

# Decision to grant water services licence WL53

BHP Iron Ore Pty Ltd

1 June 2021

**Economic Regulation Authority**

WESTERN AUSTRALIA

D232528

## **Economic Regulation Authority**

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## 1. Decision

1. Pursuant to section 11 of the *Water Services Act 2012*, the Economic Regulation Authority grants BHP Iron Ore Pty Ltd water services licence WL53.
2. Subject to its terms and conditions, the licence authorises BHP Iron Ore to supply potable water to customers in Newman (as set out in operating areas OWR-OA-319 and OWR-OA-320 in the licence).
3. The term of the licence is 25 years (the maximum period allowed by section 14 of the Water Act).
4. As required by section 47(2) of the Water Act, the ERA will publish a notice of the grant 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 2 February 2021, BHP Iron Ore applied for a water services licence to provide potable water in the town of Newman, which is approximately 455 kilometres south of Port Hedland in the Pilbara.
7. BHP Iron Ore is already providing the service and has done so for many years. BHP Iron Ore applied for a water services licence to comply with the Water Act.

### 2.2 Energy and Water Ombudsman Scheme

8. Section 70 of the Water Act states the ERA must not grant a licence unless it is satisfied the applicant is, or will become, a member of the ombudsman scheme.
9. BHP Iron Ore provided written evidence in its application of its commitment to become a member of the Energy and Water Ombudsman Scheme.

### 2.3 Public consultation

10. On 11 February 2021, the ERA sought [public comment](#) on the licence application.<sup>1</sup>
11. The ERA received a submission from the Department of Health.
12. The Department of Health made the following statement in its submission:

The Department of Health (DOH) does not object to this licence application, provided that any drinking water supply licence that is granted incorporates provisions requiring the licensee to enter a Memorandum of Understanding (MOU) with the DOH about drinking water, and that those provisions are consistent with the content of other drinking water supply licences previously granted by the Economic Regulation Authority.

13. BHP Iron Ore's water services licence includes provisions that require BHP Iron Ore to enter into a Memorandum of Understanding with the Department of Health for the supply of drinking water as soon as practicable after the licence commences, or as otherwise agreed with the Department.

### 2.4 Financial and technical assessment

14. Under section 11(1)(a) of the Water Act, the ERA must grant a licence if it is satisfied that the applicant has, and is likely to retain, for each class of water service, the financial and technical ability to provide the service in the operating area or areas to be specified for the service, or will acquire within a reasonable time after the grant, and is then likely to retain, that ability.

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<sup>1</sup> The consultation notice refers to BHP Billiton Iron Ore Pty Ltd. The applicant's name changed to BHP Iron Ore Pty Ltd on 20 February 2021.

15. The ERA did not engage a financial consultant to examine the financial ability of BHP Iron Ore because it is a wholly owned subsidiary of BHP Group Ltd, a global resources company.<sup>2</sup> In addition, BHP Iron Ore has been providing the potable water service for many years and does not charge most customers. The fees charged to the remaining customers are below the cost of providing the service.
16. The core business of BHP Iron Ore is mining. Providing water services in Newman enables BHP Iron Ore to maintain a workforce within reasonable proximity to its mining operations. BHP Iron Ore considers that the cost of operating and maintaining, and future investment in, the potable water supply to be operational expenditure to support its mining operations.
17. The ERA engaged a technical consultant to examine the technical ability of BHP Iron Ore to provide the proposed water services.
18. The technical consultant concluded that BHP Iron Ore had the technical ability to provide the service under the water services licence.

## 2.5 Assessment of public interest

### 2.5.1 Water Services Act 2012

19. Section 11(1)(b) of the Water Act states that the ERA must grant a licence if it is satisfied that it would not be contrary to the public interest to do so. In determining whether the grant would not be contrary to the public interest, section 46 provides that, without limiting the things that the ERA may take into account, the following matters must be taken into account to the extent to which the ERA considers them relevant:
  - a. Environmental considerations, including the value of economically sustainable development.
  - b. Public health considerations relating to the provision of reliable water services.

### 2.5.2 Economic Regulation Authority Act 2003

20. The ERA must also have regard to the matters set out in section 26(1) of the *Economic Regulation Authority Act 2003*:<sup>3</sup>
  - 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 or monopoly or market power.

<sup>2</sup> BHP Group's 2020 Annual Report shows it had total assets of US\$105 billion and made a profit of US\$8.6 billion on revenue of US\$42.9 billion.

<sup>3</sup> 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.

- g. The need to promote transparent decision-making processes that involve public consultation.

### **2.5.3 ERA assessment of public interest**

21. The ERA has considered:
- sections 11(1)(b) and 46 of the Water Act
  - section 26 of the ERA Act
  - the public submission received
  - the technical consultant's report
  - BHP Group Ltd's financial reports for the past three financial years.
22. The interests of BHP Iron Ore's existing customers are best served by BHP Iron Ore being licensed, so it can maintain supply to those customers (section 26(1)(a) and (b) of the ERA Act and section 46(b) of the Water Act).
23. As the water services licence regulates certain performance and service standards and provides consumer protections to customers, the ERA is satisfied that the grant of the licence will promote regulatory outcomes in the long-term interests of consumers (section 26(1)(a) and (b) of the ERA Act).
24. All water services licences are non-exclusive, which means that another water service provider could enter the market if conditions permitted (section 26(1)(e) and (f) of the ERA Act).
25. The ERA conducted public consultation on the licence application and has stated in this decision the reasons for granting the licence (section 26(1)(g) of the ERA Act).
26. 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 granting a water services licence to BHP Iron Ore would not be contrary to public interest.