

KAMBALDA WATER AND WASTEWATER FACILITIES (TRANSFER TO WATER CORPORATION) BILL 2004

Second Reading

Resumed from 10 November.

HON MURRAY CRIDDLE (Agricultural) [11.31 am]: WMC Resources Ltd has looked forward to this Bill. I had a meeting with people from that company in which they said that WMC was very keen for the legislation to go ahead. The Bill will transfer the ownership of the Kambalda water and waste water facilities to the Water Corporation. The transfer does not include the treated waste water pipeline, which the company will maintain in its Kambalda operations for services to nickel contractors; therefore, that side of the infrastructure will be maintained by the company. Kambalda was established in the 1960s and 1970s by Western Mining Corporation, as WMC Resources was then known, to accommodate the company's work force in its nickel mining operations. As those operations came into being, they impacted on Kalgoorlie and Kwinana. WMCR ceased nickel mining in Kambalda in 2000 and has been selling its mining titles and slowly withdrawing from the town. From that withdrawal has arisen a number of opportunities for smaller goldminers in the region to purchase 1 200 lots in the greater Kambalda townsite. Some of WMCR's pipelines and the like, as part of its water infrastructure, have gone with the transfer of ownership of those lots. This Bill will transfer ownership of that infrastructure back to the Water Corporation so that the mining company, WMC Resources, can remove itself from the operation entirely. Pipelines in a number of sites go across the land, which has led to difficulties with ownership. In the transfer back to the Water Corporation, of course, the Water Corporation will be liable for the maintenance and services that go with those pipelines. I understand also that WMCR has put aside about \$300 000 to cover the cost of taking the pipelines that go across the blocks of land and moving them back to the sides of the blocks. That is some of the work that will be done by WMCR. The Nickel Refinery (Western Mining Corporation Limited) Agreement Act 1968 and the Nickel Refinery (Western Mining Corporation Limited) Agreement Act Amendment Act 1970 provided for those services to be relinquished to the State without compensation for their loss. The Bill provides for the application of the Water Agencies (Powers) Act 1984 to the Kambalda water and waste water facilities to provide the Water Corporation with ongoing access to the pipe infrastructure for its operation and management. I understand that Cabinet gave that approval in 2002.

The fragmentation of the whole of the waste water pipe system is a cause for concern. The inadvertent transfer of that property to individuals has made it very difficult to manage; therefore, the Bill allows for the Water Corporation to take over that ownership. The transfer of ownership will not physically disrupt landowners, but it will ensure that the appropriate authority has the responsibility of carrying out and securing water and waste water services and is liable for their ongoing maintenance. The residents of Kambalda will not be inadvertently put out by the changeover.

The Bill bars any claim for compensation as a result of the transfer of the facilities to the Water Corporation. Compensation to landowners for transferring ownership of the pipes to the Water Corporation was not proposed, as it was never intended that sections of essential community services would pass to individual landowners. Any outstanding payment owed to WMCR for services provided in Kambalda before the commencement date of the Bill will be transferred to the Water Corporation, and will apply whether or not an account has been issued. That gives a clear understanding of the responsibilities for the funding arrangements.

The Bill has four purposes. One is to enable the transfer of ownership of the Kambalda water and waste water facilities to the Water Corporation. The transfer will remove the interest of any person in those facilities; it will take away any claim for compensation as a result of the transfer; and it will provide the Water Corporation with ongoing access to and ownership of all those facilities.

The Bill outlines a notification requirement process that will be in place to provide information to landowners of existing lots in Kambalda. That process will require WMCR to pay any costs reasonably incurred by the Water Corporation in depositing relevant plans for the water and waste water works and recording the notifications required by anybody who searches the land titles for the location of the water and waste water pipes. That is clearly outlined in the Bill.

That is the basis of the Bill. As I said, the coalition strongly supports the transfer of the facilities to the Water Corporation. WMCR is also very keen to see that transfer go ahead. As part of the normalisation payments - this relates to the recently tabled report on normalisation payments and compensation that may be required by shires in the area - WMCR is putting aside a community grant of \$1.75 million. It has announced that \$1.5 million from that grant will go towards a community recreation facility and \$250 000 towards the construction of a seniors facility in the town. I think everybody will agree that that sort of cooperation from a mining company is well and truly welcome. I would like to bring one issue to the attention of the parliamentary secretary, who I guess is handling this Bill.

