

## 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)

- Town of Port Hedland (Town).

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

- The Town is a local government established by the *Local Government Act 1995*.
- The Town is the registered proprietor of Lot 1 Traine Cr, South Hedland and Lot 581 Catamore Court, South Hedland (Land).
- The Land will be subdivided in accordance with the attached Subdivision Plan to create Lots 13-23 (Subdivision).
- The proposed lots identified as Lots 13-22 (inclusive) on the Subdivision Plan will be sold for residential use (Lots).

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

- Civic Centre, McGregor Street, Port Hedland.

### 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 the Lots being offered as house and land packages by the Town. A single residential dwelling will be constructed on each of the Lots.

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

- The Town proposes to offer the Lots to the public on the condition that the buyer(s) enters into a building contract for the supply of building services with Megara Constructions Pty Ltd (ACN 138 294 185) of Suite 2A, Level 2, 658 Newcastle Street, Leederville, Western Australia (**Builder**) to construct a residential dwelling on that lot.

*(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)*

- Potential buyers of house and land packages in the locality of the Subdivision.

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

(i) **At present time:**

- No persons are presently affected by the conduct as the Lots have not been offered for sale.

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

- The estimated number of persons to be affected will be at least 10 buyers.

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

- This information is not currently unavailable as contracts of sale for the Lots have not been entered into.

**4. Public benefit claims**

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

- Refer to the attached submissions.

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

- Refer to the 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):  
(Refer to direction 8)

- The market in which the proposed conduct relates to is potential buyers of house and land packages and the home building and construction market in the locality of South Hedland, Western Australia.

## 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)

- There is no perceived detriment as the Lots represent a very small proportion of residential real estate that is available for development sale within the district of South Hedland. There are other options for the public to purchase house and land packages within the district of South Hedland.

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

- Refer to the 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:

Malcolm Osborne

Chief Executive Officer


Town of Port Hedland

PO Box 41, Port Hedland, Western Australia

Ph: 9158 9329

Dated.....4.9.13.....

Signed by/on behalf of the applicant

.....  
(Signature)

.....MALCOLM JOHN OSBORNE.....  
(Full Name)

.....Town of Port Hedland.....  
(Organisation)

.....CEO.....  
(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.

**SUBMISSIONS TO THE AUSTRALIAN COMPETITION AND CONSUMER  
COMMISSION IN SUPPORT OF THE NOTIFICATION OF THIRD LINE  
FORCING CONDUCT – SECTION 47(6) & 47(7) OF THE COMPETITION AND  
CONSUMER ACT 2010**

**1. Background**

1.1. The Town of Port Hedland (Town) is the registered proprietor of land described as:

- (a) Lot 1 on Diagram 46898 being the whole of the land comprised in Certificate of Title Volume 1385 Folio 491; and
- (b) Lot 581 on Deposited Plan 70111 being the whole of the land comprised in Certificate of Title Volume 3779 Folio 373,

**(together the Town's Land).**

- 1.2. The Town in cooperation with the Department of Housing (Department) intends to subdivide the Town's Land together with a portion of land currently owned by the Department (Department's Land).
- 1.3. The Town's Land and the Department's Land (together the Subdivision Land) will be subdivided in accordance with the attached Subdivision Plan (Subdivision).
- 1.4. The Subdivision was approved by the Western Australian Planning Commission on 22 November 2010.
- 1.5. The Town undertook a Request for Proposal (RFP) process for the development of housing on the Subdivision Land.
- 1.6. Following the RFP process, the Council of the Town resolved to appoint Megara Constructions Pty Ltd (ACN 138 294 185) of Suite 2A, Level 2, 658 Newcastle Street, Leederville, Western Australia (Megara) as the preferred developer of the Subdivision Land.
- 1.7. The following submissions relates to 10 of the 11 proposed lots created by the Subdivision, namely Lots 11-22 (inclusive) (Lots).
- 1.8. The Town intends to sell the Lots to the public. The sale of the Lots will be conditional upon the buyer entering into a building contract with Megara for the supply of building services to construct a residential dwelling on that lot.

