



Government of South Australia

Attorney-General's Department

If calling please ask for:
James Swanson

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Our Reference: CSO:90225

Your Reference:

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5 June 2008

Australian Competition and Consumer Commission
ANZ House
13 Grenfell Street
ADELAIDE SA 5000

Dear Sir/Madam,

Re: Notification of Exclusive Dealing

I act for the South Australian Housing Trust.

I enclose a Notification of Exclusive Dealing (Form G) pursuant to section 93(1) of the *Trade Practices Act 1974 (Cth)*.

The Notification relates to a proposed development at Kilburn South, SA.

The lodgement fee of \$100 was paid to the Commission by EFT on 15 May 2007 (your reference 10037340).

Yours faithfully,

CROWN SOLICITOR

Per: 

Encl. Form G and Attachment

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:

N93431 South Australian Housing Trust ABN 17 545 435 789

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

A project for the development and marketing of house and land packages, as part of the South Australian Housing Trust's Kilburn South Urban Renewal Project Stage 5 in the area bounded by Mackie Ave, Livingstone Avenue and Churchill Rd, Kilburn/Prospect, South Australia.

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

**James Swanson
C/- Crown Solicitor's Office
GPO Box 464
Adelaide SA 5001**

2. Notified arrangement

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

Contracts for the sale of 16 vacant residential allotments in the area bounded by Mackie Ave, Livingstone Avenue and Churchill Rd, Kilburn/Prospect, South Australia.

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

Refer attachment

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:
 - (1) **Purchasers of the vacant allotments referred to in paragraph 2(a) above.**
 - (2) **Private builders in competition with Ian Wood Homes Pty Ltd ACN 007 940 936 and Rossdale Homes Pty Ltd ACN 007 936 727.**
- (b) Number of those persons:
 - (i) At present time:
Nil
 - (ii) Estimated within the next year:
16 purchasers of vacant allotments
- (c) Where number of persons stated in item 3 (b) (i) is less than 50, their names and addresses:
Not applicable

4. Public benefit claims

- (a) Arguments in support of notification:
Refer attachment
- (b) Facts and evidence relied upon in support of these claims:
Refer attachment

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 attachment

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


7. Further information

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

James Swanson
C/- Crown Solicitor's Office
GPO Box 464
Adelaide SA 5001
Ph (08) 8207 1655

Dated: 5 June 2008

Signed on behalf of the applicant



.....
 (Signature)

James Howard Swanson.

(Full Name)

Crown Solicitor's Office

(Organisation)

Senior Solicitor

(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.

ATTACHMENT

Background

1. The South Australian Housing Trust (the “Trust”) is a statutory corporation of the South Australian Government pursuant to the *South Australian Housing Trust Act 1995*. Its functions include -
 - *“to assist people to secure and maintain affordable and appropriate housing by ... supporting initiatives (within the various sectors) to increase the supply of affordable housing”;*
 - *“to provide houses to meet housing needs, or to support or promote programs or other initiatives within the private or not-for-profit sectors to meet housing needs”.*
2. The Trust is the registered proprietor of 13 existing titles bounded by Mackie Ave, Livingstone Ave and Churchill Rd within the suburbs of Kilburn and Prospect, South Australia, and comprising approximately 1.314ha (the “Land”), as detailed below:

Deposited Plan	Title reference	
	Volume	Folio
4922	5064	583
4922	5064	583
4922	5064	583
4922	5664	486
4922	5664	486
4922	5564	837
4922	5064	583
4922	5064	583
30546	5412	796
30546	5413	80
49709	5564	836
49177	5530	762
49177	5530	763

3. It is the Trust’s intention to redevelop the Land as part of the redevelopment of a larger area known as the Kilburn South Urban Renewal Project (the “Project”) and marketed as “Mapleton Grove”. The Project will reinvigorate and beautify the neighbourhood, by incorporating Trust homes, landscapes, reserves and public spaces within the redevelopment. The Trust also intends to provide recreational spaces for the wider community to improve the amenity of the area.

4. It is intended that the redevelopment, including housing to be established within Mapleton Grove, will:
 - (a) provide a better mix and distribution of private (62%) and public housing (38%) in an area which previously comprised a high level of public housing (90%);
 - (b) promote sustainability practices for housing development, including -
 - i. smarter passive design;
 - ii. energy efficient appliances;
 - iii. water saving fixtures; and
 - iv. construction waste and pollution reduction practices;
 - (c) provide a level of certainty to purchasers in relation to the housing types to be constructed on neighbouring allotments; and
 - (d) provide a quality social and urban environment catering for a diverse mix of people.
5. The Trust has been granted development approval by the Development Assessment Commission (development numbers 040/D149/06 and 050/D011/06) to divide the Land into 27 allotments, described as lots 501 to 527, and redevelop it for housing.
6. Of the 27 new allotments the Trust intends to retain ownership of 2 allotments - lot 151 (on which there are 2 existing semi-detached dwellings) and lot 512 (on which the Trust proposes to build medium density dwellings for later rental or sale). The remaining 25 allotments will be sold to the general public through a combination of sale mechanisms. It is intended that 9 of the allotments will be sold by way of auction and 16 will be sold as house and land packages.
7. The Trust has sought registrations of interest from builders to construct housing on the 16 allotments to be sold as house and land packages.
8. The Trust has accepted the services of 2 builders: Rossdale Homes Pty Ltd ACN 007 936 727 and Ian Wood Homes Pty Ltd ACN 007 940 936 (the "HLP Providers").
9. The 16 allotments earmarked for house and land packages will be allocated equally between the HLP Providers.

