

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 (Notifying Party)

- (a) Name of person giving notice:

(Refer to direction 2)

Peet Tonsley Apartments Pty Ltd ACN 621 955 226 c/- Peet Limited, Level 3, 70 Hindmarsh Square, Adelaide SA 5000 (herein referred to as "Peet")

Contact – Annoushka Scharnberg, Finlaysons Lawyers

Email: annoushka.scharnberg@finlaysons.com.au

Phone: (08) 8235 7404

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

(Refer to direction 3)

Peet, acting as a residential property developer, is delivering 450 residential apartments at Tonsley, South Australia 5042, which is known as the "Tonsley Precinct" (the "Development").

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

C/- Ms Annoushka Scharnberg

Finlaysons Lawyers

Level 7, 81 Flinders Street

Adelaide SA 5000

Email: annoushka.scharnberg@finlaysons.com.au

2. Notified arrangement

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

The Development, being the sale to the public of the 450 proposed apartment dwellings within the Tonsley Precinct detailed on the plan annexed hereto as Annexure A, on land currently owned by the Urban Renewal Authority ABN 86 832 349 but to be transferred to Peet prior to any third party transactions, will involve and require the providing of gas and recycled water (the “Utilities”) to each apartment dwelling.

In providing the Utilities for the Development, Peet has:

- 1. itself, and by engaging third parties to do so, facilitated the construction and installation of significant infrastructure capable of supplying the Utilities to each apartment dwelling, and intends to itself, and/or engage third parties to, construct and install any further infrastructure required to ensure the capability of supplying the Utilities to the Development; and**
- 2. entered into arrangements with Enwave Tonsley Pty Ltd ACN 623 288 175 (“Enwave”) for the servicing of the Utilities to the apartment dwellings the subject of the Development in reliance on the abovementioned infrastructure, which will include a reticulation network in respect of recycled water and an embedded network in respect of gas.**

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

Peet has entered into agreements with Enwave to facilitate the connection of the apartment dwellings created in respect of the Development to the services the subject of the Utilities.

Upon the sale of each apartment dwelling within the Development by way of a land sale agreement between purchasers and Peet, Peet will facilitate each purchaser within the Development entering into an agreement or agreements with Enwave in respect of the supply of the Utilities to the subject apartment dwelling.

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 who enter a land sale contract with Peet for the purchase of a proposed apartment dwelling (also being developed by Peet) delineated on the Proposed Plan of Division contained in Annexure A.

- (b) Number of those persons:

- (i) At present time:

Unknown

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

Approximately 45 (but such purchasers could be one or more individuals) of the proposed 450 apartment dwellings will be affected by the notified conduct within the next year, as the apartment dwellings have a target settlement date from July 2019

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

The identities of the potential purchasers are currently unknown.

4. Public benefit claims

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

Peet respectfully considers that the wider community will benefit by having a fully integrated services option that ensures:

- 1. cost efficiencies to be passed on to the purchasers in respect to the providing of one bespoke recycled water and gas service to the apartment dwellings in the Development;**
- 2. consistency in the quality and specifications of services to be supplied to the Development.**

Further, there are numerous small, medium and large scale residential developers in South Australia who provide, or engage a third party to provide, services similar to the Utilities.

Peet respectfully considers that the market for the supply of residential land and new dwellings, and thus for services to residential buildings, is very competitive, equipping purchasers with abundant options other than those being offered and marketed by Peet, including in respect to preferred suppliers of utilities such as the Utilities, with the effect that competition will not be materially lessened by the proposed conduct.

The proposed conduct will also facilitate the viability of an economically and environmentally sustainable project of benefit to the wider community, by providing cost-effective, functional and reliable uniform services (some of which are legislatively mandated i.e. the delivery and use of recycled water systems) to the Development, which will also assist purchasers in maintaining value for their dwelling due to there being reliable and consistent utilities service, and the avoidance of the issues that can arise in the absence of the same.

In this respect, Peet has committed to achieving a 6-Star Green Star Community Rating for the Development, and the supply of the Utilities via the subject networks is but one way in which the Development will be sustainably “green”.

Enwave Tonsley has applied to the Essential Services Commission of South Australia (ESCOSA) for both a gas distribution licence pursuant to the *Gas Act 1996 (SA)* and a water retail licence pursuant to the *Water Industry Act 2012 (SA)*. If granted, it will be subject to ESCOSA regulatory oversight in the same manner as other licenced gas distributors and water retailers in South Australia. ESCOSA has extensive powers, including to impose price regulation – see section 32 of the *Gas Act 1996 (SA)* and section 35 of the *Water Industry Act 2012 (SA)*.

