

Your Ref: 60457
Our Ref: AM:WD:16494

16 December 2016

Susan Faulbaum – Director
Australian Energy Regulator
GPO Box 520
Melbourne VIC 3001

BY EMAIL: AERAuthorisations@aer.gov.au

Dear Ms Faulbaum

**RE: ULTIUM ENERGY PTY LTD APPLICATION FOR ELECTRICITY
AUTHORISATION AER REFERENCE 102/16**

We, Ultium Energy Pty Ltd ACN 611 028 230 ("**Ultium**") provide the following response to the letter dated 30 November 2016 from Gadens Lawyers and the letter from the Australian Energy Regulator ("**AER**") dated 8 December 2016 ("**the Letters**").

This correspondence is in support of Ultium's application dated 8 November 2016 ("**Application**") and respond to the allegations made in the Letters, namely that:

1. There was unauthorised use of the intellectual property of Locality Planning Energy Pty Ltd ("**LPE**");
2. The Application contains false or misleading information;
3. Ultium fails to meet the entry criteria under section 90(1) of the Retail Law; and
4. Ultium has failed to provide required information.

These allegations are false and are addressed in turn below.

1. Unauthorised use of the Intellectual Property of LPE

Jason Hague (Stakeholder Engagement) ("**Jason**") is the original sole director and shareholder of LPE. This company was initially incorporated as Energy Parks Australia Pty Ltd ("**EPA**"). Jason was the sole Director and shareholder at the time of incorporation.

Please see the historical company extract from ASIC (**Appendix 1**) summarised below:

1. Jason was sole Director of Energy Parks Australia after incorporation;

2. Jason is sole Director of Locality Planning & Consulting (since 2007);
3. On the 8th March 2013 a change of name was registered from Energy Parks Australia to Locality Planning Energy ("LPE"). This name change was required because of contractual requirements with Sunshine Coast Council. Also from the very beginning the ACN and ABN has remained the same since Energy Parks Australia. Therefore, any reference in this document to Energy Parks Australia is a reference to Locality Planning Energy or (LPE).
4. Jason Hague was the sole Director of Locality Planning Energy;
5. On the 1st August 2013 Damien Glanville becomes a shareholder with Justin Pettett. Damien Glanville becomes a Director of Locality Planning Energy; and
6. On 07 January 2014 Ben Chester becomes a shareholder.

Appendix 2 is a media release from Sunshine Coast Council. This is from July 2013, and at the time Jason was sole Director of Locality Planning Energy. The release acknowledges both Damien Glanville and Jason Hague developing the initial concept.

Jason is the original author of the work being the LPE Application. It is established law in Australia that a company cannot be an author of a work in which copyright exists.

Jason had the initial concept for the business model, Jason incorporated as sole director of the company. Jason has all of the skills, knowledge and experience to be able to author the Application.

On 15th May 2016, knowing that it was going to become a public company, LPE deceptively failed to inform Jason (a major shareholder) of this intention. LPE then orchestrated a buy-back of Jason's shares at cost price, returning only the capital he invested into his own business. This was not a share sale, nor a business purchase. Therefore the intellectual effort authored by Jason, remained with Jason.

Neither Damien Glanville nor Ben Chester have the skill, experience, or knowledge to author the Application in its entirety.

Meta Data

There are a number of different reasons why the metadata may say "Chester". If the word "Chester" does refer to Ben Chester, which is unsubstantiated, then:

1. Using his own laptop, Ben Chester whilst an employee of LPE, was tasked with editing and amending Jason's intellectual work. Ben Chester would never have been able to author this Application on his own.
2. Ben Chester may have been given the job of downloading the Microsoft Office software and registered it in his name;

- a. For example, a home computer may name the “author” of the child’s homework as the parent who ordered, and installed the software. This does not mean that the parent is the author of the homework.

Ownership of IP

Jason owns the intellectual property in the LPE Application because:

1. Jason was the author of the Application;
2. There was no share sale nor agreement between Jason and LPE, therefore they did not buy any of his intellectual property;
3. LPE deceptively, and dishonestly removed Jason as director and shareholder of LPE immediately prior to becoming a publically listed company;
4. LPE did not disclose to Jason (then a major shareholder of LPE) of its intentions to become a publically listed company;
5. LPE simply refunded Jason’s initial capital and did not pay the value of the shares at the time of the takeover; and
6. Therefore, the intellectual effort expended by Jason in preparation of the Application moved with Jason.