**2. Third Line Forcing**

- 2.1. The condition that the buyer(s) of each of the Lots will be required to enter into a building contract with Megara will be contained in the Contract of Sale for each lot. The proposed condition is:

**"1. Seller must enter into Building Contract with Builder**

- 1.1. The Buyer acknowledges and agrees that the Seller is selling the Property as a house and land package in cooperation with Megara Constructions Pty Ltd (Builder).

- 1.2. *The Buyer shall enter into a building contract with the Builder for the construction of a residential dwelling on the Property as soon as reasonable practicable after the date of this Contract. The building contract will be in substantially the same form as the contract annexed to this Special Condition as Annexure 1 (Building Contract).*
- 1.3. *This Contract is subject to and conditional upon the following:*
  - 1.3.1. *the Buyer entering into the Building Contract with the Builder for the construction of a residential dwelling on the Property;*
  - 1.3.2. *the Buyer paying any required deposit under the Building Contract by the due date specified in the Building Contract; and*
  - 1.3.3. *the Builder giving notice to the Seller, that the Builder is satisfied that the Buyer has obtained finance or obtained sufficient funds in order to fulfil the Buyer's payment obligations under the Building Contract.*
- 1.4. *The Buyer shall not do or omit to do anything that may cause or result in a default or breach of any of the terms and conditions of the Building Contract.*
- 1.5. *The Buyer shall not terminate or rescind the Building Contract without the written consent of the Seller.*
- 1.6. *The Buyer shall not do or omit to do anything which may cause the Builder to terminate to rescind the Building Contract.*
- 1.7. *This Special Condition survives settlement of this Contract.*
- 2.2. *The conduct described above may constitute or involve exclusive dealing under sections 47(6) and/or section 47(7) of the Competition and Consumer Act 2010.*
- 2.3. *The town submits that there is no likely detriment to the public resulting from that conduct.*
- 3. Public Benefit**
  - 3.1. *The Town reasonably believes that there is no likely detriment to the public resulting from the conduct described in section 2 above. The Town believes that the benefits resulting from this conduct outweighs any potential detriment to the public.*
  - 3.2. *The Town believes that the conduct achieves the goal of economic efficiency in the industry, without restricting the entry of other builders into the market as there are already numerous developments of this style within Western Australia and the district of the Town.*
  - 3.3. *The Town undertook a Request for Proposal process prior to nominating Megara as its preferred developer for the Subdivision. The Town is reasonably satisfied that the Builder is a fit, proper and efficient contractor for the construction of the dwellings on the Lots, with adequate experience within such building construction projects to ensure that the dwellings are constructed in an efficient and timely manner and to a high standard.*

- 3.4. By nominating Megara as the preferred developer, the future residents of the Subdivision can be assured that:
- 3.4.1. all dwellings on the Lots will be constructed by a reputable and quality builder;
  - 3.4.2. their neighbours are building with the same builder and the builder will take an outcome based approach in designing an attractive streetscape; and
  - 3.4.3. the general locality of the Subdivision will be improved as the dwellings will be purpose designed for the Subdivision providing a well-designed and presentable streetscape.
- 3.5. The Lots represent a very small proportion of residential real estate that is available for development and sale in the district of the Town.
- 3.6. As there will be a single transfer of land before the commencement of building services by the Builder, the buyers will only be required to pay duty on the value of the relevant lot, which will create a significant saving for the buyers and also ensures that the Lots offered for sale by the Town will be affordable to home buyers.
- 3.7. As the Town will be bearing the cost of constructing the dwellings prior to the sale of the Lots, the Town is able to offer house and land packages at a relatively lower price and increase the affordability of the Lots offered for sale to the public.
- 3.8. Due to the isolated locality of the Subdivision, it may be impracticable for each of the buyers to engage different builders to effect construction of the dwellings on the Lots in a timely manner.
- 3.9. By using a specified builder to construct the dwellings on the Lots, this will also result in a more efficient allocation of resources, which in turn lowers the cost of construction of the dwellings and ensures consistent quality control across all dwellings.

#### **4. Summary**

- 4.1. Town believes that there are substantial public benefits that will arise from the buyers of the Lots project entering into building contracts with the Builder.
- 4.2. Any potential detriments will be outweighed by the public benefits which are outlined in these submissions.