

20 June 2007

Our Ref: PJY.07102
Direct Line: 94228922
Email: pyoung@younglaw.biz

The Australian Competition and
Consumer Commission (ACCC)
PO Box 6381
EAST PERTH WA 6892

DOC ID

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 THE NICHE, ALBANY HIGHWAY, ARMADALE, WESTERN AUSTRALIA

We act for Albany Development Alliance Pty Ltd.

Our client proposes to offer 38 residential lots for sale to buyers on the condition that each buyer enters into a building contract with a builder nominated by our client, 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. Our client’s 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.

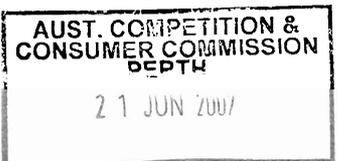
If you have any further queries in relation to the Notification, please contact the writer at your earliest convenience.

Yours faithfully

Peter Young
Director

Encl.

Cc. Mr Danne Forte



Form G

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

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: N92980
(Refer to direction 2)
Albany Development Alliance Pty Ltd ACN 121 284 937 as Trustee for.....
the Albany Development Trust.....
.....
.....
- (b) Short description of business carried on by that person:
(Refer to direction 3)
Property development.....
.....
.....
- (c) Address in Australia for service of documents on that person:
C/- Australian Property Alliance.....
PO Box 1663.....
WEST PERTH WA 6872.....
.....

2. Notified arrangement

- (a) Description of the goods or services in relation to the supply or acquisition of which this notice relates:
38 Survey Strata Lots being parcels of land upon which will be constructed 38 dwellings each containing 3 bedrooms and 2 bathrooms.....
.....
.....

(b) Description of the conduct or proposed conduct:

The sale of vacant Survey Strata Title Lots under a Contract which obliges the buyer of each Lot to enter into a Building Contract with a single nominated..... builder to construct a dwelling on that Lot.....

.....
(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)

Buyers of residential property.....
.....
.....

(b) Number of those persons:

(i) At present time:

Nil.....
.....

(ii) Estimated within the next year:

(Refer to direction 6)

38.....
.....

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

Unknown at this stage. Properties have not yet been offered for sale.....
.....
.....
.....

4. Public benefit claims

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

Refer to Submission annexed to this form.....
.....
.....
.....

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

Refer to Submission annexed to this form.....
.....
.....
.....

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)

The market is the prospective buyers of residential Lots and residential.....
dwellings within the geographical vicinity of the subject property as more.....
particularly described in the Submission annexed to this form.....
.....

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 Submission annexed to this form.....
.....
.....
.....

(b) Facts and evidence relevant to these detriments:

See Submission annexed to this form.....
.....
.....
.....

7. **Further information**

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

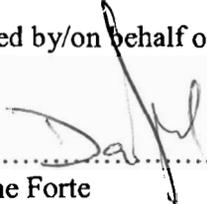
Peter Young.....
Young & Connell Lawyers.....
Level 10, 111 St George's Terrace.....
PERTH WA 6000.....

AND

Danne Forte, Director.....
Albany Development Alliance Pty Ltd.....
PO Box 1663.....
WEST PERTH WA 6872.....

Dated:

Signed by/on behalf of the applicant


.....

Danne Forte

Albany Development Alliance Pty Ltd

Director

**DRAFT SUBMISSION TO ACCC
TO NOTIFY ABOUT THIRD LINE FORCING CONDUCT**

BACKGROUND

Albany Development Alliance Pty Ltd ACN 121 284 937 (“the Developer”) is the owner of land located at 1099-1101 Albany Highway, Armadale, Western Australia. The Developer intends to create a residential development on the land of the estate to be known as “The Niche” Armadale (“the Development”).

The Development will consist of 38 lots upon which residential dwellings are to be constructed. The lots will range in size from 200 square metres to 220 square metres. There will be 12 different house designs available overall with a particular design chosen appropriate to each particular lot. The design allocated to each lot is intended to ensure, amongst other things, an attractive streetscape and a range of homes for buyers within the development.

Attached is a plan of the proposed subdivision and a copy of the relevant certificate of title to the land. The subdivision will be undertaken and registered as a survey-strata scheme. This submission relates to all of the lots on the attached plan.

The Development’s concept has been driven by a desire to create an integrated and high quality community 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 dwellings in the development. The designs have addressed specific site constraints such as slopes and gradients, facades, easy access to public transportation, energy and water efficiency, views to hills and park, and the dwellings will be located within a secure, private estate in order to create, for the benefit of buyers of the lots, an attractive, safe, integrated, community environment.

