

19 OCT 2010

PERTH

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:

Peet Brigadoon Pty Ltd (ACN 103 038 651) (**Applicant**).

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

The Applicant is offering 214 lots of rural land (**Lots**) for sale within the Avon Ridge Estate at Brigadoon, a north-eastern suburb of Perth, Western Australia (**Avon Ridge Estate**).

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

c/- Michael Ferguson
Minter Ellison Lawyers
Level 49
152-158 St Georges Terrace
PERTH WA 6000

2. Notified arrangement

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

The sale of rural land at Avon Ridge Estate.

(b) Description of the conduct or proposed conduct:

The Applicant proposes to offer the Lots for sale in the Avon Ridge Estate on the condition that a purchaser must enter into an agreement with Earthcare Recycling Pty Ltd (ABN 52 135 029 855) (**Earthcare**) for the management and recycling of at least 70% of waste generated from the construction of the purchaser's dwelling and any other approved structures on the land prior to 31 December 2014, subject to a six month trial period starting when construction of the first home in Avon Ridge Estate commences.

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:

Purchasers of Lots at Avon Ridge Estate.

- (b) Number of those persons:
 - (i) At present time:
Nil.
 - (ii) Estimated within the next year:
That number of persons who purchase lots of land at Avon Ridge Estate and commence construction on those lots within the next year. Approximately 58 lots will be offered for sale within the next year.
- (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:
See Annexure A
- (b) Facts and evidence relied upon in support of these claims:
See Annexure A

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):

Rural land sales in and around the north-eastern suburbs of Perth, Western Australia.

Supply of construction waste management and recycling services in Perth.

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

7. Further information

- (a) Name, postal address and contact telephone details of the person authorised to provide additional information in relation to this notification:
c/- Michael Ferguson
Minter Ellison Lawyers
Level 49
152-158 St Georges Terrace
PERTH WA 6000
T: (08) 9429 7607

Dated..... 19 October 2010

Signed by/on behalf of the applicant



(Signature)

Domenico SCAFETTA

(Full Name)

FEET BRIGADON PTY LIMITED

(Organisation)

COMPANY SECRETARY

(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.

ANNEXURE A

Public benefits

Arguments in support of notification and facts and evidence relied upon in support of these claims

1. The Avon Ridge Estate is a proposed sustainable new community on rural land in the hills of the Darling Ranges overlooking the upper Swan River and Walyunga National Park, at Brigadoon, a north-eastern suburb of Perth.
2. As part of creating a new community while maintaining the natural environment, the Applicant will require purchasers to comply with certain environmental obligations.
3. One of those obligations relates to purchasers minimising waste and improving recycling during construction of their dwelling and other approved structures.
4. Subject to a six month trial period starting when construction of the first home in Avon Ridge Estate commences, until 31 December 2014 a purchaser will be required to recover and recycle at least 70% of the total volume of recyclable waste generated from the construction of a purchaser's dwelling and any approved structures constructed on the land (**Recycling Requirement**). After the initial six month trial period, the Applicant may decide to remove this requirement for all purchasers.
5. To identify companies capable of providing a service to achieve this Recycling Requirement, the Applicant's Sustainability Consultant approached four main suppliers of waste management and recycling services. Of these, Earthcare was the only company which indicated a willingness and ability to provide the complete integrated waste recovery, recycling and education service outlined below.
6. In order to achieve the Recycling Requirement, Earthcare will:
 - (a) work with the purchaser and their builder to develop a waste management plan, including the essential elements of monitoring and reporting (described further below);
 - (b) facilitate waste separation at the construction site, educating and working with the builders;
 - (c) provide bobcat site cleaning;
 - (d) collect waste;
 - (e) use a facility located on site at Avon Ridge Estate, purpose built by the Applicant, for the storage of waste; and
 - (f) transport that waste from the storage facility to third party recycling facilities once sufficient volume is amassed.
7. Before commencing any construction on the property, purchasers and their builders must develop and implement a Construction Waste Management Plan together with Earthcare. This is a plan to prevent or minimise waste and encourage recycling and will:

- (a) identify details of waste materials and sources that may arise from the construction works;
 - (b) specify the manner in which waste is handled, collected, separated and stored prior to transportation to recycling facilities (for example, collection of waste in separate bins, bags or placed in separate piles on the ground);
 - (c) identify the location of the recycling facilities to which waste will be transported;
 - (d) specify how performance will be measured and monitored;
 - (e) require the keeping of proper records of details of waste including materials and sources, quantity of waste, transportation and treatment of waste; and
 - (f) require reports to be submitted to the Applicant.
8. Earthcare will also be involved in "Purchaser Information Sessions", whereby purchasers and their builders will be able to speak with all the various consultants, including Earthcare, and have their questions answered. The Applicant's Architect, Sustainability Consultant, Bushfire Manager and Environmental Consultant will also be present at these sessions, which will be arranged by the Applicant and occur approximately every three months.
9. The Applicant believes that the proposed conduct will result in the following environmental benefits:
- (a) a reduction in construction waste going to landfill;
 - (b) extensions in the life of local landfills due to increased diversion rates through recycling; and
 - (c) a greater range of recyclable material will be processed than would otherwise be possible due to economies of scale and greater separation and stockpiling of recyclable material than would otherwise occur.
10. The Applicant believes that further benefits and efficiencies likely to result from the proposed conduct include:
- (a) saving purchasers' time and expense in searching for a company to assist them in recycling construction waste;
 - (b) giving purchasers confidence that the waste management and recycling services provided will recycle at least 70% of construction waste as Earthcare will have a detailed knowledge of what is required;
 - (c) improved site cleanliness and appearance during construction due to timely removal of waste and the use of a consistent approach;
 - (d) providing purchasers and builders with a greater understanding of the services provided by Earthcare as a result of Earthcare attending the Purchaser Information Sessions held by the Applicant; and
 - (e) greater efficiency and lower costs from a single provider achieving economies of scale in collecting, storing and transporting waste to recycling facilities when there is sufficient volume.

Public detriments

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 paragraph 2(a) of the notice and the prices of goods or services in other affected markets and facts and evidence relevant to these detriments

1. The Applicant believes that there will be no or little detriment to the public likely to result from the proposed conduct.
2. The Applicant believes the proposed conduct is unlikely to materially adversely affect the price of rural land at Avon Ridge Estate or rural land sales in and around the north-eastern suburbs of Perth, Western Australia more generally.
3. As the proposed conduct will only affect the Avon Ridge Estate, the Applicant believes the proposed conduct is unlikely to adversely affect the price or supply of construction waste management and recycling services in Perth.