

Decision on water licence cancellation application

Moama Lifestyle Villages Pty Ltd

2 October 2019

Economic Regulation Authority

WESTERN AUSTRALIA

D207022

Decision

1. The Economic Regulation Authority has cancelled Moama Lifestyle Villages Pty Ltd's water services licence WL40 in accordance with section 18 of the *Water Services Act 2012*. The licence was cancelled on 24 September 2019.

Background

2. Section 18 of the *Water Services Act 2012* provides that a licensee may apply to the ERA for the cancellation of its licence.
3. In August 2019, Moama applied to the ERA for the cancellation of its water services operating licence WL40 (Appendix 1).
4. Moama's sole customer was a related company, Tuart Lakes Lifestyle Village.
5. In July 2019, Moama ceased providing the services covered by WL40 to Tuart Lakes when the village's sewer network was connected to the Water Corporation's sewer mains.

Reasons

6. In accordance with section 18(2) of the *Water Services Act 2012* and taking into consideration the matters set out in section 46 of the Act, the ERA is satisfied that the cancellation of WL40 would not be contrary to the public interest. The ERA has also considered the matters set out in section 26(1) of the *Economic Regulation Authority Act 2003*.¹

¹ The full text of section 26(1) is in Appendix 2.

Appendix 1 Water services operating licence WL40



Water Services Licence

Moama Lifestyle Villages Pty Ltd

WL40, Version 3, 1 July 2016

Economic Regulation Authority

WESTERN AUSTRALIA

WATER SERVICES ACT 2012

Licensee Name:	Moama Lifestyle Villages Pty Ltd
	ABN 32 122 593 846
Licence Number:	WL40
Commencement Date:	7 September 2010
Version Number:	3
Version Date:	1 July 2016
Expiry Date:	6 September 2035

Signed by a delegate; member; or
the Chairman of the Economic Regulation Authority
1 July 2016

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1. LICENCE AUTHORISATION

1.1 Activities authorised under this licence

1.1.1 The *licensee* is granted a *licence* for the *operating area(s)* to provide the following *water services* in accordance with the *terms and conditions* of this *licence*:

- (a) *water supply services*:
 - (i) not used
 - (ii) *non-potable water supply services*
- (b) *sewerage services*
- (c) not used
- (d) not used

1.2 Commencement date

1.2.1 7 September 2010

1.3 Expiry date

1.3.1 6 September 2035

1.4 Term [Section 14 of the Act]

1.4.1 This *licence* commences on the *commencement date* and continues until the earlier of:

- (a) the cancellation of the *licence* pursuant to clause 2.5 of this *licence*;
- (b) the surrender of the *licence* pursuant to clause 2.6 of this *licence*; or
- (c) the *expiry date*.

1.5 Operating area

1.5.1 The *operating area* is set out in plan(s):

OWR-OA-298(A)

1.5.2 The operating area plan(s) is provided in Schedule 1.

2. LICENCE ADMINISTRATION

2.1 Amendment of licence by the licensee [Section 18 of the Act]

2.1.1 The *licensee* may, at any time, apply to the *ERA* to amend the *licence* in accordance with the *Act*.

2.2 Amendment of licence by the ERA [Section 17 of the Act]

2.2.1 The *ERA* may, at any time, amend the *licence* on its own initiative in accordance with the *Act* and the procedure specified in clause 2.2.2.

2.2.2 Before amending the *licence* under clause 2.2.1, the *ERA* must:

- (a) provide the *licensee* with written *notice* of the proposed amendments under consideration by the *ERA*;
- (b) allow 15 *business days* for the *licensee* to make submissions on the proposed amendments; and
- (c) take into consideration those submissions.

2.2.3 Any amendments made to the *licence* will come into effect in accordance with the *Act* unless a longer period is specified by the *ERA* or a shorter period is agreed to by the *ERA* and the *licensee*.

2.2.4 This clause also applies to the substitution of the existing *licence*.

2.2.5 For avoidance of doubt, the *licensee* will not have to pay an associated application fee or *licence* fee for the purpose of clause 2.2.1.

