



Water Services Licence

BHP Nickel West Pty Ltd

WL52, Version 2, 22 September 2021

Economic Regulation Authority

WESTERN AUSTRALIA

WATER SERVICES ACT 2012

Licensee name: BHP Nickel West Pty Ltd
ABN 76 004 184 598

Operating area: The area set out in the plan referred to in clause 2.5.

Licence number: WL52

Commencement date: 16 September 2020

Version number: 2

Version date: 22 September 2021

Expiry date: 15 September 2045

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1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

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

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

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 has the same meaning as section 24(2) of the *Act*.

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

audit and review guidelines means the guidelines prepared by the *ERA* setting out the *ERA's* requirements for the conduct of *operational audits* and *asset management system reviews*, as published by the *ERA* on its website and as amended from time to time.

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 an *MoU*, pursuant to clause 7.1.4 of this *licence*.

Australian Drinking Water Guidelines means:

- (a) the Australian Drinking Water Guidelines Paper 6 National Water Quality Management Strategy (version 3.5) published by the National Health and Medical Research Council, as amended or replaced from time to time; or
- (b) if the *licensee* has an *MoU* for Drinking Water Quality with the *Department of Health*, the Australian Drinking Water Guidelines Paper of the National Water Quality Management Strategy published by the National Health and Medical Research Council.

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) 2018* as amended or replaced from time to time.

commencement date means the date specified in clause 2.2.

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*.

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

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

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

electronic means means:

- (a) the internet;
- (b) email, being:
 - (i) in relation to the *ERA*, the *ERA*'s email address as notified to the *licensee*; and
 - (ii) 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*; or
 - (iii) any other similar means,

but does not include facsimile or telephone.

ERA means the Economic Regulation Authority.

expiry date means the date specified in clause 2.3.

financial hardship policy means a policy referred to in clause 29 of the *Code of Conduct*.

individual performance standards mean any individual performance standards approved by the *ERA* pursuant to clause 5.2 and specified in *Schedule 2* of the *licence*.

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

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 5.2.

licensee means BHP Nickel West Pty Ltd, ABN 76 004 184 598.

MoU means a memorandum of understanding referred to in clause 7.1 as amended or replaced from time to time.

National Performance Framework: urban performance reporting indicators and definitions handbook means the handbook published by the Bureau of Meteorology, as amended or replaced from time to time.

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*.

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 2.5.

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*.

potable water supply services means the collection, treatment, transfer or delivery of water supplied from *water service works* designed and operated to provide *potable water*.

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 has the same meaning as in clause 3 of the *Code of Conduct*.

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

- (a) clause 3.8.1; and
- (b) clause 5.2.2,

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*.

standard terms and conditions of service has the meaning given to that term in section 71(1) 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 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 2.

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*.

1.2 Interpretation

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

2. LICENCE AUTHORISATION

2.1 Activities authorised under this licence

- 2.1.1 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) *potable water supply services*
 - (ii) Not used
 - (b) *sewerage services*
 - (c) Not used
 - (d) Not used

2.2 Commencement date

- 2.2.1 The *commencement date* of this *licence* is 16 September 2020.

2.3 Expiry date

- 2.3.1 The *expiry date* of this *licence* is 15 September 2045.

2.4 Term **[Section 14 of the Act]**

- 2.4.1 This *licence* commences on the *commencement date* and continues until the earlier of:
- (a) the cancellation of the *licence* pursuant to clause 3.5 of this *licence*;
 - (b) the cancellation of the *licence* on application of the *licensee*, pursuant to clause 3.6 of this *licence*; or
 - (c) the *expiry date*.

2.5 Operating area

- 2.5.1 The *operating area* is set out in plan(s):
- OWR-OA-318
- 2.5.2 The *operating area* plan(s) is provided in *Schedule 1*.

3. LICENCE ADMINISTRATION

3.1 Amendment of licence on application of the licensee **[Section 18 of the Act]**

- 3.1.1 The *licensee* may apply to the *ERA* to amend the *licence* in accordance with the *Act*.

3.2 Amendment of licence by the ERA **[Section 17 of the Act]**

- 3.2.1 The *ERA* may amend the *licence* on its own initiative in accordance with the *Act* and the procedure specified in clause 3.2.2.
- 3.2.2 Before amending the *licence* under clause 3.2.1, the *ERA* must:
- (a) provide the *licensee* with *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.

- 3.2.3 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*.