Extract from Hansard

[COUNCIL - Wednesday, 24 November 2004]

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Hon Murray Criddle; Hon Robin Chapple; Deputy President; Hon Ken Travers; Chairman

Hon Ken Travers: I am.

Hon MURRAY CRIDDLE: The issue is about further costs that may arise in the future vis-a-vis the Water Corporation taking over. We do not want any penalty imposed on Kambalda residents by way of increased water or maintenance costs. I would welcome an assurance from the parliamentary secretary that there is no intention to raise the charges that may be implemented as a result of the change. I have heard a suggestion that that might happen, although I do not think it necessarily should happen.

Hon Ken Travers: I cannot see why the ownership would change the pricing structure.

Hon MURRAY CRIDDLE: I am asking the parliamentary secretary for that assurance. If he can give it, the people in Kambalda will be happy.

The second reading speech clearly outlines the process that has existed over the 40 years from when WMC Resources Ltd had ownership of the township and then arranged for the transfer of home ownership. The Opposition is very keen to see this Bill implemented so that the people of the town can have certainty with their water and waste water services in the future. We therefore welcome this Bill.

HON ROBIN CHAPPLE (Mining and Pastoral) [11.40 am]: This legislation applies to the two towns of Kambalda and Kambalda West established in the 1960s under state agreement Acts with WMC Resources Ltd. In the move towards normalisation, it has become obvious that, by their very nature, state agreement Acts are not subject to the rigours of normal town planning or normal building design requirements. I take the point that present state agreement Acts contain much more reference to current legislative provisions.

The Water Corporation usually places its pipelines adjacent to lots along alleyways, verges or pathways. The pipes running into the lots are specific for the service of each individual house. Given that no structure was provided under the town planning arrangements because Kambalda was developed by a mining corporation, in many cases pipelines were established diagonally through some lots to service other lots. A number of pipes therefore run through lots that do service the specific houses. That must be addressed, and I understand that this legislation will do that.

I would like the parliamentary secretary to address a few issues that I will raise. I will not reiterate what the honourable member opposite said, because he outlined quite succinctly many issues. Clause 6(b) refers to the extinguishment of any claim, right, title or interest of any other person in respect of the transferred facilities. Where a pipeline crosses a tenement that does not belong to the tenement holder, have any caveats been placed on the land surrounding the pipeline to inhibit development of any properties, sheds, driveways or whatever over the pipeline? If so, how will they be administered? If a landowner were to unwittingly develop a driveway or garage on the property that covered the pipeline to be returned to the Water Corporation, and the Water Corporation entered the property to carry out work on its pipe, who would be responsible for the removal and repair of the concrete slab? Does any legislation or regulation prohibit development via a caveat on the title?

I raise this because an interesting situation developed in the north west when the old walkways behind housing in South Hedland were resumed to stop antisocial behaviour by people using those walkways. Interestingly, the walkways carried all the service corridors. When they were added to the new larger blocks, each property was subject to a caveat that prevented the owners from building sheds, access ways or swimming pools anywhere near the service corridors. Although those people owned the land, they could plant only lawn in the area.

The pipelines in Kambalda are underneath many of the properties that have already been sold. This legislation provides for the ownership of those pipelines. I want to know how the Water Corporation or any other agency will interact with the owners of the property when it is servicing the main trunk line on that private property. This Bill will remove responsibility for the pipelines from the owner of the property. I want to ensure that if a pipeline is old or damaged, the owner will not be held liable. Given that the pipelines are being vested with the Water Corporation, how will the corporation gain access to the pipeline and what compensation will be provided to the owners of the property?

Hon Ken Travers: Effectively, once the pipelines come under the Water Corporation they will be subject to the Water Agencies (Powers) Act 1984, as are all the other pipelines in Western Australia.