2.3 Transfer of licence [Section 15 of the Act]

2.3.1 This *licence* may be transferred only in accordance with the *Act*.

2.4 Renewal of licence [Section 13 of the Act]

2.4.1 This *licence* may be renewed only in accordance with the *Act*.

2.5 Cancellation of licence for serious default [Section 34 of the Act]

2.5.1 This *licence* may be cancelled for serious default in accordance with the *Act*.

2.6 Cancellation of licence by the licensee [Section 18 of the Act]

2.6.1 The *licensee* may apply to the *ERA* to request cancellation of the *licence* at any time by written *notice* to the *ERA*.

2.6.2 The *ERA* may cancel the *licence* in accordance with the *Act*.

2.6.3 The *licensee* will not be entitled to a refund of any fees by the *ERA*.

2.7 Notices

2.7.1 Unless otherwise specified, all *notices* must be in writing.

2.7.2 A *notice* will be regarded as having been sent and received:

- (a) when delivered in person to the addressee; or
- (b) three *business days* after the date of posting if the *notice* is posted in Western Australia; or
- (c) five *business days* after the date of posting if the *notice* is posted outside Western Australia; or
- (d) if sent by facsimile when, according to the sender's transmission report, the *notice* has been successfully received by the addressee; or
- (e) if sent by email when, according to the sender's electronic record, the *notice* has been successfully sent to the addressee's *water licensing email address*.

2.8 Publishing information

- 2.8.1 The *ERA* may direct the *licensee* to *publish* any information within a specified timeframe it considers relevant in connection with the *licensee* or the performance by the *licensee* of its obligations under this *licence*.
- 2.8.2 Subject to clause 2.8.3, the *licensee* must *publish* the information referred to in clause 2.8.1.
- 2.8.3 If the *licensee* considers that the information is confidential it must:
- (a) immediately notify the *ERA*; and
 - (b) seek a review of the *ERA*'s decision in accordance with clause 2.9.
- 2.8.4 Once it has reviewed the decision, the *ERA* will direct the *licensee* in accordance with the review to:
- (a) *publish* the information;
 - (b) *publish* the information with the confidential information removed or modified; or
 - (c) not *publish* the information.

2.9 Review of the *ERA*'s decisions

- 2.9.1 The *licensee* may seek a review of a *reviewable decision* by the *ERA* pursuant to this *licence* in accordance with the following procedure:
- (a) the *licensee* must make a submission on the subject of the *reviewable decision* within 10 *business days* (or other period as approved by the *ERA*) of the decision; and
 - (b) the *ERA* will consider the submission and provide the *licensee* with a written response within 20 *business days*.
- 2.9.2 For the avoidance of doubt, this clause does not apply to a decision of the *ERA* pursuant to the *Act*, nor does it restrict the *licensee*'s right to have a decision of the *ERA* reviewed in accordance with the *Act*.

3. GENERAL LICENCE OBLIGATIONS

3.1 Compliance with applicable legislation [Section 26, 27, 29 and 31 of the Act]

- 3.1.1 Subject to any modifications or exemptions granted pursuant to the *Act* and this *licence*, the *licensee* must comply with any *applicable legislation*.
- 3.1.2 Subject to the provisions of any *applicable legislation*, the *ERA* may direct the *licensee* in writing to do any measure necessary to:
- (a) correct the breach of any *applicable legislation*; or
 - (b) prevent the breach of any *applicable legislation* occurring again, and specify a time limit by which such action must be taken.

3.2 Fees

- 3.2.1 The *licensee* must pay the applicable fees and charges in accordance with the *Economic Regulation Authority (Licensing Funding) Regulations 2014*.

3.3 Provision of water services [Section 21 of the Act]

3.3.1 The licensee must provide the water service set out in clause 1.1:

- (a) to persons entitled to the *water service* under the *Act*, except to the extent otherwise provided for by the *Act*; and
- (b) if requested, to any other person within the *operating area* on reasonable terms, unless the provision of the *water service* is not financially viable or is otherwise not practicable.

3.4 Provision of water services outside operating area [Section 22 of the Act]

3.4.1 If the *licensee* provides a *water service* outside of the *operating area* specified for that *water service*, the *licensee* must:

- (a) notify the *ERA* as soon as is practicable before commencing to provide the *water service*; and
- (b) apply to amend the *licence* in accordance with clause 2.1 unless otherwise notified by the *ERA*.

3.5 Works holding arrangements [Section 23 of the Act]

3.5.1 The *licensee* must hold, or otherwise be subject to a *works holding arrangement* in respect of, all *water service works* used for the provision of a *water service*.

