

Our Ref: KC:C20120744

4 November 2011

General Manager, Adjudication  
Australian Competition and Consumer Commission  
GPO Box 3131  
CANBERRA ACT 2601

FILE No:

DOC:

MARS/PRISM:

Dear Sir

**Form G - Notification of Exclusive Dealing under Section 93(1) of the Competition and Consumer Act 2010 - Cloud 22 Pty Ltd (ACN 143 580 590) as trustee for the Cloud 22 Trust**

We act for Cloud 22 Pty Ltd (ACN 143 580 590) as trustee for the Cloud 22 Trust in regard to the proposed development and sale of survey-strata lots at 9-11 Arthur Street, Cannington, Western Australia.

We **enclose** for lodgement a Form G – Notification of Exclusive Dealing. Our client intends to offer proposed survey-strata lots for sale on the condition that the buyer enters into a building contract with a nominated builder for the construction of improvements on the lot.

We also **enclose** our cheque for \$100.00 in payment of the lodgement fee.

Please contact the writer if you have any questions.

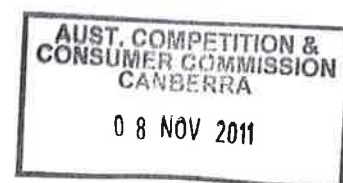
Yours faithfully  
**IRDI LEGAL**



**Kim Costello**  
**Lawyer**

Email: [kim@irdi.com.au](mailto:kim@irdi.com.au)

Enclosures (2)



## 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)

A95623 Cloud 22 Pty Ltd (ACN 143 580 590) as trustee for the Cloud 22 Trust.

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

Property development.

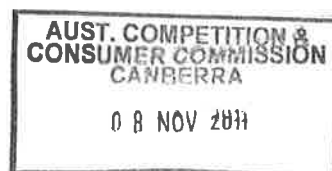
- (c) Address in Australia for service of documents on that person:

Unit 7  
105 Burswood Road  
BURSWOOD WA 6100

### 2. Notified arrangement

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

Refer to attached schedule.



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

Selling residential strata-survey lots on the condition that the buyer enters into a building contract for the construction of improvements on the lot with a nominated builder.

*(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)*

Buyers of residential lots.

- (b) Number of those persons:

- (i) At present time:

Nil.

- (ii) Estimated within the next year:

*(Refer to direction 6)*

Maximum of 10, being the number of lots on the survey-strata plan.

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

Not relevant.

#### **4. Public benefit claims**

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

Refer to schedule.

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

Refer to schedule.

#### **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 residential property market in the south eastern metropolitan area of Perth in the vicinity of Cannington.

For further details refer to schedule.

#### **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*)

Refer to schedule.

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

Refer to schedule.

**7. Further information**

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

Steven Erceg and Trent Garrett  
C/- Verse Property Group  
Unit 7  
105 Burswood Road  
BURSWOOD WA 6100

Ph: (08) 9361 8999

Dated..... *4<sup>th</sup> November 2011* .....

Signed by/on behalf of the applicant

.....  
(Signature)

**Steven Erceg**  
(Full Name)

**Cloud 22 Pty Ltd**  
(Organisation)

**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 *Competition and Consumer Act 2010* 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.

## **SCHEDULE TO NOTIFICATION OF EXCLUSIVE DEALING**

### **Background**

Cloud 22 Pty Ltd (ACN 143 580 590) as trustee for the Cloud 22 Trust (“Cloud 22”) is an entity established for the purpose of developing the properties known as 9-11 Arthur Street, Cannington, Western Australia.

Cloud 22 has entered into contracts to acquire 9 and 11 Arthur Street, Cannington, Western Australia. The properties will be amalgamated and a survey strata plan registered over the amalgamated lot. The survey strata plan will create 10 individual lots, together with a central driveway comprising a common property lot.

Cloud 22 proposes to sell each survey strata lot on the basis that the buyer will enter into a contract with a nominated builder providing for the construction of improvements on each lot. The same builder will be nominated under each sale contract.

Two of the directors of Cloud 22, Steven Erceg and Trent Garrett, are real estate agents experienced in the sale and development of residential property.

The lots on the survey strata plan will be sold as “house and land” packages. Cloud 22 will manage and market the development and the sale of the lots on the survey strata plan.

### **Relevant Market**

Residential property market in the vicinity of Cannington, Western Australia, is competitive with a number of sellers and property developers operating in the area.

Potential buyers will have the opportunity to compare the prices of the proposed “house and land” packages with packages offered by other developers. There are also existing residential houses and units available for sale in the market.

The size of the relevant market and the availability of properties for sale means that the proposed “house and land” packages offered by the applicant will not have a material effect upon competition in the market.

### **Public Benefits**

There are a number of public benefits resulting from the sale of the “house and land” packages.

Buyers will save on stamp duty as stamp duty will be payable on the land component of the package, rather than the value of the land and completed building.

Each buyer will have the benefit of economies of scale resulting from the builder constructing each house at substantially the same time. It is anticipated that the house on each lot will be constructed by the builder at one time.

Each buyer will be saved the inconvenience of having to locate an appropriate builder.

The builder nominated by Cloud 22, namely Quattro Homes, is a reputable, high quality builder. The use of the same builder will ensure a uniform, high quality construction of improvements throughout the lots on the survey strata plan.

There is no apparent public detriment arising from the proposed "house and land" packages.

