

19 Lyall Street  
South Perth WA 6151  
T 09 9354 1917  
F 08 9354 1674  
E yaran@yaran.com.au  
www.yaran.com.au

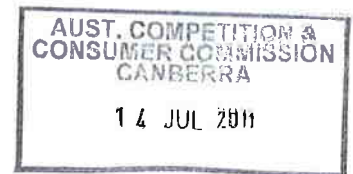


8 July 2011

Australian Competition and  
Consumer Commission  
GPO Box 3131  
CANBERRA ACT 2601

147 494 095

FILE No:
DOC:
MAR/2011



Dear Sir/Madam

**NOTIFICATION OF EXCLUSIVE DEALING – NICHOLSON 531 PTY LTD (A.C.N. 147 494 095)**

**Nicholson 531 Pty Ltd** ("Nicholson 531") is in the business of developing and selling land. Nicholson 531 has entered into a contract to purchase land at 531 Nicholson Court, Canning Vale, Western Australia and intends to subdivide the land into 42 survey strata Lots + Common Property which will be sold for residential usage.

As part of the house and land packages being offered to buyers of the 42 lots, the purchaser will acquire land by way of contract for sale from Nicholson 531 on the condition that the purchaser also enters into a contract for the supply of building services directly from a builder, to be nominated by Nicholson 531.

We therefore enclose Form G – Notification of Exclusive Dealing pursuant to the development at 531 Nicholson Court, Canning Vale by Nicholson 531 Pty Ltd (Notice).

We confirm the correct legal entity giving the Notice is Nicholson 531 Pty Ltd (A.C.N. 147 49 095) as trustee for the Nicholson 531 Trust.

If you have any further queries regarding the Notice please do not hesitate to contact our office on 08 9354 1122.

Yours faithfully

  
\_\_\_\_\_  
Faryar Gory  
Director



## 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

N95476 (a) Name of person giving notice:  
Nicholson 531 Pty Ltd (A.C.N. 147 494 095) as trustee for the Nicholson 531 Trust ("Nicholson 531").

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

Nicholson 531 is in the business of developing and selling land. Nicholson 531 has signed a contract to purchase land at 531 Nicholson Court, Canning Vale, Western Australia, which will be subdivided into 42 survey strata Lots + Proposed Common Property.

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

c/-Yaran Pty Ltd  
19 Lyall Street  
SOUTH PERTH WA 6151

### 2. Notified arrangement

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

This notice relates to the sale of 42 lots in Canning Vale in association with house and land packages being offered by Nicholson 531.

(b) Description of the conduct or proposed conduct:

Nicholson 531 proposes to offer the lots listed above to the public for sale as part of a house and land package. The purchaser will acquire land by way of contract for sale from Nicholson 531 on the condition that the purchaser enters into a contract for the supply of building services directly from a builder, to be nominated by Nicholson 531.

**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:

The conduct refers to potential and actual house and land purchasers purchasing land from Nicholson 531 in Canning Vale and building services from the Builder.

- (b) Number of those persons:

- (i) At present time:

There are no actual purchasers.

- (ii) Estimated within the next year:

(A) Minimum of 42 actual purchasers.

(B) Nicholson 531 is unable to advise on a maximum number of potential purchasers.

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

Nicholson 531 is unable to provide this information at this time as potential or actual purchasers have not yet been identified.

**4. Public benefit claims**

- (a) Arguments in support of notification:

*See attached Submissions*

**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):

The market in which the proposed conduct relates to is the residential real estate market in Canning Vale, Western Australia.

**6. Public detriments**

*See attached Submissions*

**7. Further information**

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

Mr Ben Gorjy  
c/- Yaran Pty Ltd  
19 Lyall Street  
SOUTH PERTH WA 6151

Tel: 08 9354 1122

Dated..... 8/7/2011 .....

