

Western Australia

**Kambalda Water and Wastewater Facilities
(Transfer to Water Corporation) Act 2004**

As at 30 Nov 2004

No. 64 of 2004

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Kambalda Water and Wastewater Facilities (Transfer to Water Corporation) Act 2004

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Defined Terms

Western Australia

Kambalda Water and Wastewater Facilities (Transfer to Water Corporation) Act 2004

No. 64 of 2004

An Act —

- **to transfer ownership of the Kambalda Water and Wastewater Facilities and certain associated rights to the Water Corporation;**
- **to apply section 84 of the *Water Agencies (Powers) Act 1984* to pipes and other things that are part of those facilities; and**
- **to make incidental and related provisions.**

[Assented to 30 November 2004]

The Parliament of Western Australia enacts as follows:

Part 1 — Preliminary

1. Short title

This Act may be cited as the *Kambalda Water and Wastewater Facilities (Transfer to Water Corporation) Act 2004*.

2. Commencement

This Act comes into operation on a day fixed by proclamation.

3. Terms used in this Act

In this Act —

“commencement day” means the day on which this Act comes into operation;

“coordinates” means Map Grid of Australia 1994 grid coordinates in Zone 51 of the Universal Transverse Mercator Grid System based on the Geocentric Datum of Australia;

“Kambalda area” has the meaning given by section 4;

“Kambalda Water and Wastewater Facilities” or **“the transferred facilities”** has the meaning given by section 5;

“pipe” means a main, reticulation or service pipe used for water supply or sewerage services, and includes —

- (a) any plug, stop-cock, water-cock, syphon, branch or apparatus used in connection with such pipe; and
- (b) any part of a pipe;

“Water Corporation” means the Water Corporation established by section 4 of the *Water Corporation Act 1995*;

“WMC Resources Ltd” means the company incorporated under the *Corporations Act 2001* of the Commonwealth as WMC Resources Ltd (ACN 004 184 598);

“works” includes excavations, buildings, structures, plant and equipment.

4. Kambalda area defined

- (1) The Kambalda area is the area defined by notional straight lines on the surface of the Earth connecting the points identified by numbers on the plan in Schedule 1 Division 1 starting at point number 1, moving in a clockwise direction and ending at that point.
- (2) The position on the surface of the Earth of a numbered point referred to in subsection (1) is to be determined by reference to the coordinates specified in the second and third columns in Schedule 1 Division 2 opposite the number.

5. Kambalda Water and Wastewater Facilities described

- (1) In this section —
 - “fitting”**, **“fixture”** and **“sewer”** have the meanings given by section 3 of the *Water Agencies (Powers) Act 1984*;
 - “headworks”** and **“reticulation”** have the meanings given by section 65 of the *Water Agencies (Powers) Act 1984*;
 - “sewerage works”** means sewers and —
 - (a) all headworks, reticulation works and other works;
and
 - (b) all pipes, meters and things,
connected with any sewer;
 - “treated wastewater pipeline”** means the pipeline that starts at or near the point fixed by the coordinates 373008.84E / 6548603.23N and ends at or near the point fixed by the coordinates 371239.69E / 6546413.50N, as shown by the coordinates specified on the plan in Schedule 2;
 - “water works”** means all works for the supply, storage and distribution of water, including headworks, reticulation works, pipes, meters and things that are part of such works.

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- (2) The Kambalda Water and Wastewater Facilities (“**the transferred facilities**”) comprise —

- (a) the water works; and
- (b) the sewerage works,

located within the Kambalda area that immediately before the commencement day were maintained or operated by WMC Resources Ltd to provide water supply and sewerage services within that area.

- (3) The transferred facilities do not include —

- (a) the treated wastewater pipeline; and
- (b) any —
 - (i) water pipe or water supply fixture or fitting downstream from the meter assembly on a lot or parcel of land in the Kambalda area; or
 - (ii) sewer pipe or sewerage fixture or fitting located on such a lot or parcel,

being a pipe, fixture or fitting that services only the lot or parcel concerned.

Part 2 — Transfer to the Water Corporation

Division 1 — Transfer of facilities and certain rights

6. Ownership of facilities

On the commencement day —

- (a) the ownership of the Kambalda Water and Wastewater Facilities is by virtue of this section transferred to the Water Corporation; and
- (b) any claim, right, title or interest of any other person in respect of —
 - (i) the transferred facilities as they existed immediately before the commencement day; or
 - (ii) any thing that formed part of the transferred facilities immediately before that day,is extinguished by the operation of paragraph (a).

