

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)

N99405 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 that 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:

Land and the supply of non-potable water for landscaping irrigation use.

- (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 an agreement for the supply of non-potable water for landscaping irrigation use (**water irrigation agreement**) with Total Eden Pty Ltd (ABN 47 010 118 895) (**Total Eden**).

The Applicant proposes refusing to supply lots at the Site to any potential buyer who does not agree to enter into a water irrigation agreement with Total Eden.

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.

Rosehill Waters has achieved accreditation under the Urban Development

Institute of Australia's (UDIA) highly regarded EnviroDevelopment program, which independently verifies a projects sustainability performance through a national rating system.

EnviroDevelopment is made up of six elements or "leaves" – ecosystems, waste, energy, materials, water and community. The Applicant is the first private developer in WA to be accredited by the EnviroDevelopment program under all 6 leaves.

In delivering its commitment under the EnviroDevelopment, the Applicant is committed to:

- reducing Waste to Landfill by over 90%;
- connecting every home to a community bore system for all their gardens;
- providing a 3kW solar PV system to every home, reducing household energy bills by up to 50%;
- a minimum 7-star energy performance built into every home;
- developing a community orchard on-site for home-grown fruit and vegetables;
- preserving significant buildings and gardens on-site for community use.

The proposed community bore assists the Applicant in achieving the Water leaf, through an effective reduction in potable water use. The bore will deliver ground water to all gardens through a second meter (installed by the Applicant). The system will be installed by Total Eden and it has committed to a rate that would be significantly cheaper than if residents of Rosehill Waters sourced their own potable water. The reduced rate however relies on all lots connecting and utilising the bore to ensure efficiencies are retained.

Accordingly, the notified conduct will provide the following benefits to the public:

- the infrastructure will result in the supply of non-potable water from Total Eden which is significantly cheaper than if the buyer of the lot procured water by itself;
- by requiring each buyer to enter into a water irrigation agreement with Total Eden, the Applicant ensures:
 - that there is economies of scale for the cost of the infrastructure and the supply of the water to be efficient and inexpensive;

- the Applicant satisfies its commitment under the EnviroDevelopment, providing for an environmentally responsible development which also serves as a standard for future developments;
- by requiring each buyer to enter into a water irrigation agreement with Total Eden, the Applicant ensures that there will be a consistent source of water for the landscaping for each lot and the common areas providing buyers with confidence as to:
 - the Site as a desirable neighbourhood environment; and
 - their investment in purchasing a lot on the Site;
- environmental benefits as the arrangement will mean that treated drinking water is not used for irrigation rather each lot and the common areas will use bore water. This will:
 - reduce the environmental impacts and carbon emissions that result from processing and distributing potable water; and
 - contribute to decreasing Perth's use of potable water and preserving Perth's drinking water.

(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 non-drinking water schemes in Western Australia. The sale of real estate zoned residential is highly competitive and has a significant number of participants operating within it. The market for non-drinking water schemes in Perth has a significant number of private providers which provide infrastructure for customers to utilise private water bores. The Water Corporation also operates about 80 non-drinking water schemes in Western Australia.

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:

- the real estate market in metropolitan Perth is highly competitive and, in particular, there are numerous competing residential developments available throughout Perth;
- the market for non-drinking water schemes in Perth is highly competitive;
- the Site represents a minimal portion of the relevant market (625 lots only);
- a buyer who does not want to enter into the water supply agreement with Total Eden may purchase land and/or a house at another site (including in the same suburb);
- 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: 26th October 2016

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.