

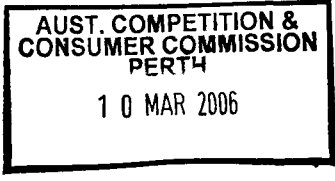
N70442



9 March 2006

Our Ref: Joanne Connell:05160
Direct Line: +618 9422 8988
Email: jconnell@younglaw.biz

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 Cape View Beach Resort, Busselton, Western Australia

We act for Cape View Developments WA Pty Ltd ACN 109 689 643 ("Cape View").

Our client proposes to offer 20 strata title lots for sale to buyers on the condition that each buyer enters into a building contract with a builder nominated by Cape View 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.

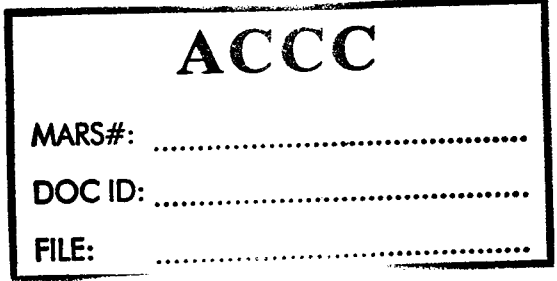
If you have any further queries in relation to the Notification, please contact Joanne Connell at your earliest convenience.

Yours faithfully

Joanne Connell
Director

Encl.

cc. Mr David Tucker – Australian Development Consultants
PO Box 193, North Fremantle, WA, 6159



N70442

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: **Cape View Developments WA Pty Ltd ACN 109 689 643**.....

(See Direction 2 on the back of this form)

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

(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 tourist accommodation units on land to be sold by Cape View Developments WA Pty Ltd 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 tourist accommodation unit 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 lots to be used for tourist accommodation.....

(b) Number of those persons--
(i) At present time... - Nil.....
(ii) Estimated within the next year. - 20.....

(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 8 March, 2006

Signed by/on behalf of the applicant giving notice

(Signature)

MARK MCKEOWN

(Full Name)

DIRECTOR

(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 sale contract each buyer of one of the 20 vacant strata title lots to which a bungalow type dwelling has been allocated within Stage 3 of the Cape View Beach Resort ("the Resort") 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 the bungalow on the lot purchased.

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.

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.

BACKGROUND

Cape View Developments WA Pty Ltd (“**Cape View**”) has a contract to purchase land located in Little Colin Street, Broadwater in the Shire of Busselton in the South West of Western Australia. Cape View proposes to purchase and develop the land which is adjacent to the existing Stages 1 and 2 of the Cape View Beach Resort located at the site (the “**Resort**”). The first 2 stages have already been developed and sold to buyers of strata and survey-strata title properties to be used for tourism purposes.

The proposed Stage 3 is being developed as a tourism and holiday location comprising various short stay tourist accommodation and other common facilities for use of guests at the Resort.

Stage 3 will be a strata title subdivision. Purchasers of individual strata properties will let their properties to tourists for short stay accommodation.

Although the properties will be owned by individual proprietors, the intention is that the Resort will be operated as an integrated resort.

The Resort is intended to provide an attractive and consistent presentation throughout. This will be enhanced by the use of complementary designs, finishes and colour schemes for all of the buildings in the Resort. In addition to the individual strata titled properties, there will be various central facilities in the common property areas, including a swimming pool. These common facilities will be available to all guests at the Resort.

Stage 3 will consist of between approximately 70 strata titled lots each of which will be allocated a particular type of tourist accommodation unit (i.e. a bungalow, townhouse or apartment) appropriate to that particular lot. This design is intended to ensure, amongst other things, an attractive resort environment and a range of types of accommodation for buyers (and tourists) within the development.

Attached are some plans of the proposed Resort.

The development concept has been driven by a desire to create an integrated and high quality resort 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 to create, for the benefit of buyers of the lots and the tourist occupants, an attractive integrated resort environment.

Potential Third Line Forcing

In order to ensure that the Resort is developed as an attractive, integrated resort environment featuring high quality and varied forms of tourist accommodation, it is intended that a single builder nominated by Cape View will be engaged to construct the various dwellings.

Cape View will engage the nominated builder directly for the construction of the apartments and townhouses to be built on the lots at the Resort and buyers of those lots will buy both the land and completed dwelling from Cape View.

However, buyers of the lots upon which bungalows are to be built (20 lots) will be required to enter into a separate building contract with the nominated builder for the construction of the bungalow on their lots after settlement. This submission is provided in support of Cape View's notification in respect of any potential third line forcing involved in this arrangement.