7. Rights to payment for services provided

- (1) On the commencement day all rights of WMC Resources Ltd to be paid for water supply services or sewerage services provided by it in the Kambalda area before that day, to the extent that payment has not been made for those services, are by virtue of this section transferred to the Water Corporation.
- (2) Subsection (1) applies to a right to be paid for a service whether or not an account for the service has been issued before the commencement day.

8. Other rights

On the commencement day the right of WMC Resources Ltd to any remedy or redress whether actual, contingent or prospective, other than a right to which section 7 applies, against any person in relation to the transferred facilities is by virtue of this section transferred to the Water Corporation.

9. Liabilities not to pass

- (1) In this section —

“liability” means any liability, duty or obligation whether actual, contingent or prospective or liquidated or unliquidated, and includes a liability for breach of any term or condition of an authority referred to in section 13.

- (2) Nothing in this Act is to be read as having the effect that a liability of WMC Resources Ltd as at the commencement day becomes on and after that day a liability of the Water Corporation.

Division 2 — Incidental and related matters

10. Pipes and other things taken to have been put in place by the Water Corporation

- (1) In this section —

“land” has the meaning given by section 3(1) of the *Water Agencies (Powers) Act 1984*.

- (2) On and after the commencement day —

- (a) section 84(1) of the *Water Agencies (Powers) Act 1984* has effect in respect of all pipes, works or other things that —

- (i) form part of the transferred facilities; and
- (ii) are on, in, over or under any land,

as if before that day the pipes, works or things were placed on, in, over or under the land by the Water Corporation in exercise of a power conferred by that Act; and

- (b) section 84(2) and (3) of that Act have effect accordingly in respect of the pipes, works and other things.

11. Compensation not payable

- (1) A person is not entitled to receive from the Water Corporation or another person any amount by way of compensation, reimbursement or otherwise for any loss, detriment or cost that the person suffers or incurs because of —
 - (a) the transfer of ownership effected by section 6; or
 - (b) the operation of section 10.
- (2) Without limiting subsection (1), section 81(1) and (2) of the *Water Agencies (Powers) Act 1984* apply to any works or other things that form part of the transferred facilities.

12. Recovery of amounts owing for services provided

- (1) The Water Corporation may take any action that is necessary or expedient for the recovery of any amount to which it is entitled by virtue of section 7.
- (2) Without limiting subsection (1), an amount required by virtue of section 7 to be paid to the Water Corporation by a person for water supply services or sewerage services provided by WMC Resources Ltd may be recovered from the person —
 - (a) in the case of an amount to be paid for water supply services, under Part VII of the *Country Areas Water Supply Act 1947* as if it were a water supply charge within the meaning in that Act; and
 - (b) in the case of an amount to be paid for sewerage services, under Part VII of the *Country Towns Sewerage Act 1948* as if it were a sewerage charge within the meaning in that Act,

that is recoverable from that person.

Division 3 — Transitional provisions

13. Licences and other authorities under written laws

- (1) In this section —

“authority” means a licence, permit, registration, right, approval, exemption or other authority issued or granted under a written law in relation to or in connection with the transferred facilities;

“relevant Minister” means the Minister administering the written law under which the authority concerned was issued or granted.

- (2) Any authority in force immediately before the commencement day —

- (a) that —

- (i) is issued or granted to WMC Resources Ltd; or
- (ii) otherwise confers authority on that company to do or refrain from doing any thing;

and

- (b) that is of a kind which the Water Corporation is required to hold,

continues to have effect by force of this section as if it had been issued or granted to, or conferred authority on, the Water Corporation.

- (3) In relation to an authority of a particular kind subsection (2) applies on and after the commencement day until —

- (a) an authority of that kind, or an exemption from the requirement to hold an authority of that kind, is issued or granted to the Water Corporation; or
- (b) the expiry of the period of 3 years, or such longer period as the relevant Minister may determine, after the commencement day,

whichever first occurs.

- (4) Subsections (2) and (3) have effect despite any provision of a written law or any term or condition of an authority.
- (5) The Water Corporation must, as soon as is practicable after the commencement day, make any application under a written law that is necessary for the purposes of subsection (3)(a).

14. Completion of things commenced

Anything commenced to be done by WMC Resources Ltd before the commencement day in relation to the transferred facilities may, subject to section 9, be continued by the Water Corporation so far as the doing of that thing is within the powers of the Water Corporation after that day.

