

Your Ref:
Our Ref: AZW:21212610
Contact: Adam Walker
Direct Line: +61 3 9252 2515
Direct Email: awalker@vic.gadens.com.au

FILE No:
DOC:
MARS/PRISM:



ABN 29 991 935 627

Level 25
Bourke Place
600 Bourke Street
Melbourne Vic 3000
Australia

GPO Box 48
Melbourne Vic 3001

DX 304 Melbourne

tel +61 3 9252 2555
fax +61 3 9252 2500

26 November 2012



Adjudication Branch
Australian Competition and Consumer Commission
GPO Box 520
MELBOURNE VIC 3001

Dear Sir/Madam

**Marlin Coast Land Company Pty Ltd ACN 116 015 340 Pty Ltd
Exclusive Dealing Notification (Third Line Forcing)**

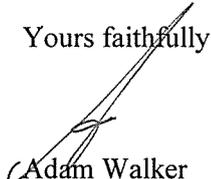
We act for Marlin Coast Land Company Pty Ltd and its project manager, Satterley Property Group Pty Ltd.

Please find **enclosed**:

1. Form G Notification; and
2. a cheque for **\$100.00** made payable to **Australian Competition and Consumer Commission** in payment of the lodgement fee.

If you have any questions, please contact the writer.

Yours faithfully


Adam Walker
for GADENS LAWYERS

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)

N96381 Marlin Coast Land Company Pty Ltd
ACN 116 015 340
18 Bowman Street
SOUTH PERTH WA 6151

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

The Applicant is the registered proprietor of the land presently known as Lot 711 on SP222736 (the **Site**), which the Applicant is developing as a residential housing estate, and marketing and selling lots of residential land therein for that purpose.

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

Attention: Mr Adam Walker
Gadens Lawyers
Level 25, 600 Bourke Street
MELBOURNE VIC 3000

2. Notified arrangement

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

Lots of residential land at the Site.

- (b) **Description of the conduct or proposed conduct:**
(Refer to direction 4)

1) The Applicant proposes supplying, and offering to supply, certain lots at the Site during the Relevant Period (see item 4(a) below) on the condition that the purchaser also enters into a

domestic building contract directly with a builder, who will be a licensed builder in accordance with the *Queensland Building Services Authority Act 1991* (Qld), nominated by the Applicant (the **Nominated Builder**).

- 2) The Applicant proposes refusing to supply certain lots at the Site during the Relevant Period to any potential purchaser who does not agree to enter into a domestic building contract directly with a Nominated Builder.

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)

Potential and actual purchasers of lots at the Site.

- (b) **Number of those persons:**

- (i) **At present time:**

Nil.

- (ii) **Estimated within the next year:**
(Refer to direction 6)

20 if all lots affected by the notified conduct are sold within this period.

- (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:**
(Refer to direction 7)

Lots on the Site will be made available for sale to purchasers in stages. Each stage will comprise approximately 40 lots. Any dwelling constructed on any lot at the Site must comply with the design and construction guidelines approved by the Applicant for the Site (the **Guidelines**).

For a period concluding no later than the date six (6) months after the Plan of Subdivision is registered for each new stage (the **Relevant Period**), the Applicant will refuse to sell up to 10 lots in each stage (the **Affected Lots**) unless the purchaser enters into a domestic building contract with a Nominated Builder (the **Exclusive Hold**

process). The Applicant intends to designate one (1) Nominated Builder per Affected Lot, however:

- in each stage, up to six (6) Nominated Builders will have the benefit of the Exclusive Hold process; and
- if an Affected Lot remains unsold at the end of the Relevant Period, the Affected Lot would no longer be subject to the Exclusive Hold, but any dwelling subsequently constructed thereon must still comply with the Guidelines; and
- the Nominated Builder may elect to relinquish its Exclusive Hold on the Affected Lot, but any dwelling subsequently constructed thereon must still comply with the Guidelines.

The notified conduct will provide benefits to the public of:

- 1) consistency, quality and integrity of design, appearance and streetscape, providing purchasers with confidence as to:
 - (A) the Site as a desirable neighbourhood environment; and
 - (B) their investment in purchasing a lot on the Site;
- 2) by the Applicant nominating reputable Nominated Builders, control of quality at the Site, which in turn gives purchasers confidence of compliance with the Guidelines;
- 3) competition between the Nominated Builders (in terms of design, quality, expediency and cost) for potential purchasers to acquire a lot associated with that Nominated Builder as opposed to:
 - (A) any other Affected Lot designated to another Nominated Builder; or
 - (B) any other lot on the Site; and
- 4) cost benefits to purchasers, including:
 - (A) reduced marketing costs through the integrated selling of house and land;
 - (B) construction by Nominated Builders occurring on a volume basis producing economies of scale; and
 - (C) by selling the Affected Lot to the ultimate purchaser rather than first to the Nominated Builder and then to the ultimate purchaser, the ultimate purchaser avoids the effective impact of paying duty on two transactions.

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

See above.

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 sale of real estate capable of Residential land use in the greater Cairns region.

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 Applicant submits that the notified arrangement involves no public detriments because.

- 1) the real estate market in the greater Cairns region is highly competitive and, in particular, there are various competing residential developments available throughout the greater Cairns region;
- 2) the Site represents a small portion of the relevant market;
- 3) there will be competition between the Nominated Builders at the Site;
- 4) the purchaser enjoys the cost benefits described at item 4(a); and
- 5) the Affected Lot is only the subject of the notified conduct during the Relevant Period.

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

See above.

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 Adam Walker
Gadens Lawyers
Level 25, 600 Bourke Street
MELBOURNE VIC 3000

T: 03 9252 2515
F: 03 9252 2500
E: awalker@vic.gadens.com.au

Dated: 26 November 2012

Signed by/on behalf of the Applicant



Gadens Lawyers, for and on behalf of
Marlin Coast Land Company Pty Ltd ACN 116 015 340



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.