The individual dwelling designs will be finally agreed between the Developer and Dasco Building Group, the builder which has been selected by a tender process (“the Builder”).

Prior to selecting the Builder, the Developer initiated a tender process inviting interested builders to submit quotations for building costs, details of their experience and examples of their workmanship. Dasco Building Group was chosen after reviewing and considering the credentials and submissions made by a number of builders.

The Builder does not have any interest in the land owned by the Developer and is not a related party to the Developer.

The Developer will promote the marketing and sale of the lots as house and land packages on the basis that the Builder will construct a particular design house on each lot at a fixed price. The prices for the dwellings will be negotiated between the Developer and the Builder before the marketing of the lots. The Developer expects that it will be able to agree prices for the dwellings which will be less than the prices that individual buyers may be able to negotiate separately with the Builder.

Potential Third Line Forcing

In order to ensure that the Development is undertaken as an attractive, integrated, community environment featuring high quality homes, it is intended that a single, reputable and experienced builder will be engaged to construct all of the 38 residential dwellings to be constructed within the estate.

It is proposed that the Developer will offer the lots for sale as vacant land on the basis that each buyer will complete the sale once an individual title is available for the lot to be purchased.

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

“The Buyer must, prior to settlement of the sale and purchase of the Property, enter into a building contract which appoints the Builder to construct the residential dwelling on the Property in accordance with the approved Design for the Property and quality standards of the Estate.”

For the purposes of this clause, “Buyer” means the buyer named in the contract, “Builder” means the Builder nominated by the Developer, “Property” means the individual freehold lot to be purchased by the Buyer, “Estate” means the parcel of land which is the subject of the Development and “Design” means an approved design for the particular lot.

The agreement between each buyer and the nominated Builder will specify the dwelling to be constructed by the Builder and the specifications, standards and timelines for the construction of the dwelling. It will also specify the price payable to the Builder and any circumstances where the price may be varied or reviewed.

This submission is provided in support of the Developer's notification in respect of any potential third line forcing involved in this arrangement.

BRIEF SUMMARY OF THE MARKET

The Development is located adjacent to Albany Highway, in the City of Armadale, approximately 30 kilometres south east of the Perth CBD. The Developer submits that the geographic market relevant to the Developer's application covers not only the City of Armadale and surrounding suburbs but encompasses the whole of the south-eastern metropolitan area of Perth, Western Australia.

The south-eastern metropolitan area of Perth comprises a wide geographic area and includes a variety of residential lots, homes and house and land packages. There is no dominant provider of residential properties in the area. According to the Metropolitan Development Program, Urban Land Release published by the Department for Planning and Infrastructure in 2004, it is estimated that 3,551 lots will be developed in 2007/08 and 2008/09 within this region. If a potential buyer wishes to purchase a freehold lot within an estate development in this region, there are numerous choices available. Apart from the numerous new developments, there are also established homes and redevelopment opportunities on offer in the area.

The City of Armadale is a rapidly growing region in itself and also includes a wide geographic area and a variety of residential lots, homes and house and land packages. There is no dominant provider of residential properties in the City of Armadale and surrounding suburbs. According to the Metropolitan Development Program, Urban Land Release published by the Department for Planning and Infrastructure in 2004, it is estimated that 1,929 lots will be developed in 2007/08 and 2008/09 within this region. If a potential buyer wishes to purchase a freehold lot within an estate development in the City of Armadale, there are numerous choices available. Apart from the numerous new developments, there are also established homes and redevelopment opportunities on offer in the area.

For your reference, we **enclose** a copy of an extract from the Metropolitan Development Program, Urban Land Release 2004/2005 to 2008/2009 showing the results of the developers' land and dwelling intentions survey 2004 in respect of the region.

Compliance with Subdivision Approval

The Development is subject of a subdivision approval obtained from the Department for Planning and Infrastructure on advice from the City of Armadale and a development approval from the City of Armadale. The approvals were given on the basis of an integrated single residential development which has restrictions imposed on it due to the local planning guidelines. In order for the Developer to ensure that the development is integrated and built in the manner approved by the Department for Planning and Infrastructure and the City of Armadale, the Developer must use a single builder who will maintain the integrity of the development.

The City of Armadale should also benefit from having a reduced number of builders submitting building applications relating to the lots in this development.

Improved Construction, Logistics, Quality and Reduced Costs

As the development is of a small lot nature with reduced and, in some instances, zero side boundary setbacks, it is not desirable to have multiple builders on site at the estate because there are limited areas for machinery and the storage of materials. If multiple builders were to build on adjoining lots within the estate at the same time, construction costs for the houses could be increased due to the double handling and coordination issues that would result.

