



Decision in respect of appeal against classification

Contaminated Sites Act 2003, Part 8, Division 2

Appellants: Moltoni Group

Site: Lot 9002 on Plan 42137, Beaconsfield

Date: 31 March 2010

1.0 SUMMARY

- 1.1 The Department of Environment and Conservation (DEC) classified the property known as **Lot 9002 on Plan 42137, Beaconsfield** as *remediated for restricted use* (with a restriction on the use of groundwater and excavations below 1.0m) under the *Contaminated Sites Act 2003* (the Act) on 18 November 2008. DEC's reasons for the classification were set out in the 'Notice of Classification' given in accordance with section 15 of the Act on 18 November 2008.
- 1.2 On 16 January 2009 the Contaminated Sites Committee (Committee) received from the Appellants an appeal against the classification, lodged in accordance with sections 18 and 79 of the Act. The letter of appeal did not specify any valid grounds of appeal.
- 1.3 The Appellants advised that further information would be forthcoming, but no such information was received by the Committee.
- 1.4 On 14 July 2009, 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 a report.
- 1.5 The CEO's report, dated 27 August 2009, was forwarded to the Appellants for response. No response was received.
- 1.6 The Committee considered the appeal and the CEO's report and decided that **Lot 9002 on Plan 42137, Beaconsfield** should be classified *remediated for restricted use*, and that the restrictions on excavation and the use of groundwater established by the DEC should be retained. Under section 82(2) this decision of the Committee is final and without appeal.

REASONS FOR DECISION

- 2.0 **APPEAL GROUNDS** (Appellants' wording in *italics*)
- 2.1 **GROUND 1** *"There is no evidence that the Site has ever been contaminated with asbestos or any other material... There has never at any stage been the presence of any form of contamination that had the potential to present a risk of harm to human health, the environment or any environmental value."*
- 2.2 ERM submitted to DEC on behalf of the Appellant three reports:
- Beaconsfield Landfill – Groundwater Monitoring, January 2003;
 - Beaconsfield Landfill – Soil Investigation April 2003; and
 - Beaconsfield Landfill – Site Remediation and Validation, May 2003
- 2.3 DEC, reporting on the results of these investigations, advised that "soil testing demonstrated that soils contained petroleum hydrocarbons at concentrations exceeding Health Investigation Levels for residential land uses, as well as Ecological Investigation Levels ... and fragments of asbestos containing materials were also present".
- 2.4 DEC further observed "Groundwater investigations identified arsenic, boron, chromium and nickel in concentrations exceeding Australian drinking water criteria and long-term irrigation criteria".
- 2.5 **The Committee dismisses this ground of appeal.**
- 2.6 **GROUND 2** *"Any elevated levels of elements and compounds found in groundwater at the Site are natural occurring background concentration levels typically found throughout the broader Beaconsfield area."*
- 2.7 In support of this ground of appeal the Appellant provided information on groundwater monitoring wells in land immediately to the east (up-hydraulic gradient) of the site. DEC observes "The plan highlights the widespread presence of chloride and nutrient contamination in groundwater at concentrations exceeding long term irrigation criteria".
- 2.8 However, DEC also points out that the land immediately to the east of the site, like the site itself, "was operated by Moltoni for the disposal of construction and demolition waste". The groundwater monitoring information provided by the Appellant is not, therefore, indicative of background levels in Beaconsfield, but of levels associated with a similar historic land use.
- 2.9 **The Committee dismisses this ground of appeal.**
- 2.10 **GROUND 3** *"The classification of the Site as having been "remediated" is incorrect and misleading."*
- 2.11 One of the reports submitted to DEC on behalf of the Appellant was titled "Beaconsfield Landfill – Site Remediation and Validation, May 2003".

According to DEC "The remediation works comprised the excavation and off-site disposal of contaminated soils and visible fragments of asbestos containing materials previously identified in the site."

2.12 The Committee dismisses this ground of appeal.

2.13 **GROUND 4** *"The Site itself is relatively small and therefore the groundwater will be shared by all adjoining landowners. If the Site is classified for 'restricted use' then all the other landowner's properties should be similarly classified."*

2.14 This is not a valid ground of appeal. The validity of the classification of the subject lot is independent of whether or not adjacent lots have or have not been classified.

2.15 The Committee dismisses this ground of appeal.

2.16 **GROUND 5** *"The Notice and the classification are based on misinformation and incorrect assumptions."*

2.17 The Appellant does not provide specific information to support this assertion.

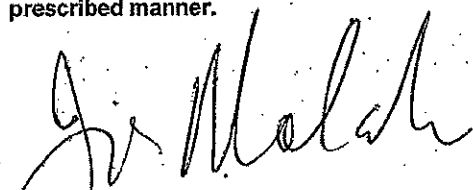
2.18 The Committee dismisses this ground of appeal.

2.19 **GROUND 6** *"The Site has never previously been classified as a contaminated site."*

2.20 This is not a valid ground of appeal. The validity of the classification of the subject lot is independent of whether or not it may have been previously classified.

2.21 The Committee dismisses this ground 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