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ACCC
28 JAN 2015
PERTH

LAVAN LEGAL
Leaders in Law

28 January 2015

Australian Competition and Consumer Commission
3rd floor, East Point Plaza
233 Adelaide Terrace
PERTH WA 6000
By Hand

Dear Sir/Madam

Third line forcing notification – Housing Authority

We act for the Housing Authority.

We enclose:

- 1 a notification in relation to the supply of a modular housing product from BGC Residential Pty Ltd, which may constitute third line forcing; and
- 2 a cheque for \$100, being the lodgement fee.

Please do not hesitate to contact me or Catherine Berbatis if you require any further information.

Yours sincerely

Tamara Heng
Tamara Heng

Partner

Encl

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)

N98105 Housing Authority of 99 Plain Street, East Perth, Western Australia (**Owner**)

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

The Owner carries on the business of the development and sale of residential land in Western Australia.

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

Care of Banksia Grove Development Nominees Pty Ltd
19 Hardy Street
South Perth WA 6151

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 supply of a modular housing product from BGC Residential Pty Ltd (ABN 54 052 543 450) (**BGC**) to be installed on lots within the land comprising the Owner's residential property development.

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

The Owner wishes to sell lots in its "Banksia Grove" residential property development pursuant to sale contracts containing a condition that purchasers must enter into a contract for the acquisition of a modular housing product from BGC prior to settlement.

(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)

The class of persons affected by the notified conduct is limited to prospective purchasers of lots in the Owner's residential property development.

- (b) Number of those persons:

- (i) At present time:

0

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

22, being the buyers of the following lots within the Banksia Grove estate.

Lot No	Street	Area (m2)	Frontage (m)
Stage 28A - Titles February 2015			
3369	Jam Way	342	12
3370	Jam Way	301	15
3371	Jam Way	301	15
3372	Jam Way	344	11.98
3373	Ausfeld Street	337	10.2
3374	Ausfeld Street	376	11.4
3375	Ausfeld Street	337	10.2
3376	Ausfeld Street	422	12.58
3377	Ausfeld Street	376	11.4
3378	Ausfeld Street	337	10.2
3379	Sandridge Street	324	11.1
3380	Sandridge Street	319	15.9
3381	Sandridge Street	319	15.9
3382	Sandridge Street	326	11.08
3383	Mountain Street	337	10.2
3384	Mountain Street	376	11.4
3385	Mountain Street	422	12.8
3386	Mountain Street	337	10.2
3387	Mountain Street	376	11.4
3388	Mountain Street	337	10.2
3389	Mountain Street	422	12.8
3390	Ausfeld Street	422	12.8

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

It is not possible to provide this information as the potential purchasers have not been identified.

4. Public benefit claims

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

The notified conduct allows the Owner to meet its development goals and affordable housing mandate offering a more cost effective alternative to traditional 'house and land' packages.

The notified conduct will provide consistency in the quality of building throughout the development and result in substantial time savings in the construction of a home.

The amount of duty payable on the sale of a lot is reduced significantly if a buyer is acquiring just the land from the Owner.

The use of modular housing will significantly reduce energy and materials wastage in building a home and reduce the carbon footprint during the construction process as compared to traditional construction methods.

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

Not applicable.

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 is the residential real estate market in Perth, Western Australia. The acquirers of residential real estate in Western Australia include private persons, businesses and Government agencies.

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 are no known public detriments arising from the notified conduct.

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

Not applicable.

7. Further information

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

Tamara Heng
Lavan Legal
1 William Street
Perth WA 6000
9288 6000

Dated... 28TH JANUARY 2015

Signed by/on behalf of the applicant

(Signature)

(Full name)

(Organisation)

(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.