



# Water Services Licence

BHP Billiton Nickel West Pty Ltd

WL52, Version 1, 16 September 2020

**Economic Regulation Authority**

WESTERN AUSTRALIA

**WATER SERVICES ACT 2012**

Licensee name: BHP Billiton 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: 1

Version date: 16 September 2020

Expiry date: 15 September 2045

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Signed by the Chair of the Economic Regulation Authority

16 September 2020

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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 Billiton 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*<sup>1</sup>; 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*.<sup>2</sup>

### 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*.

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

<sup>2</sup> 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*.<sup>3</sup>

## **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.

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<sup>3</sup> 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"><li>• Potable water supply</li><li>• Sewerage services</li></ul>