3.6 Accounting records

3.6.1 The *licensee* and any *related body corporate* must maintain accounting records that comply with the Australian Accounting Standards Board Standards or equivalent International Accounting Standards.

3.7 Reporting a change in circumstances

3.7.1 The *licensee* must report to the *ERA*:

- (a) if the *licensee* is under external administration as defined by the *Corporations Act 2001 (Cwth)* within two *business days*; or
- (b) if the *licensee*:
 - (i) experiences a material change in the *licensee's* corporate, financial or technical circumstances upon which this *licence* was granted; and
 - (ii) which may materially affect the *licensee's* ability to meet its obligations under this *licence*,within 10 *business days* of the change occurring; or
- (c) if:
 - (i) the *licensee's* name;
 - (ii) the *licensee's* ABN;
 - (iii) the *licensee's* address;

- (iv) the description of the *water service works*,
changes, within 10 *business days* of the change occurring.

3.8 Provision of information

- 3.8.1 The *licensee* must provide to the *ERA* in the manner and form specified by the *ERA*, specified information on any matter relevant to the operation or enforcement of the *licence*, the operation of the licensing scheme provided for in Part 2 of the Act, or the performance of the *ERA*'s function under that Part.
- 3.8.2 The *licensee* must comply with any information reporting requirements prescribed by the *ERA*, including but not limited to the provisions of the *Water Compliance Reporting Manual*¹, which apply to the *licensee*.
- 3.8.3 Without limiting clause 3.8.1, the *licensee* must provide the *ERA* with the data required for performance reporting purposes that is specified in:
 - (a) the *Water, Sewerage and Irrigation Licence Performance Reporting Handbook*²; and
 - (b) not used.

4. AUDITS AND PERFORMANCE REPORTING OBLIGATIONS

4.1 Asset management system [Section 24 of the Act]

- 4.1.1 The *licensee* must provide for, and notify the *ERA* of, an *asset management system* in respect of the *licensee's water service works* within two *business days* from the *commencement date* unless otherwise notified in writing by the *ERA*.
- 4.1.2 The *licensee* must notify the *ERA* of any material change to the *asset management system* within 10 *business days* of such change.
- 4.1.3 The *licensee* must, unless otherwise notified in writing by the *ERA*:
 - (a) conduct an *asset management system review*; and
 - (b) provide the *ERA* with a report on the *asset management system review*,
within 24 months after the *commencement date* and every 24 months thereafter.
- 4.1.4 The *asset management system review* must be conducted by an independent expert appointed by the *ERA* in its sole discretion. The *ERA* will determine the terms of the appointment of the independent expert.
- 4.1.5 Before appointing an independent expert the *ERA* will:
 - (a) consult with the *licensee* in a manner and form determined by the *ERA*; and
 - (b) take into account any relevant matters raised by the *licensee* from that consultation.

¹ See www.erawa.com.au -> Water Licensing -> Regulatory Guidelines.

² See www.erawa.com.au -> Water Licensing -> Regulatory Guidelines.

4.1.6 The *licensee* must cooperate with the independent expert and comply with the *ERA's* standard guidelines dealing with the *asset management system review*.

4.2 Individual performance standards

4.2.1 The *licensee* must comply with the *individual performance standards* as set out in Schedule 2.

4.2.2 The *ERA* may prescribe *individual performance standards* in relation to the *licensee* of its obligations under this *licence* or the *applicable legislation*.

4.2.3 Before approving any *individual performance standards* under this clause, the *ERA* will:

- (a) provide the *licensee* with a copy of the proposed *individual performance standards*;
- (b) allow 15 *business days* for the *licensee* to make submissions on the proposed *individual performance standards*; and
- (c) take into consideration those submissions.

4.2.4 Once approved by the *ERA*, the *individual performance standards* are included as additional *terms and conditions* to this *licence* as set out in Schedule 2.

4.3 Operational audit [Section 25 of the Act]

4.3.1 The *licensee* must, unless otherwise notified in writing by the *ERA*, provide the *ERA* with an *operational audit* within 24 months after the *commencement date*, and every 24 months thereafter.

4.3.2 The *operational audit* must be conducted by an independent expert appointed by the *ERA* in its sole discretion. The *ERA* will determine the terms of the appointment of the independent expert.

