

# Decision on Amendment to Water Corporation Operating Licence 32

18 February 2010

Economic Regulation Authority



WESTERN AUSTRALIA

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## DECISION

- 1) The application for this licence amendment was made pursuant to section 31 of the *Water Services Licensing Act 1995*.
- 2) 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:
  - i) Extends the Water Corporation's Bindoon Chittering water supply operating area to accommodate the expansion of the Bindoon town site (map OWR-OA-126 (E)); and
  - ii) Amends the benchmark for annual notification of conditions of service from 99.8 percent to 95 percent.

## BACKGROUND

On 29 May 2009, the Water Corporation wrote to the Authority seeking an amendment to their operating licence to extend its Bindoon-Chittering operating area to accommodate an expansion of the Bindoon town site.

Lennard Brook Farming Pty Ltd has signed commercial contracts with the Water Corporation and the Shire of Chittering to increase the Water Corporation's water allocation from 280ML to 643ML to enable the Water Corporation to establish an expanded integrated water supply scheme to the town of Bindoon-Chittering. The area proposed for the expanded scheme is outside the Water Corporation's existing operating area. The Department for Planning and Infrastructure and the Department of Water support this expansion.

The Water Corporation initially sought a correction to Schedule 4, section 6.1 and 6.2 of the Operating Licence, to reinstate the performance target of 95 percent, the level it was prior to 6 August 2008, when the licence was amended by substitution.

During the transition to the new Operating Licence, an administrative oversight by the Water Corporation occurred in the performance targets for farmlands annual notification of conditions of service and farmland systems (Schedule 4 section 6.1). The performance target should have remained at 95 percent, but was incorrectly amended to 99.8 percent.

The Water Corporation also requested that Schedule 4 section 6.2 be amended on the basis that a similar administrative oversight occurred. Section 6.2 relates to farmlands area water systems – pressure and flows.

In assessing the request, it was evident that an administrative oversight occurred for section 6.1. However, no such error occurred for section 6.2. The Water Corporation has acknowledged this and has withdrawn their request to amend section 6.2

The Authority published a notice on 24 June 2009 seeking public submissions on the Bindoon-Chittering extension and amendment to Schedule 4 of their Operating Licence. The period for public submissions closed on 13 July 2009 and one submission was received.

The key issues in the submission related to:

1. The Authority obtaining and publishing a definitive set of processes and procedures related to competitively neutral 'greenfield' water related service provision from the Department of Water.
2. The Authority investigating contractual arrangements between parties outside of the licence.
3. Applications for the extension of operating areas be subject to specific economic analysis.
4. The need for the Authority to identify the principles, criteria and trigger points for when a standalone scheme becomes a viable economically sustainable business unit in its own right.

## REASONS

1. The Authority notified all interested parties registered to receive Notices lodged on the Authority's web site of the application by the Water Corporation to extend the Bindoon Chittering Water Supply Operating Area.
2. These interested parties included government agencies, local governments, statutory authorities, community organisations and members of the public.
3. The Authority is unaware of any issues, other than those raised in the one submission received, relating to public interest, including matters set out in section 19 (1b) as required by section 31A of the *Water Services Licensing Act (1995)*.
4. In relation to the issues raised in the submission received, the Authority notes:
  - i. Each application to extend an operating area is considered on its merits by the Authority. The requested Bindoon Chittering extension is within the State's controlled area for water licensing and all licences within controlled areas are non exclusive and would not impede competition. The Authority did not consider that the Water Corporation is using its market power to secure an enduring exclusive right to service the area in the future. As all operating areas are non-exclusive, this extension does not prevent other entrants from providing services to this operating area.
  - ii. The licence amendment application is for the Water Corporation to expand its services into new geographical areas under existing licence terms and conditions. The Authority doesn't believe there is anything in the contractual arrangements between the parties that is of concern to the Authority.
  - iii. The Water Corporation tariff structure and decisions on tariffs relating to the Water Corporation services are made by Government. In deciding on tariffs, the Government also takes account of individual business decisions made by the Water Corporation relating to incremental scheme expansions and the cost of services to new areas. This also applies to the capital expenditure of the Water Corporation.
5. There is no change, other than a minor correction to the benchmark standard, to existing terms and conditions of the licence.
6. 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, extension of operating boundary and amendment to Schedule 4, Section 6.1 of the Operating Licence, would not be contrary to the public interest.

7. 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**