



7 June 2006

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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 Pearsall, Western Australia**

We act for Pearsall Mews Pty Ltd ACN 119 459 611 ("**Pearsall**").

Our client proposes to offer approximately 52 survey-strata title lots for sale to buyers on the condition that each buyer enters into a building contract with a builder nominated by Pearsall to construct a house 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 preliminary draft of the likely special condition to be included 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 Peter Durward, AFG

# Form G

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

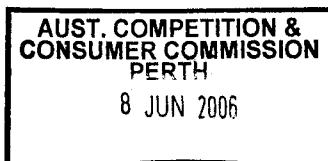
To the Australian Competition and Consumer Commission:


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.

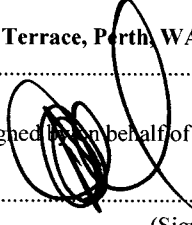
(PLEASE READ DIRECTIONS AND NOTICES ON BACK OF FORM)

1. (a) Name of person giving notice: **Pearsall Mews Pty Ltd ACN 119 459 611**.....  
.....  
(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 houses on land to be sold by Pearsall Mews Pty Ltd by a single nominated builder**.....  
(b) Description of the conduct or proposed conduct:  
**Condition of purchase of land that buyer appoints builder nominated by seller to build house 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 land to be used for residential purposes**.....  
.....  
(b) Number of those persons--  
(i) At present time... - Nil.....  
(ii) Estimated within the next year. - 52.....  
(c) Where number of persons stated in item 3 (b) (i) is less than 50, their names and addresses:  
**Unknown at this stage. Land 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 **6 June**, 2006



  
**DAVID JAMES BAILEY**  
**DIRECTOR**

Signed  on behalf of the applicant giving notice  
.....  
(Signature)  
**PETER ALAN JURWAGA**  
.....  
(Full Name)  
**DIRECTOR**  
.....  
(Description)

**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 approximately 52 survey-strata title lots proposed to be created from Lot 34, 42 Kemp Street, Pearsall to be collectively known as Pearsall Mews ("**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 house for the buyer 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 sale contract has not yet been prepared, but is discussed further in the accompanying submission.

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.

## 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.

## **BACKGROUND**

Pearsall Mews Pty Ltd (“**Pearsall**”) proposes to purchase, subdivide and develop land located at Lot 34, 42 Kemp Street, Pearsall in the northern corridor of Perth in Western Australia (the “**Estate**”).

The proposed Estate will be developed as a survey-strata titled residential estate.

The Estate 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 Estate.

Each lot in the Estate will be allocated a particular house design. This approach is intended to ensure, amongst other things, an attractive residential environment and a range of homes for buyers within the development.

**Attached** is a plan of the site and the proposed subdivision required to create the Estate.

The development concept has been driven by a desire to create an integrated and high quality estate where buyers will have the comfort of knowing what the surrounding area and homes 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 will address specific site constraints to create, for the benefit of buyers of the lots, an attractive integrated residential environment.

### **Potential Third Line Forcing**

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

Buyers of the lots will be required to enter into a separate building contract with the nominated builder for the construction of houses on their lots after settlement. This submission is provided in support of Pearsall’s notification in respect of any 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. An example of the type of condition proposed 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 Pearsall to build all of the dwellings at the Estate (currently proposed to be Pindan Pty Ltd), “Dwelling” means the house to be designed by the Seller in conjunction with the Builder, “Property” means the individual survey-strata lot to be purchased by the Buyer and

“Special Conditions” means the special conditions of the Contract (including the plans and specifications for the house).

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 Pearsall’s application is the northern corridor of the Perth metropolitan area. It includes the City of Wanneroo and the popular suburbs of Madeley, Darch and Landsdale (amongst others in the immediate vicinity of the site).

This is a growing region and, relative to the older inner city suburbs, covers a wide geographic area. It includes a variety of established residences and vacant residential lots. There are a large number of developments currently under construction to the north of the site, especially in the suburb of Wanneroo. These include ‘house and land’ packages similar to the one Pearsall proposes to offer for sale. There are numerous choices available to potential buyers of residential properties (see further comments on competition below) and there is no dominant provider of residential properties in the area.