Lastly, the efficiencies generated by way of this arrangement will have the effect of keeping dwelling prices down, with the aim of ensuring that there are housing options in an area the subject of the recent investment of significant public resources and investment.

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

The plans, drawings and specifications of the Utilities to be connected to the residential dwellings the subject of the Development evidence the efficiencies and public benefit claims outlined above.

However, these documents contain commercially sensitive information and cannot be published on the public register.

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 markets are the markets for the development and purchase of residential land and dwellings in South Australia, and the provision of gas and recycled water services to that land.

Peet respectfully considers that potential purchasers of developed residential land have a wide choice of properties to purchase within the southern and south-western suburbs of Adelaide, and Adelaide and South Australia generally, and any restriction on the procuring of utilities services in respect of 450 apartment dwellings in one development does not substantially limit that choice in any material way.

Further, Peet respectfully considers that the competitors of Peet and Enwave in the industries in which they participate will suffer no detriment as a result of the proposed conduct, given the number of other dwelling for sale and/or requiring similar services in South 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)

Peet respectfully considers that no public detriment will result from the proposed conduct as potential purchasers of the subject dwellings have the choice of many alternative developers and vendors to purchase land (both developed and undeveloped) from, the vast majority of which do not use Enwave or its parent company, Enwave Energy Pty Ltd, to supply services such as the Utilities. Further, in the absence of these arrangements, purchasers of land would only be able to

contract with a single gas distributor (Australian Gas Networks) and a single water supplier (SA Water). Arrangements with Enwave do not reduce the number of competitors from whom land users can acquire gas and water services, nor do they reduce the degree of regulatory oversight over the providers of those services.

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

<https://www.realestate.com.au/buy/property-house-unit+apartment-townhouse-unitblock-in-south+australia/list-1?newOrEstablished=new&source=refinement>

Further, please see above link to www.realestate.com.au detailing in excess of 1700 new houses, townhouses, and apartments for sale in South Australia as at January 2019 (there are also in excess of 5500 vacant lots available for sale in South Australia as at January 2019).

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 Annoushka Scharnberg, Finlaysons Lawyers, solicitor for Peet.

Finlaysons Lawyers of Level 7, 81 Flinders Street, Adelaide SA 5000

Phone (08) 8235 7404 or Fax 08 8235 2944

Email annoushka.scharnberg@finlaysons.com.au

Dated: 18th day of March 2019

Signed by/on behalf of the applicant:



.....
Signature of Annoushka Scharnberg, Finlaysons Lawyers
Solicitor for Peet

Finlaysons Lawyers of Level 7, 81 Flinders Street, Adelaide SA 5000

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* (Cth) 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.

ANNEXURE A PROPOSED PLAN OF DIVISION

Development No. 100 / D264 / 16
City of Marion

Proposed Plan of Division
Allotment Comprising Pieces 191 & 192
in Dev. No. 100/G261/15
Hundred of Adelaide
in the area named
CLOVELLY PARK
PT CT 6176582

AMENDED PLAN
14.06.2017
AMENDED PLAN
16.11.2017
AMENDED PLAN
18.12.2017
AMENDED PLAN
24.02.2018
AMENDED PLAN
03.03.2018
AMENDED PLAN
21.04.2018
AMENDED PLAN
26.09.2018
AMENDED PLAN
03.12.2018



- Sites to be further subdivided
- Regulated tree to be removed
- Significant tree to be removed

No. of proposed residential allotments 464
No. of unit sites 25
Total area 11.41ha
Reserve area 1.706ha
Length of new roads 1050m
Length of new lane ways 600m

The land is generally flat
Road pavements shown are indicative only.
Not to be used for detailed engineering design.
Dimensions and areas are subject to survey.

