

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)

N98259 MBL Elizabeth Pty Ltd ACN 166 952 254 ("**Applicant**").

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

1. The Applicant's business is the development of residential land and housing, and other related property management services within the residential development, located on lot 64 Elizabeth Street, Beckenham, Western Australia ("**Project**").
2. The Project comprises approximately 17139 sqm of land and will be developed by the Applicant over a number of stages.
3. Market forces permitting, the Project is anticipated to be fully completed sometime in 2015. When completed, the Project will comprise up to 25 residential lots, with the required service infrastructure.

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

MBL Elizabeth
PO Box 1152
Subiaco 6904
Western Australia

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 25 residential lots and dwellings to be built on those lots within the Project. A copy of the concept plan for the Project is attached.

(b) Description of the conduct or proposed conduct:

1. The Applicant is the registered proprietor of the land upon which the Project is being built.
2. The Applicant proposes to enter into an agreement with a preferred builder ("**Preferred Builder**"), giving that builder the exclusive right to construct residential homes on those residential lots where a purchaser is procured within 6 months of the project release date.
3. Tangent Nominees Pty Ltd ACN 008 865 585 has been selected to be the Preferred Builder to construct the dwellings on such lots. The Preferred Builder has been selected on the basis of its experience and standard of workmanship.
4. Such dwellings development will be:
 - a. constructed by the Preferred Builder. The Applicant will not carry out any residential building work; and
 - b. marketed for sale either by the Applicant or a selling agent.
5. After a purchaser for a residential lot has been procured, the purchaser must enter into two separate contracts, namely:
 - a. a contract between the Applicant as vendor, and the purchaser as purchaser, for the sale of the relevant residential lot, and
 - b. a building contract, between the purchaser and the Preferred Builder only, for the construction by the Preferred Builder of the dwelling on the residential lot.
6. The proposed conduct by the Applicant might be exclusive dealing that contravenes section 47 of the Competition and Consumer Act 2010 (Cth) in that:
 - a. The Applicant may be a corporation that:
 - i. supplies, or offers to supply, rights in relation to, or interests in, real property goods or services;
 - ii. supplies, or offers to supply, rights in relation to, or interests in, real property goods or services at a particular price; or
 - iii. gives or allows, or offers to give or allow, a discount, allowance, rebate or credit in relation to the supply or proposed supply of rights in relation to, or interests in, real property goods or services by the corporation;

on the condition that the person to whom the corporation supplies or offers or proposes to supply the rights in relation to, or interests in, real property goods or services or, if that person is a body corporate, a body corporate related to that body corporate will acquire goods or building services of a particular kind or description directly or indirectly from a pre determined builder another person not being a body corporate related to the corporation.
 - b. The Applicant may be a corporation that refuses:
 - iv. to supply rights in relation to, or interests in, real property goods or services to a person;

- v. to supply rights in relation to, or interests in, real property goods or services at a particular price to a person; or
- vi. to give or allow a discount, allowance, rebate or credit in relation to the supply of rights in relation to, or interests in, real property to a person;

for the reason that the person or, if the person is a body corporate, a body corporate related to that body corporate has not acquired, or has not agreed to acquire, building goods or services of a particular kind or description directly or indirectly from a builder another person not being a body corporate related to the corporation.

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)

Purchasers of residential lots within the Project.

- (b) Number of those persons:

- (i) At present time:

None as the Applicant has yet to launch the product in the marketplace.

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

One purchaser for each of the lots within the Project, and should therefore not exceed 25 in number.

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

Not known as none of the residential lots has been sold.

