

AUST. COMPETITION &  
CONSUMER COMMISSION  
1 JUN 2015  
CANBERRA

27<sup>th</sup> May 2015

Dr Richard Chadwick  
General Manager Adjudication Branch  
Australian Competition and Consumer  
Commission  
GPO Box 3131  
Canberra ACT 2601

Dear Dr Chadwick

**Exclusive dealing notifications – Zivalia Pty Ltd**

Please find enclosed for the Australian Competition and Consumer Commission's consideration exclusive dealing notifications by Zivalia Pty Ltd in accordance with section 93(1) of the *Competition and Consumer Act 2010*.

I also enclose a cheque for \$100 in payment of the notification.

I am the project manager for Zivalia Pty Ltd and am authorised to lodge the application.

Please contact me if you wish to discuss.

Yours faithfully



Andrew de Haas  
0403 362 044  
[Andrew@handlepg.com.au](mailto:Andrew@handlepg.com.au)

# 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)*

N98300 Zivalia Pty Ltd ATF Zivalia No1 Unit Trust  
ACN 167 285 323  
1/10 Achievement Way, Wangara, WA 6065

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

The Applicant is the registered proprietor of 2414, 2428, 2442, 2452 and 2468 Wright Road, Piara Waters, Western Australia (**Site**), which the Applicant is developing as a residential housing estate and marketing and selling lots of residential land for that purpose.

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

Handle Property Group  
Attention: Mr Andrew de Haas  
Unit 1, 10 Achievement Way  
WANGARA WA 6065

## 2. Notified arrangement

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

House and land packages.

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

The Applicant proposes supplying, and offering to supply, approximately 200 lots at the Site on the condition that the buyer also enters into a building contract directly with Prime Projects Construction Pty Ltd (ABN 24 008 999 059) (**Nominated Builder**).

The Applicant proposes refusing to supply lots at the Site to any potential buyer who does not agree to enter into a building contract directly with the Nominated Builder.

**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 and actual buyers of residential lots at the Site.

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

**(i) At present time:**

Nil.

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

200.

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

N/A.

**4. Public benefit claims**

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

The Site will comprise approximately 200 lots. Any dwelling constructed on the lot must comply with the Applicant's design guidelines and building requirements.

The notified conduct will provide the following benefits to the public:

1. a single builder, together with the Applicant's design guidelines and building requirements, will provide consistency, quality and integrity of design, appearance and streetscape, providing buyers with confidence as to:
  - (A) the Site as a desirable neighbourhood environment; and
  - (B) their investment in purchasing a lot on the Site;
2. the selection of specific design outcomes by the Applicant will enhance the capital value of the property for the buyer and the surrounding buyers;

3. bundling the house and land as a package is the most efficient method to deliver affordable housing outcomes as the majority of the lots will be sold to first home owners;
4. by the Applicant nominating a reputable Nominated Builder it will:
  - (A) ensure control of quality at the Site,
  - (B) result in additional efficiencies during construction; and
  - (C) reduce the possibility of disputes arising regarding compliance with design guidelines,which in turn gives buyers confidence in the quality of the house and land package;
5. the lots in the Site are generally around 250 to 300 square metres in area so are most efficiently constructed in groups by one builder;
6. cost benefits to buyers, including:
  - (A) reduced marketing costs (through the integrated selling of house and land) can be passed onto the buyer;
  - (B) construction by the Nominated Builder occurring on a volume basis producing economies of scale. This will, among other benefits, provide sufficient certainty to the Nominated Builder to allow it to offer a fixed price for the house and land package; and
  - (C) by selling the lot to the ultimate buyer rather than first to the Nominated Builder and then to the ultimate buyer, the ultimate buyer is not carrying the effective impact of paying duty on two transactions.

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

See above.

**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 relevant market is the sale of real estate zoned residential, or capable of being zoned residential, in metropolitan Perth. The proposed conduct may also affect the market for the supply of residential building and construction services in Perth. Each market is highly competitive and has a significant number of participants operating within it.

**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 Applicant submits that the notified arrangement involves no public detriments because:

1. the real estate market in metropolitan Perth and the residential building and construction market in Perth are highly competitive and, in particular, there are numerous competing residential developments available throughout Perth;
2. the Site represents a de minimis portion of the relevant market;
3. a buyer who does not want to contract with the Nominated Builder may purchase land and/or a house at another site (including in the same suburb). For example, a buyer could purchase land and /or a dwelling in the estates of "Mason Green" (QUBE Property Group), "Piara Central" (Cedar Woods), ".Aspiri Piara Waters" (PRM Property), "Holland Park" (Holland Park Private Estate) and "Newhaven" (Stockland). This list is not exhaustive and represents only a portion of the land and/or houses available just in the suburb of Piara Waters alone;
4. the buyer enjoys the quality and cost benefits described at item 4(a).

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

See above.

**7. Further information**

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

Mr Andrew de Haas  
Unit 1, 10 Achievement Way  
WANGARA WA 6065  
T: 08 9403 8000  
F: 08 9403 8001  
E: Andrew@handlepg.com.au

Dated: 27<sup>th</sup> May 2015

Signed by/on behalf of the applicant

.....  
(Signature)

.....  
ANDREW DE HAAS  
.....  
(Full Name)

..... HANDE PROPERTY GROUP .....

(Organisation)

..... PROJECT MANAGER .....

(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.