The requirement that individual buyers (of the bungalow lots) enter into a building contract with a nominated builder will be included in each bungalow buyer's sale contract to buy the lot. The proposed condition is as follows:

“Contemporaneously with signing the Contract, the Buyer must enter into a building contract pursuant to which the Builder is engaged to construct the Dwelling on the Property in accordance with these Special Conditions.”

For the purposes of this clause, “Contract” means the contract for the sale and purchase of the lot, “Buyer” means the buyer named in the Contract, “Builder” means the registered builder nominated by Cape View to build all of the dwellings at the Resort (currently proposed to be Pindan Pty Ltd), “Dwelling” means the bungalow as designed by the Seller's consultants, “Property” means the individual strata lot to be purchased by the Buyer and “Special Conditions” means the special conditions to the Contract including the plans and specifications for the bungalow.

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). It is proposed to use a standard form agreement such as the Master Builders Association of Western Australia's home building works contract for this purpose.

BRIEF SUMMARY OF THE MARKET

The geographic market relevant to Cape View's application covers the south-west of Western Australia between Cape Naturaliste and Cape Leeuwin and includes the popular towns of Busselton, Dunsborough, Yallingup, Cowaramup, Gracetown, Margaret River and Augusta.

The 2 coastal Shires of Busselton and Margaret River-Augusta comprise a wide geographic area and include a variety of tourist developments, residential and holiday homes, vacant lots and house and land packages. There is no dominant provider of residential or tourist properties in the area. There are numerous choices available to potential buyers (see further comments on competition below).

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 property development, building and local tourism industries.

Efficiency and Competitiveness

By using one selected builder to construct dwellings 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 is clearly disclosed in the land sale 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 tourist properties in Busselton and the surrounding areas. As one of the fastest growing regions in Australia, there is a continuing strong demand for tourism accommodation in the south west of Western Australia. That demand extends to accommodation units which are located within and form part of a fully integrated resort.

Developers are active in the region. Apart from numerous resorts, hotels and motels, there are also private homes and bed and breakfast accommodation styles on offer. The buyers will be able to compare the price of the 'house and land' packages for the bungalows with those of existing holiday homes, vacant lots and other tourist resorts or complexes to ensure that the prices at the Resort have not been inflated by the use of a single builder.

The buyers will also be able to compare the prices and choose between the apartments and townhouses at the Resort which can be bought as completed dwellings for a single package price from Cape View and the bungalow lots with separate construction arrangements direct with the builder.

The potential buyers will have a genuine choice, based on quality and price, whether or not to purchase one of the 'bungalow' lots in the Resort together with the requirement to enter into a separate contract with the nominated builder for the construction of the bungalow on the lot.

Given the size of the local property market compared to the number of bungalow lots involved in this development, any adverse impact on competition would be minimal.

Accordingly, there is negligible anti-competitive detriment caused by obliging a buyer of a strata title lot in the Resort (allocated for a bungalow type dwelling) to use the nominated builder.

Improved Construction, Logistics, Quality and Reduced Costs

It is not desirable to have multiple builders on site at the Resort for a variety of reasons.

If multiple builders were to build on adjoining lots within the Resort at the same time, construction costs for the dwellings could be increased due to the double handling and coordination issues that would result.

It is difficult to control the quality of the total Resort if there is a wide range of builders on site. By choosing a reputable builder to build all the dwellings in the development, the developer is protecting the investment of the buyers because all the dwellings 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 dwellings 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 dwellings 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 dwellings adjacent to each other, there are further cost and time savings as one trade is able to move from one building to the next and the materials can be easily sourced and transferred as required.

Local governments also prefer a single builder in developments of this type because this means they only have to deal with one builder in relation to the issue of building licences, inspections and clearances. Security, maintenance and other issues can all be dealt with by a single builder if that builder is in control of the site as a whole. It can be a problem for the local government in strata titled or other individually owned developments where each individual accommodation unit is owned by a different proprietor. To attend to complaints and deal with security issues and other problems or regulations applying to the construction of the units is far more time consuming and inefficient.

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 dwelling 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.

Environmental and Community Aims

Retaining the uniform style of the Resort will ensure that it is compatible with the local environment, including the adjacent established tourist developments (Stages 1 and 2 of the Cape View Beach Resort). It is this aspect of the development which will give it its integrated feel and attract people to the Resort 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 tourist accommodation and the local area and provides an ease of access to, and security of, the lots during construction.

The designs of the dwellings to be built on the lots address specific site constraints and have, therefore, been able to take into account the environmental requirements of the Resort and the individual lots. The design of the dwellings and the retention of existing trees aim at ensuring

that the Resort is environmentally friendly and complies with all of the environmental requirements of the Shire of Busselton and the Department for Planning and Infrastructure.