Part 3 — Notifications on title as to location of pipes and works

15. Terms used in this Part

In this Part —

“approved”, in relation to a form, means approved by the relevant official;

“notification” means a notification referred to in section 16;

“relevant official”, in relation to a lot or parcel of land, means —

(a) the Registrar of Titles under the *Transfer of Land Act 1893*; or

(b) the Registrar of Deeds under the *Registration of Deeds Act 1856*,

according to which of them has responsibility for the register relating to the lot or parcel;

“sewerage works” means the sewerage works referred to in section 5(2) but excluding the pipes, fixtures and fittings referred to in section 5(3)(b);

“water works” means the water works referred to in section 5(2) but excluding the pipes, fixtures and fittings referred to in section 5(3)(b).

16. Steps to be taken for recording of notifications

(1) As soon as is practicable after the commencement day the Water Corporation is to deposit with the relevant official —

(a) one or more plans of the sewerage works; and

(b) one or more plans of the water works,

showing the location or approximate location of the pipes, works and other things that immediately before the commencement day were part of the works referred to in paragraphs (a) and (b).

- (2) For each lot or parcel of land in the Kambalda area the Water Corporation is to lodge with the relevant official, after subsection (1) has been complied with —
 - (a) a notification, in accordance with an approved form, in respect of pipes, works and other things referred to in that subsection that were part of the sewerage works; and
 - (b) a notification, in accordance with an approved form, in respect of pipes, works and other things referred to in that subsection that were part of the water works.
- (3) Despite subsection (2) —
 - (a) where appropriate, a single notification in accordance with an approved form may be lodged under that subsection in respect of all pipes, works and other things referred to in subsection (1); and
 - (b) a notification need not be lodged for a lot or parcel in respect of pipes, works and other things referred to in subsection (1) if the Water Corporation has satisfied itself that there were no such pipes, works or other things on, in, over or under the land concerned immediately before the commencement day.
- (4) Subsection (2) does not apply to a lot or parcel of land of which the Water Corporation is registered under the *Transfer of Land Act 1893* as the owner of the freehold.

17. Exception where land is not a lot

- (1) The Water Corporation is not required —
 - (a) to comply with section 16(2) in respect of any land that is not a lot; or
 - (b) to take any steps for the creation of a lot to enable that subsection to be complied with in respect of any land.
- (2) However, the Water Corporation is to comply with section 16(2) in respect of land if at any time it appears to the

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Corporation that subsection (1)(a) has ceased to apply to the land.

18. Wording of notification

(1) In this section —

“**title**” means —

- (a) a certificate of title under the *Transfer of Land Act 1893*; and
- (b) a relevant document in the register of deeds under the *Registration of Deeds Act 1856*.

(2) A notification —

- (a) is to be worded so that it constitutes notice to —
 - (i) the proprietor of; and
 - (ii) a person searching the title relating to, a lot or parcel of land that pipes, works and other things that immediately before the commencement day were part of —
 - (iii) the sewerage works; or
 - (iv) the water works,may be on, in, over or under the land; and
- (b) is to refer to the pipes, works and other things as shown on the relevant plan deposited under this Part.

19. Recording of notification

When —

- (a) a notification under section 16(2) has been lodged in respect of a lot or parcel; and
- (b) the required fee has been paid,

the relevant official is to record the notification —

- (c) on the certificate of title for the lot or parcel; or

- (d) in the register of deeds under the *Registration of Deeds Act 1856*,

as the case may require.

20. Replacement of deposited plans and notifications

- (1) If the Water Corporation considers that it is necessary or desirable to better show the location or approximate location of any pipe, works or other thing for the purposes of this Part, it may deposit with the relevant official a plan that replaces a plan deposited under section 16(1).
- (2) Where a plan is replaced by another deposited plan (the “**new plan**”) the Water Corporation must lodge with the relevant official —
 - (a) a request, in accordance with an approved form, for the removal of any existing notification that refers to the replaced plan; and
 - (b) a notification —
 - (i) in accordance with an approved form; and
 - (ii) referring to the pipes, works and other things as shown on the new plan,to replace the existing notification.
- (3) Subject to payment of the required fee, the relevant official is to comply with a request that is lodged under subsection (2)(a).
- (4) Section 19 applies with all necessary changes where a notification is lodged under subsection (2)(b).

