

AUST. COMPETITION &
 CONSUMER COMMISSION
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Mr Paul Dunn
 Director Network Regulation South
 Australian Energy Regulator
 GPO Box 520
 MELBOURNE VIC 3001

FILE No: D07/73292
 DOC:
 MARS/PRISM:

Dear Mr Dunn

TRADECOAST CENTRAL – ELECTRICITY NETWORK – EXEMPTION FROM REQUIREMENT TO REGISTER AS A NETWORK SERVICES PROVIDER

Background

- Trade Coast Land Pty Ltd (**'TradeCoast Land'**) is the registered proprietor of the following land comprising the old Brisbane Airport site:

Lot	Title Reference	County	Parish	Area
Lot 31 on RP 895254	50098030	Stanley	Toombul	7.4ha
Lot 2 on SP 112300	50264507	Stanley	Toombul	74.3ha
Lot 30 on RP 895254	50098029	Stanley	Toombul	75.3ha

(**'Site'**). A plan of the Site is at **Annexure A**.

- TradeCoast Land is a company that is wholly owned by Brisbane City Council (**'BCC'**).
- At the conclusion of a competitive tender process undertaken by BCC, TradeCoast Central Pty Ltd ACN 100 972 530 (**'TradeCoast Central'**), won the right to develop the Site. On 8 November 2004, TradeCoast Land entered into a written development agreement (**'Development Agreement'**) with TradeCoast Central to facilitate the development of the Site.
- The directors and shareholders of TradeCoast Central are:

Directors	Shareholders
Robert Walter John Tucker	Robert Walter John Tucker
Kenneth David Tucker	Kenneth David Tucker

- The terms of the Development Agreement between TradeCoast Land and TradeCoast Central, relevantly provide that:

- (a) for a 15 year development period TradeCoast Central has the exclusive right to develop the Site, effectively as if it was the owner;
 - (b) during that 15 year period, the Site is to be developed into a master planned first class industrial estate;
 - (c) lots on the Site will be sold;
 - (d) the lots will be used for a wide variety of industrial and commercial related uses; and
 - (e) infrastructure and utility services may form part of the common property for the Site.
6. TradeCoast Central intends that:
- (a) a body corporate to be known as the Body Corporate for TradeCoast Central Community Titles Scheme (**'Body Corporate'**) will be established;
 - (b) the common property for the scheme will include all utility services or infrastructure forming part of the scheme land (which comprises the Site);
 - (c) a facilities manager (**'Facilities Manager'**) will be appointed by the Body Corporate to manage and maintain the Site, and in particular to provide facility management services to the Body Corporate or occupiers of the lots within the Site.
7. The type of facility management services that will be provided to the occupiers of the lots on the Site include:
- (a) electricity reticulation;
 - (b) potable and recycled water reticulation including storage and pumping;
 - (c) gas reticulation;
 - (d) pumping facilities;
 - (e) telecommunications facilities;
 - (f) general maintenance services;
 - (g) equipment storage facilities;
 - (h) air conditioning maintenance;
 - (i) computer data or television services;
 - (j) a pressure sewer system;
 - (k) stormwater drainage;
 - (l) a system for the removal, recycling or disposal of garbage or waste;
 - (m) trade waste and pollutant traps;
 - (n) security monitoring;
 - (o) building management systems; and
 - (p) any other system or service designed to improve the amenity, or enhance the enjoyment of lots or of the common property on the Site.

Overview of proposed electricity reticulation on Site

8. It is proposed that:
- (a) all internal roads on the Site will be public roads;
 - (b) there will be a single point of power supply into the Site from ENERGEX's distribution network;
 - (c) the reticulation network on the Site will be located within public road reserves in a volumetric easement;

- (d) the Body Corporate will own the reticulation network however, it will appoint the Facilities Manager to operate and maintain the network;
 - (e) electricity will be bought in bulk by either the Body Corporate or the Facilities Manager from the local retailer and will then be on-sold to occupiers of the lots on the Site at the appropriate retail tariff.
9. The Facilities Manager has not yet been established and/or retained. The Facilities Manager may be a company controlled by TradeCoast Central or its existing shareholders, but a final decision has not yet been made.