Hon ROBIN CHAPPLE: The fundamental difference is that none of the other pipelines exists on private property.

Hon Ken Travers: They all exist on private property.

Hon ROBIN CHAPPLE: No. A pipeline servicing a property for sewerage, for example, usually passes the front door of the house and a pipeline proceeds from that pipeline to the house. The moment a pipeline enters the individual's property it is the individual's responsibility.

Hon Ken Travers: No. Where it connects from the house to the connection point is the individual's responsibility.

Hon ROBIN CHAPPLE: That is correct.

Hon Ken Travers: But the main line -

Hon ROBIN CHAPPLE: That is the property of the Water Corporation.

Hon Ken Travers: That is right.

Hon ROBIN CHAPPLE: In a number of instances the main lines cross private property.

Hon Ken Travers: As do the Water Corporation pipes.

Hon ROBIN CHAPPLE: No.

Hon Ken Travers interjected.

The DEPUTY PRESIDENT (Hon George Cash): Order! The Hansard reporter cannot hear when Hon Ken Travers is talking to the ceiling and Hon Robin Chapple has the call. If these things need to be teased out, the committee stage is the process in which to do that.

Hon ROBIN CHAPPLE: That is what I need clarification on. It is important for the parliamentary secretary to examine the issue at Port Hedland. In that town, when a Water Corporation main line was placed within a private property, the property became subject to a caveat that ensured that the owner did not build anything on top of the main line. The caveat also allowed the Water Corporation onto the property to repair the pipeline and required that it reinstate any grass or whatever else it disturbed in the process. We are talking about a number of square blocks. I hope that both Hon Murray Criddle and the parliamentary secretary have looked at the maps, which show that the pipelines extend diagonally across the blocks.

Hon Murray Criddle: Yes, I have seen them. The information I received from WMC was that it had set aside some money to put those pipes alongside the blocks.

Hon ROBIN CHAPPLE: In some cases, yes; however, in other cases that could not be done because some of them were main lines with a number of feeders, which would have required quite considerable works. Certainly it was indicated that that could be done in lots of cases.

Hon Murray Criddle: I can only go by the briefing I had.

Hon ROBIN CHAPPLE: My concern is not so much with the fact that the pipelines that still exist on properties will become the property of the Water Corporation under the Bill - the Bill does not deal with that - but with how the Water Corporation will be able to access those pipes and whether, to enable access to those pipes, any provisions of the tenure of that property will prohibit people from building on top of the pipelines. I am also concerned about the responsibility of the Water Corporation to compensate property owners if it needs to access the pipelines. I hope that the parliamentary secretary has a clear understanding of what I am seeking.

We must remember that the transfer of ownership does not occur under normal circumstances. As was articulated earlier, most pipes come under the Water Agencies (Powers) Act 1984. My only reason for raising this issue is that I had a similar experience in Port Hedland when we sought to re-vest land that covered principal pipelines. I make the distinction between a principal pipeline and a pipeline that services a house. Many pipelines cut diagonally through two or three properties.

I understand that WMC Resources issued a document to most Kambalda residents that outlines the consent to WMCR, or its agents, to enter and re-enter without notice at all reasonable times the specified land and premises for the purpose of taking all actions required to effect emergency repairs or maintenance to the water and sewerage facilities located in or on that land. That included pipes, valves and everything else. It is my understanding that that agreement already exists between WMC and the residents by way of a consent document that was established between WMC and individual owners. That deals with the access issues. Obviously in this case, because the pipelines are in the one place, there will have to be an access arrangement, whether it be with the Water Corporation or WMC.

I commend WMC for indicating that it will establish a fund to assist the community, which is headed by a former shire clerk who operated in the Pilbara. I have only one concern. Of the fund, \$1.5 million will go towards community recreation facilities and \$250 000 will support the construction of a seniors' facility. Further, as a result of our recent committee of inquiry, has the WMC and shire established that the maintenance and upkeep of those facilities will not be a drain on the reserves of that local authority? Kambalda and West Kambalda are vibrant communities in which housing is still available and is being taken up by many small mining companies and individuals who operate within the mining industry. When I recently heard the price of

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some of those blocks and houses, I was tempted to move there. It is economical to purchase a house in Kambalda.

