



DECISION IN RESPECT OF APPEAL AGAINST CLASSIFICATION

Contaminated Sites Act 2003, Part 8, Division 2

Appellant: Anilia Pty Ltd
Site: Lots 33 and 34 on Plan 122 and Lot 124 on Diagram 8273, Certificate of Title Volume 2230 Folio 26
Known as 219 Hampton Rd, South Fremantle
Decision: Appeal Upheld
Date: 22 May 2013

1.0 SUMMARY

- 1.1 The Department of Environment and Conservation (DEC) classified the site as *possibly contaminated – investigation required* under the *Contaminated Sites Act 2003* (the Act) on 24 September 2012. DEC's reasons for the classification were set out in the 'Notice of Classification' given in accordance with section 15 of the Act on 25 September 2012.
- 1.2 The reason given for classification was because the site was formerly part of the South Fremantle landfill quarry with unknown materials in the fill. No investigations had been carried out on the soil or groundwater on the site, however the neighbouring property which was also part of the landfill quarry has been classified as a source site for groundwater contamination. The auditor assigned to carry out a Mandatory Auditor's Report on the neighbouring land had noted that there was evidence of subsidence of a building on the site, although landfill gases were found to be at background levels on neighbouring land.
- 1.3 On 22 October 2012 the Contaminated Sites Committee (Committee) received from the Appellant an appeal against the classification. The Appellant is the owner of the site. The appeal was lodged in accordance with sections 18 and 79 of the Act.
- 1.4 The Appellant provided technical reports and other evidence to be considered by the Committee, including a letter from Civil Technology dated 25 January 2013 with supporting annexures and affidavit evidence including a letter from Structerre Consulting Engineers dated 27 November 2012 and an Ace Environmental Soil Investigation Report dated January 2013
- 1.5 On 11 February 2013, in accordance with section 80 of the Act, the Committee forwarded a copy of the appeal and supporting information to the CEO of DEC for its report.
- 1.6 The CEO's s80 Report dated 11 March 2013 was forwarded to the Appellant on 13 March 2013 for a response. The CEO concluded that the classification for the site should be changed to **report not substantiated**, however DEC did not have the power under the Act to make this change of classification.
- 1.7 The Appellant responded on 5 April 2013, agreeing with the proposed classification.
- 1.8 The Committee considered the appeal and supporting documents, and the CEO's report on 22 May 2013. The Committee decided that the appeal should be **upheld** for the reasons set out below. Under section 82(2) of the Act this decision of the Committee is final and without appeal.

REASONS FOR DECISION

2.0 Appeal Grounds (Summary)

1. *There is no proper factual basis for the classification*
2. *The classification relies on the wrong facts*
3. *The CEO had no power to classify without first giving the (Appellant) owner the opportunity to be heard*
4. *The "site" does not occupy the whole of the lots of land and therefore they should not have been classified*
5. *The CEO failed to fulfil his implied statutory duty to ensure the report was "substantiated" prior to classification*
6. *There was no evidence of consultation or agreement with the Department of Health regarding the classification*
7. *There is no evidence that anything on site is of potential risk to human health*
8. *Remediation was undertaken to remove fill prior to the development of the site by the current owner*
9. *Settlement in the building is not sufficient to justify a suspicion of contamination*
10. *Soil testing undertaken by Ace Environmental found no contamination*

3.0 COMMITTEE'S FINDINGS

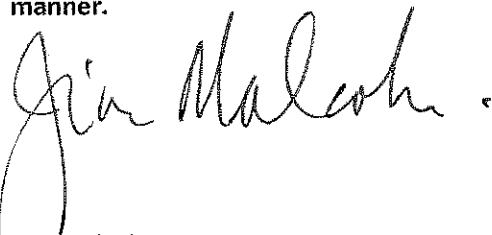
The Committee concluded that Grounds 1, 2, 7, 8 and 10 should be upheld to the extent that the classification be set aside and the new classification substituted.

In the light of both the Appellant and the CEO approving a classification of *report not substantiated*, and given the evidence provided in the appeal supports this classification, the Committee determined to uphold the appeal and apply this new classification.

4.0 CONCLUSION

The Committee upholds some grounds of appeal and substitutes the classification of the site to *report not substantiated*.

Note: Section 82(2) of the Act provides that the Committee's decision under that section is final and without appeal. Section 83 of the Act provides that the CEO of DEC is to give effect to the outcome of the appeal as soon as practicable and to ensure that the details are published in the prescribed manner.



Jim Malcolm,
Chairman
and as agent for and on behalf of
the Contaminated Sites Committee