2. The Application Contains False or Misleading Information

The allegation that Jason was not “*responsible for delivering the business case for the Sunshine Coast Council demonstrating the financial viability and the principal architect in the unique energy retailing model using renewable energy as the generation source*” is untrue and is false.

Jason is, and was prior to Damien Glanville or Ben Chester becoming involved, the principal architect of LPE’s business model. The historical company extract from ASIC (refer **Appendix 1**) shows that Jason was the founder, director and 100% shareholder of LPE from 24 January 2011. Damien Glanville did not commence as director until 15 May 2014 and Ben Chester did not commence as director until 9 September 2014.

In early January 2011, discussions took place with Sunshine Coast Council prior to Jason lodging a planning application (refer **Appendix 3**). Subsequent to this a planning application MCU11/0030 was lodged with Sunshine Coast Council over a site Energy Parks Australia had contracted. This application was approved on 29th June 2011 (refer **Appendix 4**).

Following this a client asked for a planning application to be gained in Cootharaba, Sunshine Coast with a fellow enthusiast (refer **Appendix 5** – Jason on the left).

The test site was set up so they could compare yield data for three mounting system structures. Fixed, single axis and dual axis mounting system - data in 2010 was not readily available. The system shown is a dual axis tracking system. There was no involvement from any parties that have been named in the written AER response by LPE and serves as another example of participation in the solar industry prior to any involvement with Damian Glanville and Ben Chester.

Upon receiving this application approval and knowing the stakeholders to get this type of project up and running conversations were started with Energex (Steven Lynch) and various retailers (refer **Appendix 6** – local news article.) This article appeared in Sept 2011 prior to any involvement with Damian Glanville and Ben Chester.

This is a critical phase of the project as two things happened the level of interest from Energex grew due to the rapid changing of the solar industry and due to the difficulty in dealing with the various retailers Jason started to investigate the requirements of becoming a retailer. This retailer would be the conduit between the generator (Valdora Solar farm) and the off taker which Jason hoped would be Sunshine Coast Council.

As mentioned above, an identified off taker of the generated electricity was the Sunshine Coast Council. **Appendix 7** demonstrates a commitment from the CEO of the Sunshine Coast Council – John Knaggs to investigate the purchase of the electricity from the Valdora solar farm.

These conversations included application approval specifics, commercial viable arrangement that would likely apply to the Valdora project – such as an electricity retailer and the future intent of Energy Parks Australia being retailer of electricity and possible opportunities for Sunshine Coast Council involvement.

All of this happened before Jason ever met with Damian Glanville and Ben Chester. All of the intellectual effort needed to commence and maintain this business model was Jason's.

The allegations that Jason provided false and/or misleading statements is in itself false and misleading. These allegations are unequivocally denied.

3. Ultium Fails to Meet the Entry Criteria under Section 90(1) Of The Retail Law

The two sub-sections under 90(1) of the Retail Law in the submissions in the Letters are:

1. The organisational and technical capacity criterion; and
2. The suitability criterion.

These criterion will be outlined in detail below:

Criteria in Relation to Jason Hague:

Jason has lived on the Sunshine Coast for the majority of time since 1985. He gained a Bachelor in Regional & Urban Planning from the University of the Sunshine Coast in 2008 and have been a member of PIA since 2005/6. Jason was a member of the Sunshine Coast Branch PIA Committee during 2009/10. Since 1985 Jason has seen the Sunshine Coast cane industry dismantle from a robust industry to one that has struggled to survive, culminating with the Nambour Sugar Mill closing down, leading to

the collapse of the sugar industry in the region and causing the majority of the cane land to be left underutilised.

Living in London, UK and Brisbane in early 1999 – 2003, enabled Jason to experience alternate living lifestyles. Jason was able to experience different ways to live from a built form perspective and gained an understanding of how town planning could influence our everyday living.

Whilst in Munich in Sept 2000 refer **Appendix 9** , Jason visited a 1Mw roof mounted system at 'Messe' convention centre (solar install around 1995/96) where Jason learned a new way to produce electricity on a large scale where you needed it and further how the future of solar energy production could impact our everyday living.

In 2005 whilst studying at the University of the Sunshine Coast Jason was introduced to Claudia Baldwin, Senior Lecturer, whom he continues to have contact with today. Lectures given by Ms Baldwin engaged Jason (as a presenter), in solving the land use issues associated with the cane lands on the Sunshine Coast. Jason continues to engage with Ms Baldwin and USC students on an ongoing regular basis, outlining industry trends and infrastructure provision for electricity installations (refer **Appendix 8**).