4.3.3 Before appointing an independent expert the *ERA* will:

- (a) consult with the *licensee* in a manner and form determined by the *ERA*; and
- (b) take into account any relevant matters raised by the *licensee* from that consultation.

4.3.4 The *licensee* must cooperate with the independent expert and comply with the *ERA's* standard audit guidelines dealing with the *operational audit*.³

5. CUSTOMERS

5.1 Customer contract

5.1.1 The *licensee* must, if directed by the *ERA*, submit a draft *customer contract* for approval by the *ERA*.

5.1.2 The *licensee* must comply with any *Customer Contract Guidelines*⁴, which apply to the *licensee*.

³ See www.erawa.com.au -> Water Licensing -> Regulatory Guidelines.

⁴ See www.erawa.com.au -> Water Licensing -> Regulatory Guidelines.

5.1.3 The licensee may only amend the customer contract by submitting to the *ERA*:

- (a) a proposed amendment to the *customer contract*; or
- (b) a proposed substituted *customer contract*.

5.1.4 The *ERA* may:

- (a) approve the amendment to the *customer contract* or substituted *customer contract*; or
- (b) specify the amendments the *licensee* must make to the amended or substituted *customer contract* before the *ERA* will amend the *customer contract*,

and notify the *licensee* of its decision within 10 *business days* of making the decision.

5.1.5 The *ERA* may, at any time, by *notice* in writing, direct the *licensee* to amend the *customer contract* by specifying:

- (a) the amendments to be made to the *customer contract*; and
- (b) the latest date at which the amendments will come into force.

5.2 Standard terms and conditions of service [Section 71 of the Act]

Not used.

5.3 Non standard terms and conditions of service

5.3.1 Subject to compliance with this clause, the *licensee* may enter into an agreement with a *customer* to provide *water services* that exclude, modify or restrict:

- (a) the terms and conditions of this licence; or
- (b) the requirements of the *Code of Conduct*.

5.3.2 Subject to clause 5.3.3, an agreement referred to in clause 5.3.1:

- (a) must be approved by the *ERA* prior to its commencement; and
- (b) must not be amended without the prior approval of the *ERA*.

5.3.3 The *licensee* does not need the approval of the *ERA* if:

- (a) the terms that exclude, modify or restrict the *terms and conditions* of this licence or the requirements of the *Code of Conduct* have previously been approved by the *ERA* in another agreement that applies to the same class of *customer*; or
- (b) the terms that exclude, modify or restrict the *terms and conditions* of this licence were in force before the *amendment date*.

5.3.4 If a *licensee* enters into an agreement with a *customer* that excludes, modifies or restricts the terms and conditions of this licence, or the *Code of Conduct*, the *licensee* must publish a report annually that includes the following information:

- (a) the total number of agreements entered into by the *licensee*, categorised by location and the type of exclusion, modification or restriction;

- (b) the number of agreements entered into by the *licensee* during the reporting period, categorised by location and the type of exclusion, modification or restriction;
- (c) the total number of agreements entered into by the *licensee*, categorised by location and by land use; and
- (d) the number of agreements entered into by the *licensee* during the reporting period, categorised by location and by land use.

5.4 Hardship policy

Not used.

5.5 Water Services Ombudsman Scheme [Section 70 of the Act]

5.5.1 The *licensee* must not supply *water services* to *customers* unless the *licensee* is:

- (a) a member of the *water services ombudsman scheme*; and
- (b) bound by, and compliant with, any decision or direction of the water services ombudsman under the *water services ombudsman scheme*.

5.6 Supplier of last resort [Section 60 of the Act]

5.6.1 If the *licensee* is appointed the *supplier of last resort* for a designated area under the *Act*, the *licensee* must perform the functions of the *supplier of last resort* for the designated area and the class of *water service*, comply with the duties imposed in relation to those functions under the *Act* and carry out its operations under or for the purposes of the *last resort supply plan* in accordance with the *Act*.

6. HEALTH

6.1 Memorandum of understanding

Not used.

