

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)

**Urban Renewal Authority ABN 86 832 349 553 of Level 9 (West),
Riverside Centre, North Terrace SA 5000 trading as Renewal SA
(herein referred to as “Renewal SA”)**

**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)

Renewal SA, as the land holding entity, has entered into a development agreement with Peet Tonsley Pty Ltd (“Peet Tonsley”), a private residential developer, to deliver an 850 dwelling residential project at Tonsley, South Australia 5042, which is known as the “Tonsley Village” (the “Development”).

Renewal SA is the landowner and has appointed Peet Tonsley to develop, market and sell the land.

- (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 development and sale of 450 vacant allotments and 400 apartments within the Tonsley Precinct (such allotments detailed on the plan annexed hereto as Annexure A), will require the provision of recycled water and may require the provision of natural gas (the “Utilities”) to each allotment within the Development.

This notice relates to the connection to the recycled water network and the natural gas network and to the supply of the Utilities to each of the individual allotments within the Development.

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

To facilitate the connection to the recycled water network and the natural gas network and the supply of the Utilities to each of the individual allotments within the Development:

- 1. Renewal SA has undertaken certain infrastructure head works;**
- 2. Renewal SA has entered into a development agreement with Enwave Tonsley Pty Ltd (“Enwave”) pursuant to which Enwave has acquired Renewal SA’s existing electrical and recycled water infrastructure assets at the Tonsley Precinct and agreed to develop, operate and maintain an embedded electricity network, a recycled water network, a thermal energy network and an embedded natural gas network to service the entire Tonsley Precinct;**
- 3. Peet Tonsley is responsible for all supply authority works and infrastructure upgrades required to connect each individual allotment within the Development to the recycled water network and the natural gas network; and**
- 4. Peet Tonsley has entered into a multi-utility agreement with Enwave to facilitate the connection of each of the individual allotments within the Development to the networks the subject of the Utilities.**

Upon the sale of each allotment within the Development by way of a land sale agreement between the purchaser, Renewal SA

(as vendor) and Peet Tonsley (as developer), each purchaser acknowledges that:

1. **Renewal SA and Peet Tonsley have engaged or will engage Enwave to provide and operate a recycled water network and a natural gas network throughout the Tonsley Precinct;**
2. **the Purchaser:**
 - a. **will be required to connect to the Enwave recycled water network and pay a network connection fee to Enwave and purchase recycled water from Enwave on terms to be agreed with Enwave; and**
 - b. **will, if they require a gas connection, be required to connect to the Enwave natural gas network and pay a connection fee to Enwave and purchase natural gas from Enwave on terms to be agreed with Enwave.**

The development agreement between Renewal SA and Enwave also requires Enwave to offer connection to the recycled water network and the natural gas network and to supply the Utilities on fair and reasonable terms consistent with the terms upon which such utility services are offered to equivalent categories of customers serviced by public networks and consistent with market practice.

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 Renewal SA and Peet Tonsley for the purchase of a proposed allotment 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 50 purchasers (who could be one or more individuals) of the proposed 850 allotments will be affected by

the notified conduct within the next year, as the allotments have a target settlement date from Jan 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)

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

- 1. cost efficiencies to be passed on to purchasers in the provision of one bespoke recycled water network and one natural gas network to service the allotments within the Development; and**
- 2. consistency in the quality and specifications of utility 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. Renewal SA respectfully considers that the market for the supply of the residential land and dwellings, and thus for services to residential buildings, is very competitive, equipping purchasers which abundant options other than those being offered and marketed by Renewal SA and its developers, 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 allotment 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, Renewal SA has committed to achieving a 6-Star Energy Rating for all dwellings within the Development, and the supply of the Utilities via the subject networks is 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 this arrangement will have the effect of keeping allotment 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 in South Australia, and the provision of natural gas and recycled water services to that land.

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

Further, Renewal SA respectfully considers that the competitors of Renewal SA 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 allotments 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)

Renewal SA respectfully considers that no public detriment will result from the proposed conduct as potential purchasers of the undeveloped land have the choice of many alternative developers and vendors to purchase undeveloped land 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 acquired 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-land-in-sa/list-1>

Please see above link to Australia's leading property website, www.realestate.com.au detailing in excess of 5600 vacant blocks for sale in South Australia as at January 2019.

<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.