21. Amendment or removal of notification

- (1) Where a notification has been recorded under section 19, the Water Corporation may, in accordance with an approved form —
 - (a) request the relevant official to amend the notification; or

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- (b) with the approval of the Minister, request the relevant official to remove the notification, whether in whole or in part.
- (2) The Minister is not to give an approval for the purposes of subsection (1)(b) in respect of any land unless he or she is satisfied that it is no longer necessary for notice to be given to persons searching the title as mentioned in section 18(2)(a).
- (3) Subject to payment of the required fee, the relevant official is to comply with a request that is duly made under subsection (1).

22. Cost of complying with section 16(1) and (2)

- (1) WMC Resources Ltd must pay to the Water Corporation on demand the amount of any cost or expense reasonably incurred by the Water Corporation —
 - (a) in complying with section 16(1) and (2); and
 - (b) in doing anything required to enable it to comply with those subsections.
- (2) The Water Corporation may recover an amount referred to in subsection (1) in a court of competent jurisdiction as a debt due to it by WMC Resources Ltd.

Part 4 — General

23. Agreements on incidental matters

- (1) Nothing in this Act is to be taken to limit the ability of WMC Resources Ltd and the Water Corporation —
 - (a) to determine any matter incidental or supplementary to the operation of this Act by agreement made between them, whether before or after the commencement day; and
 - (b) to give effect to any such agreement.
- (2) An agreement referred to in subsection (1) must not be inconsistent with this Act.

24. Saving

The operation of any provision of this Act is not to be regarded —

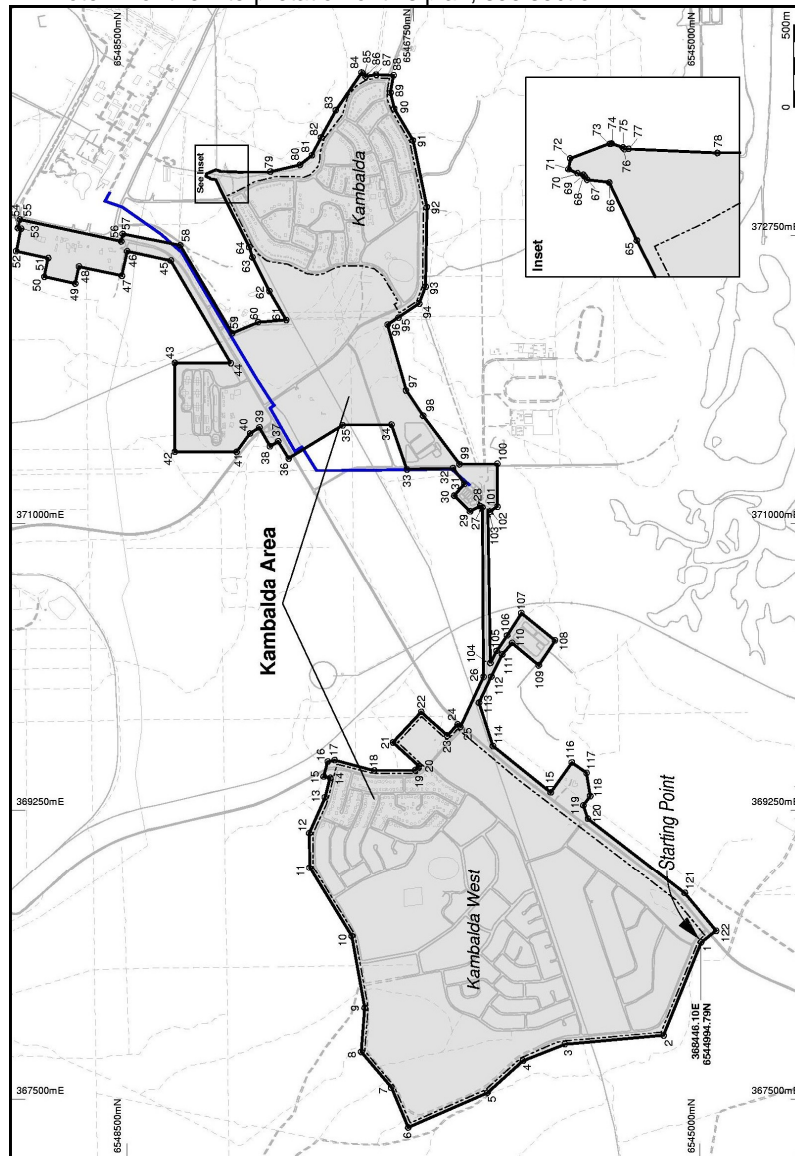
- (a) as a breach of contract or confidence or otherwise as a civil wrong;
- (b) as a breach of any contractual provision prohibiting, restricting or regulating the assignment or transfer of assets or rights or the disclosure of information;
- (c) as giving rise to any remedy by a party to an instrument or as causing or permitting the termination of any instrument, because of a change in the beneficial or legal ownership of any asset or right;
- (d) as causing any contract or instrument to be void or otherwise unenforceable; or
- (e) as releasing or allowing the release of any surety.

