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**AUST COMPETITION & CONSUMER  
COMMISSION - ADELAIDE**

## Form G

Commonwealth of Australia

*Competition and Consumer Act 2010 — 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 *Competition and Consumer Act 2010*, 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)

N95593

***Land Management Corporation*** ABN 86 832 349 553 (***LMC***)

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

LMC is a body corporate established pursuant to the Public Corporations (Land Management Corporation) Regulations 1997 as a subsidiary of the South Australian Minister for Infrastructure.

LMC's primary role is to facilitate opportunities for the private sector across residential, industrial and commercial property developments in Adelaide, consistent with State Government urban development policy objectives articulated through the South Australian Strategic Plan and the 30-year Plan for Greater Adelaide.

This includes:

- Ensuring the provision of residential and industrial land to meet the growing needs of the State and to maintain a competitive advantage;
- Identifying land parcels critical to the sustainable future growth and consolidation of greater Adelaide and amalgamating and assembling land to facilitate urban renewal and development;
- Where required, facilitating, participating in or undertaking development activities to meet Government priorities and policy objectives; and
- Providing strategic advice to Government agencies on land related issues and managing the disposal of some surplus Government land assets.

This notification relates to the mixed-use residential, commercial and open space development on a 16-hectare former industrial site located on the western fringe of the Adelaide CBD, situated within the suburb of Bowden, which is known as the “LMC Bowden Project” (*Bowden Project*). The Bowden Project is being managed by LMC on behalf of the State Government in conjunction with involvement from the private sector and will be developed in stages.

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

Level 9 West Riverside Centre, North Terrace, Adelaide SA 5000

## 2. Notified arrangement

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

LMC intends to supply development lots to developers on the condition that a body corporate related to each developer (being the relevant community corporation during the developer control period) enters into an arrangement with the operator of the tri-generation plant which is to be located within a pilot area of the Bowden Project (*Tri-generation Plant*), for the supply of space heating/cooling and domestic hot water (*Thermal Products*) to the relevant community corporation, which will in turn distribute the Thermal Products to end users (being lot owners or occupiers) on a lot entitlement basis. This arrangement will be supported by contractual obligations on developers, community scheme documents and building encumbrances.

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

### *Background:*

The Bowden Project is the first significant in-fill development of its size and type to be attempted in Adelaide. With a focus on innovative, creative and sustainable design outcomes coupled with a strong plan and vision for the integration of built form, public space and community living, it is LMC’s intention that the Bowden Project will be an example for the type of outcomes that can be achieved and set the benchmark for future developments of this type in and around Adelaide.

To achieve environmental sustainability, LMC intends to trial the use of tri-generation services within the first stage of the Bowden Project which will include a minimum of five (5) development lots upon which apartment buildings (comprising both residential and retail spaces) will be constructed (*Pilot Area*). Thermal energy products, gas and electricity will be produced via the operation of the Tri-generation Plant and supplied to end users within the Pilot Area. To facilitate this, energy transfer stations will be constructed and installed in the common area of each apartment building within the Pilot Area to facilitate metering.

The Urban Design Guidelines (*UDG’s*) for the Pilot Area will include requirements for the delivery of tri-generation reticulation networks and

It is foreseeable that, in order to comply with the UDG's, developers may be required to purchase connection services or equipment from the operator of the Tri-generation Plant where these are specific to the Tri-generation Plant for the Bowden Project and cannot be realistically obtained elsewhere, which may also result in a technical breach of section 47(6) of the Act.

*(Refer to direction 4)*

**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)*

Those other potential providers of Thermal Products to end users within the Pilot Area.

End users within the Pilot Area (both residential and retail).

- (b) Number of those persons:

- (i) At present time:  
Unknown.
- (ii) Estimated within the next year:  
*(Refer to direction 6)*  
Unknown.

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

Unable to be identified at this time.

**4. Public benefit claims**

- (a) Arguments in support of notification:  
*(Refer to direction 7)*

The Tri-generation system refers to the simultaneous generation of heating, cooling and electricity from the same original source. Excess heat from electricity generation is captured and re-directed into heating and cooling. This can produce higher efficiencies per unit of fuel than co-generation or traditional power plants. The result is a reduction in carbon emissions.

The proposed conduct will be of benefit to the public because it will:

- Enable LMC to offer a residential housing development with improved energy efficiency and significant environmental benefits; and

infrastructure and prevent lot owners and occupiers from employing alternate methods for the services of Thermal Products (i.e. compelling the use of the building central services for Thermal Products).

It is intended that developers will be required to procure:

- development of the built form for each apartment building in accordance with the UDG's and plans approved by LMC and subsequently by the relevant authority;
- creation of the community scheme (i.e. scheme description and by-laws) (*Community Scheme Documents*) and incorporation of the community corporation for each apartment building;
- Community Scheme Documents that uphold the UDG's and include certain provisions regarding tri-generation services delivery and the manner by which lot owners/occupiers will be charged;
- the relevant community corporation to grant an easement to the operator of the Tri-generation Plant for the energy transfer station;
- the relevant community corporation to enter into a supply contract with the operator of the Tri-generation Plant for the supply of Thermal Products to the energy transfer station within each apartment building;
- the relevant community corporation to grant an encumbrance in favour of LMC over the common property title on similar terms to the Developer Encumbrance mentioned below; and
- each end purchaser of a lot to grant an encumbrance in favour of LMC on similar terms to the Developer Encumbrance mentioned below, but also including a restriction on installing and using reverse cycle air-conditioning.