### **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 and building 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.

This is particularly true in an environment where buyers of vacant land may otherwise have to wait for lengthy periods of time in order to find a builder willing and able to construct a single “one-off” home on their land due to the current high level of demand in the Western Australian construction industry.

As the building contract price will be separate from the land price, the buyers of the “product” will receive the direct cost benefit of the developer negotiating approximately 52 building contracts as a whole rather than each buyer having to do so individually.

#### **Consumer Protection**

The proposed conduct promotes equitable dealings in the industry because all of the costs are disclosed up front. The land and building components will be 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 in the Estate 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 are a variety of developers and sellers of residential properties in Pearsall and the surrounding areas. The northern corridor of Perth’s metropolitan area is a fast growing region and there is continuing strong demand for homes in the existing and newly established northern suburbs. That demand extends to homes which are located within and form part of an integrated estate.

As mentioned above, developers are active in the region and will be offering competing residential properties to the market. The buyers will be able to compare the price of the ‘house and land’ packages for the Pearsall Mews development with those of existing homes, vacant lots and other residential estates to ensure that the prices at the Estate have not been inflated by the use of a single builder.

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

Given the size of the local property market and the number of lots being developed in the region (particularly immediately north of the site) compared to the number of lots involved in this development, any adverse impact on competition is likely to be minimal.

Accordingly, it is submitted that there is negligible anti-competitive detriment caused by obliging a buyer of a lot in the Estate to use the nominated builder.

### **Improved Construction, Logistics, Quality and Reduced Costs**

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

It is difficult to control the quality of the total Estate 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. This assists in ensuring that the overall standard of building in the Estate is higher than would otherwise be the case.

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

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.

In addition, using a single builder for an estate assists in avoiding delays and differences in the time frames for construction of the homes within the estate. This is because the builder is likely to try and commence and finish construction of all of the homes at approximately the same time in order to maximise the cost and time savings mentioned above. This helps to reduce the nuisance, safety risks and frustration of buyers, existing residents and users of the surrounding areas arising from ongoing and stop-start construction over many years and the presence of vacant lots in the middle of the development for extended periods.

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 survey-strata titled or other individually owned developments where each individual home is being built by a different builder. To attend to complaints and deal with security issues and other problems or regulations applying to the construction of the homes is far more time consuming and inefficient.

### **Buyers' Preference**

We believe that buyers prefer this type of "product" for a variety of reasons.

Buyers 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 "complete" product as the home will be 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 lots and choosing colours, tiles, floor coverings, fencing, landscaping and other aspects of the homes.

### **Environmental and Community Aims**

Retaining the consistent style of the Estate will ensure that it is compatible with the local environment. It is this aspect of the development which will give it its integrated 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 local area and provides an ease of access to, and security of, the lots during construction.

As mentioned above, the designs of the dwellings to be built on the lots will address specific site constraints and take into account the environmental requirements of the Estate and the individual lots. The designs of the dwellings aim at ensuring that the Estate is environmentally friendly and



complies with all of the environmental requirements of the local government and the Department for Planning and Infrastructure.

The use of a single builder familiar with the site and issues relating to its planning and development 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, 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 and users 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 property development or building 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. The current demand for building services is not likely to be reduced by this one project. 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.

