

# 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)*

N96230

Charles Darwin University

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

*(Refer to direction 3)*

Charles Darwin University (**CDU**) is the beneficial owner of the land situate at Lot 9765 Town of Palmerston being the whole of the land contained in Certificate of Title Register Book Volume: 702 Folio: 336 in the Northern Territory of Australia, also known as The Heights Durack (**The Heights Durack**). CDU have entered into a Project Development Agreement with CIC-LDC Pty Ltd (ACN 147 029 534) (**CIC**) to develop the land for residential subdivision. CIC and its related entities have extensive experience in developing and establishing residential subdivisions throughout Australia.

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

C/o Ward Keller Lawyers  
GPO Box 330  
Darwin NT 0800

### 2. Notified arrangement

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

This notification relates to the development and sale of residential land at The Heights Durack. The development will take approximately 5 - 6 years and aims to produce approximately 738 lots with development approval given for 317 lots to date.

The Heights Durack is due to commence civil construction within a matter of weeks and contracts for 27 residential lots have been exchanged to date. Titles for Stage 1 of the development are expected to issue on or about March of 2013.

The Northern Territory Government (NTG) encourage and support new land releases in the Northern Territory to reserve for sale an agreed number of lots to members of the public who qualify in accordance with NTG's requirements for affordable housing (**Lifestyle Housing**). As part of the land release at The Heights Durack, CIC have made a commitment to reserve approximately 15% of the available lots as Lifestyle Housing. The NTG requires that CDU must only sell Lifestyle Housing to purchasers who meet the eligibility as established by the NTG. The criteria, although subject to change, is an income based means test and applicants must also be eligible for the First Home Owners Grant.

The NTG's affordable housing initiatives enable eligible Territorians to have an opportunity to purchase affordable properties made available throughout the Northern Territory. The properties offered for sale are generally either pre-constructed homes or house and land packages and are sold by ballot or on a first come, first serve basis.

The Heights Durack SP8 Zoning requirements include, in addition to other matters, that land identified as 'small lot integrated housing' or Lifestyle Housing have a house and land package design that has been endorsed by the consent authority and developed in accordance with the endorsed design. In order for CIC to deliver a house and land package which meets the Zoning and NTG requirements a design process was initiated to create a house and land package that would meet all the design guidelines and fall below a particular price point to meet affordability targets.

CIC consulted with a number of builders in an attempt to produce the house and land package at or below the intended price point. Only one builder was able to meet the requirements of CIC and NTG and has continued to work in conjunction with CIC to finalise designs and fixed price contracts.

Vantage Homes Pty Ltd (ACN 106 132 094) (**Vantage**) is an established, award winning building company operating in the Northern Territory. They have extensive experience in building high quality residential dwellings and can provide CIC with confidence that the Lifestyle Housing product will be produced to a certain quality and in a realistic construction timeframe.

(b) Description of the conduct or proposed conduct:

*(Refer to direction 4)*

The third line forcing conduct can be described as follows:

1. CDU supplying or offering to supply Lifestyle Housing to eligible purchasers subject to and conditional upon the purchaser entering into a construction contract with Vantage Homes Pty Ltd; or
2. CDU refusing to supply Lifestyle Housing to eligible purchasers or complete settlement with an eligible purchaser because they have not entered into a construction contract with Vantage Homes Pty Ltd.

**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)*

Eligible purchasers of Lifestyle Housing at The Heights Durack.

- (b) Number of those persons:

- (i) At present time:

No Lifestyle House has been offered for sale to date, although eligible applicants have been requested to make expressions of interest.

- (ii) Estimated within the next year:

*(Refer to direction 6)*

During the next 12 months it is expected that 6 of Lifestyle Housing lots will be made available for public sale and contracts will be exchanged for all of that Lifestyle Housing.

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

As no contracts have been entered into for The Heights Durack, we cannot provide the names and addresses of persons to be affected.

**4. Public benefit claims**

- (a) Arguments in support of notification:

*(Refer to direction 7)*

The conduct is unlikely to have any or little detrimental impact on competition in the relevant market(s).

The conduct will have, at least, the following public benefits which outweigh any public detriment.

**- Entry into housing market**

Low income or asset poor purchasers often find it difficult to purchase their first home at current market rates because they have difficulty financing the purchase and are wary of construction contracts in which the price may increase beyond the initial cost estimate. This conduct will assist those

purchasers by providing them with access to affordable land and an affordable fixed price construction contract to deliver certainty in the cost of the overall purchase.

Purchasers will also gain a reduction in Stamp Duty by purchasing land and building as opposed to buying an existing dwelling.

**- Lower prices for purchasers**

The home design created by CIC and Vantage will guarantee Vantage a certain number of dwellings and they can deliver those dwellings at a lower price than normal because of the following reasons:

- \* Vantage costs of engaging surveyors, trades people and other personnel to construct the dwellings will be reduced because multiple dwellings are to be constructed within close proximity to one another, reducing down time and travel costs.
- \* The set design and layout of the homes to be constructed will allow Vantage to purchase materials in bulk and pass the saving in costs on to the purchasers. It will also create a quick build time by removing the need for the design process and being able to leverage manpower across a number of building sites at once.
- \* The fixed price of the contract will also allow for Vantage to commence construction quickly after the issue of titles and complete the construction in a timely manner.
- \* Vantage has a proven track record, providing the purchaser with a certain quality of workmanship.

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

The current subdivisions of residential land in Darwin propose to provide just over 4500 residential lots available for public purchase. To date under 2500 of these lots have been given subdivision approval, providing for a large number of residential lots still to be released by the NTA over the next two calendar years. Further information regarding NTA's plan for release and development of residential land can be found at <http://www.housingnt.nt.gov.au/Grow/index.html>

In addition to the demand for new land, the current demand for development of private residence, home renovations and major constructions within the CBD have created a great need for both skilled and unskilled labour in the construction industry. Other major infrastructure projects in the Northern Territory have created a flourishing economy and the demand for services in the industry does not appear as though it will ease in the near future. The volume of land to be released over the coming years will continue to provide companies who construct residential homes with ongoing work for the foreseeable future.

There is no obligation on purchasers of Lifestyle Housing to purchase a Lifestyle Housing Lot at The Heights Durack.

**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 market for the sale of residential land in the area of Palmerston and in the metropolitan areas of Darwin in the Northern Territory;
- The market for provision of construction services for residential homes in the area of Palmerston and in metropolitan Darwin in the Northern Territory.

**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)*

No other builder except Vantage will be able to construct residential dwellings for purchasers of Lifestyle Housing Lots in The Heights Durack. Alternatively all builders can enter into construction contracts for purchasers of the remaining lots in the development. At a minimum, approximately 85% of the development will be available for purchasers who can select a builder of their choice.

Public detriment that may flow from the proposed conduct will be marginal, if not negligible and are far outweighed by the public benefit as outlined earlier.

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

Nil

**7. Further information**

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

Name: Ken Suter  
Senior Manager Major Projects

Charles Darwin University  
PO Box 40146  
Casuarina NT 0811  
Ph: (08) 8946-6309

Dated the 4<sup>th</sup> day of October 2012

Signed on behalf of the applicant

.....*Teresa Hall*.....

(Signature)

.....  
(Full Name) – Teresa Lydia Hall

.....  
(Organisation) – Ward Keller

.....  
(Position in Organisation) – Associate

## 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.