It helps to ensure that individual owners do not construct dwellings or undertake work which would be detrimental to the environment and the community as a whole. For example, the nominated builder will be briefed to ensure that protecting the existing trees on the site 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 Resort 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 bungalow dwellings within the Resort, 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 property development, building or tourism industries.

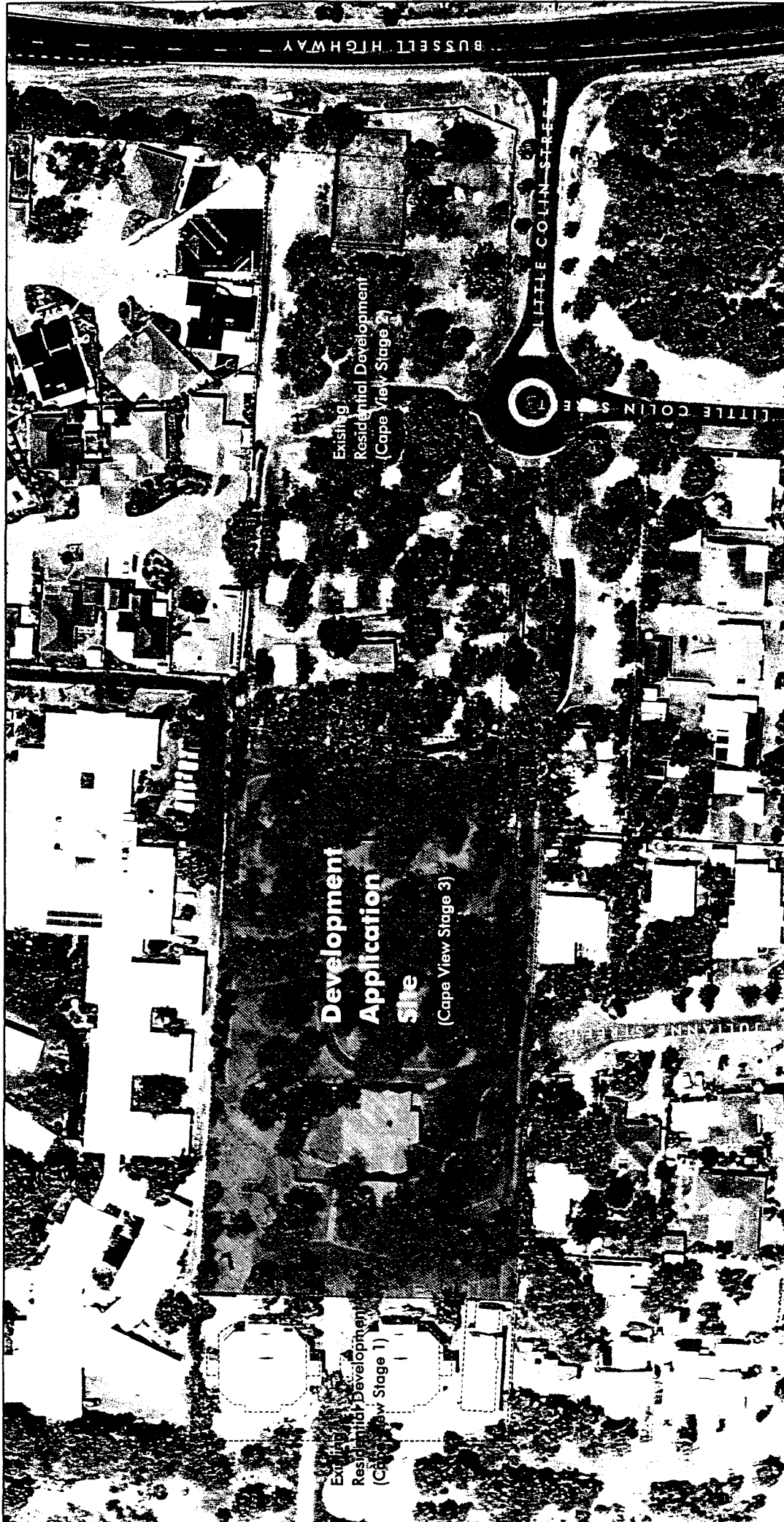
The use of one builder should not impact on the cost or quality of the dwellings because the dwellings will be built to prices, plans and specifications agreed to by buyers prior to construction of the building. There should not be any increase in the restrictions on entry to the market for other builders 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 of one of the 20 'bungalow' lots enter into a building contract with one nominated builder.

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.



