

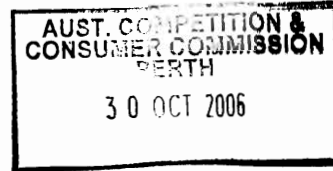
**ACCC**

MARS#: .....

DOC ID: .....

FILE: .....

N70482 \$ N70483



The Quadrant  
1 William Street, Perth  
Western Australia 6000  
GPO Box F338, Perth  
Western Australia 6841  
BX 500-015  
Tel: +61 8 9288 6000  
Fax: +61 8 9288 6001  
www.lavanlegal.com.au

Our ref: GVH:CXB:1074392

Contact: Genevieve Ho  
Direct Line: (08) 9288 6834  
E.mail: genevieve.ho@lavanlegal.com.au



30 October 2006

Mr Sam Di Scerni  
Regional Director  
ACCC Perth  
PO Box 6381  
East Perth WA 6892

Dear Sam

**Notification: Satterley Property Group Pty Ltd**

We act for the Satterley Property Group Pty Ltd (**Satterley Property Group**) and wish to lodge on behalf of Satterley Property Group, two notifications in respect of conduct that may constitute third line forcing by Satterley Property Group.

Accordingly, please find **enclosed**:

- two notifications under section 93(1) of the *Trade Practices Act 1974* on behalf of Satterley Property Group;
- a cheque in the amount of \$200 as payment of the required fees; and
- submissions in support of Satterley Property Group's notifications.

Please feel free to contact either myself or Genevieve Ho if you wish to discuss this matter.

Yours sincerely

A handwritten signature in black ink, appearing to be 'Caroline Brown', written over a horizontal line.

Caroline Brown  
Partner

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 subsection 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.

1. (a) Name of person giving notice:

Satterley Property Group Pty Limited (ACN 009 054 979) (**Satterley Property Group**).

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

Satterley Property Group is engaged in the development and sale of residential land.

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

Caroline Brown  
Lavan Legal  
Level 19  
1 William Street  
PERTH WA 6000

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

The supply of land for residential housing in an estate in Brighton, Perth known as 'The Green'.

- (b) Description of the conduct or proposed conduct:

It is proposed to offer land for residential housing for purchase by consumers on the condition that the owner of the land uses a specified non-drinking water supply system using local groundwater. The system will be obtained from the Water Corporation, who will obtain the services from the nominated service provider, Total Eden.

3. (a) Class or classes of persons to which the conduct relates:

Persons wishing to purchase land at 'The Green', Brighton, Perth.

- (b) Number of those persons?

- (i) At present time - 0  
(ii) Estimated within the next year - 600  
(iii) Estimated within the next five years - 5000

- (c) Where number of persons stated in item 3 (b) (i) is less than 50, their names and addresses:

Not applicable.

4. (a) Name and address of person authorized by the person giving this notice to provide additional information in relation to this notice:

Caroline Brown  
Lavan Legal

Level 19  
1 William Street  
PERTH WA 6000

Dated: 30<sup>th</sup> October 2006

Signed by/on behalf of the person giving this notice

A handwritten signature in black ink, appearing to be 'C. Brown', written over a horizontal line.

Full name:

Description:

**CAROLINE BROWN**  
The Quadrant, 1 William Street, Perth WA 6000  
Commissioner of the Supreme Court  
of Western Australia for taking Affidavits

## DIRECTIONS

5. 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.
6. 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.
7. 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.
8. If particulars of a condition or of a reason of the type referred to in subsection 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.
9. In item 3 (a), describe the nature of the business carried on by the persons referred to in that item.
10. 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 subsection 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 subsection 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 subsection 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.

## **SUBMISSIONS IN SUPPORT OF NOTIFICATION OF EXCLUSIVE DEALING**

### **1 Background**

- 1.1 A joint venture between Butler Land Company and the Housing Authority is the owner of the land in Brighton, Perth that is the subject of this notification, and will be known as "The Green". It is planned to develop a residential development on the land known as "The Green". Ocean Springs Pty Ltd is the Property Manager of the land, and Satterley Property Group will be the Project Manager. "The Green" will form part of the City of Wanneroo.
- 1.2 The Green will comprise over 1,400 dwellings.
- 1.3 Satterley Property Group wishes to include in the development a non-drinking water supply system, to be supplied through a third pipe system (a purple pipe), using local groundwater.
- 1.4 Through the arrangement with the Water Corporation, Total Eden will provide services to both residential landowners and the City of Wanneroo (however, the services will be provided to Satterley Property Group rather than the City of Wanneroo for the first two years until handover). The services will be provided to the City of Wanneroo in order for the water to be used for the irrigation of street verges and public open spaces.
- 1.5 The initial stages of development have been earth-worked with infrastructure and services to the allotments being undertaken. A release of the first stage is planned for November 2006 with subsequent stages to be released in line with the prevailing market conditions.
- 1.6 When purchasers enter into a contract to purchase land, a condition of the contract will be that the owner of the land uses a specified non-drinking water supply system using local groundwater. The system will be obtained from the Water Corporation, who will obtain the services from the nominated service provider, Total Eden.
- 1.7 Satterley Property Group has a long association with Total Eden and consider Total Eden the pre-eminent supplier of irrigation systems in Perth. Total Eden have been involved in the planning, design and will be closely involved with the construction phase of the irrigation system.

