

Economic Regulation Authority
PO Box 8469,
Perth BC, WA 6849

Fax: 9213 1999

Attention: Mr Mick Geaney

Dear Sir,

RE: Amendment to water operating licence 32, proposed new operating area for potable water supply services in the Muchea area (Chittering south)

Thank you for providing the opportunity to make relevant comment on the proposal as submitted. The submitter objects to the ERA approving the application in its current form, on a number of grounds. As the Corporation has the ability to enter into voluntary service by agreement contracts with the developer and water servicing to create new lots is not a mandatory requirement of development, it is unclear how the ERA would entertain approval of the application in its current form.

In the alternate, taking into consideration social equity issues and the Governments current drought relief strategies and programs, the ERA may consider that it is imperative to expand the proposed operating area to ensure that all families have access at their property boundaries of reliable drinking water service supply to meet their basic human needs. Given the seasons lack of rainfall it would not be unreasonable to suggest that supply availability should be effective from the date of the ERA's determination and subject to consumer usage fees and charges (consistent with the Bindoon/Chittering zone) as regulated under the provisions of the States uniform pricing policy.

Objection to the granting of the application

Overview

In 2009 the DoW released its interim policy position on water related servicing in the State, presumably to provide guidance to potential water providers, land developers, the ERA in discharging its administrative functions under the WSL Act and the community at large.

The policy identifies:

"that a developer can appoint any potential water service provider that can obtain a water allocation from DoW under the Rights in Water and Irrigation Act 1914 and a water services operating licence, if required, (potable, non potable, sewerage, irrigation or drainage) from the Economic Regulation Authority under the Water Services Licensing Act 1995"

Of some relevance to this application is the ERA's published reasoning supporting its approval determination of February 2010, related to the Water Corporation's application to extend the Bindoon/Chittering operating area.

The Authority determined that the issues raised in the one submission as being one of public interest matters, the reasoning summarised as:

1. All areas within the State are controlled areas for the purpose of water licensing and are issued on a non – exclusive basis
2. The Authority did not consider Water Corporation was using its market position or power to secure an enduring exclusive right to service the area.
3. Commercial contractual arrangements between the Corporation and third parties that specifically excludes new entrants is not an issue to concern the authority
4. Economic viability of a Corporation proposal is not a matter for the Authority's consideration, however is a matter for Government determination.

Evidence of the application and implementation of DoW's interim policy and the ERA's February 2010 determination has now been tested, attachment A, to the extent that it is now at the voluntary discretion of a land developer to determine if it is in their interest to connect to reticulated drinking water scheme supply.

Extract:

"We note the Water Corporation's standard requirements if the subdivision was to be connected to reticulated water. However, in accordance with the endorsed Development Plan and the current subdivision approval, connection to a reticulated water supply is not a mandatory requirement. Provision 7 on the revised Development (which is consistent with the endorsed Development Plan) gives the subdivider the option of connecting to reticulated water and if it does not occur then the requirement for water tanks is applicable. The current Development Plan was endorsed in July, 2010 when the above water situation was applicable.

Also the current subdivision approval, which applies to the whole of Lot 20, does not include any condition requiring connection to a reticulated water supply."

It is noted that the Local Government requires the installation of rainwater tanks when granting building approvals regardless of whether scheme water supplies exist or not.

Muchea operating area proposal

Given this background, reference is now made to the current Muchea operating area proposal.

The ERA would be aware or should be aware that CVI satisfied the statutory provisions of the WSL Act 1995 by providing written notice to the ERA of its intention to provide water related servicing to the proposed commercial Muchea industrial area. The Company is still actively involved in discussions with the Department of Planning and Local Government to implement its proposal. Therefore, CVI holds the view that any ERA consideration or determination related to the commercial industrial area should be excluded from the proposed operating plan area as submitted by the Corporation.

No evidence of a WAPC application, approval or signed and sealed development plan has been provided to support the claimed number of lots proposed for the estate. Therefore, it is difficult to ascertain whether the isolated land development proposal within the zoned rural residential planning area conforms to applicable

planning law and policies. In addition, as it is no longer a mandatory requirement for water service provision as a condition of development, it remains unclear whether the particular estate has approval to create more than 50 lots requiring a mandatory service, which would in itself require referral to the ERA under its current trigger level administrative practices.

The Corporation application proposes to extend the operating area beyond the boundaries of the estate where it could be inferred that a voluntary agreement for servicing between the developer and the Corporation may exist. However, there is no evidence that any other existing self supply landowners in the built environment, within the proposed area, have displayed any desire to fund the headworks and ongoing fees and charges attached to a scheme proposal that may or may not be implemented at some distant unspecified time in the future.