7. DEFINITIONS AND INTERPRETATION

7.1 Definitions

7.1.1 In this *licence*, the following definitions apply unless the context otherwise requires:

Act means the *Water Services Act 2012* (WA).

amendment date means 1 July 2016.

applicable legislation includes:

- (a) the *Act*;
- (b) any relevant subsidiary legislation including:
 - (i) regulations made under the *Act*; and
 - (ii) the *Economic Regulation Authority (Licensing Funding) Regulations 2014*; and
- (c) any code in force from time to time made pursuant to the *Act*.

asset management system means the measures that are to be taken by the *licensee* for the proper maintenance, expansion or reduction of the *water service works*.

asset management system review means an assessment of the matters set out in section 24(2) of the *Act*.

audit report means a signed, written document that presents the purpose, scope and results of the audit by the *Department of Health* on compliance by the *licensee* of its obligations under the *MoU*.

business day means a day which is not a Saturday, Sunday or a public holiday in Western Australia.

Code of Conduct means the *Water Services Code of Conduct (Customer Service Standards) 2013* as amended or replaced from time to time.

commencement date means the date specified in clause 1.2.

complaint means an expression of dissatisfaction made to or about an organisation, related to its products, services, staff or the handling of a complaint, where a response or resolution is explicitly or implicitly expected or legally required.

customer has the meaning given to that term in section 3 of the *Act*.

customer contract means a "standard customer contract" referred to paragraph (a) of the definition of "standard terms and conditions of service" in section 71(1) of the *Act*.

Customer Contract Guidelines means the guidelines relating to the content of the *licensee's customer contract* issued by the *ERA*, as amended or replaced from time to time.

Department of Health means the Department of Health or its successors in Western Australia.

Department of Water means the Department of Water or its successors in Western Australia.

ERA means the Economic Regulation Authority.

expiry date means the date specified in clause 1.3.

financial hardship policy means a policy referred to in clause 26 of the Code of Conduct.

Financial Hardship Policy Guidelines means the guidelines relating to financial hardship policies for water services issued by the *ERA*, as amended or replaced from time to time.

individual performance standards mean any individual performance standards approved by the *ERA* pursuant to clause 4.2 and specified in Schedule 2 of the *licence*.

last resort supply plan has the meaning given to that term in section 50 of the *Act*.

licence means:

- (a) this document (excluding the pages prior to clause 1, the header and footer of this document and the amendment record sheet);
- (b) any *Schedules* to this document; and
- (c) any *individual performance standards* approved by the *ERA* pursuant to clause 4.2.

licensee means Moama Lifestyle Villages Pty Ltd, ABN 32 122 593 846.

non-potable water supply services means the collection, treatment, transfer or delivery of water supplied from *water services works* not designed and operated to provide *potable water*.

non-residential customer means a *customer* who is not a *residential customer*.

notice means a written notice, agreement, consent, direction, representation, advice, statement or other communication required or given pursuant to, or in connection with, this *licence*.

operating area(s) has the meaning given to that term in section 3 of the *Act* and is the area specified in clause 1.5.

operational audit means an assessment of the matters set out in section 25(2) of the *Act*.

potable water means drinking water in accordance with the Australian Drinking Water Guidelines or as otherwise defined in the *MoU* between the *licensee* and the *Department of Health*.

publish in relation to a report or information means either:

- (a) posting the report or information on the *licensee's* website; or
- (b) sending the report or information to the *ERA* to be published on the *ERA's* website.

related body corporate has the meaning given to that term in section 50 of the *Corporations Act 2001* (Cwth).

residential customer means a *customer* to which *water services* are sold or supplied in respect of the place used solely or primarily as the *customer's* dwelling.

reviewable decision means a decision by the *ERA* pursuant to:

- (a) clause 2.8.3;
- (b) clause 4.1.6;
- (c) clause 4.2.2; and
- (d) clause 4.3.4;

of this licence.

Schedule means the schedule or schedules which are appended to, and which form part of, this *licence*.

sewerage services has the meaning given to that term in section 3 of the *Act*.

supplier of last resort has the meaning given to that term in section 50 of the *Act*.

terms and conditions means the terms and conditions in this *licence* including any terms and conditions contained in the *Schedules*.