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

3.3 Transfer of licence **[Section 15 of the Act]**

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

3.4 Renewal of licence **[Section 13 of the Act]**

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

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

3.5.1 This *licence* may be cancelled in accordance with the *Act*.

3.6 Cancellation of licence on application of the licensee [Section 18 of the Act]

3.6.1 The *licensee* may apply to the *ERA* to request cancellation of the *licence* by *notice* to the *ERA*.

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

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

3.7 Notices

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

3.7.2 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 *electronic means* when, according to the sender's electronic record, the *notice* has been successfully sent to the addressee.

3.8 Publishing information

3.8.1 The *ERA* may direct the *licensee* to *publish*, within a specified timeframe, any information it considers relevant in connection with the *licensee* or the performance by the *licensee* of its obligations under this *licence*.

3.8.2 Subject to clause 3.8.3, the *licensee* must *publish* the information referred to in clause 3.8.1.

3.8.3 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 3.9.

3.8.4 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.

3.9 Review of the ERA's decisions

3.9.1 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*.

4. GENERAL LICENCE OBLIGATIONS

4.1 Compliance with applicable legislation and licence conditions [Sections 26, 27, 29 and 31 of the Act]

4.1.1 Subject to any modifications or exemptions granted pursuant to the *Act* and this *licence*, the *licensee* must comply with any *applicable legislation*.

4.1.2 Subject to the provisions of any *applicable legislation*, the *ERA* may give the *licensee* a *notice* directing it 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.

4.1.3 The *licensee* must comply with the *terms and conditions* of this *licence*.

4.2 Fees

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

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

4.3.1 The *licensee* must:

- (a) Not used.
- (b) if requested, offer to provide the *water service* set out in clause 2.1 to any person within the *operating area* on reasonable terms, unless the provision of the *water service* is not financially viable or is otherwise not practicable.

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

4.4.1 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 3.1 unless otherwise notified by the *ERA*.

4.5 Works holding arrangements [Section 23 of the Act]

- 4.5.1 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*.

4.6 Accounting records

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

4.7 Reporting a change in circumstances

- 4.7.1 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* of such external administration occurring; or
- (b) if:
 - (i) the *licensee* experiences a change in its corporate, financial or technical circumstances upon which this *licence* was granted; and
 - (ii) the change 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; or
 - (iv) the *works holding arrangement* for the *water service works*,changes, within 10 *business days* of the change occurring.

4.8 Provision of information

- 4.8.1 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.

4.8.2 Without limiting clause 4.8.1, 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*¹; and
- (b) Not used.

5. AUDITS AND PERFORMANCE REPORTING OBLIGATIONS

5.1 Asset management system [Section 24 of the Act]

5.1.1 The *licensee* must provide for an *asset management system* in respect of the *licensee's water service works*.

5.1.2 The *licensee* must notify the *ERA* of the details of the *asset management system* within five *business days* from the later of:

- (a) the *commencement date*; or
- (b) Not used.

5.1.3 The *licensee* must notify the *ERA* of any material change to the *asset management system* within 10 *business days* of such change.

5.1.4 The *licensee* must, unless otherwise notified in writing by the *ERA*, provide the *ERA* with a report as to the effectiveness of the *asset management system* within 24 months after the *commencement date* and every 24 months thereafter.

5.1.5 The *asset management system review* must be conducted by an independent expert engaged by the *ERA*. The *ERA* will determine the terms of the appointment of the independent expert.

5.1.6 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.

5.1.7 The *licensee* must cooperate with the independent expert and comply with the *ERA's audit and review guidelines* dealing with the *asset management system review*.²

5.2 Individual performance standards

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

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

¹ The Handbook can be found on the [ERA website](#).

² The guidelines can be found on the [ERA website](#).

- 5.2.3 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.
- 5.2.4 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*.

5.3 Operational audit [Section 25 of the Act]

- 5.3.1 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.
- 5.3.2 The *operational audit* must be conducted by an independent expert appointed by the *ERA*. The *ERA* will determine the terms of the appointment of the independent expert.
- 5.3.3 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.
- 5.3.4 The *licensee* must cooperate with the independent expert and comply with the *ERA's audit and review guidelines* dealing with the *operational audit*.³

6. CUSTOMERS

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

- 6.1.1 If, during the term of the *licence*, the *ERA* considers that one or more of a *licensee's standard terms and conditions of service* is no longer in the public interest, the *ERA* may direct the *licensee*:
- (a) to amend:
 - (i) the *standard term or condition of service*; or
 - (ii) the *standard term or condition of service* in accordance with a term proposed by the *ERA*; and
 - (b) to do so within a specified period.
- 6.1.2 The *licensee* must comply with a direction given to the *licensee* under this clause.

