

ACCC	
MARS#:
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FILE:

14 November 2006

By Courier

The General Manager
Adjudication
Australian Competition and Consumer Commission
Level 3, 233 Adelaide Terrace
PERTH WA 6000

Dear Sir,

THIRD LINE FORCING - NOTIFICATION

We act for Claymont Land Pty Ltd. We enclose:

1. a Notification on behalf of our client relating to proposed third-line forcing in respect of a residential land development;
2. a Notification on behalf of Joseph Merenda and Domenic Robert Condidorio trading as "M.I. Constructions" as a party to the proposed third-line forcing in respect of the same residential land development; and
3. our client's cheque for \$200 being the fee payable of \$100.00 for each Notification.

Please note that the relevant residential land development at Southern River which is to be known as "Park Lane Cottage Homes" is the same development as the one the subject of a previous Notification N70443-N70446 which was lodged with the ACCC on 13 March 2006 with legal immunity conferred on 27 March 2006. Ms Melanie Brandis from the ACCC was the officer who managed the Notification process.

The enclosed Notification is required for the Southern River development as the developer has now nominated a different builder.

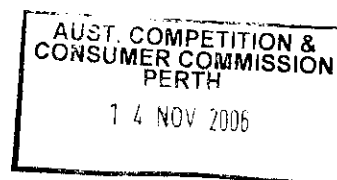
Your Ref:
Our Ref: BJH
Matter No: 60419

Level Two
Fortescue House
50 Kings Park Road
West Perth WA 6005
Australia

PO Box 630
West Perth WA 6872

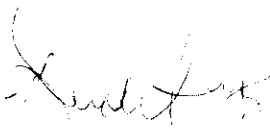
T: (08) 9320 4999
F: (08) 9320 4900
E: info@prlawyers.com.au
www.prlawyers.com.au

PRL Co. Pty Limited
ABN: 43 109 326 463
An incorporated legal
practice



Please let us know if any further information is required in this matter.

Yours faithfully



Brenda Hogg
Senior Associate
Email: bhogg@prllawyers.com.au

Enc

Form G

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

N92699

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... CLAYMONT LAND PTY LTD (ACN 081 255 192).....
.....
(See Direction 2 on the back of this form)
(b) Short description of business carried on by that person
..... RESIDENTIAL LAND DEVELOPMENT
(c) Address in Australia for service of documents on that person
..... Level 1, 189 St George's Terrace, Perth

2. (a) Description of the goods or services in relation to the supply or acquisition of which this notice relates
..... LAND SALES
(b) Description of the conduct or proposed conduct
..... SEE ANNEXURE A ATTACHED
(See Direction 4 on the back of this Form)

3. (a) Class or classes of persons to which the conduct relates
..... SEE ANNEXURE A ATTACHED
(b) Number of those persons--
(i) At present time SEE ANNEXURE A ATTACHED
(ii) Estimated within the next year... SEE ANNEXURE A ATTACHED
(c) Where number of persons stated in item 3 (b) (i) is less than 50, their names and addresses
.....
.....
.....

4. Names and address of person authorised by the person giving this notice to provide additional information in relation to this notice... PULLINGER READHEAD LUCAS, COMMERCIAL LAWYERS,
..... LEVEL 2, 50 KINGS PARK ROAD, WEST PERTH

Dated 8 November 2006

Signed by/on behalf of the applicant giving notice


(Signature)

JERRY GOH

(Full Name)

CHIEF OPERATING OFFICER

(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

1. Claymont Land Pty Ltd (ACN 081 255 192) ("Claymont Land") is a developer of residential land in Western Australia.
2. Claymont Land has undertaken a residential sub-division of land at Southern River in the southern suburbs of Perth. Claymont Land is developing a high density group dwelling development of six strata-titled lots and 18 green title lots located on Abadan Road, Calgary Street and Holmes Street to be known as the "Park Lane Cottage Homes".
3. 15 of the 24 lots forming "Park Lane Cottage Homes" are the subject of this Notification. Nine green title lots and six strata-titled lots are to be constructed on current Lots 301, 302 and 319 on Deposited Plan 46309 being the whole of the land in Certificate of Title Volume 2600 Folios 207, 208 and 225.
4. Southern River is a rapidly expanding residential area and there are a number of other land developers operating in the area involved in sub-division of vacant land for residential use.
5. The development consists of the majority of lots being smaller than 300 square metres intended to:
 - (a) provide more compact housing choices for affordable and sustainable living to a wide demographic of the population including first home buyers and people wishing to down-size;
 - (b) provide low maintenance easy-care homes; and
 - (c) involve the development of single-level urban style housing in clusters of six dwellings on lots of approximately 205 square metres to 305 square metres with total floor areas ranging from 140 to 183 square metres.
6. It is intended that the housing to be established at Park Lane Cottage Homes will broaden the social base by making a range of small-lot dwellings more affordable.
7. Park Lane Cottage Homes is aimed at providing a style of housing which will reach a broader market segment comprising retirees, singles, couples and first home buyers. It is aimed at meeting future trends in housing which are considered to involve a dramatic increase in demand for smaller, more compact housing due to the growth of single and couple occupant homes.