In 2005 Jason commenced part time work at Maroochy Shire Council where he was introduced and met various planners including:

1. Phil Woods - future author of Climate Change and Peak Oil Strategy 2010 – 2020 and the Energy Transition Plan 2010 – 2020;
2. Jeremy Addison - future co-author of Rural Futures Background Study & Rural Landuse Planning Background Study; and
3. Rowena Skinner - future co-author of Rural Futures Background Study & Rural Landuse Planning Background Study.

Whilst working directly for Warren Bunker in 2008 (Executive Director – Regional Strategy & Planning Sunshine Coast Regional Council) Jason was instructed to investigate trends in Energy Efficient Building ratings for potential to be integrated further into current and/or future planning schemes. This research gives personal exposure to Energy Rating systems such as Green Star and NABERS. This enabling research into vertical community initiatives as was the first steps forward in bulk purchasing of power options for high rise development(s). This leads to a separate submission of concepts for the DRAFT Energy Transition Plan to be lodged with Sunshine Coast Council, outlining community energy models, retailing by using a pass through model and virtual metering. The main elements are highlighted below. In hindsight there are also certain aspects of the concept paper that are flawed, such as expected power growth. It should also be noted that most of the concepts are in place overseas or ideas that were to ahead of their time in the solar industry as it was still maturing.

The key points were:

1. *A 6MW power station funded in 200 sub-leased lots of 30kw has the ability to engage a wide cross section of private, business, Government and institutional investors,*
2. *The placement of panels on above ground frames on under-utilised farming land would enable horticultural pursuits to occur in conjunction with power creation,*
3. *Demonstrate alternative use of technology including translucent PV panels as roofs of glass houses for agriculture plus the harvesting of rain water from panels,*
4. *Would feature "Buy Local" awareness and purchase of Sunshine Coast designed and manufactured technology where ever possible,*
5. *The 12ha space is based on not only providing enough space for panels and a control centre, but for future power storage units to support peak power needs when the sun is not shining.*
6. *Additional space could be made available for an interactive visitor centre (with under-cover parking created using solar panels) to become a significant educational awareness centre,*
7. *As a model, it can be replicated in numerous neighbourhoods close to the area of power use,*
8. *If successfully implemented, it is potentially achievable to locate 3 of these 6MW capacity Power parks per year across the Sunshine Coast region and meet entirely the expected power growth of 100MW whilst using under-utilised cleared land.*

Whilst carrying out due diligence and research into the merits of this solar farm model, contact was made by Jason to the Office of Clean Energy (Brisbane). Advice received was that the 5 - 30kw feed in tariff was to encourage the up-take of solar from individuals to reduce consumption leading to lower electricity bills for the individual house or land owner and not a money making venture. The idea of a community solar park model was against the intent of the feed in tariff and not supported.

By early 2011, after carrying out due diligence and research into the merits of the solar farm concept (all in his own time), Jason determined that various regulatory authorities had highlighted that the concept had merit in theory but was flawed in numerous ways, including:

1. Regulatory approval would be extremely arduous with inherent risk;
2. State departments perceived the concept as opportunistic and against the intent of policy and would therefore not be supported;
3. Local government(s) perceived the concept was against the intent of the planning scheme(s) and SEQ Regional Plan(s) 2005-2024 and 2009-2031; and
4. Critically retailers required a better understanding of end users and their bankability.

As the architect of the LPE business model, various retailing delivery models, and being interested or directly involved in the renewable energy industry for the last two

decades, as argued above, the allegations that Jason Hague is not a suitable person, nor that Jason has expertise in the energy or related industries is false.

The AER Authorisation guideline ("**Guideline**") states that capacity will be assessed by looking at technical and industry experience, technical operations and human resources.

The information provided above demonstrates Jason's ability to comply with regulatory obligations imposed on retailers, as well as the ability to administer business processes within the position of stakeholder engagement.

The Guideline states a person's character or reputation is relevant to the determination. The submissions in the Letters do not mention any other information in relation to Jason's character or reputation, and therefore should not be taken into consideration.

As the architect of the LPE business model, and as shown above, Jason was clearly the author of the Application and its initial concepts, there is no grounds in which LPE can say that Jason is not a fit and proper person. All of LPE's allegations in relation to this centre around the use of LPE's IP. Therefore, we respectfully submit that this is no longer to be considered by AER.