In that regard, the Greens (WA) will support the legislation because it will fix one of the inherent problems of state agreement Acts. However, I want some surety about the interaction between the Water Corporation and the landowners on whose properties the pipelines exist. I also want surety about the caveats and the economic responsibilities of the Water Corporation.

HON KEN TRAVERS (North Metropolitan - Parliamentary Secretary) [11.58 am]: I thank members for their contribution and support of the Kambalda Water and Wastewater Facilities (Transfer to Water Corporation) Bill 2004. Hon Murray Criddle raised issues about impacts on the charging structure. I have not been advised specifically on that issue. However, I am more than happy to undertake to ensure that a written response is provided to the member. I am not aware of any intention to change it, other than any changes that may occur if the operations remained with WMC Resources Ltd. I am not aware of anything that would otherwise impact on the charging structure, but I will get a written response for the member.

With respect to the issue raised by Hon Robin Chapple, I reiterate to members that at the moment there is a fragmentation of what would have normally and traditionally been owned by WMC and, in others parts of Western Australia, by the Water Corporation. The ownership of those pipes and the like, whether they are operated by WMC or the Water Corporation, is fragmented and they are technically owned by individual landowners. The issue about why someone would not build on top of those relates to safety and the maintenance of the integrity of the pipelines. That issue will remain whether or not this Bill is passed. If an individual landowner were to build a shed over the pipelines, he would face the risk of having to provide compensation, especially as in building that shed he might cause damage to the pipelines, which might also affect his neighbour. I understand the issues raised by Hon Robin Chapple. However, the alternative of not going down that path is worse.

Hon Robin Chapple: I am just saying that, with the administration of those pipelines, we really need to ensure that current individual owners are protected from themselves and from the Water Corporation.

Hon KEN TRAVERS: This Bill will unify the ownership of the pipelines and give them back to the Water Corporation. The rights and obligations that will apply to those pipelines will be contained in the Water Agencies (Powers) Act 1984. I will provide an example about the pipelines that currently exist. In Rivervale, where I used to own a property, the pipelines were put in after the event. They run down the backs of houses through private property. However, the Water Corporation has the authority to enter those premises to do work and maintenance. There were restrictions on what could be done on top of that pipeline. The same restrictions will apply in Kambalda.

Hon Robin Chapple: I understand that. Currently, there are no restrictions because WMC Resources owns it all. Following the passage of this Bill, a different set of circumstances will apply whereby an easement will be associated with the pipeline. I need to know that that easement will be reflected in the tenement holding, that the owners of all the properties will be aware of the easement, and that there will be a relative caveat over that easement. What will happen to an existing shed or some other structure already on that easement? That has been totally permissible to date.

Hon KEN TRAVERS: The reason a shed cannot be built over the pipeline is to protect the pipeline.

Hon Robin Chapple: Of course.

Hon KEN TRAVERS: Currently there is a question about how a person would be affected if his structure caused damage to the pipeline and that damage impacted also on his neighbours. I do not have the nitty-gritty details at hand for the member. We can try to deal with that in committee or, if the member is agreeable, I am more than happy to provide him with a detailed written response to the issues he has raised rather than go through the committee process. A process of public consultation has been undertaken to notify the residents of Kambalda about what is happening. My understanding is that the people of Kambalda are fairly well informed about this process and about what is happening. Certainly WMC has made every effort to do that. I leave open those two options. I am happy to provide the member with that information in writing or to address his concerns in the House during a brief committee stage. I concur with Hon Robin Chapple's comments about the contribution that WMC is making, and I congratulate it on its efforts. I commend the Bill to the House.

Question put and passed.

Bill read a second time.

Committee

The Chairman of Committees (Hon George Cash) in the Chair; Hon Ken Travers (Parliamentary Secretary) in charge of the Bill.

Clauses 1 to 5 put and passed.

