

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:

N99475 Zuccala Homes Pty Ltd ("Zuccala")

(ACN 005 204 777)

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

Customers to build residences under fixed price domestic building contracts. Zuccala operates a domestic building business in Victoria entering into contracts with customers to build residences.

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

John Macmillan
Phillips & Wilkins Solicitors
PO Box 1086
Thornbury VIC 3071

2. Notified arrangement

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

The proposed conduct relates to the supply of new residential houses by Zuccala pursuant to fixed price contracts including the provision of building surveyor services to ensure each house has all necessary building and occupancy permits in a timely and professionally competent manner.

- (b) Description of the conduct or proposed conduct:

The proposed conduct - outline

Very few customers have the knowledge to identify and appoint a building surveyor who will have the attributes necessary to provide an affordable and competent service. There are approximately 648 registered building surveyors in Victoria.

Zuccala proposes to supply, or offer to supply, customers with a new house with specified features at a fixed price that includes the cost of obtaining all necessary building and occupancy permits from a private building surveyor, on condition that the customer appoints a private building surveyor Zuccala has identified as a "recommended" surveyor (the "**Proposed Conduct**")

Zuccala proposes that all surveyors recommended are private building surveyors and that based on Zuccala's assessment of matters such as the surveyor's knowledge, skills and experience, the surveyor's occupational health and safety policies, procedures, training and record, whether the surveyor has appropriate insurances, and whether the surveyor is able to provide building surveying services in relation to homes built by Zuccala in a manner that enables Zuccala to achieve cost and time efficiencies that it can share with customers by offering the fixed price identified above (including the surveyor's ability to work within Zuccala's construction timetable).

Zuccala will closely monitor the performance of building surveyors before and after they are identified as a "recommended" surveyor. In addition, any recommended surveyor would of course be registered with the Victorian Building Authority in Victoria

Zuccala has been in business as a family owned builder for sixty years and has identified building surveyors in differing districts with wide knowledge of their duties for the benefit of customers. Based on real knowledge and years of past experience the building surveyors Zuccala proposes to identify as recommended surveyors are experienced and capable of carrying out their duties to a high standard. Other building surveyors maybe recommended in the future.

Zuccala proposes to engage in the Proposed Conduct from immediately, consequent upon changes to *Building Act 1993* (Vic) to provide that only an owner of land (or the owner's formally appointed agent) is able to appoint a private building surveyor for domestic building work. However, builders are permitted to recommend building surveyors.

Role of building surveyors

The role of a building surveyor is set out in the *Building Act 1993* (Vic), regulations made under that Act, and relevant codes and standards. A building surveyor's responsibilities are issuing building permits (which

involves assessing building designs and plans), conducting mandatory inspections of buildings and building work, and (in the case of domestic building work) issuing occupancy permits. All building surveyors are independent of a builder, and must be registered with the Victorian Building Authority in Victoria in accordance with the *Building Act 1993* (Vic).

Efficiencies from using recommended building surveyors

Zuccala offers customers their own home designs to choose from, which have been approved by building industry experts including building surveyors. A critical part of Zuccala's business is that it supplies building services to construct homes using those designs within a short construction timetable, at competitive prices. A fixed price that includes the costs of the building surveyor whom the customer appoints is attractive to customers, and provides cost certainty and timely completion.

Zuccala can offer customers a competitively priced product despite its smaller scale of building operations. Part of its competitiveness arises from its ability to identify competent building surveyors based on Zuccala's generations of building experience to achieve the goal of shorter time frames for construction. By comparison building surveyors chosen at random by unskilled customers, often just browsing the internet or phone books, will not guarantee a correct selection of a building surveyor.

- i. While the building surveyor is appointed by the customer, Zuccala obtains considerable benefits from the services provided by the building surveyor, as building surveyors provide an important 'quality assurance' measure in relation to Zuccala and its sub-contractors building works. Zuccala has already expended time and resources to conduct due diligence to obtain that 'quality assurance'.

Zuccala has the knowledge to assess building surveyors. If the customer appoints a building surveyor then Zuccala must carry out its own assessment of competence on a myriad of building surveyors rather than a previous carefully identified list of building surveyors.

Many of Zuccala's customers are recent migrants to Australia or foreign residents and do not have the range of support services or acquaintances to guide them in their choice.

- ii. A construction timetable depends on the building surveyor and its sub contracted trades people providing services within an agreed time period. One of Zuccala's competitive advantages is to offer a relatively short construction timetable of between 140 days for a single storey house, and 224 days for a double storey house (on average). A number of factors affect Zuccala's ability to meet the construction timetable. These include the following:
 - a. Zuccala is responsible for its building sites, and therefore

requires any person working on its sites (including a building surveyor) to be assessed from an occupational and safety perspective. Zuccala would only identify a building surveyor as a recommended building surveyor after it had assessed both their occupational and health and safety policies and procedures, and their insurance arrangements. If a customer appointed a different building surveyor, these assessments would need to be carried out before the building surveyor could access the site. The considerable time required for these assessments would need to be factored into the construction timetable, as would the cost of conducting the assessment. There is no readily available and reliable service to assess building surveyors.