Criteria in Relation to Scott Juniper:

Scott Juniper ("**Scott**") has permanently resided for approximately 40 years on the Sunshine Coast. He was schooled at Immanuel Lutheran College on the Sunshine Coast and went on to complete a Bachelor of Business at the University of Qld.

From the age of 21, Scott has been a self-employed and director of multiple successful companies focused in the following fields:

1. Retail
2. Interior Design
3. Gaming
4. Importation
5. Event Management
6. Hospitality Management
7. Child Care

In relation to the last abovementioned item, Scott owned and operated a 150 place Child Care centre and owned two further sites prior to 2009 that he intended to develop into further centres. As such Scott was required, screened and subsequently approved for a 'Blue Card' by the Queensland government as a 'fit and proper' person.

Even though Scott has owned and operated many different businesses, his principal focus throughout his business life has been Property Development.

In the year 1998 Scott became the Director of a company named S&L Developments. It started with minor renovation and subdivision 'value add' projects. Over the next 10 years the company rapidly grew to the point where at its peak it held assets in retail

residential, commercial and industrial properties with realised or 'On Completion' values of significant value..

During this time, Scott personally negotiated property deals with the following:

1. McDonalds Australia;
2. Metcash Australia Limited;
3. IGA;
4. Woolworths; and
5. Super Retail Group.

It was personally important to Scott that the company remained private at this time because of the speed and flexibility and quick decision making that a privately owned company structure allowed to complete transactions. From 2006 onwards Scott considered undertaking an Initial Public Offering (IPO) for his company. During this period, detailed due diligence investigations were undertaken in relation to the benefits and disadvantages of such a strategy, which took into account the relevant corporate governance procedures and requirements and complexities of such. Following this, it was decided that the most suitable course of action was a part sale of some of the Company's assets.

At the same time, Scott was personally invited and accepted a position on an advisory board to the University of the Sunshine Coast (USC) for the delivery of its surrounding Town Centre. This board also included VC Paul Thomas (OAM) and the Head of Economic Development for Maroochy Shire Council.

2012 Part X

In 2012 Scott entered into a Part X arrangement with his creditors. Scott did not go bankrupt and this action Scott believes was a direct result of the Global Financial Crisis.

Between the period of 2005 and 2008 Scott's two Principal Lenders were Capital Finance Australia limited ("**CFAL**") and Bankwest. The world lending market tightened in late 2006 in what would ultimately be referred to as the Global Financial Crisis. (GFC). As a result, Scott's lender CFAL merged into its parent company Bank of Scotland International ("**BOSI**").

Scott's other significant lender, Bankwest was also (within a 4-week period) sold to Commonwealth Bank at what was believed to have been a substantial discount. S&L developments had not breached its loan covenants and both lending managers (State managers) had verbally approved continuing with the financial facilities that were in place.

Unfortunately for Scott, both of the Senior Executives had been reshuffled in the mergers and Scott then had to answer to different people in different lending institutions. This unfortunately is usually a ploy by financial institutions to break and

remove existing customer relationships with customers in order to initiate changes in the financial facilities and arrangements.

It was clear from initial meetings that both institutions were not going to renew the loans; they were looking for opportunities to end the loan facilities and they wanted their capital returned. Scott was not alone and this happened to many thousands of borrowers across the country and the world. Bankwest's actions at the time were subject to a Royal Commission.

Ultimately BOSI and Bankwest appointed receivers and eventually liquidators to S&L. S&L had a ten-year trading history of delivering profitable project after profitable project and a pipeline of future projects. It had never taken a loss on any project funded by either institution. In the end, it didn't matter as this was never taken into account by the lenders. Scott contends that both banks had a mandate to not lend to the property market and to get the capital they had lent returned.

Once receivers were appointed Bankwest starting proceedings to recoup their monies under Scott's personal guarantee. Even though they had yet to sell assets they claimed their full exposure was approximately \$22 million.

In response to their actions, Scott commenced counter claim proceedings against the lenders. cannot recall the exact figure but believes the counter claim in this dispute was over \$30 million approximately against one bank. Due to Scott's inability to sustain the legal costs associated with the claim and other events, led Scott to file a Part X in 2012.

LPE have highlighted that part of the case in which Scott brought an application on before the court to summarily dismiss the action on the basis that John Roberts had no real prospects of winning. Amongst the reasons for Scott seeking for the matter to be dismissed was because "the majority of the relevant allegations made by the applicant creditors are simply wrong and unsustainable on the face of the material before the court."