Signed by/on behalf of the applicant

.....  
(Signature) *Ben Gorjy*

.....  
(Full Name) *FARUAR GORJY*

.....  
(Organisation) *Nicholson 531 Pty Ltd*

.....  
(Position in Organisation) *Director*



## 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 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.

## **SUBMISSIONS IN SUPPORT OF NOTIFICATION UNDER SECTION 93(1) OF THE TRADE PRACTICES ACT 1974**

### **1. Background**

- 1.1 Nicholson 531 Pty Ltd as trustee for the Nicholson 531 Trust ('**Nicholson 531**') has entered into a contract to purchase land at 531 Nicholson Court, Canning Vale, Western Australia.
- 1.2 Nicholson 531 is in the business of developing and selling house and land packages.
- 1.3 The land currently comprises green titled Lot 602 on Deposited Plan 66094 (531 Nicholson Court, Canning Vale, Western Australia), which will be subdivided into 42 survey strata lots for residential usage, plus proposed Common Property.
- 1.4 Nicholson 531 intends to develop and sell 42 lots to the public as house and land packages.
- 1.5 Under the house and land package, potential purchasers will be required to enter into the following contracts:
  - (1) Contract for the sale of land from Nicholson 531; and
  - (2) Building contract with the Builder for the supply of building services.
- 1.5.1 The sale of the land by Nicholson 531 to the potential purchaser will be conditional upon the purchaser entering into a contract with the Builder for the supply of building services.
- 1.6 The subdivision of the land into 42 survey strata lots will soon be completed. Nicholson 531 proposes to make offers to the public as soon as possible.

### **2. Public Benefit**

- 2.1 The conduct described in this Form is exclusive within sections 47(6) and 47(7) of the Trade Practices Act 1974 (Cth). Nicholson 531 submits there is no likely detriment to the public resulting from that conduct.
- 2.1.2 In the alternative, Nicholson 531 submits the benefit to the public resulting from the conduct outweighs any detriment to the public.
- 2.2 The proposed conduct does not substantially lessen competition in the relevant market as the area represents a small proportion of residential

real estate available for development and sale in the Canning Vale area of Western Australia.

- 2.3 The tight design of the Lots necessitates that all lots are required to be built by one builder concurrently. Please find attached plans and illustrations for the proposed development in Canning Vale.
- 2.4 Common areas and common services need to be constructed before the units can be occupied. Please find attached copies of the proposed plans. On site, it would be impractical to engage more than one Builder to effect construction of these plans.
- 2.5 Using one Builder to construct all homes on the lots described will mean purchasers have more certainty about:
  - (a) the quality of construction;
  - (b) the symmetry of the development;
  - (c) development in accordance with the design guidelines and plans; and
  - (d) timing of completion of the development.
- 2.6 As there is a single transfer of the land prior to the commencement of the building services by the Builder, purchasers will only be required to pay stamp duty on the land value, representing a significant saving for the purchasers and making the overall house and land package being offered by Nicholson 531 more affordable.
- 2.7 As Nicholson 531 does not have to carry the cost of constructing the buildings, Nicholson 531 can sell its house and land packages at a price lower than if Nicholson 531 had to fund the construction of all of the buildings itself. As a consequence, the house and land packages will be available to purchasers at more affordable prices.
- 2.8 Nicholson 531 will obtain tender quotations from pre-qualified builders suitable for the development and the most efficient builder with the best quality will be selected for the development.
- 2.9 The total house and land package prices that are paid by purchasers are based on sworn valuations of the completed houses. The total price paid for the house and land package by purchasers is therefore not impacted by the particular builder selected nor influenced by the cost of construction as set by the builder.



































WESTERN



AUSTRALIA

REGISTER NUMBER <b>602/DP66094</b>	
DUPLICATE EDITION <b>N/A</b>	DATE DUPLICATE ISSUED <b>N/A</b>

**RECORD OF CERTIFICATE OF TITLE**  
UNDER THE TRANSFER OF LAND ACT 1893

VOLUME **2745** FOLIO **369**

The person described in the first schedule is the registered proprietor of an estate in fee simple in the land described below subject to the reservations, conditions and depth limit contained in the original grant (if a grant issued) and to the limitations, interests, encumbrances and notifications shown in the second schedule.

