

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)

N97084 & Tamala Park Regional Council for and on behalf of the City of Perth, the
N97093 Town of Victoria Park, the City of Joondalup, the City of Vincent, the
Town of Cambridge, the City of Wanneroo and the City of Stirling

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

Acquisition, development and sale of land.

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

Unit 2, 369 Scarborough Beach Road, Innaloo, Western Australia.

2. Notified arrangement

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

See Annexure A attached.

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

See Annexure A attached.

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)

See Annexure A attached.

- (b) Number of those persons:
 - (i) At present time:
Not known.
 - (ii) Estimated within the next year:
(Refer to direction 6)
Not known.
- (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)
See Annexure A attached.
- (b) Facts and evidence relied upon in support of these claims:
See Annexure A attached.

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)

See Annexure A attached.

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)
See Annexure A attached.
- (b) Facts and evidence relevant to these detriments:
See Annexure A attached.

7. Further information

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

Attention: Chief Executive Officer

Tamala Park Regional Council
Unit 2, 369 Scarborough Beach Road
INNALOO WA 6018
(PO Box 655, Innaloo, WA 6918)

Dated..... 31/10/13

Signed by/on behalf of the applicant

.....
(Signature)

.....
(Full Name)

Tamala Park Regional Council
(Organisation)

Chief Executive Officer
(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.

ANNEXURE A

1. Tamala Park Regional Council (for and on behalf of the landowners being the City of Perth, the Town of Victoria Park, the City of Joondalup, the City of Vincent, the Town of Cambridge, the City of Wanneroo and the City of Stirling) (“TPRC”) is developing a residential estate known as Catalina Estate which is situated in the outer metropolitan suburb of Clarkson approximately 34 kilometres north-west of Perth and which is being developed in stages (“Estate”).
2. Satterley Property Group (“SPG”) has been appointed by TPRC as the project and sales manager of the Estate.
3. TPRC has identified up to 88 medium density lots (“House and Land Package Lots”) out of 278 proposed lots within Stages 9, 10, 11, 12 & 13 of the Estate which it proposes to offer to selected builders (“Builders”) to market on the basis that the Builders will construct residences for purchasers on the House and Land Package Lots.
4. TPRC will undertake a public tender process to identify which Builders it proposes to appoint to construct residences for purchasers on the House and Land Package Lots based upon the following selection criteria:
 - (a) experience in medium density design and construction;
 - (b) capacity to meet market demand;
 - (c) building design;
 - (d) sustainability credentials;
 - (e) innovation; and
 - (f) financial capacity.
5. It is proposed that the Builders will be able to market (in conjunction with TPRC and SPG) “house and land packages” on the House and Land Package Lots. It will be a condition of the sale of the House and Land Package Lots by TPRC that purchasers enter into a building contract with one of the Builders. Prime facie, this proposal may amount to third line forcing under the provisions of the *Competition and Consumer Act 2010* (Cth).
6. It is proposed that TPRC will also enter into put options with Builders whereby any House and Land Package Lots not sold to purchasers as mentioned in Item 5 above within a specified timeframe may be required to be purchased from TPRC by the Builders.
7. It is considered that the likely benefit to the public from the proposed conduct will outweigh the likely detriment to the public from the proposed conduct in that the conduct will encourage the Builders to build residences

of a high standard and which will meet TPRC's requirements and which are intended to be competitively priced.

8. It is considered that this proposal will not have the effect of substantially lessening competition in the market for residential land and/or building services in Clarkson or in the vicinity of the Estate given that there will be 190 proposed lots within Stages 9, 10, 11, 12 & 13 of the Estate which will be sold without restriction. Additionally, in each of TPRC's three most recent builder's releases four or more builders were allocated lots, providing competition for the sale of the House and Land Package lots. TPRC expect a similar number of builders to participate in the House and Land Package lots in stages 9, 10, 11, 12 & 13. TPRC expects that prospective purchasers will receive a competitively priced building price for the proposed residence to be constructed on the House and Land Package Lots.

10. It should also be noted that the Estate is located within the north western metropolitan suburb of Clarkson where there are a number of vacant lots (without restriction) available for sale in nearby suburbs.

11. TPRC and SPG will not receive any fee, commission or other financial reward in relation to the building contracts to be entered into between the Builders and purchasers of the House and Land Package Lots.

12. It is also proposed that the put options for the House and Land Package Lots will include a condition that the Builder must participate in the Catalina Waste Management Program. The Catalina Waste Management Program requires the Builder to contract with Instant Waste Management to provide recycling bins and recycle material at their recycling facility in Bayswater, Western Australia. The fee schedule for the Catalina Waste Management Program is shown in the table below.

House Size (incl carport)	Single Storey (3 "Bin and Cleans") (ex GST)	Double Storey (4 "Bin and Cleans") (ex GST)
0 – 100sqm	\$ 2,550.00	\$ 3,850.00
101 – 200sqm	\$ 2,550.00	\$ 4,150.00
201 – 260sqm	\$ 2,800.00	\$ 4,250.00
261 – 320sqm	\$ 3,100.00	\$ 4,550.00
321 – 400sqm	\$ 3,750.00	\$ 5,100.00
>401sqm	\$ 4,350.00	\$ 5,420.00

Prime facie, this proposal may amount to third line forcing under the provisions of the *Competition and Consumer Act 2010* (Cth). The TPRC will pay a rebate of \$900 per house to Builders as a contribution towards the costs of participating in the Catalina Waste Management Program. The cost is also substantially offset by the reduction in bob cat and bin services that would otherwise be required by the Builder.

13. It is considered that the likely benefit to the public through the recycling of building materials will outweigh the likely detriment to the public.
14. It is considered that participation in the Catalina Waste Management Program will not have the effect of substantially lessening competition in the market for waste management services in Clarkson or in the vicinity of the Estate given that there will be 190 proposed lots within Stages 9, 10, 11, 12 & 13 of the Estate which will be sold without restriction. Additionally, additional costs (if any) to the Builder will be largely offset by the rebate payable by TPRC.
15. The Catalina Waste Management Program was publicly advertised and tendered, before being awarded to Instant Waste Management in February 2014. There are currently 36 home sites at Catalina Estate participating in the Catalina Waste Management Program voluntarily indicating that the Program has real benefits for Builders and is not cost prohibitive.
16. TPRC and SPG will not receive any fee, commission or other financial reward in relation to the Catalina Waste Management Program.