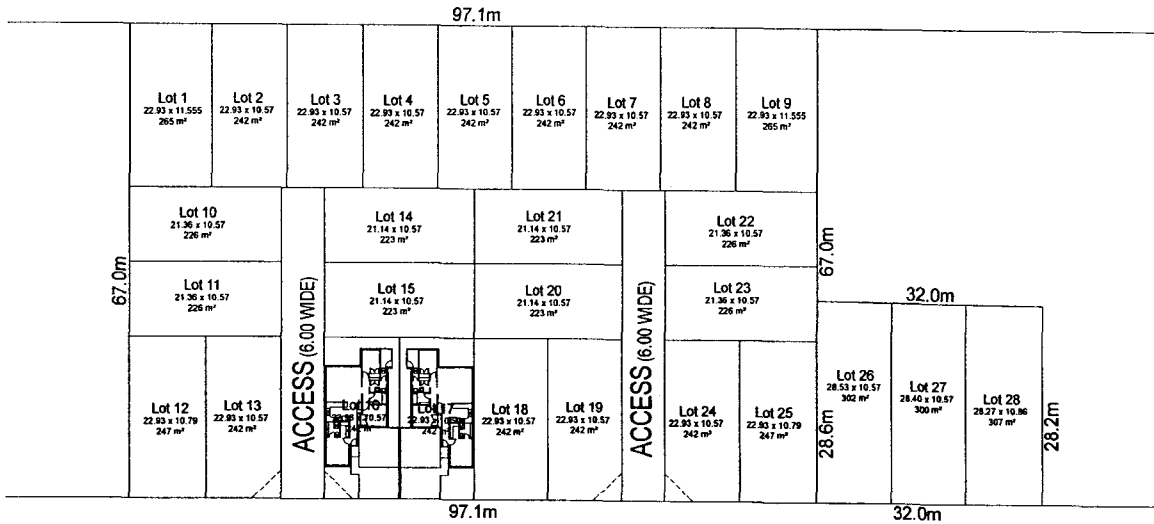
### **CONCLUSION**

In summary, there are substantial public benefits arising from having each buyer of one of the proposed survey-strata lots enter into a building contract with one nominated builder.

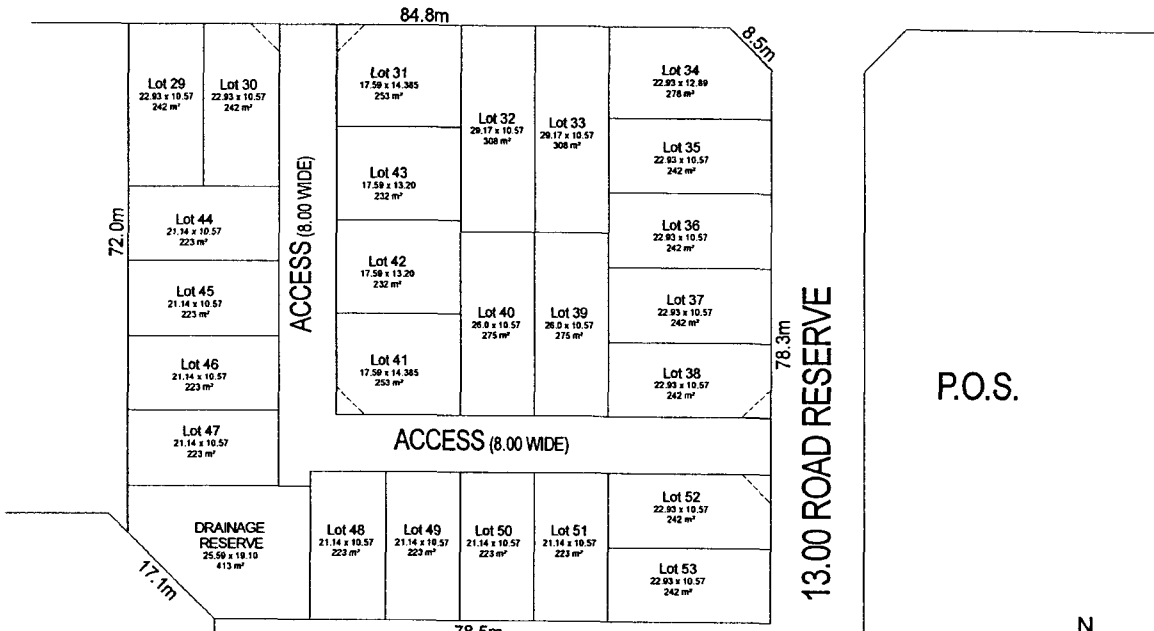
Therefore, we submit that any detriment which might arise will be outweighed by the public benefits outlined above.

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

# KEMP STREET



# 15.00 ROAD RESERVE



P.O.S.



ORIGINAL 3 LOTS: 14,974 m<sup>2</sup>

"DRAFT"

Client :

Location :

Proposed Development Site,  
Kemp Street, Pearsall

Site Layout  
Scale 1:750 @A3  
2/6/06

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