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**LAVAN** LEGAL  
Leaders in Law

15 October 2009

Chief Executive Officer  
Australian Competition & Consumer Commission  
P.O. Box 6381  
EAST PERTH WA 6892

Dear Sir

**Exclusive Dealing: Notification**

I *enclose*:

- 1 a Form G notification relating to exclusive dealing by Golden Spring Development Pty Ltd; and
- 2 a cheque for \$100.00 in respect of your fee.

If you have any queries in relation to this letter, or the notification, please do not hesitate to contact me or Joseph Addy.

I look forward to hearing from you.

Yours sincerely



Ronnie Nardizzi  
Senior Associate

DOC

**ACCC**

19 OCT 2009

PERTH

~~ACCC  
16 OCT 2009  
PERTH~~

Encl

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**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:**

N94273 Golden Spring Development Pty Ltd ACN 104 753 031 (**Golden**).

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

Development and sale of land.

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

Peter Beekink  
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:**

Development and sale of land.

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

Golden proposes to offer land to the public as part of a house and land package. Golden will sell the land on the condition that the buyer engage Kinbuild Pty Ltd ACN 131 315 396 trading as Wilson and Hart (**Builder**), as its builder to construct a residence on the land.

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

The conduct relates to actual and potential house and land buyers, buying land from Golden and engaging the Builder to perform building services in relation to that land.

(b) **Number of those persons?**

- (i) At present time – 0.
- (ii) Estimated within the next year – 23
- (iii) Estimated within the next five years – 23 (being the 23 referred to in (ii))

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

It is not possible to provide this information at this time as the potential buyers have not been identified.

4 **Name and address of person authorized by the person giving this notice to provide additional information in relation to this notice**

Peter Beekink  
Lavan Legal  
Level 19  
1 William Street  
PERTH WA 6000

Dated: 15 October 2009

**Signed on behalf of the person giving this notice**



**Full name:** Peter Cornelius Beekink  
**Description:** Solicitor for Golden

### **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 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.
- 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 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 UNDER SECTION 93(1)  
OF THE TRADE PRACTICES ACT 1974**

**Background**

Golden wishes sell 23 lots in their land subdivision in Mandurah, Western Australia, on the condition that the purchaser engages the Builder to construct houses on those lots.

The purchasers will be required to enter into 2 separate contracts: a contract for the sale of land with Golden and a building contract with the Builder.

**Market**

The market in which the proposed conduct relates is the residential real estate market in the Peel region of Western Australia.

**Analysis of the conduct**

The conduct described in Form G is third line forcing within sections 47(6) and 47(7) of the Trade Practices Act 1974 (Cth). Golden submits that there is no likely detriment to the public resulting from that conduct.

The proposed conduct does not have the effect of substantially lessening competition in the relevant market in that the estate represents a small proportion of residential real estate available for development in the Peel region of Western Australia.

The proposed conduct offers significant benefits to buyers in that:

- (a) buyers will not have to bear the cost of 'double' duty as there is a single transfer of land from Golden to the relevant buyer, avoiding an intermediate transfer to the Builder. If an intermediate transfer took place, the resulting duty would be passed on to the ultimate buyer;
- (b) as the transfer of title is effected prior to the commencement of the building services, duty is payable only on the land value; and
- (c) as a consequence, the new house and land packages will be available to buyers at more affordable prices.

**Conclusion**

For the reasons stated above, Golden submits that the proposed conduct provides benefits to the public and will have no anti-competitive effect and therefore no public detriment.

For these reasons and based on the information provided in these submissions and the Form G notification which supports it, it is submitted that the notified conduct should not be opposed by the Commission.

Dated: 15 October 2009

Signed by:



**Full name:** Peter Cornelius Beekink  
**Description:** Solicitor for Golden