In support of its application to include the built environment of the Muchea townsite, the Corporation raises unsubstantiated social health and environmental matters, as principal drivers to sway the ERA. However, if evidence existed that current self supply practices at the townsite were or had potential to cause significant harm to the community there would be a presumption that Government would remedy the situation, at its cost, as soon as it became aware of the evidence. As no Government action or remedy has occurred it could be inferred that Government is satisfied with current practices.

In the event that the ERA considers the preceding issues of concern have no substance or material bearing of relevance on discharging its administrative functions, the following is submitted.

IN THE ALTERNATE

Overview

The ERA in discharging its statutory obligations would be aware of Government and community expectations that identify *"all families living in the State should have access to safe, reliable, essential drinking water supplies to meet their basic human needs at a fair and reasonable price"*

As a consequence of previous and current Government decisions, the majority of families living in rural residential areas in the southern portion of the Shire are wholly dependant on self supply rainfall capture and storage to meet their essential drinking water needs. Neither the Health Department nor Government sanctions the use of rainwater tanks for drinking water purposes, even though local government regulations require the installation of rainwater tanks in both reticulated service areas and un serviced areas.

The Governments current drought strategies and programs, in response to this seasons lack of rainfall, clearly identifies the vulnerability of families totally reliant on rainfall to meet their basic human needs regardless of the storage capacity they may or may not have. Consensus professional opinion supports the proposition that rainfall can no longer be regarded as a reliable water source to meet basic human needs now or into the future.

Satisfaction of objection to application

To provide surety and certainty that the Corporations application is not an ambit claim to gain an enduring right using market power or position and taking into consideration the Governments drought strategies and programs that are

designed to provide relief to exposed and vulnerable families, the submitter proposes for the ERA consideration:

'With the exception of the proposed commercial industrial area, the ERA grant conditional approval for an operating area for drinking water servicing that is expanded to encompass and incorporate all zoned rural residential land and the Muchea townsite, in the southern portion of the Shire of Chittering'.

'As a performance condition, the Water Corporation is required to enter into an enforceable legally binding commitment with the ERA that stipulates the Corporation is to provide families with fair and reasonable access to essential drinking water supplies at their property boundary, under the provisions of the States uniform pricing policy, effective from the date of the ERA determination of the application'.

Should the ERA require further information, Clint O'Neil can be contacted by phone 9571 8058 or alternatively email coneil@bigpond.com.au

Clinton O'Neil
22nd November 2010
Director and water efficiency auditor,
Chittering Valley Water Services
2837 Chittering road
Chittering WA 6084



AGENDA OF THE ORDINARY COUNCIL MEETING
WEDNESDAY, 14 NOVEMBER 2010

**Comment
Submissions**

A total of eight submissions were received during the submission period. Below is a summary of the submissions and the officer's comment in relation to the submissions.

| Submission received from | Comments | Officer's comments |
|--------------------------|---|--|
| Water Corporation | <ul style="list-style-type: none"> No objection to the amended development plan. | |
| | <ul style="list-style-type: none"> Water Corporation has been granted an extension the Bindoon/Chittering Water supply Operating Licence Area by the Economic Regulatory Authority to cover the development area. | Noted |
| | <ul style="list-style-type: none"> The existing water reticulation network for Bindoon/Chittering does not have the capacity to adequately supply development in this area. | It is understood that the Water Corporation in conjunction with the private Water Traders are preparing the staging of the development within the extended Licence Operating Area to ensure that there are sufficient water allocation and that the provision and upgrade of the services infrastructure can be program in an effective manner. This will need to be refer to the Water Corporation at subdivision stage and for the developer to liaise with Water Corporation. |
| | <ul style="list-style-type: none"> For the funding of subdivision, development or redevelopment is one of user pays and the developer is expected to provide all water reticulation and to contribute for headwork's. The developer may also be required to fund new works or the upgrading of existing works to provide for the increase demand resulting from the development. | As per above comment. |
| | <ul style="list-style-type: none"> The developer to liaise with the Water Corporation in the early stages of the development to determine the requirements for the provision of a reticulated water supply. | Noted. This can be referred to the Developer as an advice note to liaise with Water Corporation. |
| | <p><i>The applicant in response to the submission provided by Water Corporation provided the following comments:</i></p> <p><i>"We note the Water Corporation's standard requirements if the subdivision was to be connected in reticulated water. However, in accordance with the endorsed Development Plan and the current subdivision approval, connection to a reticulated water supply is not a mandatory requirement. Provision 7 on the revised Development (which is consistent with the endorsed Development Plan) gives the subdivider the option of connecting to reticulated water and if it does not occur then the requirement for water tanks is applicable. The current Development Plan was endorsed in July, 2010 when the above water situation was applicable. Also the current subdivision approval, which applies to the whole of Lot 20, does not include any condition requiring connection to a reticulated water supply."</i></p> | |
| FESA | <ul style="list-style-type: none"> No comment | |