*Conduct:*

The proposed conduct relates to LMC supplying development lots within the Pilot Area to developers on the condition that a body corporate related to each developer (being the relevant community corporation during the developer control period) enters into an arrangement with the operator of the Tri-generation Plant, which is to be located within a pilot area of the Bowden Project, for the supply of Thermal Products to the relevant community corporation, which will in turn distribute the Thermal Products to end users (being lot owners or occupiers) on a lot entitlement basis. We have assumed that, for so long as the relevant community corporation is controlled by each developer, it will be a related body corporate to that developer for the purposes of section 47(6) of the *Competition and Consumer Act 2010* (Cth) (the *Act*).

As part of this arrangement, developers will be required to grant an encumbrance in favour of LMC over the development lot (*Developer Encumbrance*) which will support the requirement to develop the development lot in accordance with the UDG's.

developers of each development lot as avoided capital expenditure. The ongoing reduction in network charges payable will largely accrue to the end users in the Pilot Area.

## **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 relevant market likely to be affected by the proposed conduct is the market for the provision of Thermal Products to the extent that end users in the Pilot Area might use them.

Also likely to be affected is the market of potential purchasers (and tenants) for apartments within metropolitan Adelaide and the market of potential investors in (and tenants for) retail space within metropolitan Adelaide.

## **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)*

The Pilot Area which is the subject of this notification represents five (5) development lots which will be converted into approximately 222 apartments and some 150m<sup>2</sup> of retail space. This is a very small percentage of the total number of residential and retail offerings both old and new on the market at the current time in the Adelaide metropolitan area.

LMC considers that the public benefit of incorporating energy efficient technologies in to the Pilot Area outweighs any public detriment that may result from the proposed conduct.

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

There are no empirical facts or evidence that LMC is aware of that is relevant to the potential detriments identified above.

The Pilot Area is a very small component of the market for retail energy supply in the Adelaide metropolitan area.

The market for retail energy supply in the Adelaide metropolitan area is highly competitive. The proposed conduct will not reduce effective competition in this market for the provision of electricity and gas to end

Enable each dwelling within the Pilot Area to be connected to the Tri-generation Plant, which will reduce the costs associated with the system for each end user. In its Request for Proposals from prospective operators of the Tri-generation Plant, LMC has advised proponents that it is LMC's expectation that end users will receive Thermal Products, gas and electricity at a discount to what would be possible from conventional connection to the National Energy Market.

If the use of a Tri-generation system in the Pilot Area is successful in achieving LMC's stated objectives, LMC will consider adopting the same for future stages of the Bowden Project.

The proposed conduct may also encourage other residential property developers to incorporate sustainable energy solutions into future developments.

Furthermore, successful land releases by LMC with sustainability credentials enhances the reputation of LMC for the benefit of the people of South Australia.

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

LMC will be selecting the operator of the Tri-generation Plant after an exhaustive and competitive Expression of Interest and Request for Proposal process and believes that the chosen operator will have the appropriate experience and expertise and will be best positioned to successfully design, construct and install, own, operate and maintain the Tri-generation Plant. A key consideration in the selection of the operator will be its ability to supply Thermal Products, gas and electricity to end users within the Pilot Area at competitive prices which LMC is expecting will be less than pricing from conventional electricity and gas retailers.

In the case of Thermal Products, LMC expects a pricing methodology that reflects the benefits of avoided up-front infrastructure costs as well as the operational efficiency benefits of tri-generation.

LMC is committed to capturing the benefits for developers that a local energy system can provide. Significant up-front investments in energy supply and conversion infrastructure – that would normally accrue to developers and be passed on to the eventual owners – can be avoided.

A key feature of a tri-generation based local energy system is the reduction in electrical distribution capacity requirements as a result of moving thermal loads off the electrical infrastructure. This feature will result in a very different electrical load profile for the Pilot Area than would be apparent otherwise.

The potential reduction in upstream augmentation costs from this avoided capacity is sizeable and importantly, this benefit would accrue to the

**7. Further information**

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

David Martin

Finlaysons Lawyers

81 Flinders Street,

Adelaide SA 5000

(P) 8235 7400

(E) david.martin@finlaysons.com.au

Dated..... 6/10/11 .....

Signed by/on behalf of the applicant .....

.....  
(Signature)

David Martin.....  
(Full Name)

Finlaysons Lawyers.....  
(Organisation)

Partner.....  
(Position in Organisation)

users within the Pilot Area and may well increase competition for electricity and gas by the operator of the Tri-generation Plant providing electricity and/or gas at lower prices.

There are a number of suppliers in the housing and retail markets in South Australia. LMC considers that these markets are competitive. As a result, the ability of developers to offer apartments and retail space to potential purchasers or investors that come with the provision of tri-generation services will increase competition within the market by increasing the number of offerings that are available. The proposed offerings will compete with a vast range of alternative residential developments, dwellings and retail space. Accordingly, the proposed conduct will not limit the choices available to potential purchasers or investors (or tenants) within these markets.

## 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.