© ALAN HODGROVE & ASSOCIATES PTY LTD Licence under Survey

Glenn Ian Hodgrove
LICENSED SURVEYOR

REF:	AD46555
DIAG NO:	AD46555/SP001/DEV/1
REVISION:	01
DATE:	03/12/2018

Prepared by A Symonds Pty Ltd
11 Lang Street, Level 4, North Sydney,
New South Wales 1587
PO Box 1044 North Sydney, NSW 1587
Tel: (02) 9387 7123 Fax: (02) 9387 7124

T: (02) 9387 8444
F: (02) 9387 0070
www.alexandersymonds.com.au
alexandersymonds.com.au

Alexanders Symonds
SURVEYORS

- Property & Land Development
- Construction & Mining
- Spatial Information Management





Development No. 100/D264/16
City of Marion

Proposed Plan of Division
Allotment Comprising Pieces 101 & 102
in Div. No. 100/D264/16
in the area name of
CLOVELLY PARK

PT CT 817692

AMENDED PLAN

14/06/2017

AMENDED PLAN

18/11/2017

AMENDED PLAN

19/12/2017

AMENDED PLAN

28/03/2018

AMENDED PLAN

03/03/2019

AMENDED PLAN

21/06/2019

AMENDED PLAN

23/09/2019



1:500

SHEET 2 OF 3



-  Regulated tree to be removed
-  Significant tree to be removed

No. of proposed residential allotments	464
No. of unit sites	25
Total area	11.4 ha
Reserve area	1.730 ha
Length of new roads	1060m
Length of new lane ways	680m

The land is generally flat
Road pavements shown are indicative only.
"Not to be used for detailed engineering design."
Dimensions and areas are subject to survey.

ALEXANDER & SYMONDS PTY LTD Original Drawn Sun 31	
Glenn Ian Horsdace	
LICENSED SURVEYOR	
REF:	AM0319
DATE:	23/09/2019
PROJECT:	AM0319/PT16
REVISION:	N

Alexander & Symonds Pty Ltd
11 King William Street & Kent Terrace,
South Melbourne VIC 3207
Tel: 03 9594 2000 Fax: 03 9594 2001
Email: alex@alexanderson.com.au
www.alexanderson.com.au

Alexander Symonds
1100
60000000



Development No. 100 / D264 / 16
City of Marion

Proposed Plan of Division
Allotment Comprising Places 101 & 102
in Dev. No. 100/G261/15
Hundred of Adelaide
in the area named
CLOVELLY PARK
PT CT 6176592

AMENDED PLAN
14/08/2017

AMENDED PLAN
10.11.2017

AMENDED PLAN
19.12.2017

AMENDED PLAN
28.02.2018

AMENDED PLAN
03.03.2018

AMENDED PLAN
21.06.2018

AMENDED PLAN
20.09.2018

0 5 10 20 30 40 50
1:500
SHEET 3 OF 3

Regulated tree to be removed
Significant tree to be removed

No. of proposed residential allotments 469
No. of unit sites 25
Total area 11.41ha
Reserve area 1.73ha
Length of new roads 1950m
Length of new lane ways 580m

The land is generally flat
Road pavements shown are indicative only.
Not to be used for detailed engineering design.
Dimensions and areas are subject to survey.

WILKINSON & SYMONDS PTY. LTD. Original Scale 1:1
Glenn Ian Hordacre
LICENSED SURVEYOR

REF:	AB4315
CLIENT:	ADAMSPROPT DEV
SUBDIVISION:	N
DRAWN:	12/2018

Wilkinson & Symonds Pty Ltd
11 King William Street Adelaide,
South Australia 5000
90 King Street East Fremantle, SA 5017
08 8391 4444 • 08 8391 7333

T 08 8333 1846
F 08 8333 2066
www.wilkinsonandsymonds.com.au
e admin@wilkinsonandsymonds.com.au

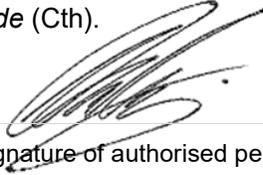
• Property & Land Development
• Construction & Mining
• Spatial Information Management

Declaration by notifying party

Authorised persons of the notifying party must complete the following declaration.

The undersigned declare that, to the best of their knowledge and belief, the information given in response to questions in this form is true, correct and complete, that complete copies of documents required by this form have been supplied, that all estimates are identified as such and are their best estimates of the underlying facts, and that all the opinions expressed are sincere.

The undersigned are aware that giving false or misleading information is a serious offence and are aware of the provisions of sections 137.1 and 149.1 of the *Criminal Code* (Cth).



Signature of authorised person

Australian Legal Practitioner on behalf of the Notifying Party

Office held

Annoushka Lee Scharnberg

(Print) Name of authorised person

This 19th day of March 2019

Note: If the Notifying Party is a corporation, state the position occupied in the corporation by the person signing. If signed by a solicitor on behalf of the Notifying Party, this fact must be stated.