

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)

N99395 Noahs Rosehill Waters Pty Ltd (ACN 165 463 061) of
1/10 Achievement Way, Wangara, WA 6065

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

The Applicant is the registered proprietor of:

- Lot 57 on Plan 28643, being the whole of land comprised in Certificate of Title Volume 2720 Folio 200;
- Lot 200 on Plan 30961, being the whole of land comprised in Certificate of Title Volume 2223 Folio 564;
- Lot 9000 on Plan 30961, being the whole of land comprised in Certificate of Title Volume 2223 Folio 565

comprising approximately 625 lots on West Parade, South Guildford, Western Australia (**Site**), which the Applicant is developing as a residential housing estate, “Rosehill Waters” and marketing and selling lots of residential land for that purpose.

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

Attention: Ms Sandra Klarich
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, a selection of lots at the Site on the condition that the buyer also enters into a building contract directly with one of the following nominated build partners:

- i. Prime Projects Construction Pty Ltd (ACN 008 999 059) as the Trustee For The Passione Trust (ABN 72 851 949 131) t/a Prime Projects Move Homes WA, Total Living WA and In-Residence WA;
- ii. Aveling Homes Pty Ltd (ABN 72 134 703 067);
- iii. The Trustee for Assetbuild Developers & Builders Unit Trust t/a Asset Build (ABN 73 673 709 472),

(Nominated Builders).

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 one of the Nominated Builders.

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)

625.

(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 625 dwellings. Any dwelling constructed on the lot must comply with the Applicant's design guidelines and building requirements. The Site also is subject to aircraft noise from Perth Airport and all residential development within Rosehill Waters is required to install noise insulation in accordance with Australian Standard 2021 (AS2021) to protect occupants and residents from aircraft noise.

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

1. the Nominated Builders will provide the Applicant and buyers with confidence that the noise restriction conditions required at the Site will be complied with;
2. the Nominated Builders, 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;
3. the selection of specific design outcomes by the Applicant will enhance the capital value of the property for the buyer and the surrounding buyers;
4. 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;
5. by the Applicant nominating reputable Nominated Builders 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;
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 Builders will occur on a volume basis producing economies of scale. This will, among other

benefits, provide sufficient certainty to the Nominated Builders to allow them to offer a fixed price for the house and land package;

- (C) the noise insulation will be able to be installed with increased efficiency due to the volume ensuring consistent quality and at a reduced cost; and
- (D) by selling the lot to the ultimate buyer rather than first to one of the Nominated Builders 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 minimal portion of the relevant market (625 lots only);
3. a buyer who does not want to contract with one of the Nominated Builders may purchase land and/or a house at another site (including in the same suburb);

4. the buyer enjoys the quality and cost benefits described at item 4(a).

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

See above.

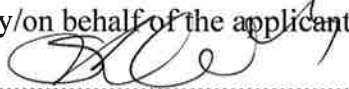
7. Further information

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

Ms Sandra Klarich
Unit 1, 10 Achievement Way
WANGARA WA 6065
T: 08 9403 8000
F: 08 9403 8001
E: sandra@rosehillwaters.com.au

Dated: October 2016

Signed by/on behalf of the applicant



.....
(Signature)

Sandra Klarich

.....
(Full Name)

Noahs Rosehill Waters Pty Ltd

.....
(Organisation)

General 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.