



AUST. COMPETITION & CONSUMER COMMISSION PERTH
29 NOV 2005

28 November 2005

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

N70436.

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 THE FAIRWAYS AT THE MANDURAH COUNTRY CLUB, CITY OF MANDURAH, WESTERN AUSTRALIA

We act for the Mandurah Country Club Inc. (“Club”).

Our client proposes to offer 25 residential lots for sale to buyers on the condition that each buyer enters into a building contract with a builder nominated by the Club to construct a dwelling on the lot purchased.

We believe that this may constitute or involve exclusive dealing under section 47(6) and/or section 47(7) 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. Please advise us if a different fee applies in the circumstances.

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

Yours faithfully

J. Connell
Joanne Connell
Director

Encl.

Cc. Mr Ken Haustead - Cedar Woods Properties Ltd
66 Kings Park Road, West Perth WA 6005

ACCC	
MARS#:
DOC ID: 205/72721
FILE:

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: **Mandurah Country Club Inc**.....

 (See Direction 2 on the back of this form)
 (b) Short description of business carried on by that person:
Managing and operating the golf course located at Halls Head, Mandurah.....

 (c) Address in Australia for service of documents on that person:
C/- Young & Connell, Lawyers, 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:
Construction of townhouses on land to be sold by the Club by a single nominated builder.....

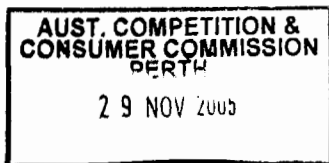
 (b) Description of the conduct or proposed conduct:
Condition of purchase of property that buyer appoints builder nominated by seller to build house on the property (see Annexure "A").....

 (See Direction 4 on the back of this Form)
3. (a) Class or classes of persons to which the conduct relates:
Buyers of residential property.....

 (b) Number of those persons--
 (i) At present time... - **Nil**
 (ii) Estimated within the next year. - **25**
 (c) Where number of persons stated in item 3 (b) (i) is less than 50, their names and addresses:
Unknown at this stage. Properties not yet offered for sale.....

4. Names and address of person authorised by the person giving this notice to provide additional information in relation to this notice:
Joanne Connell of Young & Connell, Lawyers, Level 10, 111 St. George's Terrace, Perth, WA, 6000.....

Dated 21/11.....,2005



Signed by/on behalf of the applicant giving notice

Malcolm Wills

 (Signature)
M. F. Wills

 (Full Name)
President.

 (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 of Form G

Under the terms of the proposed Special Conditions of Sale ("Sale Contract") each buyer of one of the 25 vacant lots which form part of The Fairways at the Mandurah Country Club ("the Estate") will be required to enter into a separate building contract with a nominated builder ("the Nominated Builder") pursuant to which the Nominated Builder shall construct a dwelling on the lot purchased.

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 and our client wishes to notify in respect of this proposed conduct.

The building contract between each of the buyers and the Nominated Builder will be in a form to be agreed between the seller and the Nominated Builder.

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 Nominated Builder is imposed under the terms of the contract for the sale and purchase of the lot.

SUBMISSION BY THE MANDURAH COUNTRY CLUB INC.

BACKGROUND

Mandurah Country Club Inc. (“**the Club**”) is the owner of land in the City of Mandurah in Western Australia.

The Club propose to create a residential development on the land owned by the Club (“**the Estate**”).

The Estate will consist of 25 lots which will be allocated a 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.

Attached is a plan of the proposed Estate.

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. views) and the homes will be located opposite the fairways of the adjacent golf course in order to create, for the benefit of buyers of the lots, an attractive integrated community environment.

Potential Third Line Forcing

In order to ensure that the Estate is developed as an attractive, integrated community environment featuring high quality homes around the golf course, it is intended that a builder nominated by the Club will be engaged to construct the various residential dwellings. This submission is provided in support of the Club’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 a nominated 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 the Builder nominated by the Club, “Property” means the individual survey-strata lot to be purchased by the Buyer, “Estate” means The Fairways at the Mandurah Country Club and “Design” means an approved design for the particular lot.

The agreement between each buyer and the nominated 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).

The nominated builder will not have any interest in the land and will not be a related party to the Club. A tender process is currently being carried out in respect of the construction of the approved home designs to select the nominated builder.

BRIEF SUMMARY OF THE MARKET

The geographic market relevant to the Club's application covers the City of Mandurah in the Peel Region of Western Australia.

The City of Mandurah comprises a wide geographic area and includes a variety of residential lots, homes and house and land packages. There is no dominant provider of residential properties in the area. According to the Metropolitan Development Program published by the Department for Planning and Infrastructure in 2005, it is estimated that 1500 lots will be developed in 2005/2006 within the City of Mandurah. If a potential buyer wishes to purchase a lot within an estate development in the Peel Region, there are numerous choices available.

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

In using a specific builder to construct houses on a group of adjoining lots 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 the Western Australian market.

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.

The use of a nominated builder on a specific group of lots 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.

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 Estate house and land packages with those of existing houses, vacant lots and other house and land packages to ensure that the prices at the Estate have not been inflated by the use of a single builder.

Any adverse impact on competition would be negligible given the size of the property market compared to the number of lots involved in this development. The 25 lots involved represent less than 2% of the vacant lot market in the Mandurah area (as estimated by the Department for Planning and Infrastructure). If established homes are also considered, then the Club'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 built 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

The Estate 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 the Club 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, the Club requires a builder who will maintain the integrity of the development.

The City of Mandurah should also benefit from having a single builder submitting building applications relating to the lots in this development as all of the homes need to be built in accordance with specific requirements prescribed by the City for this development.

Improved Construction, Logistics, Quality and Reduced Costs

As the development is of a small lot nature with zero side boundary sets backs, it is not desirable to have multiple builders on site at the estate because there are limited areas for the storage of materials. In addition to the confined space, there is also only a single access point.

If multiple builders were to build on adjoining 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 a wide selection of builders 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 on a group of adjoining lots 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 will have 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 can be 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.

Where 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

We believe 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 the Estate will ensure that it is compatible with the local environment, including the adjacent golf course. 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 expenditure in the area which generally leads to increased employment in that area.

Using a nominated builder enables minimal disruption to the adjacent golf course and the local area and provides an ease of access to, and security of, the 25 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 and the Department for Planning and Infrastructure.

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. For example, it is important to protect the existing trees on the site and the nominated builder will be briefed to ensure that this is a priority. 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 and visitors to 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 one 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 having each buyer enter into a building contract with one builder nominated for the construction of the 25 houses comprising the Estate.

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.