

# Asset1

1 September 2009

FILE No:
DOC:
MARS/PRISM:

Australia Competition &  
Consumer Commission  
Adjudication Branch  
23 Marcus Clarke Street  
CANBERRA ACT 2601

Dear Sir

## **ASSET1 (DEVELOPMENTS) PTY LTD THIRD LINE FORCING REQUEST FOR NOTIFICATION**

We wish to submit a request for notification in relation to land being sold at an estate currently owned by us called The Reserve, Tarneit (Derrimut Road, Tarneit, Victoria).

Please find enclosed the following documents for your consideration:

1. Form G for Asset1 (Developments) Pty Ltd;
2. Executive summary supporting the Form G; and
3. A cheque for \$100.

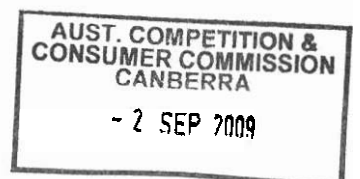
Please contact me if you have any queries on (03) 9620 7888.

Yours sincerely



**LUKE ADAMS**  
MANAGING DIRECTOR

Asset1 (Developments) Pty Ltd  
Level 3, Yarra Tower, World Trade Centre, Melbourne Vic 3005  
Phone +61 3 9620 7888 Fax +61 3 9620 5453  
ACN 110 142 795



# 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)

N94149 Asset1 (Developments) Pty Ltd ACN 110 142 795.

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

**Property Developer (Land Subdivisions).**

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

**Asset1 (Developments) Pty Ltd ACN 110 142 795**

**C/- Marco Gattino**

**Level 3**

**Yarra Tower**

**World Trade Centre Melbourne 3005**

### 2. Notified arrangement

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

**Please refer to the executive summary attached.**

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

**Offering residential lots for sale at The Reserve Estate, Tarneit, on the condition that the purchasers acquire building services for improvements on the lot they have purchased from a pre-determined builder. More detail is provided in the executive summary.**

**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)*

**Residential land purchasers.**

- (b) Number of those persons:

- (i) At present time:

**Zero.**

- (ii) Estimated within the next year:  
*(Refer to direction 6)*

**Please refer to the executive summary attached.**

- (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 to direction 7)*

**Please refer to the executive summary attached.**

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

**Please refer to the executive summary 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)*

**The markets are the residential property market and the home building market. Both are highly competitive. For more information see the executive summary attached to this application.**

**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)

**Please refer to the executive summary attached.**

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

**Please refer to the executive summary 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:

**Marco Gattino**

**Level 3**

**Yarra Tower**

**World Trade Centre Melbourne 3005**

**(03) 9620 7888**

Dated..... 01-09-09 .....

Signed by/on behalf of the applicant

L. Adams  
.....  
(Signature)

LOUCAS ADAMS  
.....  
(Full Name)

ASSET 1 (DEVELOPMENTS) PTY LTD  
.....  
(Organisation)

MANAGING DIRECTOR  
.....  
(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.

## **Asset1 (Developments) Pty Ltd**

### **Submission in Support of application for Notification**

#### **Executive Summary**

1. Asset1 (Developments) Pty Ltd (ACN 110 142 795) (Asset1) and its related entities manage large scale residential developments on land owned by them. The marketing and sale of lots at these residential developments is significantly assisted by the pre-packaging of homes onto some of the lots providing a total solution outcome for the Purchaser where very little needs to be undertaken by them to enjoy the comforts of their new home.
2. Once Asset1 has identified the appropriate lots for the purpose of pre-packaging, it invites Builders to tender for the construction of pre-determined home designs on the lots. At all times, Asset1 owns the intellectual property rights contained within the designs. The builder awarded the construction works, pays an intellectual property fee to Asset1 for the right to use its designs.
3. Asset1 submits that there are substantial public benefits likely to result from offering a proportion of the lots at its developments as “house and land” packages. The principal benefits include:
  - a) A reduction in search and transaction costs for Purchasers;
  - b) Lower stamp duty for Purchasers; and
  - c) An effective and simple method for consumers to buy into Asset1 developments.

Offering “house and land” packages enhances the overall attractiveness and competitiveness of the developments with no, or little, material detrimental impact for Purchasers.

#### **Background**

4. Asset1 is a wholly privately owned entity. Asset1 and its related entities are involved in the business of residential subdivisions. Asset1’s projects are generally large scale residential developments that include a combination of land, and “house and land”, sales.
5. For each development, there is generally a special purpose Asset1 entity that undertakes the development and the position in relation to The Reserve, Tarneit is no different.
6. At The Reserve, Asset1 also performs the role of marketing agent. Apart from marketing vacant lots, Asset1 also markets House and Land Packages. From time to time Asset1 allows independent real estate agents to market vacant lots.
7. Lots that are allocated to one or more Builders are not transferred to the builder, but remain in the name of the Asset1 entity until sale and transfer to a Purchaser. The reasons are that this provides flexibility and saves stamp duty. If an allocated lot cannot be sold as a “house and land” package after a specified period of time, the lot can be sold independently by the marketing agent as a vacant lot.

