of the 26 houses comprising this part of Stage 9 of Mariners Cove.

Therefore, we submit that any detriment which might arise will be outweighed by the public benefits outlined above.

We are happy to provide any additional information you require or discuss any aspect of the development at your convenience.