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 Renewal SA.

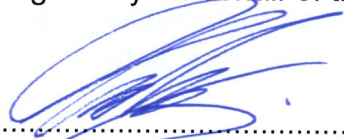
Finlaysons Lawyers of Level 7, 81 Flinders Street, Adelaide SA 5000

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 Renewal SA.
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
Abolition Comprising Pieces 101 & 102
in Dev. No. 100/G261/15
Hundred of Adelaide
in the area named
CLOVELLY PARK
PT CT 6176542

- AMENDED PLAN 14.05.2017
- AMENDED PLAN 16.11.2017
- AMENDED PLAN 19.12.2017
- AMENDED PLAN 24.02.2018
- AMENDED PLAN 24.03.2018
- AMENDED PLAN 21.04.2018
- AMENDED PLAN 20.09.2018
- AMENDED PLAN 1.10.2018



1:1000

SHEET 1 OF 3



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	1.730ha
Length of new roads	1950m
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.

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ALEXANDER & BONDROCK PTY. LTD. GLenn Ian Hordacre LICENSED SURVEYOR	
REP: AMR155	
DATE: 01/10/2018	
PROJECT: 100/G261/15	
DATE: 1/10/2018	
<p>Alexander & Bondrock Pty Ltd 11 Kings Highway Street East Park, North Adelaide 5006 PO Box 1011 2211, Adelaide, SA 5001 64 239 4966 (SA) 64 239 4966 (VIC) 64 239 4966 (WA)</p> <p>T: (08) 8130 1000 F: (08) 8130 1000 E: alexander@alexanderandbondrock.com.au www.alexanderandbondrock.com.au</p> <p>• Property • Land Development • • Construction • Survey • • Spatial Information Management •</p>	





Development No. 106 / D264 / 16
City of Marion

Proposed Plan of Division
Allotment Comprising Pieces 101 & 102
in Dev. No. 100C261/15
Hundred of Adelaide
in the area named
CLOVELLY PARK

PT CT 6176982

AMENDED PLAN
14.03.2017

AMENDED PLAN
18.12.2017

AMENDED PLAN
18.12.2017

AMENDED PLAN
26.6.2016

AMENDED PLAN
1.8.2016

AMENDED PLAN
24.8.2015

1 2 3 4 5 6 7 8 9 10 11 12

1:500

SHEET 2 OF 3

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S

Regulated tree to be removed
Significant tree to be removed

No. of proposed residential allotments 464
No. of unit sites 25
Total area 114.4 ha
Reserve area 1.730ha
Length of new roads 1650m
Length of new lane ways 650m

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 & PARTNERS PTY. LTD. (except Street view 81)
Glen Ian Horsface
LICENSED SURVEYOR

REF: 4044316
DATE: 04.03.2016
SCALE: AS SHOWN

Alexander & Partners Pty Ltd
14 York Avenue, Adelaide Park Town,
West Adelaide 5047
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Tel: 08 8362 2000
Fax: 08 8362 2001
www.alexanderpartners.com.au

Property • Land Development •
Construction • Survey •
Water Information Management •

Alexander PARTNERS
CONSTRUCTION



Development No. 100 / D264 / 16
 City of Marion
 Proposed Plan of Division
 Allotment Comprising Pieces 101 & 102
 in Dev. No. 100/0261/15
 Hundred of Adelaide
 in the area named
CLOVELLY PARK
 PT CT 419/52E

AMENDED PLAN
 14/06/2017

AMENDED PLAN
 18/11/2017

AMENDED PLAN
 19/12/2017

AMENDED PLAN
 24/02/2018

AMENDED PLAN
 09/03/2018

AMENDED PLAN
 21/08/2018

AMENDED PLAN
 23/09/2018



1:500

SHEET 3 OF 3



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

No. of proposed residential allotments 489
 No. of unit sites 25
 Total area 11.41ha
 Reserve area 1.730ha
 Length of new roads 1950m
 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.

CLARENCE & STENOGE PTY. LTD. Original land owner
Glenn Ian Hordacre
 LICENSED SURVEYOR

REF: ADM215
 DRAWING: A041/PLN/PTD/15/1/A
 PROJECT NO.
 DDL 3/12/2016

Alexander & Symonds Pty Ltd
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 Australia
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• Property & Land Development
 • Construction Services
 • Special Information Management