- a) In summary, the Builders can be described as corporations with whom Asset1 has good business relationships resulting from previous dealings and a proven record of timely delivery and the appropriate standards of quality; and
- b) New Builders that Asset1 approached to become involved with its development and assist in delivering house and land packages.

#### **Promotion and sale of house and land packages**

- 8. Asset1 and its client Lot Owners operate in highly competitive residential property markets. The home building market in which Builders operate is also highly competitive as well as fragmented with many Builders operating in each geographic region.
- 9. A large proportion of residential lots will be marketed and sold as unallocated lots. For these lots, Purchasers will have complete freedom in selecting the builder of their choice and, subject to the development's design covenants, will be able to choose any home design. However, the attractiveness and marketability of the Asset1 developments will be significantly improved if the developments have pre-planned product that has been professionally designed, strategically positioned within the estate and effectively allow Purchasers to take possession of the home with little more to do, that is, a simple walk in and live arrangement. Asset1 believes that having homes at each of its developments is a very efficient way to attract prospective Purchasers and sell residential lots. Asset1 also considers that the marketing and sale of residential lots is significantly improved if pre-planned stock is complete as it helps generate a perception that the estate is established, that is, the estate maintains a greater presence within the marketplace.
  - a) In summary, a builder is allocated a construction job for a specific lot where they can demonstrate the following:
    - a. Competitive pricing;
    - b. Ability to deliver on time;
    - c. Market reputation; and
    - d. Professionalism.

If a builder is allocated specific lot numbers and a specific home design for each of these lots, the Purchaser must use the builder allocated by Asset1 and the builder must use the house design allocated by Asset1.

- 10. Where a prospective Purchaser approaches Asset1 seeking to purchase a lot that has been allocated to a builder, Asset1 may:
  - a) Supply or offer to supply the selected lot;
  - b) Supply or offer to supply the selected lot at a particular price; or
  - c) Give or allow or offer to give or allow a discount, allowance, rebate or credit in relation to the supply or proposed supply of the selected lot,

to the prospective Purchaser on the condition that the prospective Purchaser acquires home building services from the specified builder.

- 11. Asset1 may also:

- a) Refuse to supply the selected lot;
- b) Refuse to supply the selected lot a particular price; or
- c) Refuse to give or allow a discount, allowance, rebate or credit in relation to the supply or proposed supply of the selected lot,

to a prospective Purchaser for the reason that the prospective Purchaser has not acquired, or has not agreed to acquire, home building services from the specified builder.

- 12. If lots are marked or sold as "house and land" package, Purchasers will be required to enter into two separate contracts – one with the Land Owner and one with the Builder.

#### **Public benefits**

- 13. Asset1 submit that substantial public benefit is likely to result from the sale of a proportion of residential lots at each development as "house and land" packages, when compared to a situation where no house and land packages are available.
- 14. There will be a reduction in the search and transaction costs for Purchasers. Purchasers will be able to assess on a site a range of home designs offered by Asset1. Also, Purchasers will be assured that there is full compliance with the estate's design covenants.
- 15. The ability to offer Purchasers a range of house designs, without having to sell a significant portion of lots to Builders, reduces stamp duty costs for Purchasers. The reduction in stamp duty will arise for the following reasons:
  - a) Purchasers will not have to bear the costs of "double" stamp duty, because there is a single transfer of land from the land owner to the Purchaser, avoiding an intermediate transfer to the builder. If an intermediate transfer took place, the stamp duty paid by the builder would be passed on by the builder in the subsequent sale to the ultimate Purchaser; and
  - b) Because the transfer of title is in respect of the undeveloped land, stamp duty is payable on the land value, a significant saving for Purchasers.
- 16. There are likely to be lower building costs for Purchasers. Economies of scale can be generated by the Builders particularly in relation to the acquisition of building supplies and supply of labour. These economies of scale should reduce Builders' construction costs resulting in lower costs for Purchasers. Builders will also be able to supply their services to Purchasers of unallocated lots which will generate competition amongst Builders delivering lower costs and better services for Purchasers.
- 17. The alternative of requiring Builders to purchase all lots on which they construct homes is unattractive to Purchasers, Builders and Land Owners. Purchasers would be faced with a situation where a significant number of particular lots are locked in with particular Builders as well as being exposed to substantially higher stamp duty. Builders would face significantly higher risks and increase holding costs in investing in a larger amount of land before they have a Purchaser for the "house and land" package. The substantial reduction in on-site homes reduces the marketability of a development for Land Owners. The financial



consequences and inflexibility for Purchasers, Builders and Land Owners do not make this a viable option.

**Public detriments**

18. In the regions where The Reserve is located, there are considerable residential development choices for Purchasers. It is a highly competitive environment for developers, land owners and Builders. For these reasons, Asset1 submits that there will be no or little material detrimental impact from the proposed conduct.

**Conclusion**

19. Overall, the benefits to be achieved from offering house and land packages within the development outweighs any detriment. The combination of greater choice, financial savings, increased quality and improved efficiencies for Purchasers, Land Owners and Builders achieved by the proposed conduct will enhance the overall attractiveness and competitiveness of the development.