Position of TradeCoast Central

10. Prior to commencing development of the proposed electricity reticulation network, TradeCoast Central has conducted a detailed overview of its proposed electrical operations at the Site in order to satisfy itself that in undertaking its proposed operations it will fall within:
- (a) the general exemptions from the requirement to register as a network service provider initially published by the National Electricity Code Administrator ('NECA'). TradeCoast Central notes that these general exemptions have now been adopted by the Australian Energy Regulator ('AER'); and
 - (b) the on-supplier exemption contained in part 6 division 1 of the *Electricity Act 1994* (Qld) ('**Electricity Act**').
11. TradeCoast Central is aware that a party seeking to rely upon the general exemptions adopted by the AER, must satisfy itself that one or more of the general exemptions is applicable to its operations. TradeCoast Central considers that it falls within the general exemptions, specifically the exemption class described as 'industrial park'.
12. Nonetheless, because:
- (a) of the complexity of the regulatory environment;
 - (b) the fact that the 'industrial park' general exemption is in very broad terms that do not necessarily take into account the complexities of modern industrial park operations, in particular the land tenure;
 - (c) the possibility that the guidelines may be redrafted in the future; and
 - (d) there are now potential anomalies between the general exemptions from the requirement to register as a network service provider published by NECA, and the on-supplier provisions of the Electricity Act (which we discuss in further detail below),
- TradeCoast Central would appreciate a formal acknowledgement from the AER that it is satisfied, on the basis of the information provided by TradeCoast Central, that TradeCoast Central is justified in forming the opinion that it falls within the 'industrial parks' general exemption from the requirement to register as a network service provider.
13. If the AER was to form a contrary opinion, TradeCoast Central would seek the opportunity to meet with the AER to discuss other potential options that may be available to TradeCoast Central to ensure strict regulatory compliance.

Commonwealth regulatory requirements

14. Section 11 of the National Electricity Law ('NEL') states that registration is required to undertake certain activities in the National Electricity Market ('NEM').
15. Section 11(2) of the NEL provides that a person must not engage in the activity of owning, controlling or operating a transmission system or distribution system that forms part of the interconnected transmission and distribution systems, unless:
- (a) the person is a registered participant in relation to that activity; or

- (b) the person is the subject of a derogation that exempts the person, or is otherwise exempted by the AER, from the requirement to be a registered participant in relation to that activity under the NEL and the National Electricity Rules ('NER').
16. Clause 2.5 of the NER also provides that, subject to clause 2.5.1(d), a person must not engage in the activity of owning, controlling or operating a transmission or distribution system unless that person is registered by NEMMCO as a Network Services Provider. Clause 2.5.1(d) states that the AER may, in accordance with guidelines issued from time to time by the AER, exempt any person or class of persons who is or are required to register as a Network Services Provider from the requirement to register as a Network Services Provider or from the operation of Chapter 5 of the NER.
17. TradeCoast Central is aware that in order to supply and sell electricity through its own reticulation network it must (in order to achieve Commonwealth regulatory compliance) either:
- (a) fall within one of the general exemptions for the requirement to be registered as a Network Services Provider; or
 - (b) apply for a specific exemption from the requirement to be registered as a Network Services Provider; or
 - (c) seek registration as a Network Services Provider.

Exemptions

18. The network service provider exemption guidelines indicate that there are both general exemptions and specific exemptions from the requirement to register as a network services provider.

General Exemptions

19. NECA (the predecessor to AEMC and AER) has granted the following general exemptions from the requirement to register as a network services provider:
- (a) caravan parks;
 - (b) office buildings;
 - (c) flats/apartments;
 - (d) units;
 - (e) industrial parks; and
 - (f) shopping centres.

Organisations that fall within one of these general exemptions do not need to make an application for a specific exemption.

20. If TradeCoast Central does not fall within the category of general exemptions a specific exemption will need to be sought by TradeCoast Central.

TradeCoast Central's position

21. TradeCoast Central considers that it falls within the '*General exemptions from the requirement to register as a network service provider*' that were published by NECA in 2000 and which have subsequently been adopted by the AER.
22. While there is no specific general exemption for developers of industrial estates, TradeCoast Central believes that it falls within the 'industrial park' general exemption. Additionally, in relation to certain parts of its operations, the 'office buildings' general exemptions may also have application. For convenience, details of the 'industrial park' and 'office buildings' general exemptions reproduced from the '*General exemptions from the requirement to register as a network service provider*' are set out below:

Class of Network Owner or Operator	Description	Conditions
Industrial parks	Large areas where land and buildings are leased.	Where: <ol style="list-style-type: none"> 1. the network is supplied at no cost or a nominal fee and access to retailers is available to tenants; and 2. standards for the network are agreed with the local network service provider.
Office buildings	Large complexes where floors or individual offices are rented or leased on a short or long term basis, and electricity is supplied as part of the building infrastructure and either separately metered or charged on a basis agreed at the time of the lease.	A mechanism establishing the maximum price for on-selling of electricity must be in place.