It is difficult to control the quality of the total estate if there is a wide selection of builders on site. By choosing a single reputable builder to build all the homes in the development, the developer is protecting the investment of the buyers because all the homes 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 homes for the lots, shorter building time frames will be available for buyers as building licences can be obtained relatively quickly and the Builder has 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 homes have been 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 homes adjacent to each other, there are further cost and time savings available as one trade is able to move from one house to the next and the materials can be easily sourced and transferred as required.

As the Developer has undertaken a tender process to select the Builder, the Developer expects that it will be able to agree prices for the dwellings which will be less than the prices that individual buyers may be able to negotiate separately with the Builder. This saving will be passed on to the buyers.

Reduced stamp duty

By allowing the buyers to purchase the vacant lots before building works commence, the amount of stamp duty payable by them in respect of the land purchase is reduced. Stamp duty is calculated by reference to the price or value of the land at the time it is transferred. A transfer of a vacant lot will attract considerably less stamp duty than the transfer of land with a completed dwelling on it.

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 residential development industry.

Efficiency and Competitiveness

By using a specific builder to construct houses 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 of each house and land package will be clearly disclosed in each contract to purchase a lot and building contract.

As each building contract will be set at a fixed price, the Builder will not be entitled to increase the price to the buyer unless the buyer requests a variation to the design. Should the buyer seek a variation, the Builder will quote the cost of the variation to the buyer and obtain the buyer's approval to that cost, before undertaking the variation.

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.

Each building contract will be in the form of the standard lump sum Housing Industry Association contract which is the most commonly used contract in Western Australia for the construction of dwellings. This form of contract affords the level of consumer protection generally expected by consumers in dealings with builders of residential buildings.

Existing Competition

There is currently ample competition for residential properties in the subject region and the surrounding areas. The buyers will be able to compare the price of the house and land packages with those of existing houses, vacant lots and other house and land packages to ensure that the prices at the Development have not been inflated by the use of a single builder.

Any adverse impact on competition would be negligible given the size of the property market compared to the number of lots involved in this development. The 38 lots involved represent approximately 1.97% of the vacant lot market in the Suburb and approximately 1.07% of the vacant lot market in the South East metropolitan region of Perth (as estimated by the Department for Planning and Infrastructure). If established homes are also considered, then the Developer's potential market share as a result of this development is negligible.

Accordingly, there is negligible anti-competitive detriment caused by obliging a purchaser of a freehold lot in the estate to use the nominated Builder. There are many other sources of supply of residential properties (either vacant or with established homes). The potential buyers will have a genuine choice, based on quality and price, whether or not to purchase a lot in the Development together with the dwelling to be constructed on the lot.

Survey strata scheme

Typically with strata schemes, buyers are used to having the building or buildings constructed by a single builder. Strata title houses and units are more commonly sold as a completed dwelling. In those instances, the buyer is generally aware of the identity of the developer but not the builder. Often, a developer has not even appointed a builder when he sells strata houses or units “off the plan”.

In this case, the Developer will have appointed the Builder before selling the lots so that the buyers will know the identity of the builder and will be able to assess the Builder’s reputation before agreeing to buy the land.

Buyers’ Preference

Our experience in the industry is 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 house. 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 which many buyers do not wish to spend time and energy doing themselves. Essentially, this can take all of the design headaches and a lot of the “pain” out of the building process for buyers of vacant land.

Environmental and Community Aims

Retaining the uniform style of this Development will ensure that it is compatible with the local environment. It is this aspect of the Development which will give it a communal 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 construction of the remainder of the Development and the local area and provides an ease of access to, and security of, the 38 lots during construction.

The designs of the houses to be built on the lots address specific site constraints and have, therefore, been able to take into account the environmental requirements of the estate and the individual lots. The use of passive solar energy and water efficiency and the maximisation of views from each lot aim at ensuring that the estate is environmentally friendly and complies with all of the environmental requirements of the City of Armadale, the Department for Planning and Infrastructure and the Department of Environment.

It helps to ensure that individual owners do not construct homes or undertake work which would be detrimental to the environment and the community as a whole. 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 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 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 industry.

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 the buyers prior to construction of the dwellings. 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 enter into a building contract with one builder nominated for the construction of the 38 houses comprising the Development.

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.

**PROPOSED DEVELOPMENT PLANS
NOT INCLUDED ON PUBLIC REGISTER**