ADC
AUSTRALIAN DEVELOPMENT CONSULTANTS

Cape View Beach

Tourist Apartments & Bungalows

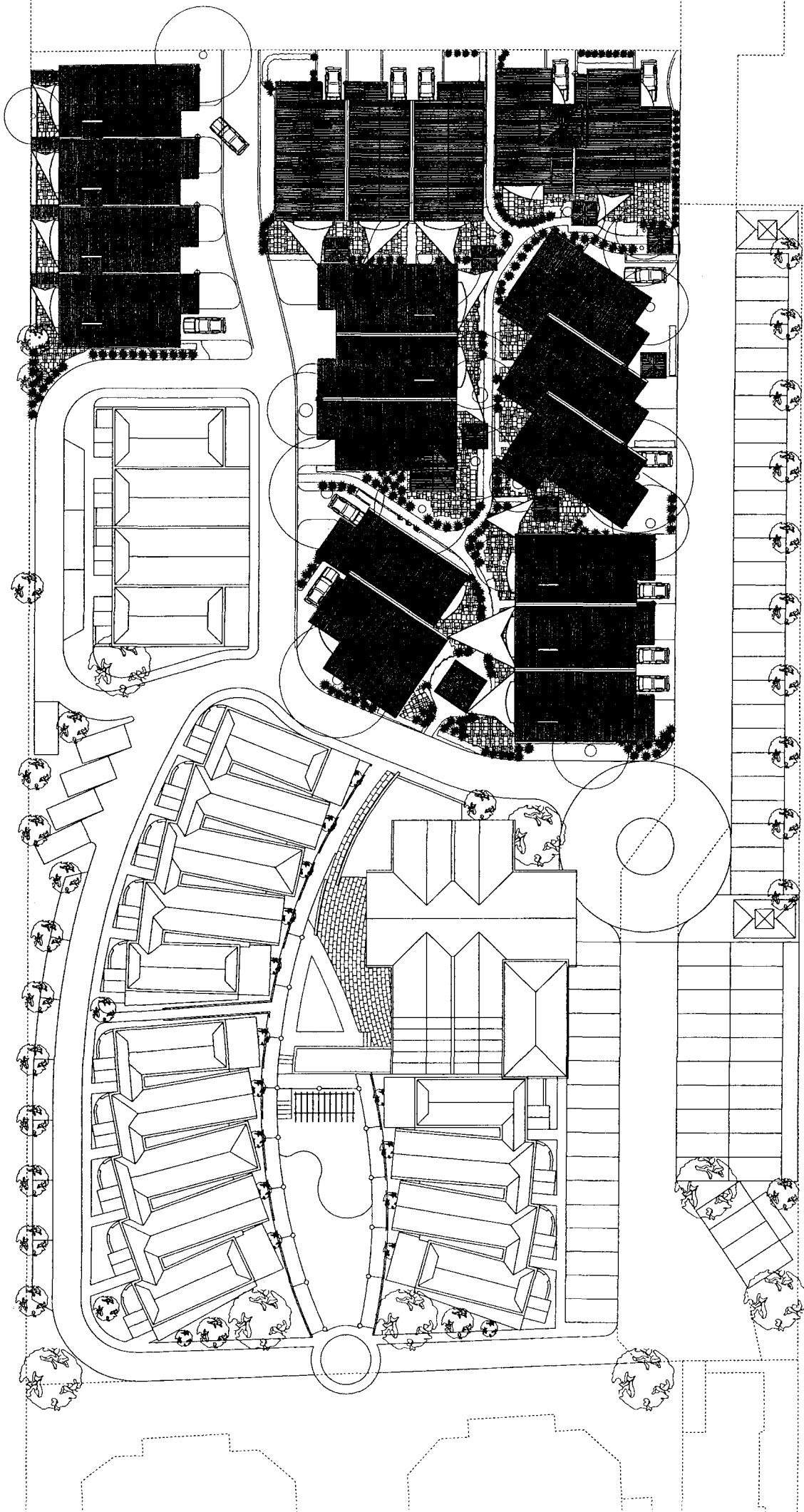
Site Location Plan

Cape View Beach
Development Application
27 October 2005

CCN Nicol
DENNEY
BUILDING DESIGN

Scale: 1:500 (map A1) or 1:1000 (map A3)

DA-01





The diagram above is a composite plan of a Tree Survey conducted by GHD Surveys Pty Ltd in December 2003 and the Development Application Proposal.

The trees to be retained are highlighted



Cape View Beach

Tourist Apartments & Bungalows

Retention of Existing Trees

Cape View Beach
Development Application
27 October 2005

DA-08