

Decision to grant water services licence WL52

BHP Billiton Nickel West Pty Ltd

15 September 2020

Economic Regulation Authority

WESTERN AUSTRALIA

D218887

Economic Regulation Authority

Level 4, Albert Facey House

469 Wellington Street, Perth WA 6000

Telephone 08 6557 7900

Email info@erawa.com.au

Website www.erawa.com.au

This document can also be made available in alternative formats on request.

National Relay Service TTY: 13 36 77

© 2020 Economic Regulation Authority. All rights reserved. This material may be reproduced in whole or in part provided the source is acknowledged

1. Decision

1. Pursuant to section 11 of the *Water Services Act 2012*, the Economic Regulation Authority grants BHP Billiton Nickel West Pty Ltd water services licence WL52.
2. Subject to its terms and conditions, the licence authorises BHP to supply potable water and sewerage services to the town of Leinster (as set out in the operating area OWR-OA-318 in the licence).
3. The term of the licence is 25 years (the maximum period allowed by section 14 of the *Water Act*).
4. As required by section 47(2) of the *Water Act*, the ERA will publish a notice of the grant of the licence in the *Government Gazette* as soon as practicable.

2. Reasons

2.1 Licence

5. Section 5 of the Water Act requires a person to hold a licence to provide a water service.
6. On 27 July 2020, BHP [applied](#) for a water services licence to provide potable water and sewerage services to the town of Leinster, located approximately 370 kilometres north of Kalgoorlie.¹
7. BHP has been supplying and maintaining potable water and sewerage services at Leinster since 2005.
8. Leinster has a population of approximately 2,100 with a mixture of permanent residents accommodated across 280 houses and a fly-in, fly-out workforce using camp accommodation.

2.2 Energy and Water Ombudsman Scheme

9. BHP has provided written evidence of its commitment to become a member of the Energy and Water Ombudsman Scheme.²

2.3 Financial hardship policy

10. Clause 29(2) of the *Water Services Code of Conduct (Customer Services Standards) 2018* requires a licensee to have a financial hardship policy approved by the ERA. A financial hardship policy assists residential customers who are unable to pay for their water services because of financial hardship.
11. BHP was not required to provide a financial hardship policy because it will not charge a fee for the supply of potable water and sewerage services.³

2.4 Public consultation

12. On 31 July 2020, the ERA sought [public comment](#) on the licence application.
13. The ERA received two [submissions](#) from the Department of Health and the Department of Water and Environmental Regulation (DWER).
14. The Department of Health made the following statement in its submission:

The Department of Health (DOH) does not object to this licence application, provided that any potable water supply licence that is granted incorporates provisions requiring the licensee to enter a Memorandum of Understanding (MOU) with the DOH about drinking water, and that

¹ Potable water supply and sewerage services to the Leinster mine and concentrator site and the airport are not included in the licence application.

² Page 8 of BHP's [licence application summary](#).

³ A licensee is not required to have a FHP if it does not charge for the provision of a water services (clause 4(3)(a) of the Code).

those provisions are consistent with the content of other potable water supply licenses previously granted by the Authority.

15. DWER supports the granting of a water services licence to BHP, provided that BHP continues to work with DWER to finalise and implement its water source protection report. The information and recommendations in this report will help to identify, protect and manage the Leinster drinking water source.

2.5 Financial and technical assessments

16. Under section 11(1)(a) of the Water Act, the ERA must grant a licence if it is satisfied that the applicant:
 - a. has, and is likely to retain, for each class of water service, the financial and technical ability to provide the service in the operating are or areas to be specified for the service
 - or
 - b. will acquire within a reasonable time after the grant, and is then likely to retain, that ability.
17. The ERA did not engage a financial consultant to examine the financial ability of BHP to provide the proposed water services because BHP has already constructed the potable water and sewerage infrastructure and also, will not charge a fee for the supply of potable water and sewerage services.
18. The core business of BHP is mining, and the provision of water services is to enable the maintenance of a workforce within reasonable proximity to its mining operations. Operations and maintenance of, and future investment in, the drinking water and sewerage systems is considered to be operational expenditure and is accounted for in BHP's projected expenditure for the next five years.
19. The ERA engaged a technical consultant to examine the technical ability of BHP to provide the proposed water services.
20. Following the technical assessment, the technical consultant concluded that BHP complies with the technical requirements of section 11(1)(a) of the Water Act.

2.6 Assessment of public interest

2.6.1 Water Services Act 2012

21. Section 11(1)(b) of the Water Act states that the ERA must grant a licence if it is satisfied that it would not be contrary to the public interest to do so. In determining whether the grant would not be contrary to the public interest, section 46 provides that, without limiting the things that the ERA may take into account, the following matters must be taken into account to the extent to which the ERA considers them relevant:
 - a. Environmental considerations, including the value of economically sustainable development.
 - b. Public health considerations relating to the provision of reliable water services.

2.6.2 *Economic Regulation Authority Act 2003*

22. The ERA must also have regard to the matters set out in section 26(2) of the *Economic Regulation Authority Act 2003* (ERA Act):⁴
- 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.

2.6.3 *ERA assessment of public interest*

23. The ERA has considered section 11(1)(b) of the Water Act, the matters set out in section 46 of the Water Act, section 26 of the ERA Act, the public submissions received, the report of the technical expert and BHP's financial reports for the past three financial years.
24. As the water services licence regulates certain performance and service standards and provides consumer protections to customers, the ERA is satisfied that the grant of the licence will promote regulatory outcomes in the long-term interests of consumers, consistent with section 26(2)(a) and (b) of the ERA Act.
25. All water services licences are non-exclusive, which means that another water service provider could enter the market if conditions permitted. The ERA is therefore satisfied that the grant of the licence will be consistent with section 26(d) and (e) of the ERA Act.
26. The ERA conducted public consultation on the licence application and has stated in this decision the reasons for granting the licence, which is consistent with section 26(f) of the ERA Act.
27. In all circumstances, after taking into account the matters in section 46 of the Water Act and section 26 of the ERA Act, the ERA is satisfied that granting WL52 to BHP would not be contrary to public interest.

⁴ The ERA has a discretion as to the weight it gives to each of the matters listed in section 26(2) of the Act in making its decision on BHP's application for a water services licence.