4. Public benefit claims

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

The proposed conduct will benefit the public as it will result in purchasers being offered lower prices for the residential lot with a dwelling to be built on the lot because the provision of residential building and/or construction services by the Preferred Builder will:

1. result in significant economies of scale in the construction of the dwellings within the Project;
2. ensure that the dwellings to be built within the Project are constructed in accordance with architectural plans for an aesthetically pleasing streetscape, thus

increasing the prospect of those properties as a whole increasing in value over time;

3. result in increased efficiencies and safety during construction of the dwellings, given that multiple, separate builders would be likely to face substantial logistical, access and coordination issues when simultaneously on site;
4. save purchasers time and cost in searching for an appropriate builder, and give the purchasers confidence that economies of scale and compliance with the design guidelines of the Project will be achieved; and
5. result in purchasers avoiding any some of the usual costs associated with building a house (eg design fees, architectural fees) since these have all been prepared by the Preferred Builder and approved by the Applicant in advance.

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

The notified conduct will result in more affordable housing for the purchasers for the following reasons:

1. Economies of scale

The provision of residential building and/or construction services by the Preferred Builder for the residential house and land packages will result in significant economies of scale in three key areas:

- a. supply of materials: The Preferred Builder is likely to be able to acquire and supply building materials at lower costs (including delivery costs) by way of volume discounts than if there were multiple builders constructing a smaller number of residential house and land packages;
- b. supply of construction services: The supply of construction services for multiple residential dwellings is likely to be undertaken at lower cost than if those services were to be provided on a separate house by house basis by more than one builder at the same time; and
- c. supply of associated services: The performance of electrical, plumbing, carpentry and other services for the dwellings are likely to be undertaken at lower cost than if those services were to be provided on a separate house by house basis.

2. Reduced coordination, transaction and administration costs

- a. By having one builder build the dwellings on the lots within the Project, the coordination, transaction and administration costs for the development would be lower than would otherwise be the case.
- b. The Applicant will not be required to simultaneously negotiate separate contracts with multiple builders or contractors and to assess whether each has the capacity and expertise to deliver in accordance with the architectural plans and then coordinate on-site construction and delivery of materials.

3. Efficiencies and safety

The provision of residential building and/or construction services by one builder will avoid the substantial logistical, access and coordination issues on site that

would be experienced if the Applicant were compelled to deal with several builders at any given time.

4. Increase in competitiveness and standards

- a. Given that potential purchasers of the residential house and land packages are likely to compare those packages to other new estate housing in Perth, there will be an effective constraint on the Applicant and the Preferred Builder to ensure that its purchase prices are competitive.
- b. The Applicant has selected the Preferred Builder as the Preferred Builder has demonstrated that it has:
 - i. personnel with expertise in the management and construction of the types of dwellings to be built on the residential lots within the Project by the Applicant;
 - ii. the capacity to undertake and complete the dwellings within the Project by the completion dates set or to be set by the Applicant; and
 - iii. the financial capability to enable the dwellings within the Project to be completed by the completion dates set or to be set by the Applicant.

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)

1. The Project is located approximately 17 km south-east of Perth. The relevant market is the Perth's east market, for the supply and acquisition of:
 - a. residential house and land packages, and
 - b. residential construction services.
2. The market referred to above is competitive and fragmented, with many builders operating in the area Perth metropolitan area. These markets compete frequently for purchasers in their respective markets, including by competitive offers, conditions and incentives from time to time.
3. There is a large number of residential estates in this area which offer strong competition to the Project in relation to the supply of residential land and housing packages.

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 proposed conduct will have little, if any, public detriment. It will not decrease competition in the WA residential housing market as a purchaser is under no obligation to purchase land from the Applicant or to use any particular builder for the construction of a residential home outside the Project. In addition, purchasers have the option to purchase other vacant land not within the Project from the Applicant and to have their dwellings built by other builders. The Applicant therefore considers that the proposed conduct will not have any competitive effect in the relevant market.

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

1. The number of lots within the Project (a maximum of 25) is small;
2. Purchasers will have the opportunity to consider and review all factors before they determine which product is suitable for them; and
3. Purchasers can choose to obtain land, house and land packages, and residential construction services from a number of other land owners, developers and builders in the Perth's market.

7. Further information

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

**MBL Elizabeth
PO Box 1152
Subiaco 6904
Western Australia**

1602 BJEYAL
01535 4753
1602 @ MBL CONSTRUCTION. COM. AU

Dated..... 07/05/2015

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.