Water Compliance Reporting Manual means the reporting manual issued by the *ERA*, as amended or replaced from time to time.

water licensing email address means:

- (a) in relation to the *ERA*, the addressee's authorised *ERA* email address or other such email address as notified in writing to the *licensee*; and
- (b) in relation to the *licensee*, the email address specified in the *licence* application or other such email address as notified in writing to the *ERA*.

water service means the service or services that the *licensee* is authorised to provide by this *licence* being a *drainage service*, *irrigation service*, *sewerage service* and/or *water supply service* as more particularly described in clause 1.

water service works has the meaning given to that term in section 3 of the *Act*.

water services ombudsman scheme means a scheme approved under section 65 of the *Act*.

Water, Sewerage and Irrigation Licence Performance Reporting Handbook means the handbook produced by the *ERA* of the same name as amended or replaced from time to time.

water supply service has the meaning given to that term in section 3 of the *Act*.

works holding arrangement means an arrangement as set out in section 23 of the *Act*.

7.2 Interpretation

- 7.2.1 A reference in this *licence* to any *applicable legislation* includes, unless the context otherwise requires, any statutory modification, amendment or re-enactment of that *applicable legislation*.

Schedule 1 – Operating area

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Schedule 2 – Performance standards

The *licensee* must comply with the standards, principles and reporting requirements as set out below.

1. POTABLE WATER

1.1 Potable water system – pressure and flow standards

Not used.

1.2 Potable water system – pressure and flow exemptions

Not used.

1.3 Water restrictions

Not used.

2. NON-POTABLE WATER

Not used.

3. SEWERAGE

3.1 Sewerage service standards

Not used.

4. DRAINAGE

4.1 Drainage service standards

Not used.

5. IRRIGATION

5.1 Irrigation service standards

Not used.

Schedule 3 – Customer provisions

1. ADDITIONAL CUSTOMER PROVISIONS

1.1 Requirement for approved financial hardship policy

- 1.1.1 Where the *licensee* intends to supply *water services to customers* other than *non-residential customers* or members of the *licensee*, the *licensee* must notify the *ERA* and must have an approved *financial hardship policy* in accordance with clause 26 of the *Code of Conduct* prior to any such supply.
- 1.1.2 For the purposes of clause 1.1, a *water service* does not include *non-potable water supply services*, except where the *non-potable water supply service* is supplied on the basis that the *customer* is responsible for treating the water to make it fit for humans to drink.

Amendment record sheet

Version No.	Version Date	Description of Amendment
1	7 September 2010	Water services licence granted for the following service(s): <ul style="list-style-type: none">• Non-potable water supply services• Sewerage services
2	18 November 2013	Amendment by substitution - <i>Water Services Act 2012</i>
3	1 July 2016	Water Licence Review 2016

Appendix 2 Legislative provisions referenced in decision

Water Services Act 2012

Section 18 Amendment or cancellation of licence — on application of licensee

- (1) A licensee may apply to the Authority at any time for the amendment or cancellation of a licence held by the licensee.
- (2) The Authority may amend or cancel the licence in accordance with the application if satisfied that it would not be contrary to the public interest to do so.

Section 46 Matters relevant to determination of public interest

If the Authority is required under this Part to determine whether or not something would be contrary to the public interest, then, without limiting the things that the Authority may take into account, the following matters must be taken into account to the extent to which the Authority considers that they are relevant to the particular case —

- (a) environmental considerations, including the value of ecologically sustainable development;
- (b) public health considerations relating to the provision of reliable water services.

Economic Regulation Authority Act 2003

Section 26 Authority to have regard to certain matters

- (1) In performing its functions, other than the functions described in section 25(c) and (d), the Authority must have regard to —
 - (a) the need to promote regulatory outcomes that are in the public interest;
 - (b) the long-term interests of consumers in relation to the price, quality and reliability of goods and services provided in relevant markets;
 - (c) the need to encourage investment in relevant markets;
 - (d) the legitimate business interests of investors and service providers in relevant markets;
 - (e) the need to promote competitive and fair market conduct;
 - (f) the need to prevent abuse of monopoly or market power;
 - (g) the need to promote transparent decision-making processes that involve public consultation.
- (2) The Authority has a discretion as to the weight it gives to each of the matters referred to in subsection (1) in the performance of a particular function.
- (3) Nothing in subsection (1) limits a provision of another written law that requires the Authority, in performing a particular function, to have regard to, or take into account, particular objectives, considerations or other matters.
- (4) If there is any conflict or inconsistency between subsection (1) and a provision described in subsection (3), the latter provision prevails to the extent of the conflict or inconsistency.