



Contaminated Sites Committee

Decision in respect of appeal against classification

Contaminated Sites Act 2003, Part 8, Division 2

Appellant: Ian Veale (co-owner)
Site: 20 (Lot 5) Bayley Street, Woodbridge
Lot 5 on Deposited Plan 26078 Certificate of Title Volume 2507 Folio 745
Date: 20 March 2013
Decision: That the appeal be dismissed

SUMMARY

1. The site is owned by the Appellant and Leonie Joy Bawden.
2. The rear of the property backs on to the former West Midland Landfill, which contains uncontrolled land fill of putrescible and non-putrescible waste which was a municipal land fill for the (then Shire) City of Swan and Shire of Midland between 1959 - 1985. It has now been rehabilitated into Ray Marshall Park for recreation. Some of the land fill was placed on residential properties adjoining the land fill area.
3. DEC classified the property known as Lot 5 on Deposited Plan 26078 Certificate of Title Volume 2507 Folio 745 as *remediated for restricted use* under the *Contaminated Sites Act 2003* (the Act) on 6 July 2010. DEC's reasons for the classification were set out in the 'Notice of Classification' given in accordance with section 15 of the Act on 15 July 2010.
4. DEC note that the classification of *remediated for restricted use* was applied because of remedial works such as adding a 0.5m layer of clean fill above the landfill materials, and a restriction on excavation soil and abstraction of groundwater is in place.
5. On 9 September 2010 the Contaminated Sites Committee (Committee) received the Notice of Appeal dated 27 August 2010 from the Appellant against the classification, lodged in accordance with sections 18 and 79 of the Act and outlining some grounds of appeal addressed below.
6. The Appellant provided further information on 26 January 2011, indicating he was seeking further information from the City of Swan through the Freedom of Information (FOI) process. By letter dated 30 July 2012, the Appellant advised he was unable to provide further information regarding the existence of letters of consent due to inadequate or inaccurate FOI request and compliance, requesting more time to provide information.
7. The CSC wrote to the Appellant on 12 September 2012 requesting his further submissions, however no response was received.
8. On 2 November 2012, 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.

9. The CEO's report dated 7 January 2013, including additional information, was forwarded on 4 February 2013 to the Appellant for response by 1 March 2013, however no response was received.
10. The Committee considered the appeal and supporting documents and the CEO's report and supporting documents on 20 March 2013.
11. The Committee decided that the appeal should be **dismissed**. Under section 82(2) of the Act this decision of the Committee is final and without appeal.

REASONS FOR DECISION

❖ APPEAL GROUNDS (SUMMARY):

- a) The control of the area has changed a number of times, and is currently changing from the Midland Redevelopment Authority to the City of Swan
- b) Rubbish was deposited on Lot 5 by the City of Swan
- c) Restrictions were only recently placed on the land by the planning authority
- d) The party responsible for the contamination and removing it is not clear and it is important to know who has legal responsibility as it will have bearing on the appeal

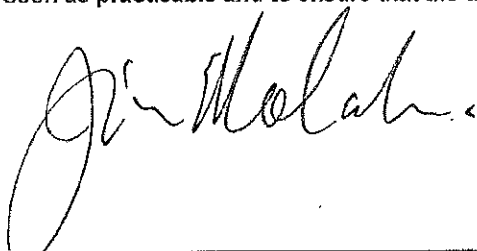
❖ The Committee found with respect to these grounds:

- a) The control of the area is not relevant to the classification or reasons for classification. The relevant consideration is whether contamination is present, and is of the type and condition that justifies the current DEC classification. This ground of appeal is dismissed.
- b) This ground of appeal supports the classification given by the DEC. This ground of appeal is dismissed.
- c) The restrictions placed on the use of the land by the planning authority are also not a relevant consideration with respect to the classification of the site, for the purposes of this appeal. This ground of appeal is dismissed.
- d) This ground of appeal is dismissed on the same grounds as a) above.

The Committee considers that the current classification of *remediated for restricted use* is appropriate for this site, in the absence of any site-specific information to the contrary.

❖ **The Committee dismisses all grounds of appeal**

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