Description of Industrial parks - large areas where land and buildings are leased

23. The Site will comprise a large area where buildings will be purchased by various entities and then will be either occupied by that entity or on-leased, either in whole or in part, to a variety of different tenants.
24. TradeCoast Central, as a consequence of the Development Agreement with TradeCoast Land, presently has full control of the Site, because under the Development Agreement it has an exclusive licence to enter the Site for the purposes of developing the Site.
25. Once individual lots on the Site are sold to third parties:
 - (a) TradeCoast Central will, for the first 12 months following the sale, still have effective control over the Site pursuant to powers of attorney in the individual sale contracts; and
 - (b) after the expiration of the initial 12 months period, then the Body Corporate, will effectively have control over the Site, pursuant to the terms of the Community Titles Scheme that it is proposed to establish over the Site.
26. The Body Corporate, either directly or through the Facilities Manager, will be responsible for electricity reticulation and the sale and supply, of electricity to all end users on the Site.

Nature of TradeCoast Central's network

27. TradeCoast Central's proposed electricity reticulation network will be a private electricity network within the confines of the Site. TradeCoast Central, as the developer of the Site, will meet the capital cost of the construction of the network.
28. It is proposed that the network will comprise:
 - (a) switchboard and circuit breakers at single point of supply;
 - (b) 2x 11Kv dedicated feeders initially, increasing to 2x33Kv dedicated feeders with a zone sub-station;
 - (c) underground conduits and cabling;

- (d) transformers and ring main units; and
 - (e) lot meters.
29. TradeCoast Central's private network will be connected to ENERGEX's public network at the northern end of Schneider Road, Eagle Farm.
 30. Plans of the proposed cable layout of TradeCoast Central's Stage 1 network showing that the network is wholly within the confines of the Site is at **Annexure B**. Plans for future Stages are not yet available, however the network will be fully within the site.
 31. The anticipated cost of the network is \$8 million.
 32. As the development of the Site progresses the network is likely to expand. For example, a zone sub-station may ultimately be required at the entry point to the Site. TradeCoast Central does however, only intend to expand its network within the private boundaries of Site and will only use the network to supply electricity to end users located within the confines of the Site.
 33. The Body Corporate will own the reticulation network, and will either directly or through its Facilities Manager, maintain the system, read meters, issue bills for on-supply of electricity, collect money and pay the retailer.

TradeCoast Central's core business

34. Trade Coast Central's core business is that of a property developer.
35. The management of its private network is one of many ancillary services that it contemplates will be provided to occupiers of lots, as part of its aim to create a world class industrial estate and is incidental to TradeCoast Central's core business.

The network is supplied at no cost or at a nominal cost and access to retailers is available to tenants

36. The first of the conditions that a party relying upon the 'industrial park' general exemption must comply with are that:
 - (a) the network is supplied at no cost or at a nominal cost; and
 - (b) access to retailers is available to end users.

Network is supplied at no cost or at nominal cost

37. All end users will have full access to TradeCoast Central's private network, which will be maintained at the Body Corporate or Facility Manager's cost (as the case may be).
38. The Body Corporate or the Facilities Manager (as the case may be) intends to purchase electricity in bulk from its retailer of choice at the entry point to the Site, and then, on sell that electricity to tenants.
39. Either the Body Corporate or the Facilities Manager will enter into a separate agreement for supply of electricity with each tenant and each tenant's premises will be separately metered and charged on a consumption basis at the appropriate retail tariff. The Body Corporate or its Facilities Manager (as the case may be) intends to invoice tenants on the basis of a monthly meter read.
40. Before entering into a contract of sale in relation to a lot in the Scheme, TradeCoast Central will give the prospective purchaser a detailed disclosure statement that complies with the requirements of the *Body Corporate and Community Management Act 1997* (Qld).
41. TradeCoast Central will, within a reasonable period before making a supply agreement, give the prospective purchaser:
 - (a) a written notice of the accounting period that is to apply to the electricity on-supply agreement;

- (b) an estimate of the common area consumption for the first accounting period of the on-supply agreement; and
 - (c) specifics as to how the common area's consumption is to be worked out and where the end user is only required to pay part of the common area consumption, how that part is to be worked out.
42. This information will be included in the disclosure statement for all new contracts. For existing contracts of sale, separate notice will be given.
 43. The draft Community Management Statement for the Body Corporate provides that each lot to which services are to be provided must have a separate meter. Tenants may elect to install the meter at their expense.
 44. All tenants will be charged the equivalent franchise tariff, that is the tariff that they would have been charged if they were supplied by the area retailer directly. These tariffs are set by the Queensland State Government. The tariff used will depend upon the customer load and profile. The electricity component of the common areas charges will also be based on the published applicable retail tariff rate.
 45. A tax invoice will be sent to each tenant along with a utility record which contains the meter information and details of the billing method.
 46. All occupiers wishing to connect to Trade Coast Central's private network, will be treated in the same manner.

