

# Form G

Commonwealth of Australia  
Trade Practices Act 1974 — subsection 93 (1)

N92826

## NOTIFICATION OF EXCLUSIVE DEALING

To the Australian Competition and Consumer Commission:

Notice is hereby given, in accordance with subsection 93 (1) of the *Trade Practices Act 1974*, of particulars of conduct or of proposed conduct of a kind referred to subsections 47 (2), (3), (4), (5), (6), (7), (8) or (9) of that Act in which the person giving notice engages or proposes to engage.

PLEASE FOLLOW DIRECTIONS ON BACK OF THIS FORM

### 1. Applicant

- (a) Name of person giving notice:  
(Refer to direction 2)

CLAYMONT LAND PTY LTD (ACN 081 255 192).....  
.....  
.....

- (b) Short description of business carried on by that person:  
(Refer to direction 3)

RESIDENTIAL LAND DEVELOPMENT.....  
.....

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

LEVEL 1, 189 ST GEORGES TERRACE, PERTH.....  
.....

### 2. Notified arrangement

- (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  
.....  
.....  
.....

*(Refer to direction 4)*

**3. Persons, or classes of persons, affected or likely to be affected by the notified conduct**

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

*(Refer to direction 5)*

.....  
SEE ANNEXURE A ATTACHED  
.....  
.....  
.....

(b) Number of those persons:

(i) At present time:

.....  
SEE ANNEXURE A ATTACHED  
.....

(ii) Estimated within the next year:

*(Refer to direction 6)*

.....  
SEE ANNEXURE A ATTACHED  
.....

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

.....  
.....  
.....  
.....  
.....

**4. Public benefit claims**

- (a) Arguments in support of notification:  
*(Refer to direction 7)*

.....  
SEE ANNEXURE A ATTACHED  
.....  
.....

- (b) Facts and evidence relied upon in support of these claims:

.....  
SEE ANNEXURE A ATTACHED  
.....  
.....

**5. Market definition**

Provide a description of the market(s) in which the goods or services described at 2 (a) are supplied or acquired and other affected markets including: significant suppliers and acquirers; substitutes available for the relevant goods or services; any restriction on the supply or acquisition of the relevant goods or services (for example geographic or legal restrictions):  
*(Refer to direction 8)*

.....  
SEE ANNEXURE A ATTACHED  
.....  
.....

**6. Public detriments**

- (a) Detriments to the public resulting or likely to result from the notification, in particular the likely effect of the notified conduct on the prices of the goods or services described at 2 (a) above and the prices of goods or services in other affected markets:  
*(Refer to direction 9)*

.....  
SEE ANNEXURE A ATTACHED  
.....  
.....

- (b) Facts and evidence relevant to these detriments:

.....  
SEE ANNEXURE A ATTACHED  
.....  
.....

7. Further information

- (a) Name, postal address and contact telephone details of the person authorised to provide additional information in relation to this notification:

PULLINGER READHEAD LUCAS  
COMMERCIAL LAWYERS  
LEVEL 2, 50 KINGS PARK ROAD  
WEST PERTH WA 6005

Dated.....

14/2/07

Signed by/on behalf of the applicant

(Signature)

JERRY GOH

(Full Name)

CLAYMONT LAND PTY LTD

(Organisation)

CHIEF OPERATING OFFICER

(Position in Organisation)

## DIRECTIONS

1. In lodging this form, applicants must include all information, including supporting evidence that they wish the Commission to take into account in assessing their notification.

Where there is insufficient space on this form to furnish the required information, the information is to be shown on separate sheets, numbered consecutively and signed by or on behalf of the applicant.

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. Describe that part of the business of the person giving the notice in the course of the which the conduct is engaged in.
4. If particulars of a condition or of a reason of the type referred to in section 47 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. Describe the business or consumers likely to be affected by the conduct.
6. State an estimate of the highest number of persons with whom the entity giving the notice is likely to deal in the course of engaging in the conduct at any time during the next year.
7. Provide details of those public benefits claimed to result or to be likely to result from the proposed conduct including quantification of those benefits where possible.
8. Provide details of the market(s) likely to be affected by the notified conduct, in particular having regard to goods or services that may be substitutes for the good or service that is the subject matter of the notification.
9. Provide details of the detriments to the public which may result from the proposed conduct including quantification of those detriments where possible.

## 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. Nine of the lots forming "Park Lane Cottage Homes" are the subject of this Notification. Nine green title lots are to be constructed on current Lots 320 and 343 on Deposited Plan 46309 being the whole of the land in Certificates of Title Volume 2600 Folio 226 and Volume 2600 Folio 249.
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.
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 9 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 nine 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.