- b. Zuccala would only identify recommended building surveyors who have an industry reputation for providing quality services, experience working on a number of Zuccala building sites, and are familiar with Zuccala's designs and construction approach. This means that recommended building surveyors would be able to fulfil their own role – i.e. by assessing Zuccala's designs and construction in a particular case more quickly than a surveyor who was unfamiliar with Zuccala's designs and approach.
- c. Zuccala, like most builders, may use alternative building methods to 'standard' methods for some new homes. Zuccala has already worked with its recommended building surveyors to critique and approve those alternative methods and would do so for any new recommended surveyors identified in the future. Accordingly, the time required for a recommended building surveyor to assess and decide whether to approve those alternative methods in a particular case is likely to be shorter than that required by a surveyor unfamiliar with those methods. The longer time required by a non-recommended surveyor is likely to be significant, and will need to be factored into the construction timetable, and will require the surveyor to undertake additional work compared to a recommended surveyor, both of which mean increased costs, compare to the costs savings that could be shared with a customer if they used a recommended surveyor.

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:

The persons likely to be affected by the Proposed Conduct are future customers of Zuccala who purchase new homes. The customers would have the choice of a fixed price home if they appoint a recommended building surveyor or a differently structured higher price if they choose to appoint a building surveyor of their choice.

The conduct is not expected to have a material effect on building surveyors as they will remain able to compete to supply work for customers of Zuccala and to other individuals building residential and other buildings in Victoria.

(b) Number of those persons:

(i) At present time:

Sixty

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

One hundred and fifty

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

Not applicable.

4. Public benefit claims

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

The Proposed Conduct will allow Zuccala to continue to provide a highly competitive, fixed price new home contract, featuring a short construction timetable, which includes the cost and time associated with obtaining necessary building permits.

Zuccala expects that the Proposed Conduct will result in a number of public benefits. In Zuccala's view, the key benefits are as follows:

- (i) The Proposed Conduct will enable Zuccala to set a construction timetable and price that takes advantage of the efficiencies generated from working with the recommended building surveyors (as outlined in paragraph 2(b) above) and offer that to customers. The timetable is up to 3 months shorter, which directly leads to lower construction costs for Zuccala and the customer, as time and cost have a direct link in the construction industry.
 - (ii) By enabling Zuccala to offer a competitive, fixed price new home product, the Proposed Conduct may generate a public benefit by encouraging further competition in the competitive Melbourne residential homes market, which will promote lower prices for new home contracts.
 - (iii) As referred to above Zuccala's customers will generally have no exposure to working with domestic building and building surveyors in particular, and therefore may not have the experience or expertise to assess whether a building surveyor has the necessary knowledge, skills and experience to perform its services to a high standard, and in a timely manner. As mentioned above, Zuccala will have already conducted due diligence on its recommended building surveyors to ensure they have the necessary insurance, financial resources, knowledge and expertise to properly discharge their obligations for the benefit of the customer. This due diligence provides an assurance that if there is a problem arising from the building surveyor's services in the future, the building surveyor will have the financial resources to properly deal with the claim.
 - (iv) The Proposed Conduct will therefore benefit Zuccala's customers by removing from their responsibility the burden of conducting due diligence into building surveyors in circumstances where customers may lack awareness of the appropriate means by which to assess whether a building surveyor has the necessary knowledge, skills and experience.
 - (v) Zuccala's customers will not be prevented from appointing a different building surveyor, and can choose a different building surveyor.
- (b) Facts and evidence relied upon in support of these claims:
- (i) Please refer to the matters in 2(b) 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 market or markets for new residential houses in Suburban Melbourne.

The market or markets in which building surveyor services are supplied for residential houses in Suburban Melbourne.

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)

Zuccala does not consider that there will be any public detriments resulting or likely to result from, the Proposed Conduct.

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

- (i) A customer is under no obligation to buy a new home from Zuccala. There are a number of competing builders that customers can choose from in the highly competitive Victorian industry.
- (ii) The Proposed Conduct would allow Zuccala to offer a product (with a lower fixed price and shorter construction timetable) that it would not otherwise be able to offer if it is not permitted to engage in the Proposed Conduct.
- (iii) The Proposed Conduct would not prevent customers from appointing a different building surveyor on a Zuccala home, or a home built by another builder.

7. Further information

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

John Macmillan, partner
Phillips & Wilkins
PO Box 1086
Thornbury VIC 3071
(03) 9480 1155

Dated 9 December 2016

Signed on behalf of the applicant

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(Signature)

John Ronald Ashmore Macmillan
(Full Name)

Phillips & Wilkins
(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.