*J. Roberts*



REGISTRAR OF TITLES

**LAND DESCRIPTION:**

LOT 602 ON DEPOSITED PLAN 66094

**REGISTERED PROPRIETOR:**  
(FIRST SCHEDULE)

POMPEO FRANCOIS MAIOLO  
JOSEPH MAIOLO  
BOTH OF LOT 6 GATEWAY BOULEVARD, CANNING VALE  
AS JOINT TENANTS

(AF L348708 ) REGISTERED 18 JUNE 2010

**LIMITATIONS, INTERESTS, ENCUMBRANCES AND NOTIFICATIONS:**  
(SECOND SCHEDULE)

1. \*K765111 MORTGAGE TO AUSTRALIA & NEW ZEALAND BANKING GROUP LTD REGISTERED 19.12.2008.
2. \*EASEMENT BURDEN CREATED UNDER SECTION 167 P. & D. ACT FOR SEWERAGE PURPOSES TO WATER CORPORATION - SEE DEPOSITED PLAN 66094
3. \*L348709 EASEMENT TO ELECTRICITY NETWORKS CORPORATION FOR ELECTRICITY TRANSMISSION WORKS PURPOSES - SEE SKETCH ON DEPOSITED PLAN 66094 REGISTERED 18.6.2010.

Warning: A current search of the sketch of the land should be obtained where detail of position, dimensions or area of the lot is required.  
\* Any entries preceded by an asterisk may not appear on the current edition of the duplicate certificate of title.  
Lot as described in the land description may be a lot or location.