### **2 Possible application of the Trade Practices Act**

- 2.1 The offer to the public for the purchase of land at "The Green" is conditioned by the requirement that the purchaser must acquire a specified non-drinking water supply system using local groundwater from the Water Corporation. Accordingly, it is arguable that sections 47(6) and (7) of the Trade Practices Act 1974 (Cth) may apply.

### **3 Market**

- 3.1 The market in which the proposed conduct will take place is the residential real estate market in the greater Perth metropolitan region.

## 4 Public benefit

4.1 The proposed conduct offers significant benefits to purchasers in that:

4.1.1 The system will replace high quality drinking water with a “fit for purpose” water supply system that ensures that the quality of the water is appropriate for the end use.

4.1.2 This will result in a reduction of the use and consumption of drinking quality water (potable water). The system is expected to result in a reduction in consumption of potable water of over 56% in residential dwellings.

4.1.3 The reduction in consumption of potable water will mean lower water bills for the purchaser.

4.1.4 The system will also provide the purchaser with a choice to use lesser quality water on irrigation etc rather than wasting high quality drinking water.

4.1.5 Less water will be pumped through the Integrated Water Supply System, which will result in a reduction in energy costs for the system which would be expected to be passed onto the purchaser.

4.1.6 The purchaser will be participating in an environmentally friendly, water conservation initiative.

4.1.7 The central control of the non-drinking water system will ensure protection of both the quality and quantity of the groundwater resulting in significantly reduced likelihood of the residents being faced with total sprinkler ban.

4.2 The proposed conduct also offers a number of public benefits including:

4.2.1 If the pilot program succeeds, it will lead to a general reduction in headworks charges for similar developments.

4.2.2 The program will ensure a reduction in potable water use and the consumption of water which will result in:

(a) benefits to the community by saving potable water;

(b) more economically efficient use of water by matching quality with purpose; and

(c) a general reduction in costs to the community as such water does not need to be unnecessarily treated to a standard for which it will not be used.

4.2.3 There will also be a reduction of water use of approximately 40% in public open space through soil improvement, waterwise landscaping and controlled application of water.

4.2.4 Less water will be being pumped through the Integrated Water Supply System. This will result in:

- (a) a reduction in energy costs;
- (b) a reduction in greenhouse gas emissions; and
- (c) a reduction in the quantities of chemicals being required to be applied to drinking water.

4.3 The use of Total Eden will be cost effective, as it has in-depth knowledge of the system, having been involved in the planning and design of the system. Total Eden has also been closely involved with the construction phase of the irrigation system.

4.4 The project also has the support of the Western Australian Department of Water.

## 5 Public detriment

5.1 The proposed conduct would take place in the highly competitive Perth residential property market. Therefore, Satterley Property Group submits that the proposed conduct only gives rise to public benefit. The proposed conduct will not give rise to a substantial lessening of competition in the market, and therefore there is no likely detriment to the public resulting from the conduct.

5.2 Regardless of how the market is defined, neither Satterley Property Group nor the Water Corporation have sufficient market power to force a member of the public to obtain services from Satterley Property Group or the relevant builder.

## 6 Conclusion

6.1 For the reasons stated above, Satterley Property Group believes that there are only benefits to be achieved from the proposed conduct, which will have no anti-competitive effect.

Based on the information provided in the Form G notification and the submissions which support it, it is submitted that the notified conduct should not be opposed by the Commission.

Dated: 2006



CAROLINE BROWN  
PARTNER

CAROLINE BROWN  
The Quadrant, 1 William Street, Perth, WA 6000  
Commissioner of the Supreme Court  
of Western Australia for taking Affidavits

## 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 subsection 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.