³ The guidelines can be found on the [ERA website](#).

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

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

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

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

6.3.1 If the *licensee* is appointed the *supplier of last resort* for a designated area in relation to the provision of a particular *water service* under the *Act*, the *licensee* must:

- (a) perform the functions of the *supplier of last resort* for the designated area and the class of *water service*;
- (b) comply with the duties imposed in relation to those functions under the *Act*; and
- (c) carry out its operations under or for the purposes of the *last resort supply plan* in accordance with the *Act*.

7. PUBLIC HEALTH

7.1 Memorandum of understanding

7.1.1 Where the *licensee* provides *potable water*, the *licensee* must enter into an *MoU* as described in this clause 7.1 with the *Department of Health* as soon as practicable after the *commencement date* or as otherwise agreed with the *Department of Health*.

7.1.2 Not used.

7.1.3 Not used.

7.1.4 An *MoU* must:

- (a) specify that the *MoU* is a legally binding document between the *licensee* and *Department of Health*; and
- (b) require an audit by the *Department of Health* on compliance by the *licensee* with its obligations under the *MoU* at least once every three years, or other such time as notified by the *Department of Health*, and the provision of the *audit report* to the *ERA*.

7.1.5 The *licensee* must comply with the terms of an *MoU*.

7.1.6 The *licensee* must *publish*, in a form agreed with the *Department of Health*, an *MoU* and any amendments to the *MoU* on the *licensee's* website within one month of entering into the *MoU* or of making amendments to the *MoU*.

7.1.7 The *licensee* must *publish* the *audit report* on the *licensee's* website within one month of the completion of the audit.

- 7.1.8 The *licensee* must *publish*, in a form agreed with the *Department of Health*, any other reports required by the *Department of Health* or required by an *MoU* on the *licensee's* website, at a reporting frequency specified by the *Department of Health*.

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

1.1.1 The *water service works* provided by the *licensee*, for the purpose of *water supply services*, shall be designed, constructed, operated and maintained to provide continuity of pressure and flow for services in accordance with the following standards.

Pressure and flow standards

Area	Minimum Static Pressure (metres of water)	Maximum Static Pressure (metres of water)	Minimum Flow (litres per minute)
All other water licences	15	100	20

1.2 Potable water system – pressure and flow exemptions

1.2.1 The *licensee* must notify:

- (a) new *customers* upon purchase of the affected property as soon as practicable; and
- (b) existing *customers* at least annually,

if the pressure and flow of the water supplied to the *customer's* property falls outside of the standard pressure and flow range set out in clause 1.1 of this *Schedule*.

1.2.2 The notification in clause 1.2.1 must advise the *customer* whether the pressure and flow of water supplied to the *customer's* property will be lower or higher than the pressure and flow range set out in clause 1.1 of this *Schedule*.

1.3 Water restrictions

1.3.1 The *licensee* must notify the *ERA* annually of any restrictions applied in accordance with the *Water Services Regulations 2013* to a *potable water* supply, detailing restrictions by scheme, type (severity), duration, start date and number of services affected.

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 If the *licensee* at any time during the term of the *licence*:

- (a) intends to supply *water supply services* (but only in respect of the supply of *drinking water*) or *sewerage services* to *residential customers*; and
- (b) does not have a *financial hardship policy* approved by the *ERA*,

the *licensee* must submit a draft *financial hardship policy* to the *ERA* for approval.

1.1.2 The *licensee* must not commence the supply of *water supply services* (but in respect of the supply of *drinking water* only) or *sewerage services* to *residential customers* unless the *ERA* has approved the *licensee's* draft *financial hardship policy*.

1.1.3 For the purposes of clause 1.1 of this *Schedule*, 'drinking water' has the meaning given to that term in clause 4(1) of the *Code of Conduct*.

Amendment record sheet

Version No.	Version Date	Description of Amendment
1	16 September 2020	Water services licence granted for the following services: <ul style="list-style-type: none">• Potable water supply• Sewerage services
2	22 September 2021	Change to licensee's name from BHP Billiton Nickel West Pty Ltd to BHP Nickel West Pty Ltd.