



Decision in Respect of Appeal Against Classification

Contaminated Sites Committee (CSC 05/2019)

Contaminated Sites Act 2003, Part 8, Division 2

APPELLANT: Ms Barbara Stojkovski
SITE: 10 & 12 Dalby Street, Warwick 6024 (**the Site**)
DATE: 3 April 2020

1. This is an appeal against a notice of classification given by the Chief Executive Officer (**CEO**) of the Department of Water and Environmental Regulation (**DWER**)¹ under s15 of the *Contaminated Sites Act 2003 (Act)* on 29 March 2019. That notice of classification advised that the CEO had classified the Site as *remediated for restricted use*. The site is owned by Ms Barbara and Zani Stojkovski.
2. The Reasons for Classification given by the CEO found:

“The site is contaminated and has been remediated such that it is suitable for the proposed high density residential land use, subject to implementation of the management measures documented in the report titled ‘Asbestos Risk Assessment: 10 and 12 Dalby Street, Warwick, WA’ (360 Environmental, 5 March 2019). Therefore, the site is classified as Remediated for restricted use”.

Background

3. The site was reported because asbestos-containing-material (ACM) fragments were identified across the site, following the demolition of former residential dwellings.
4. On 14 January 2019, the site was first classified as *Possibly contaminated – investigation required* under section 13 of the Act based on information submitted to DWER by December 2018.
5. To reflect additional technical information submitted to DWER by March 2019, the site was then re-classified to *Remediated for restricted use* on 29 March 2019.

¹ The Department of Water and Environmental Regulation (DWER) was established on 1 July 2017 following the amalgamation of the Department of Water, the Office of the Environmental Protection Agency and the Department of Environmental Regulation (DER). DER was separated from the former Department of Environment and Conservation (DEC) in June 2013. The use of the name ‘DWER’ is used in this document to refer to both DER and DEC. The CEO, herein refers to the CEO of DWER or its predecessors.

6. Site works following demolition included filling the void left by a former below ground pool at the site. While ACM was identified to be present upon the ground surface, the extent of subsurface impacts was not assessed. Limited remedial works were carried out at this site, which included raking accessible surface soil and hand-collection of ACM Fragments in February 2019. All Identified ACM was disposed to a licenced Waste Facility.
7. The proposed development plans for construction of six residential buildings over the site incorporated management measures, which limited access to potentially ACM-impacted soil through the use of concrete foundations and paving over the majority of the site. The management measures are documented in the 360 Environmental Report, dated 5 March 2019 '*Asbestos Risk Assessment: 10 and 12 Dalby Street, Warwick, WA*'. There has been no investigation of groundwater at the site.
8. The site was classified in consultation with the Department of Health (DoH). If groundwater is being or proposed to be abstracted, DWER has recommended that analytical testing should be carried out to determine if groundwater is suitable for its intended use.
9. Access to the asbestos-impacted soil at the site has been restricted and periodic monitoring of sealed surfaces and warning barriers are required to ensure that the integrity of the containment is maintained.
10. There are restrictions on the use of the site, including that soil beneath the geofabric warning barrier immediately below the concrete foundations and paving should not be disturbed, with consideration to the management measures documented in the 360 Environmental Report.

Appeal

11. On 13 May 2019, the Appellant notified the Contaminated Sites Committee (**Committee**) that an appeal against the *Remediated for restricted use* classification would be submitted. Additional information to support the appeal was provided on 3 June 2019.

Time limitation

12. An appeal against a site classification made under s13 of the Act is to be effected in accordance with s18 of the Act. An appeal is to be brought, dealt with and determined in accordance with Part 8 of the Act. By s79(2), a notice of appeal is to be lodged within 21 days after the day on which the appellant is given the notice or certificate which gives rise to the appeal, or such later time as may be specified in the notice. The notice, subject of this appeal was dated 29 March 2019 and specified a period of 45 days from the date of service of the notice as the period during which an appeal may be lodged. The Committee determined the appeal application was valid.

Grounds of appeal

13. The Appellant requested the Committee to revoke the *remediated for restricted use* site classification based on the following reasons:
 - i. The site was reported on false assumptions;
 - ii. There was no communication (to owner) about the potential contamination concern;
 - iii. The Local Government Environmental Health Officer and/or Department of Health was/were negligent in his/their duty;
 - iv. Test results were withheld from the owners;
 - v. The current classification of the site is not based on reasonable grounds; and
 - vi. The cause of actions from relevant authorities resulted in costly and lengthy delays.

Committee's decision


14. The Committee has given consideration to all grounds of appeal and other matters raised in the correspondence and information that has been provided by the Appellant and the CEO.
15. *"The site was reported on false assumptions."* This ground of appeal is not relevant to whether the current classification is correct. ***This ground of appeal is dismissed.***
16. *"There was no communication (to owner) about the potential contamination concern."* This ground of appeal is not relevant to whether the classification is correct. ***This ground of appeal is dismissed.***
17. *"The Local Government Environmental Health Officer and/or Department of Health was/were negligent in his/their duty."* This ground of appeal is not relevant to whether the classification is correct. If the Appellant has concerns over issues of possible alleged maladministration they may be referred directly to the State Ombudsman. The Committee expresses no view on these matters. ***This ground of appeal is dismissed.***
18. *"Test results were withheld from the owners."* This ground of appeal is not relevant to whether the classification is correct. ***This ground of appeal is dismissed.***
19. *"The current classification of the site is not based on reasonable grounds."* The *Remediated for restricted use* classification is appropriate for this site under the *Contaminated Sites Act 2003*. It is reasonable to assume that the site was possibly contaminated based upon the presence of ACM noted at the site's surface. Remedial works were conducted to remove the ACM from the site surface as part of the investigation that was undertaken, however the levels of asbestos remaining below the surface, including within the pool area, were not investigated and are unknown. Further site investigations have not been carried out to indicate that the site should be classified as *Not contaminated – unrestricted use* or *Decontaminated*. The Committee agrees with DoH that the adoption of the proposed engineering controls and management measures (in lieu of conducting a detailed investigation of the site to assess the subsurface risks from asbestos) are grounds for the site to be classified as *Remediated for restricted use*. ***This ground of appeal is dismissed.***
20. *"The cause of actions from relevant authorities resulted in costly and lengthy delays."* This ground of appeal is not relevant to whether the classification is correct. See paragraph 17 above for comments in relation to the Ombudsman. ***This ground of appeal is dismissed.***

Conclusion

21. For the reasons stated above, the Committee has dismissed the appeal.

22. The site remains classified under the *Contaminated Sites Act 2003* as *Remediated for restricted use*.

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 the Department 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.

A handwritten signature in black ink that reads "Jim Malcolm". The signature is written in a cursive style with a large, looping initial "J".

Jim Malcolm
Chairman

as agent for and on behalf of
the Contaminated Sites Committee

Anna Ciffolilli (**Member**)
Peter McNab (**Member**)
Vanessa Bryant (**Member**)
Warren Dodge (**Member**)