Access to retailers is available to end users

47. While the industrial park general exemption conditions of the AER guidelines, state that access to retailers is to be available to tenants, an anomaly now exists with the Queensland regulatory requirements.
48. The Electricity Act has recently been amended by the provisions of the *Electricity and Other Legislation Amendment Act 2006* (Qld).
49. Specifically, for present purposes, the new section 23 of the Electricity Act provides that a receiver from an on-supply network will not be a 'customer' and therefore unable to choose their retail supplier unless, the receiver's premises has an electrical installation that, to the reasonable satisfaction of the distribution entity whose distribution area includes the premises, is capable of receiving supply directly from a supply network. Receivers' premises are not currently capable of receiving supply directly from a supply network. In order for this to occur additional infrastructure would need to be constructed and TradeCoast Central would have to grant appropriate easements or licences to ENERGEX to enter the Site to provide a separate supply. It is likely that the costs of such infrastructure would not be economically viable.

Standard for network to be agreed with the local network service provider

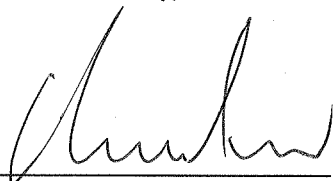
50. TradeCoast Central intends to undertake a substantial investment to ensure that its electrical network is of a standard, superior even to those provided by registered network service providers, in terms of supply quality and reliability.
51. TradeCoast Central's network assets will be maintained according to industry standards. TradeCoast Central intends to use the local ENERGEX standards for all electrical work and electrical equipment.
52. TradeCoast Central will hire a private certifier to certify both the design and the finished electrical work to ensure that it is to ENERGEX's standards. The certifier that TradeCoast Central intends to engage has specialist ENERGEX certification.
53. TradeCoast Central or the Body Corporate intends to negotiate a '*Negotiated Customer Connection Contract*' with ENERGEX Limited. TradeCoast Central understands that such agreement will incorporate agreed operating protocols and will impose obligations on both ENERGEX and TradeCoast Central to comply with all relevant laws, which are specifically defined to mean that *National Electricity Law*, *Electricity Act* and *Electrical Safety Act 2002* (Qld).

54. TradeCoast Central has provided ENERGEX with formal notice that a single point of supply will be required for the Site. It has however not commenced negotiations with a retailer in relation to the sale of electricity for the Site.

Conclusion

55. TradeCoast Central considers that the intended arrangements for supply and sale of electricity at the Site will fall within:
- (a) the 'industrial park' general exemption to the requirement to register as a network services provider and, to the extent possible, given the recent amendments to the contestability provisions of the Queensland legislation is compliant with the required conditions attached to the 'industrial park' general exemption; and
 - (b) the definition of 'on-supplier' in section 20 of the Electricity Act and complies with the requirements of part 6 division 1 subdivisions 3 to 7 of the Electricity Act and is therefore exempt from the operation of sections 88A and 89 of the Electricity Act.
56. TradeCoast Central would welcome an acknowledgement from the AER that, on the basis of the information provided by TradeCoast Central, it is satisfied that TradeCoast Central and the proposed Body Corporate and its Facilities Manager will be compliant with the NEL and NER in relation to this particular issue.
57. To assist with your consideration of this request we also **enclose** copies of the following:
- (a) approved plan of subdivision – **Annexure C**;
 - (b) proposed Community Management Statement – **Annexure D**; and
 - (c) proposed Facilities Management Agreement – **Annexure E**.
- We cannot provide you with a copy of the Development Agreement as its terms are confidential, but if you require a copy, we will endeavour to seek permission from TradeCoast Land to provide a copy to you.
58. Should you require any further information from TradeCoast Central please contact RWJ Tucker c/- TradeCoast Central Pty Ltd PO Box 347 Indooroopilly QLD 4068. Alternately, you could contact Ms Tracey Moore, McCullough and Robertson, Level 11 Central Plaza Two, 66 Eagle Street, Brisbane.

Yours faithfully,



R.W.J. Tucker

Director

TradeCoast Central Pty. Ltd.