-----END OF CERTIFICATE OF TITLE-----

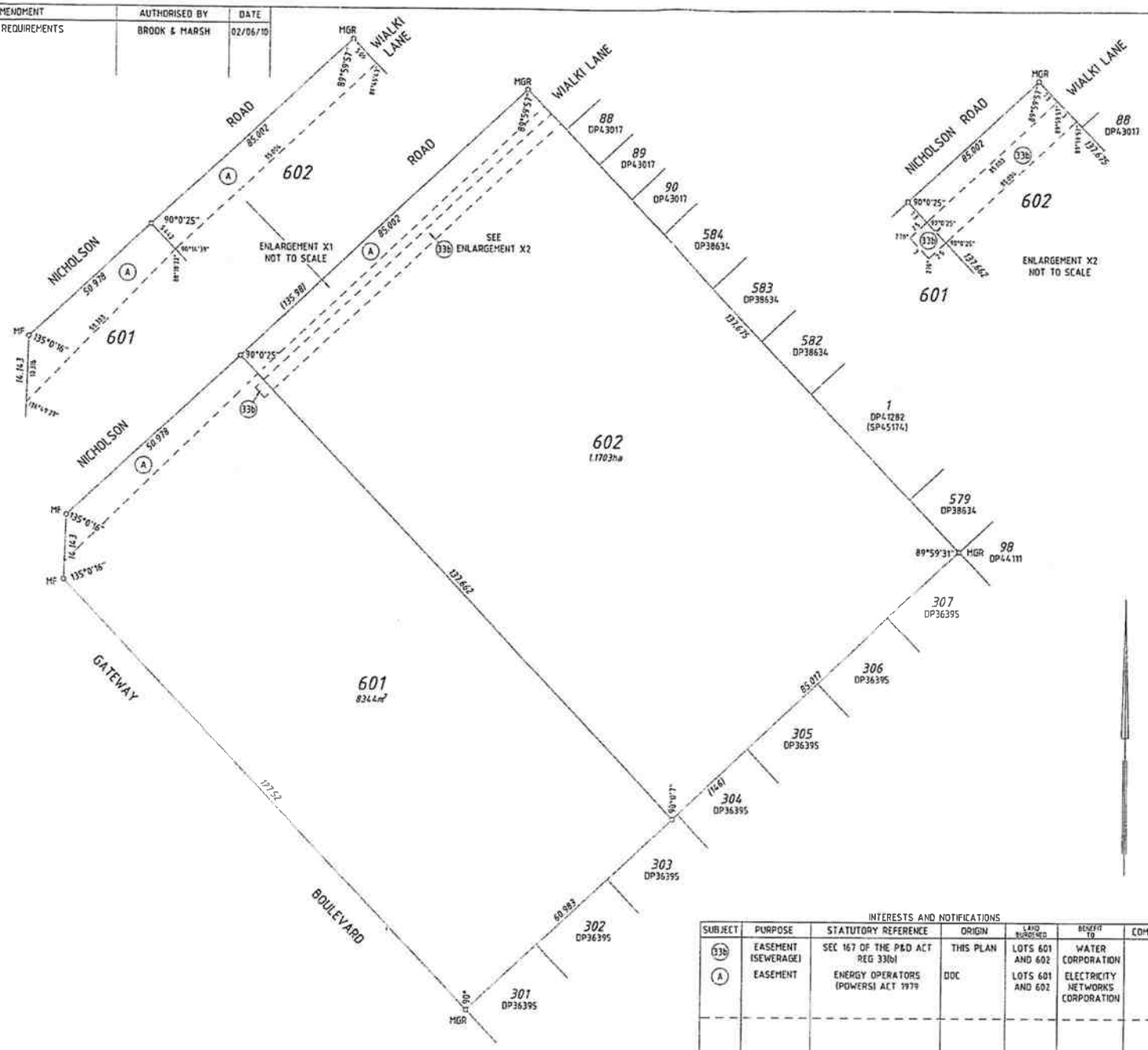
**STATEMENTS:**

The statements set out below are not intended to be nor should they be relied on as substitutes for inspection of the land and the relevant documents or for local government, legal, surveying or other professional advice.

SKETCH OF LAND: DP66094 [SHEET 1].  
PREVIOUS TITLE: 1680-132.  
PROPERTY STREET ADDRESS: 531 NICHOLSON CT, CANNING VALE.  
LOCAL GOVERNMENT AREA: CITY OF GOSNELLS.

NOTE 1: DUPLICATE CERTIFICATE OF TITLE NOT ISSUED AS REQUESTED BY DEALING K765111

VER	AMENDMENT	AUTHORISED BY	DATE
2	AUDIT REQUIREMENTS	BROOK & MARSH	02/06/10



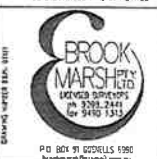
TYPE Freehold  
PURPOSE Subdivision

PLAN OF  
**LOTS 601 AND 602  
AND EASEMENTS**

DISTRICT CANNING TOWNSITE	SSA No
FILE	FORMER TENURE
LOCAL AUTHORITY CITY OF GOSNELLS LOCALITY CANNING VALE	LOT 6 ON D57104 C/T 1680-132
ON	FIELD BOOK
INDEX BG34 [2] 17 12 BG34 [2] 18 12	112227

SCALE 1:600 @ A2  
ALL DISTANCES ARE IN METRES

SURVEYORS CERTIFICATE - Reg 54  
I, W FRANCE  
hereby certify that this is a correct  
representation of the:  
(a) survey; and/or  
(b) calculations from measurements,  
undertaken for the purposes of this plan and  
that it complies with the relevant written  
law(s) in relation to which it is lodged.



4/11  
Licensed Surveyor  
Date

APPROVED BY  
WESTERN AUSTRALIAN  
PLANNING COMMISSION  
FILE 135026  
DELEGATED UNDER S 49 P10 ACT 1995  
DATE

IN ORDER FOR CEALINGS  
SUBJECT TO

FOR INSPECTOR OF PLANS & SURVEYS / AUTHORISED LAND OFFICER DATE

APPROVED  
INSPECTOR OF PLANS & SURVEYS / AUTHORISED LAND OFFICER DATE

Landgate  
Western Australian Land Information Authority  
DEPOSITED PLAN  
**66094**

SHEET 1 OF 1  
VERSION 2

INTERESTS AND NOTIFICATIONS						
SUBJECT	PURPOSE	STATUTORY REFERENCE	ORIGIN	LAND INTERESTED	BENEFIT TO	COMMENT
(33b)	EASEMENT (SEWERAGE)	SEC 167 OF THE P&O ACT REG 33(b)	THIS PLAN	LOTS 601 AND 602	WATER CORPORATION	
(A)	EASEMENT	ENERGY OPERATORS (POWERS) ACT 1979	DOC	LOTS 601 AND 602	ELECTRICITY NETWORKS CORPORATION	