1. (a) Name of person giving notice:  
  
Satterley Property Group Pty Limited (ACN 009 054 979) (**Satterley Property Group**).
- (b) Short description of business carried on by that person:  
  
Satterley Property Group is engaged in the development and sale of residential land.
- (c) Address in Australia for service of documents on that person:  
  
Caroline Brown  
Lavan Legal  
Level 19  
1 William Street  
PERTH WA 6000
2. (a) Description of the goods or services in relation to the supply or acquisition of which this notice relates:  
  
The supply of land for residential housing in an estate in Baldivis, Perth known as 'Evermore Heights'.
- (b) Description of the conduct or proposed conduct:  
  
It is proposed to offer land for residential housing for purchase by consumers on the condition that the owner of the land enters into a building agreement with one of five builders, choosing from approximately 20-25 designs, all being designs that maximise water and energy efficiency and sustainability.
3. (a) Class or classes of persons to which the conduct relates:  
  
Persons wishing to purchase land at 'Evermore Heights', Baldivis, Perth.
- (b) Number of those persons?
  - (i) At present time - 0
  - (ii) Estimated within the next year - 70
  - (iii) Estimated within the next five years - 370
- (c) Where number of persons stated in item 3 (b) (i) is less than 50, their names and addresses:  
  
Not applicable.

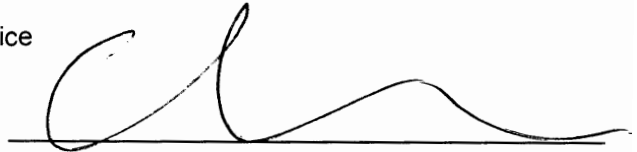


4. (a) Name and address of person authorized by the person giving this notice to provide additional information in relation to this notice:

Caroline Brown  
Lavan Legal  
Level 19  
1 William Street  
PERTH WA 6000

Dated: 30<sup>th</sup> October 2006

Signed by/on behalf of the person giving this notice

A handwritten signature in black ink, appearing to be 'C. Brown', written over a horizontal line.

Full name:

Description:

**CAROLINE BROWN**  
The Quadrant, 1 William Street, Perth WA 6000  
Commissioner of the Supreme Court  
of Western Australia for taking Affidavits

## DIRECTIONS

5. 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.
6. 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.
7. 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.
8. If particulars of a condition or of a reason of the type referred to in subsection 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.
9. In item 3 (a), describe the nature of the business carried on by the persons referred to in that item.
10. 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 subsection 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 subsection 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 subsection 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.

## SUBMISSIONS IN SUPPORT OF NOTIFICATION OF EXCLUSIVE DEALING

### 1

#### Background

- 1.1 The land in Baldivis, Perth which is the subject of this notification is currently owned by the Crown. It is planned that in March 2007, Satterley Property Group, in a joint venture with LandCorp, will become owner of the land. A residential development will be developed on the land, which will be known as "Evermore Heights". "Evermore Heights" will form part of the City of Rockingham.
- 1.2 Evermore Heights will comprise approximately 425 dwellings. It is envisaged that the first lots will be available for purchase in October 2007.
- 1.3 Satterley Property Group aims to create a water and energy efficient estate incorporating a range of best practice, sustainable design features to serve as a model for other urban developments.
- 1.4 In relation to energy efficiency, the estate has been designed to maximise northerly aspects of the living spaces to encourage passive solar design. This orientation will ensure that the need for heating will be significantly reduced. The opportunity for cross ventilation of homes will reduce or remove the need for reverse cycle or evaporative air conditioning.
- 1.5 In order to ensure that the desired sustainability standards are maintained, Satterley Property Group proposes to require owners of the land to enter into building contracts with one of five builders chosen by Satterley Property Group.
- 1.6 Satterley Property Group has not yet selected the builders. However, Satterley Property Group uses the highest criteria in selecting builders including:
  - 1.6.1 strong professional integrity;
  - 1.6.2 proven financial and technical resources to ensure the builder can carry out the required development;
  - 1.6.3 knowledge and use of best practices;
  - 1.6.4 building design which is affordable to the expected purchasers, being first and second home buyers;
  - 1.6.5 strong understanding of energy and water efficient design principles and evidence that these principles have been incorporated into current designs; and
  - 1.6.6 a proven track record of building quality houses.
- 1.7 The Builders will have, or be required to obtain, "Green Smart" accreditation from the Housing Industry Association and adopt work practices in alignment with the "Green Smart" accreditation that include:
  - 1.7.1 containing building waste and rubbish;

- 1.7.2 ensuring concrete, plastering, paint and wash water are not allowed onto the footpath or into the water table;
  - 1.7.3 correct site management to ensure the site is prepared and operated in an environmentally manner; and
  - 1.7.4 ensuring tradespeople and suppliers do not damage footpaths, trees and the water table.
- 1.8 Satterley Property Group will require the Builders to provide approximately 20-25 designs which will be either existing designs or designs which may be specifically developed for use at Evermore Heights.
- 1.9 The designs will be approved by Satterley Property Group and will be vetted to ensure that each design is appropriate for the residential estate and maximises energy and water efficiency.
- 1.10 The land is currently being assessed for its suitability and capability by the City of Rockingham, the Western Australian Planning Commission and the Department of Environment.
- 1.11 When purchasers enter into a contract to purchase land, a condition of the contract will be that the owner of the land enters into a building contract with one of five builders, choosing from the approximately 20-25 designs.

