

Decision on Amendment to Water Corporation Operating Licence 32

27 August 2009

Economic Regulation Authority

 WESTERN AUSTRALIA

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DECISION

1. The Economic Regulation Authority (Authority) has approved an amendment to Operating Licences 32 (Water Corporation) under section 31 of the *Water Services Licensing Act 1995* (Act). The amendment extends the Water Corporation's Waroona sewerage services operating area to include three sites identified for special residential development that abut the Waroona town site (map OWR-OA-239 (A)).
2. The application for this licence amendment was made pursuant to section 31 of the *Water Services Licensing Act 1995* (Act).
3. Pursuant to section 31 of the Act, the Authority approves the amendment of the Water Corporation's licence.

REASONS

1. On 18 March 2009, the Water Corporation wrote to the Authority seeking an amendment to its operating licence to extend the Waroona sewerage services operating area to include three sites identified for special residential development that abut the Waroona town site. The Water Corporation received a joint request from the Peel Planning Directorate - Department for Planning and Infrastructure, and the Shire of Waroona, to become the preferred service provider for the wastewater servicing of future development in Waroona.
2. On 31 March 2009, the Authority published a notice seeking public submissions on the Waroona extension. The period for public submissions closed on 20 April 2009 and two submissions were received, one from Mr Clinton O'Neil and the second from the Peel Harvey Catchment Council (PHCC).
3. Mr Clinton O'Neil objected to the amendment on two grounds and made a further recommendation on licence conditions in the event the amendment was approved. Firstly, Mr O'Neil posited that the proposed extension constitutes an expansion to the controlled area, which is beyond the powers of the Authority in the Act. The Authority notes that this amendment is not seeking an extension to a controlled area and that the proposed extension of the operating area is within the existing controlled area. In view of this, the Authority does not accept this objection.
4. Secondly, Mr O'Neil expressed concern that the Water Corporation's application, represents an ambit claim, using its monopoly marketing power to secure an enduring right to service the area in the future. As all operating areas are now non-exclusive and this extension does not prevent other entrants from providing services to this operating area, the Authority did not accept this proposition.
5. Mr O'Neil recommended a licence condition that required the Water Corporation to disclose the full cost of service to all future lots created within the proposed extended operating area, without a disclaimer in any agreements with land owners, that service provision is - '*subject to economic viability*'. The Authority considers this recommendation is unreasonable and inconsistent with section 30(1) of the *Water Corporation Act 1995*, which requires the Water Corporation to act in accordance with prudent commercial principles and endeavour to make a profit, consistently with maximizing its long term value.
6. With reference to the PHCC's submission, the PHCC, does not object to the extension, but requested that the Authority place a condition on the licence to the effect that the net release of phosphorus from the Waroona Wastewater Treatment Plant (WWTP) be decreased by at least 50% from current levels within 5 years and then progressively to zero discharge within 10 years. The Authority notes that the issues raised by PHCC concerning phosphorus levels are matters that are better addressed by the Department of Environment and Conservation (DEC) in its licence arrangements with the Water Corporation and that advice provided by DEC indicates that the views raised by PHCC will receive appropriate attention. In view of this, the Authority does not support the PHCC's recommendation to include a phosphorus level target relating to WWTP in the Water Corporation's operating licence.
7. In its consideration of the application, the Authority considered the public interest, including the matters set out in section 19 (1b) as required by sections 31A of the

Act. Accordingly, the Authority concluded that the approval of this amendment to Operating Licence 32 would not be contrary to the public interest.

8. The Authority has therefore decided to amend the Water Corporation's Operating Licence 32 by extending the Waroona sewerage services operating area to include the three sites identified for special residential development adjacent to the Waroona town site.
9. As required under section 31(4b) of the Act, the Authority will publish a notice of its approval of the licence amendment in the *Government Gazette* as soon as is practicable.

LYNDON ROWE
CHAIRMAN