Schedule 1 — Kambalda area

[s. 4]

Division 1 — Plan of Kambalda area

Note: For the interpretation of this plan, see section 4.



Division 2 — Map Grid of Australia coordinates

Point	Coordinates mE	Coordinates mN
1	368446.102	6544994.798
2	367886.400	6545224.837
3	367833.889	6545826.212
4	367734.730	6546081.617
5	367540.564	6546299.906
6	367332.541	6546781.454
7	367572.089	6546885.625
8	367786.969	6547069.154
9	368052.680	6547047.689
10	368485.289	6547126.784
11	368900.656	6547383.817
12	369113.441	6547385.558
13	369331.024	6547290.171
14	369449.552	6547258.767
15	369457.992	6547298.298
16	369548.640	6547273.000
17	369557.235	6547229.825
18	369494.095	6546988.986
19	369496.053	6546739.394
20	369520.263	6546717.020
21	369664.666	6546873.970
22	369850.083	6546702.364
23	369706.252	6546544.717
24	369774.758	6546480.357
25	369760.744	6546463.301
26	370062.828	6546322.450
27	371098.875	6546329.974
28	371106.726	6546343.087
29	371075.234	6546405.012
30	371170.265	6546501.367

Schedule 1 Kambalda area

Point	Coordinates mE	Coordinates mN
31	371241.937	6546438.936
32	371337.976	6546508.613
33	371330.141	6546789.810
34	371602.096	6546883.464
35	371597.974	6547181.674
36	371396.160	6547511.439
37	371501.101	6547575.387
38	371470.411	6547625.179
39	371585.705	6547689.908
40	371547.989	6547746.487
41	371436.555	6547829.435
42	371437.000	6548205.000
43	371977.000	6548205.000
44	371975.968	6547864.237
45	372599.111	6548229.843
46	372656.843	6548496.126
47	372506.739	6548528.672
48	372563.459	6548790.299
49	372459.701	6548812.796
50	372500.434	6549002.210
51	372614.546	6548977.670
52	372656.598	6549173.197
53	372793.467	6549143.765
54	372797.672	6549163.315
55	372848.795	6549151.009
56	372715.966	6548532.206
57	372760.441	6548523.748
58	372691.337	6548173.548
59	372157.843	6547855.307
60	372224.631	6547697.430
61	372237.818	6547526.216

Point	Coordinates mE	Coordinates mN
62	372413.643	6547628.482
63	372618.943	6547732.082
64	372681.065	6547751.835
65	373002.673	6547913.141
66	373090.653	6547955.427
67	373094.721	6547988.878
68	373099.482	6547992.383
69	373102.403	6547994.664
70	373104.722	6548003.360
71	373110.785	6548017.432
72	373127.206	6548014.632
73	373149.545	6547954.669
74	373149.769	6547951.764
75	373143.909	6547934.173
76	373141.408	6547932.147
77	373141.753	6547925.646
78	373135.553	6547790.305
79	373139.417	6547623.298
80	373180.736	6547442.140
81	373238.940	6547369.545
82	373348.194	6547313.729
83	373512.576	6547223.476
84	373741.477	6547066.060
85	373729.743	6547049.864
86	373718.022	6547041.823
87	373728.961	6546977.963
88	373725.256	6546871.628
89	373619.853	6546890.673
90	373521.045	6546867.464
91	373328.692	6546752.695
92	372922.432	6546668.432