## **2 Possible application of the Trade Practices Act**

- 2.1 The offer to the public for the purchase of land at "Evermore Heights" is conditioned by the requirement that the purchaser must enter into a building contract with one of five builders. Accordingly, it is arguable that sections 47(6) and (7) of the Trade Practices Act 1974 (Cth) may apply.

## **3 Market**

- 3.1 The market in which the proposed conduct will take place is the residential real estate market in the greater Perth metropolitan region.

## **4 Public benefit**

- 4.1 The proposed conduct offers significant benefits to purchasers in that it will provide a dwelling that has significant energy and water efficiencies including:
- 4.1.1 The designs will include a rainwater tank which will be used to flush toilets. This will result in a reduction of potable water use of approximately 65%.
  - 4.1.2 The design of the house will be required to:
    - (a) maximise northerly aspects of the living spaces to encourage passive solar design to decrease the need for heating;
    - (b) maximise the opportunity for cross ventilation to reduce air-conditioning; and

- (c) mandate the use of solar hot water systems and low voltage lighting,

This should ensure that energy consumption will be reduced by over 75%.

- 4.1.3 The effect of such measures will mean that purchasers:
  - (a) will save on energy costs; and
  - (b) produce less greenhouse gas emissions.
- 4.2 Purchasers will have a large range of designs (20-25) to choose from. Purchasers will be free to choose any design. This will reduce transaction costs for purchasers who would otherwise have to spend time and money assessing alternative individual proposals from a number of builders.
- 4.3 Since builders will have a degree of assurance of receiving a reasonable volume of building work, builders will be able to create designs that maximise water and energy efficiencies, including designs which may not be economically feasible without such an assurance.
- 4.4 The builders will be able to promote these designs to purchasers who may not wish to purchase a Satterley Property Group development. This will:
  - 4.4.1 increase competition in other developments; and
  - 4.4.2 promote energy and water efficient houses with resulting public benefits.
- 4.5 The restriction of the number of designs to 20-25 will result in:
  - 4.5.1 economies of scale for those designs and therefore result in significant savings on construction costs. This savings should be passed onto purchasers;
  - 4.5.2 superior quality control of:
    - (a) each development; and
    - (b) the overall project; and
  - 4.5.3 a level of comfort for purchasers that neighbouring lots will be developed to a minimum level of quality and on the same principles as their lot.
- 4.6 The proposed conduct also offers a number of public benefits including:
  - 4.6.1 The project will ensure in an overall reduction in the use of water which will result in:
    - (a) benefits to the community by saving potable water;
    - (b) more economically efficient use of water by matching quality with purpose; and

- (c) a general reduction in costs to the community as such water does not need to be unnecessarily treated to a standard for which it will not be used.

4.6.2 The project will ensure in an overall reduction in the use of energy which will result in:

- (a) benefits to the community by saving energy;
- (b) reductions in greenhouse gas emissions and associated environmental impacts from energy generation; and
- (c) a general reduction in costs to the community from efficient energy use.

4.6.3 The project will also promote the efficient design and construction of water and energy efficient housing.

## 5 Public detriment

5.1 The proposed conduct would take place in the highly competitive Perth residential property market. Therefore, Satterley Property Group submits that the proposed conduct only gives rise to public benefit. The proposed conduct will not give rise to a substantial lessening of competition in the market, and therefore there is no likely detriment to the public resulting from the conduct.


5.2 Regardless of how the market is defined, neither Satterley Property Group nor the builders it selects to participate in this program have sufficient market power to force a member of the public to obtain services from Satterley Property Group or the relevant builder.

## 6 Conclusion

6.1 For the reasons stated above, Satterley Property Group believes that there are only benefits to be achieved from the proposed conduct, which will have no anti-competitive effect.

Based on the information provided in the Form G notification and the submissions which support it, it is submitted that the notified conduct should not be opposed by the Commission.

Dated: 2006

  
CAROLINE BROWN  
PARTNER

CAROLINE BROWN  
The Quadrant, 1 William Street, Perth WA 6000  
Commissioner of the Supreme Court  
of Western Australia for taking Affidavits