

Decision to renew water services licence WL22

Shire of Lake Grace

31 May 2021

Economic Regulation Authority

WESTERN AUSTRALIA

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1. Decision

1. Pursuant to section 13(2) of the *Water Services Act 2012*, the Economic Regulation Authority has renewed the Shire of Lake Grace's water services licence WL22.
2. Subject to its terms and conditions, the licence authorises the Shire to provide non-potable water supply and sewerage services to customers centred on the township of Lake Grace (as set out in operating area OWR-OA-037(C) in the licence).
3. The term of the renewed licence is two years from 1 June 2021.
4. As required by section 47(2) of the *Water Act*, the ERA will publish a notice of the renewal 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 29 April 1996 the Shire of Lake Grace was granted a licence by the Office of Water Regulation for a period of 25 years.¹
7. On 3 February 2021, the Shire applied to the ERA to renew WL22.
8. Section 70 of the Water Act states the ERA must not renew a licence unless it is satisfied the licensee is a member of an approved scheme. The Shire is a member of the water ombudsman scheme.

2.2 Public consultation

9. On 11 February 2021, the ERA sought [public comment](#) on the licence renewal application. The period for submissions closed on 4 March 2021.
10. The ERA did not receive any submissions.

2.3 Financial and technical assessments

11. Under section 13(2)(a) of the Water Act, the ERA may renew a licence if it is satisfied that the licensee has, and is likely to retain, for each class of water service to be authorised by the licence, the financial and technical ability to provide the service in the operating area or areas to be specified for the service.
12. As part of its renewal application, the Shire provided audited financial reports for the past three years and a written declaration from the Shire's manager of corporate services that it has the financial ability to provide the service.
13. Based on the information provided, the ERA is satisfied that the Shire has, and is likely to retain, for each class of water service to be authorised by the licence, the financial ability to provide the service in the operating area.
14. The ERA used the Shire's licence compliance and asset management history to determine whether it has the technical ability to continue to provide the service.
15. The past three asset management system reviews of the Shire of Lake Grace's water services assets found material deficiencies.
16. The ERA's [notice](#) about the 2019 asset management system review stated the ERA would consider taking compliance enforcement action against the Shire under section 31 of the Water Act if the Shire did not resolve the recommendations from the 2019 review to the ERA's satisfaction by the due dates in the post-review implementation plan.

¹ On 1 January 2004, the Office of Water Regulation became part of the Economic Regulation Authority.

17. The ERA notes that the Shire has addressed most of the recommendations from the 2019 review and considers that compliance enforcement action is not necessary at this time. However, the ERA is concerned by the length of time it has taken for the Shire to rectify some of the issues with the sewerage scheme, and by the auditor's conclusion in the 2019 review report that the Shire "operates its sewerage collection, treatment and disposal systems in a casual manner."²
18. The ERA has renewed the licence for less than the 25-year maximum period permitted under section 14 of the Water Act as it has concerns about the Shire's technical ability to provide the service on an ongoing basis.
19. Based on its licence compliance and asset management history, the ERA considers that the Shire has, and is likely to retain, for each class of water service to be authorised by the licence, the technical ability to provide the service in the operating area for the next two years.

2.4 Assessment of public interest

2.4.1 Water Services Act 2012

20. Section 13(2)(b) of the Water Act states the ERA may renew a licence if it is satisfied that it would not be contrary to the public interest to do so. Section 46 of the Water Act specifies what matters the ERA must take into account (to the extent it considers them relevant) when considering section 13(2)(b). These matters are:
 - a. Environmental considerations, including the value of ecologically sustainable development.
 - b. Public health considerations relating to the provision of reliable water services.

2.4.2 Economic Regulation Authority Act 2003

21. The ERA must also have regard to the matters set out in section 26(1) of the *Economic Regulation Authority Act 2003*:³
 - 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 Economic Regulation Authority, 27 February 2020, *Report on the 2019 review of the Shire of Lake Grace sewerage assets management system*, Report prepared by Barry Robbins Engineering & Project Management ([online](#)).

³ The ERA has discretion to decide the weight it gives to each of the matters listed in section 26(1) of the ERA Act in making its decision.

2.4.3 ERA assessment of public interest

22. The ERA has considered:
 - the matters set out in section 46 of the Water Act
 - the matters set out in section 26(1) of the ERA Act
 - the Shire's financial reports for the past three financial years
 - the written declaration from the Shire's manager of corporate services
 - the Shire's previous licence compliance and asset management history.
23. There are environmental and public health benefits from the Shire providing the sewerage service (section 46(a) and (b) of the Water Act).
24. The interests of the Shire's existing customers are best served by the Shire continuing to be licenced so it can provide water services to those customers (section 26(1)(a) and (b) of the ERA Act and section 46(b) of the Water Act).
25. As the water services licence regulates certain performance and service standards and provides consumer protections to customers, the ERA is satisfied that the renewal of the licence will promote regulatory outcomes in the long-term interests of consumers, consistent with section 26(1)(a) and (b) of the ERA Act and section 46(b) of the Water Act.
26. 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 renewal of the licence will be consistent with section 26(1)(e) and (f) of the ERA Act.
27. The ERA conducted public consultation on the licence renewal application and has stated in this decision the reasons for renewing the licence, which is consistent with section 26(1)(g) of the ERA Act.
28. In all circumstances, after taking into account the matters in section 46 of the Water Act and section 26(1) of the ERA Act, the ERA is satisfied that renewing WL22 would not be contrary to the public interest.