Scott believes that it is very rare that cases like this are struck out as Judges prefer to take a more conservative stance as Judge Bennet did in this instance and asked for the matter to go to trial. The matter never went to trial because John Roberts and Scott settled the matter out of court, the terms of which included a confidentiality agreement at John's request.

While *Roberts v Juniper* was being heard Bankwest asked for and Scott agreed to file a notice of discontinuance in his matter on the basis Scott didn't continue with his counter claim against them.

Scott's Part X was successful because B.O.S.I signed their proxy for Fifty Million Dollars in favour of releasing Scott. It was done at the direction of Martin Green, Head of B.O.S.I Australia. It is Scott's strong belief that they took this course of action because;

1. They understood this was a consequence of the GFC not Scott's actions;

2. At all times during Scott's receivership he conducted himself honestly and appropriately;
3. During this period, Scott actually helped facilitate the sale of some of their other impaired assets, including the Big Pineapple on the Sunshine Coast.

Scott Juniper - Current

Scott is currently the director of Cube Developments. This company has thirteen active projects with a collective, on completion value in excess of \$200 million dollars.

Also, Appendix 10 & 11 & 12 are three recent articles printed in the Courier Mail, Sunshine Coast Daily and Property Advisor.

Scott is currently Chairman of a Body Corporate in which a property that he owns forms part and is retained in an advisory position on two 'Start up' companies.

The majority of his current developments are structured through private syndication. The parties involved include, respected members of the business community, lawyers, accountants, a Queensland Queen's Counsel, multiple high net worth individuals and a Government accredited building company.

All Scott's current syndicates are bound by unitholders agreements etc. which along with the business journey he has taken have given Scott a very good understanding of trusts, probity, unitholders agreements, corporate governance and ultimately the law in general.

Scott throughout his business dealings, where he does not have specific skills or expertise, engages external consultants with the requisite experience and expertise to assist undertake the project. Similarly in the operation of Ultium, external consultants are available and ready to provide services where appropriate and necessary to ensure the success of the company. Attached as Appendix 13 is a letter in support from Reynard Smith.

4. Ultium has failed to Provide Required Information

As evidenced above, the material submitted by LPE was in fact authored by Jason Hague. Therefore, the submissions made by LPE in the letters are false.

As LPE have failed to make out any of the arguments in the submissions contained in the Letters, we respectfully submit that Ultium, Jason Hague and Scott Juniper have provided the required information and met the standard needed to be granted a retail license.

Further to the letter from the Australian Energy Regulator:

- i. Numerous letters of support have been gained by independent companies outlining the capability to be a holder of a retailer licence;
- ii. Scott Juniper and subsequently Ultium Energy has access to large amounts of capital;
- iii. There is a demonstrated previous relationship with LPE; and

- iv. In calculating the minimum occupancies for bulk energy numerous variables were considered including but not limited to – that the current market dictates that retailers for embedded network are paying for the upfront costs, infrastructure costs of specific sites, daily surcharge calculations, and overall consumption considerations.

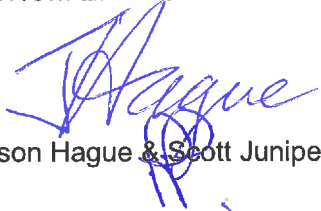
This response has outlined the application by Ultium Energy, demonstrates that Ultium Energy:

- has the necessary organisational and technical capacity to operate as a retailer; and
- seems suitable to hold a retailer licence.

Locality Planning Energy Pty Ltd has a vested interest in Ultium Energy Pty Ltd not being approved for a retailer authorisation. In lodging their submission they are attempting to limit competition to their business. Whilst we are confident that we have adequately answered all accusation contained in their submission we believe that their submission should not we even be considered by AER. They are far from being a concerned independent party, they are trying to monopolise their industry. They have accused Jason and Scott of not being suitable people, whilst we don't wish to engage them on this level, we believe it is worth pointing out that Damien Glanville and Ben Chester have stated they were the founders of LPE (in 2012) on their ASX listed documents, a statement which is clearly false as you've seen on the evidence provided (Appendix 14).

We look forward to the opportunity to have a retailers licence in the future as we have many innovative ideas for this exciting industry which goes hand in hand with the town planning industry and the development industry.

Yours faithfully
ULTIUM ENERGY

A handwritten signature in blue ink, appearing to read 'J. Hague', with a stylized flourish underneath.

Jason Hague & Scott Juniper