10. It is intended that the HLP Providers will market and sell the allotments over a period of 12 months and that construction of all dwellings will be completed within a further 12 months.

Description of the conduct or proposed conduct (paragraph 2(b)).

11. The 16 allotments will be offered to purchasers on the basis that any land sale contract that they enter into with the Trust will be subject to a condition that settlement on the sale will not take place until they have entered into a building contract with one of the HLP Providers to build a dwelling on the land in accordance with a design chosen by the purchaser from an approved range.

Public benefit claim (paragraphs 4(a) and 4(b)).

12. The Trust does not have the capacity to act as a builder itself in respect of the Land and it is therefore unable to offer 'bundled' house and land packages in its own right.
13. The Trust proposes to enter into separate agreements with the HLP Providers. Each HLP Provider will market 8 of the allotments as house and land packages. The HLP Providers were selected as the builders against the following criteria:
 - (a) expertise in building and developing urban housing projects;
 - (b) the product range of the HLP Provider;
 - (c) the price point of the product range;
 - (d) the capacity of the HLP Provider;
 - (e) conformity to the Mapleton Grove and the Trust's requirements.
14. The Trust will retain control over the price of the land component of each house and land package and over the marketing material issued by the HLP Provider. The Trust will ensure that the houses built by the HLP Providers comply with the design guidelines for the Project.
15. Although this redevelopment is not formally part of the South Australian Government's Affordable Homes Program, it is expected that most of the house and land packages will be taken up by purchasers of low to moderate income.

16. If the Trust's vacant land were offered to purchasers unconditionally there would be a greater risk that:
 - (a) the land would remain vacant (which would be inconsistent with the Trust's objectives and with the aims of the Project);
 - (b) the purchaser may enter into an unaffordable house contract; or
 - (c) inferior housing may be constructed.
17. The Trust considers that the sale of the 16 allotments as bundled house and land packages will:
 - (a) ensure that the Trust is able to control the continuity of design and construction of new dwellings in accordance with the Project objectives and the expectations of parties who have previously bought in the Project area; and
 - (b) enable the Trust to ensure compliance by the HLP Providers with the environmental and social objectives of the Project.

These factors are of particular importance in an area where there might otherwise be an incentive for a builder to erect sub-optimal housing.

18. The limitation on the number of HLP Providers is market driven.
19. The Trust considered building costs when assessing the registrations of interest received. The Trust considered that due to the competitive nature of the tender process, and due to the fact that the HLP Providers will be building all of the houses on the Land, the cost of the houses will be competitive and will align with the environmental and social objectives of the Trust in relation to the Land and with the Project generally.
20. The Trust considers the facts advanced in support of this Notification demonstrate that the proposed conduct will give rise to a substantial public benefit.

Market definition (paragraph 5)

21. Without the proposed restriction, the relevant markets are (taking into account long-term substitute possibilities):

(a) Product - land zoned for residential development

(i) geographical area: metropolitan Adelaide and near Hills areas (Gawler to Sellicks Beach and inland to Mount Barker/Nairne)

(ii) functional level: retail sales

(iii) temporal: continuously occurring

(iv) suppliers: all owners of vacant land or land appropriate for redevelopment

(v) acquirers: at large

(vi) substitutes: residential rental market

(b) Product - building services

(i) geographical area: metropolitan Adelaide and near Hills areas (Gawler to Sellicks Beach and inland to Mount Barker/Nairne)

(ii) functional level: retail sales

(iii) temporal: continuously occurring

(iv) suppliers: licensed builders

(v) acquirers: land owners

(vi) substitutes: none

(c) Product - house and land packages

(i) geographical area: metropolitan Adelaide and near Hills areas (Gawler to Sellicks Beach and inland to Mount Barker/Nairne)

(ii) functional level: retail sales

(iii) temporal: continuously occurring

- (iv) suppliers: developers (project home sales); 'spec' builders; vendors of established dwellings
- (v) acquirers: at large
- (vi) substitutes: products (a) and (b), acquired under separate contracts

Public detriments (paragraphs 6(a) and 6(b))

22. Proposed restriction on land use.

Without the proposed restriction, any type of dwelling consistent with zoning and building laws could be built on the subject allotments. Realistically, the nature and locality of the allotments would limit the type and cost of dwelling that would be built. It is most unlikely that high-end housing would be built in this area. It is submitted that there is no public detriment from the proposed restriction on land use.

23. Proposed restriction on building service providers.

The Trust advises that there were 24,556 residential dwelling sales (established and new homes) in metropolitan Adelaide in calendar 2007. Given that there are only 16 allotments being offered as house and land packages in the present proposal, the effect of the proposed restriction on building service providers in the relevant geographic area will be insignificant.

24. The Trust submits that the likely public benefit from the proposed conduct will outweigh any public detriment.

