

24 March 2009

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

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 “106-108 MANDURAH TERRACE”, MANDURAH,
WESTERN AUSTRALIA**

We act for Shorewide Holdings Pty Ltd ACN 105 910 594.

Our client proposes to offer 22 survey-strata lots, of which 7 are zoned mixed-use residential/commercial and 15 of which are zoned residential, 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.

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

DOC ID:

ACCC
25 MAR 2009
PERTH

Encl.

cc Mr Louie Napoli

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:
(Refer to direction 2)

N93903 Shorewide Holdings Pty Ltd ACN 105 910 594

- (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/- Galluccio Griggs

Ground Floor

620 Newcastle Street

LEEDERVILLE WA 6005

2. Notified arrangement

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

22 survey –strata lots of which 7 are zoned mixed-used residential/commercial and 15 of which are zoned residential. The lots will range in size from 109 square metres to 219 square metres.

All lots will be offered for sale as “house and land packages”. There will be 7 different house designs available overall with a particular design chosen appropriate to each particular lot. The house designs will consist of 2 bedrooms and 2 bathrooms including a mix of the following:

(i) Two storey dwellings with a ground floor and an upper floor, each with a double lock-up garage, from a choice of 5 house designs. This applies to all lots other than the 7 lots which front on to Mandurah Terrace.

(ii) Three storey buildings with a ground floor office space, an upper floor and a loft floor, each with a single lock-up garage, from a choice

of 2 house designs. This applies to the 7 lots which front on to Mandurah Terrace.

- (b) Description of the conduct or proposed conduct:
(Refer to direction 4)

The sale of vacant survey-strata title lots under a contract pursuant to which the buyer of each lot is obliged to enter into a building contract with a single nominated builder to construct a dwelling on that lot.

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)

22.

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

Not yet available.

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:

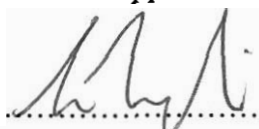
Peter Young
Young & Connell Lawyers
Level 10, 111 St George's Terrace
PERTH WA 6000
Tel: 08 9422 8999

AND

Luciano Napoli, Director
Shorewide Holdings Pty Ltd
C/- Galluccio Griggs
Ground Floor
620 Newcastle Street
LEEDERVILLE WA 6005
Tel: 0401 029 506

Dated: 23rd of March.....2009

Signed by/on behalf of the applicant

(Director to sign) .....

Insert name of Director: Luciano Napoli.....

Shorewide Holdings Pty Ltd

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.

**SUBMISSION TO ACCC
TO NOTIFY ABOUT THIRD LINE FORCING CONDUCT
106-108 MANDURAH TERRACE, MANDURAH**

BACKGROUND

Shorewide Holdings Pty Ltd ACN 105 910 594 (“the Developer”) is the owner of land located at 106-108 Mandurah Terrace, Mandurah, Western Australia. The Developer intends to create a residential development on the land of the estate to be known as “106-108 Mandurah Terrace, Mandurah” (“the Development”).

The Development will consist of 22 survey-strata title lots of which 7 are zoned mixed-used residential/commercial and 15 are zoned residential. The lots will range in size from 109 square metres to 219 square metres. There will be 7 different house designs available overall with a particular design chosen appropriate to each particular lot. The house designs will consist of 2 bedrooms and 2 bathrooms including a mix of the following:

- (i) Two storey dwellings with a ground floor and an upper floor, each with a double lock-up garage, from a choice of 5 house designs. This applies to all lots other than the 7 lots which front on to Mandurah Terrace.
- (ii) Three storey buildings with a ground floor office space, an upper floor and a loft floor, each with a single lock-up garage, from a choice of 2 house designs. This applies to the 7 lots which front on to Mandurah Terrace.

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 are 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, 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 as finally agreed between the Developer and Pindan Pty Ltd ACN 009 009 072 trading as “Pindan Constructions”, being the company which has been selected as the builder (“**the Builder**”). Pindan Constructions is a well established and highly reputable builder of dwellings in Western Australia with a long history of producing high quality dwellings.

The Developer has determined, after undertaking a comparison as to pricing and product, that the Builder provides the best value.

The Builder does not have any interest in the land owned by the Developer other than as the selected builder. The Builder and the Developer are not related companies.

Initially, the Developer will promote and sell the 15 lots which are zoned residential (Lots 8-22) and defer the development of the remaining 7 lots.

The Developer will promote the marketing and sale of the initial 15 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 dwellings to be constructed within the estate.

It is proposed that, initially, the Developer will offer the 15 lots (being the rear lots which are zoned solely for residential use) for sale as vacant land on the basis that each buyer will complete the purchase once an individual title is available for the lot to be purchased. It is possible that the remaining 7 lots will be developed on the same basis at a later date.

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 on Mandurah Terrace, Mandurah, in the City of Mandurah, approximately 73 kilometres south-west of the Perth CBD. The Developer submits that the geographic market relevant to the Developer's application covers not only the City of Mandurah and surrounding suburbs but encompasses the whole of the Peel region.

The Peel sector 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 Land Development Program, State Lot Activity September Quarter 2008 published by the Western Australian Planning Commission, in the Peel sector of Perth, there are 6,992 proposed residential lots currently held by developers under conditional approvals and 303 residential lots for which final approvals are held. 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 Mandurah 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 Mandurah and surrounding suburbs.

According to the Land Development Program, State Lot Activity September Quarter 2008 published by the Western Australian Planning Commission, in the City of Mandurah, there are 5,240 proposed residential lots currently held by developers under conditional approvals and 229 residential lots for which final approvals are held. If a potential buyer wishes to purchase a freehold lot within an estate development in the City of Mandurah, 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 the Land Development Program, State Lot Activity September Quarter 2008 published by the Western Australian Planning Commission showing the latest available information about the availability of residential lots in Western Australia. The information which we have quoted above is taken from pages 2 and 15 of that publication.

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 single 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 22 lots involved represent approximately 0.40% of the vacant lot market in the City of Mandurah and approximately 0.30% of the vacant lot market in the Peel sector of Perth (based on the information contained in Land Development Program, State Lot Activity September Quarter 2008 published by the Western Australian Planning Commission quoted above). If established homes are also considered, then the Developer's potential market share as a result of this development is even less.

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.

Compliance with Subdivision Approval

The Development is the subject of a subdivision approval obtained from the Department for Planning and Infrastructure on advice from the City of Mandurah and a development approval from the City of Mandurah. The approvals were given on the basis of an integrated mixed-use residential development (lots 1-7 inclusive as mixed use commercial and lots 8-22 inclusive as residential) 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 Mandurah, the Developer must use a single builder who will maintain the integrity of the development.

The City of Mandurah 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 costs 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 considered the pricing and product of the Builder to be the best value, 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.

The Builder which has been selected is a well established and highly reputable builder.

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. 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 duty than the transfer of land with a completed dwelling on it.

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 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. All houses have been designed to achieve a 5 star energy rating.

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 Mandurah, 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 adversely 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 22 dwellings 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.