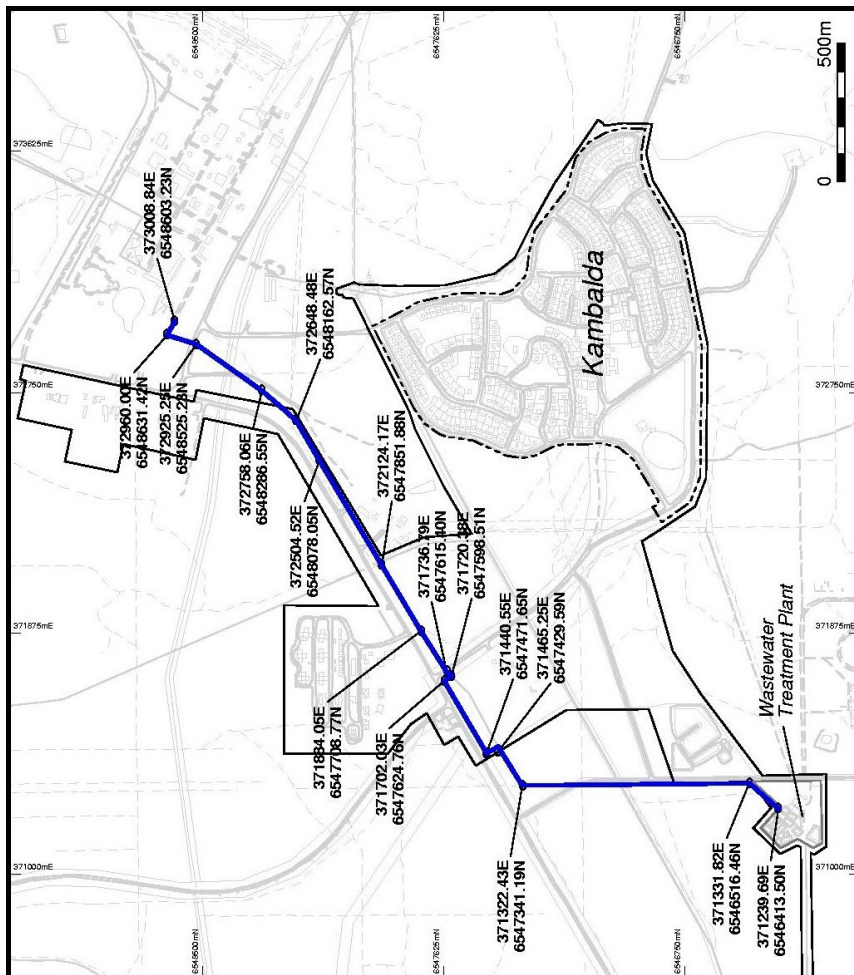
Schedule 1 Kambalda area

Point	Coordinates mE	Coordinates mN
93	372440.438	6546674.993
94	372337.978	6546714.788
95	372253.190	6546842.128
96	372210.380	6546907.594
97	371810.791	6546795.325
98	371656.326	6546691.655
99	371360.953	6546468.827
100	371365.096	6546238.628
101	371103.517	6546237.453
102	371073.800	6546283.105
103	371078.923	6546294.663
104	370147.902	6546280.846
105	370221.223	6546242.527
106	370314.669	6546179.128
107	370450.743	6546091.936
108	370284.511	6545886.863
109	370132.558	6545986.087
110	370269.418	6546148.566
111	370198.957	6546208.931
112	370064.883	6546275.730
113	369906.611	6546349.931
114	369643.455	6546265.494
115	369360.702	6545912.184
116	369542.583	6545784.093
117	369479.402	6545694.393
118	369338.482	6545672.213
119	369282.861	6545713.588
120	369200.769	6545685.187
121	368745.153	6545094.527
122	368516.792	6544903.767

Schedule 2 — Treated wastewater pipeline

[s. 5(1)]

Note: For the interpretation of this plan, see the definitions of “treated wastewater pipeline” in section 5(1) and of “coordinates” in section 3.



Defined Terms

Defined Terms

*[This is a list of terms defined and the provisions where they are defined.
The list is not part of the law.]*

Defined Term	Provision(s)
approved	15
authority	13(1)
commencement day	3
coordinates	3
fitting.....	5(1)
fixture.....	5(1)
headworks	5(1)
Kambalda area	3
Kambalda Water and Wastewater Facilities	3
land	10(1)
liability	9(1)
new plan	20(2)
notification	15
pipe	3
relevant Minister	13(1)
relevant official	15
reticulation	5(1)
sewer	5(1)
sewerage works	5(1), 15
the transferred facilities.....	3, 5(2)
title	18(1)
treated wastewater pipeline.....	5(1)
Water Corporation	3
water works.....	5(1), 15
WMC Resources Ltd.....	3
works.....	3