8. Park Lane Cottage Homes is also part of a transit oriented development at Southern River. The development is located near the Canning Vale Commercial Precinct, South Street, Roe Highway and the Kwinana Freeway. The development is also located close to Murdoch and Curtin Universities and the St John of God Medical Centre which has satisfied planning guidelines for a higher residential density zoning for the site which is in line with the State Government's sustainable living policy.
9. Coordination of the construction of Park Lane Cottage Homes is required to ensure a functional and consistent product. The development of the complex will require the careful coordination of the delivery and movement of materials on the building site to achieve an orderly building process and to minimize disruption to other owners. In a group dwelling environment proper spatial planning is essential to ensure harmony of built form. It is therefore essential that Claymont Land has some degree of control over the development to ensure the orderly development of dwellings in the complex together with the common property. A strata body corporate entity will come into existence upon approval of the strata plan.
10. In order to facilitate the outcomes mentioned in the preceding paragraph it is proposed that the land to be made available in the Park Lane Cottage Homes will be sold as "house and land packages". Subject to approval under the Trade Practices Act, it is proposed that Claymont Land would enter into an agreement with Joseph Merenda and Domenic Robert Condidorio trading as M.I. Constructions ("the Builder"), on the basis that the 15 lots would only be sold on condition that the purchaser enters into a building contract with the Builder for the construction of a dwelling on the lot based on a choice of floor-plan designs. This arrangement will allow prospective purchasers to be aware of the building designs, set-backs and boundaries for neighbouring properties before purchasing a lot in the development. This would not be possible if multiple builders were utilised on the project.
11. The intention is that Claymont Land would attract purchasers to enter into a house and land package in respect of the lots the subject of the development. The contract for the sale of the land would provide that it is a condition of the sale that the purchaser enters into a building contract with the Builder with a requirement to build a house with that builder. Prime facie, this proposal may amount to third line forcing under the provisions of the Trade Practices Act.
12. It is considered that the proposal will not have the effect of substantially lessening competition in the market for residential land and/or building services in Perth or in the southern suburbs of Perth in that:
 - (a) there is a large supply of land available in the suburb of Southern River;

- (b) there are only 24 lots within the entire Park Lane Cottage Homes complex and only 15 of those lots are the subject of this Notification. Accordingly there would be an adequate supply of other land on an unrestricted basis in Southern River undertaken by other land developers;
- (c) It is considered that the proposed house and land contracts would provide a benefit to the public and that such contracts are necessary in order to enable the proposed development to proceed incorporating the unique land development concepts mentioned above. Finished homes will attract purchasers to the complex and demonstrate to purchasers that the homes are built in accordance with design guidelines which produce a high quality house with innovative features based on sustainability principles. Buyers will be given a choice of floor-plan designs by the Builder. Consequently, it is suggested that the public benefits flowing from the proposed arrangement will substantially outweigh any public detriment that the proposed arrangement may cause.

13. Claymont Land approached a number of builders in Perth including J-Corp, Dale Alcock Homes, Summit Homes and BGC. While there was no formal tender process, service levels and price were the major selection criteria. Claymont eventually chose M.I. Constructions for its service levels and price competitiveness.
14. Claymont Land will be paid a Project Management Fee in relation to each building contract entered into between M.I. Constructions and purchasers of the lots to be offered for sale. The Project Management Fee is a fee equivalent of not more than fifteen per cent (15.0%) of the total building contract price. In return for the Project Management fee, Claymont Land is required to co-ordinate the entire building process including obtaining local authority approvals, determining and arranging the order of construction of the dwellings, landscaping and fencing, etc. The Project Management Fee will be fully disclosed to prospective purchasers in the building contract to be entered into with M.I. Constructions.

Form G

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

N92700(J)
N92701(J)

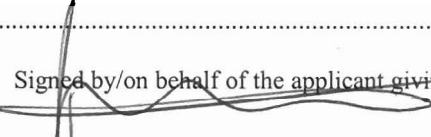
To the Australian Competition and Consumer Commission:

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(PLEASE READ DIRECTIONS AND NOTICES ON BACK OF FORM)

1. (a) Name of person giving notice... JOSEPH MERENDA AND DOMENIC ROBERT CONDIDORIO
TRADING AS M.I. CONSTRUCTIONS
(See Direction 2 on the back of this form)
(b) Short description of business carried on by that person
BUILDER
(c) Address in Australia for service of documents on that person
255 SCARBOROUGH BEACH ROAD, DOUBLEVIEW, WA 6018
2. (a) Description of the goods or services in relation to the supply or acquisition of which this notice relates
BUILDING
(b) Description of the conduct or proposed conduct
SEE ANNEXURE A ATTACHED
(See Direction 4 on the back of this Form)
3. (a) Class or classes of persons to which the conduct relates
SEE ANNEXURE A ATTACHED
(b) Number of those persons--
(i) At present time SEE ANNEXURE A ATTACHED
(ii) Estimated within the next year SEE ANNEXURE A ATTACHED
(c) Where number of persons stated in item 3 (b) (i) is less than 50, their names and addresses
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.....
.....
4. Names and address of person authorised by the person giving this notice to provide additional information in relation to this notice... PULLINGER READHEAD LUCAS COMMERCIAL LAWYERS
LEVEL 2, 50 KINGS PARK ROAD, WEST PERTH

Dated 14/11/2006

Signed by/on behalf of the applicant giving notice

.....
(Signature)
Joseph Merenda
.....
(Full Name)
Partner
.....
(Description)

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