

## 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:

N98515 South Australian National Football League Inc (**SANFL**)

N98516 Commercial & General Communities Pty Ltd, ACN 600 978 103 as trustee for Commercial & General Communities Trust (**C&G**)

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

SANFL is the registered proprietor of land located in West Lakes, South Australia, being the whole of the land comprised in Certificates of Title Register Books Volume 5178 Folio 136, Volume 6135 Folio 410, Volume 6138 Folio 298, Volume 5854 Folio 360, Volume 6135 Folio 412 and Volume 6135 Folio 413.

C&G carries on a business of development and sale of residential land.

SANFL and C&G have entered into an agreement to undertake the subdivision and development of the land and C&G has been appointed to act on SANFL's behalf in the marketing, sale and development of the land. The development is known as the "West Lakes Development".

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

Attention: Mr A. Swale, Minter Ellison Lawyers, GPO Box 1172, Adelaide SA 5001

### 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 proposed sale of residential land and procurement of residential construction services at the West Lakes Development.

(b) Description of the conduct or proposed conduct:

The land the subject of the West Lakes Development will be subdivided into approximately 700 allotments, comprising up to 1,600 residential homes including terraces and apartments. The land will be developed in an estimated nine stages between 2015 and 2025.

The subdivision process has delineated 33,300m<sup>2</sup> of the land for Stage A of the West Lakes Development. Stage A will be undertaken in 2015 and is estimated to be completed by December 2016. Stage A involves the sale of approximately 87 lots of land plus additional apartments (each an **Allotment**) to purchasers, each being for residential purposes.

C&G wishes to market and offer for sale the Allotments for Stage A, on behalf of SANFL, to purchasers on condition that the purchaser construct their residential home on the Allotment using a builder that has been approved by C&G (**Approved Builders**). As at the date of the notification, the number of Approved Builders is two, however additional builders may be approved by C&G in future, on the basis of the selection criteria outlined in section 4(a) below.

Under this arrangement, the purchaser will be required to enter into two separate contracts, being:

- the Land Sale Contract between the purchaser and SANFL, for the purchase of the Allotment; and
- a Building Contract between the purchaser and its nominated Approved Builder for the construction of the residential home on the Allotment,

(hereafter, the "**Proposed Conduct**").

The Proposed Conduct may constitute third line forcing that contravenes section 47(6) or 47(7) of the *Competition and Consumer Act 2010* (Cth).

**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:

Prospective purchasers of Allotments at the West Lakes Development.

(b) Number of those persons:

(i) At present time:

0

(ii) Estimated within the next year:

*(Refer to direction 6)*

144 (being the total number of purchasers for Stage A)

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

This information is not available as the prospective purchasers have not yet been identified.

#### **4. Public benefit claims**

- (a) Arguments in support of notification:

The Proposed Conduct offers several public benefits, including:

- The Proposed Conduct will result in a visually consistent and integrated housing development, as a result of centralised control over materials and design. This would not be possible if Approved Builders were not pre-selected by SANFL/C&G.
- The Proposed Conduct will result in time and cost savings for each purchaser for the following reasons:
  - (i) the purchaser will benefit from reduced costs due to the Approved Builders utilising economies-of-scale and obtaining competitive pricing through bulk purchasing;
  - (ii) the purchaser will avoid the additional costs associated with designing and building a residential home (i.e. design fees, architectural fees etc.);
  - (iii) the purchaser will have the certainty of a fixed price and turn key solution with no additional financial outlay required (including floor coverings, air conditioning, fencing, landscaping and some window furnishings which are usually excluded);
  - (iv) the purchaser will pay a lower amount of stamp duty by acquiring vacant land and then building their residential home (than if they were to buy the land with a pre-existing residential home);
  - (v) the purchaser will not be required to invest time and cost in identifying and comparing the services of other builders;
  - (vi) the purchaser's home may be built in a reduced timeframe because the Approved Builder can commence construction earlier and build homes in groups rather than individually; and
  - (vii) the purchaser will receive the benefit of a managed solution, as the building process will be managed by C&G with the nominated Approved Builder.
- The Approved Builders have been selected on the basis of the quality of their workmanship, proof they have the resources for delivery, customer service record and reliability. Further, Approved Builders have been

assessed on their overall experience in delivering high quality builds, on time and within budget.

- The Approved Builders are not related entities of either SANFL or C&G.

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

There are several other developers in the South Australian market which offer house and land packages and require purchasers to enter into similar residential house and land contracts with pre-approved builders.

The proposed conduct will not decrease competition in the South Australian residential housing market, nor the market for South Australian residential house and land packages.

A purchaser is under no obligation to purchase an Allotment from SANFL or to use one of the Approved Builder, for the construction of a residential home outside of the West Lakes Development.

Purchasers will be aware before purchasing an Allotment that it is conditional upon them using an Approved Builder, and will therefore be making an informed decision.

## **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):

The relevant market is the South Australian market for the supply of:

- residential homes;
- residential house and land packages;
- residential construction services.

All of these markets are extremely competitive. These services are highly substitutable within the geographical area of South Australia, as there are a significant number of other developers which offer house and land packages in South Australia. Additionally, there are existing residential homes and vacant land sites available for sale within South Australia, for which purchasers would have an unfettered choice of builder.

## **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:

There are no detriments to the public which result or are likely to result from the Proposed Conduct.

(b) Facts and evidence relevant to these detriments:

Purchasers can choose to obtain land, house and land packages or residential construction services from a number of other land owners, developers and builders in the South Australian residential housing market and surrounding areas.

Further, the Proposed Conduct is not likely to detriment the public because:

- There are a large number of existing residential homes and vacant land sites available in South Australia, which offer strong competition to the West Lakes Development.
- There are multiple home designs to select from for each Approved Builder, which means a variety of choice for purchasers.

## 7. Further information

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

Attention: Ms L. Jarrett  
Partner, Minter Ellison  
GPO Box 1272  
Adelaide SA 5001

Dated 28 August 2015

Signed by/on behalf of the applicant

  
\_\_\_\_\_  
(Signature)

Lisa Nicole Jarrett  
\_\_\_\_\_  
(Full Name)

Minter Ellison  
\_\_\_\_\_  
(Organisation)

Partner  
\_\_\_\_\_  
(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 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.