Clause 6: Ownership of facilities -

Hon ROBIN CHAPPLE: I refer again to the point that I have raised. I do not know how I can articulate it more clearly. Originally, when WMC owned all the facilities, the same person owned all the property and the pipeline. WMC had right of access to the buildings, houses and pipelines. For the most part, the primary pipelines - those that will become the property of the Water Corporation - exist externally to the boundaries. However, a large percentage of them are inside the boundaries and travel parallel to the boundary edges. A small number of them transect the properties diagonally. I am talking not about service pipelines to the housing, but about primary pipelines that traverse a number of properties. When the pipelines come under the auspices of the Water Corporation, an easement will be associated with the pipelines. By its very nature, an easement usually requires a caveat over the property to identify the location of the pipeline. Also, usually nothing can be constructed within five metres of that property or that easement - for example, a swimming pool or any other ground disturbing activity - and nothing can be placed over the easement that would impede access to the pipelines. In a couple of bizarre cases, the pipelines actually pass underneath houses. Notwithstanding the difficulties that causes, I want to know what caveats the Water Corporation will place on those properties with regard to the pipelines. What will happen if existing facilities - for example, a swimming pool - come close to the new easement that will be established by those pipelines? Other local authorities have provided me with evidence that when easements are created in a residential property area, it has compromised the situation. For example, swimming pools may be too close to the easement of a sewerage line. I refer not to the property owner's sewerage line, but to the regional sewerage line. Also, those property owners who became aware that a Water Corporation mainline was on their property were advised that it was attached to the landholding. They were told that they could not build any structures over those pipes on their property. I am aware of the contents of this legislation, but the matters about which I am concerned are not articulated clearly and enunciated properly in it.

The CHAIRMAN: Although clause 6 deals with the ownership of facilities, it seems to me that the matters that are the subject of the current discussion are related to clause 10. I understand that Hon Robin Chapple suggested we start at part 2. However, clause 10 is the appropriate clause if we are to deal with the transfer of facilities upon the passage of this Bill. I give the parliamentary secretary the opportunity to comment on clause 6 and decide whether we should proceed to clause 10.

Hon KEN TRAVERS: I will answer the question to make proceedings sensible in *Hansard*, if the Chairman will indulge me.

As I previously outlined, once ownership is transferred, the Water Agencies (Powers) Act will provide access for the Water Corporation. Any problems with mains located on private property will become the responsibility of the Water Corporation. It is intended to place a notification on titles to alert current and future owners to the fact that a pipeline exists on the land. My understanding and advice is that the Water Corporation intends to notify people that the notification has been placed on the title. Once it is prepared, attempts will be made to notify owners. The intention is for no change if existing structures sit above publicly owned facilities - that is, existing structures will not be required to be moved. Once ownership is with the Water Corporation, restrictions will be placed regarding future structures, as is the case elsewhere in the State where such items run across private property.

My advice is that the bigger issues have already been dealt with. Matters identified as potential problems with high-pressure mains have already been dealt with. For any other case, my advice is that if a problem arises, the Water Corporation will consider the best way to deal with the matter at that time. The corporation accepts that it will be its responsibility to meet the cost of moving the main or to find the best solution to deal with the issue at that time. The corporation will pick up the cost imposed at that point. I hope that answers the member's question.

Hon ROBIN CHAPPLE: I think it does. I place one last statement on the record. If a shed or swimming pool is currently in place that would not be allowed to be constructed under the normal Water Corporation easements, and if work needs to be carried out on that pipe or the pre-existing structure breaches Water Corporation guidelines under the Water Agencies (Powers) Act 1984, the structure will not be considered to be inappropriate. I really want to make sure that residents of Kambalda will not at some stage be compromised by the closeness of a building or a swimming pool to one of the principal pipelines.

Hon KEN TRAVERS: I can only reiterate that currently located items will remain, but there will be restrictions on future structures and activities. Currently existing facilities will remain and, should there be a problem in the future, it will be resolved at that time to try to find the best solution then available.

Clause put and passed.

Clauses 7 to 24 put and passed.

Schedules 1 and 2 put and passed.

Title put and passed.

Report

Bill reported, without amendment, and the report adopted.

Third Reading

Bill read a third time, on motion by Hon Ken Travers (Parliamentary Secretary), and passed.