

Contaminated Sites Committee

- Summary of Decision
 - Appeal Against Site Classification
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Date of decision	18 May 2011
Type of decision	Determination of an appeal against site classification pursuant to section 82 of the <i>Contaminated Sites Act 2003</i> .
Matter (file no.)	47/2009
Date lodged	26 October 2009
Appellant	Mr Brian Garvey
Site name/address	2532 Great Northern Highway, Bullsbrook, 6084
Certificate of title no./ Crown reserve no.	Lot 1 on Diagram 9938 as shown on Certificate of Title Volume 1577 Folio 503
Background	<p>The site was used as a petrol station until 1996. The site was remediated in 2003 and subsequent soil validation investigation was undertaken.</p> <p>Department of Environment and Conservation classified the site <i>possibly contaminated – investigation required</i> on 22 May 2009, which was received by the Appellant on 7 October 2009.</p> <p>The Appellant appealed on a number of grounds summarised as follows:</p> <ol style="list-style-type: none"> 1. Bacteria eat below-ground hydrocarbons and over time hydrocarbons are likely to be non-existent. The forecourt area has been cleaned up and replaced. 2. Appellant has been denied natural justice, as a Memorial on Title has been lodged without providing reason or notice to the appellant. 3. The site contains a service station building with a section of the forecourt still remaining. In 2002/2003 the site was remediated as far as possible without destroying buildings. 4. The DEC accepted a Form 1 from an unknown person. 5. The site is about 10 metres away from an environmentally sensitive area Ki-It Brook and 150m from a Catholic Church, which uses the groundwater for spiritual purposes. 6. The high level water table is about 900m below the

	<p>surface and the ex-service station closed in 1996, as a result the rising groundwater would push the hydrocarbons to the surface year after year and the bacteria in the soil would have consumed it years ago.</p> <ol style="list-style-type: none"> 7. The classification should be <i>remediated for restricted use</i> and included in the restricted use allowance for commercial development uses, stumped transportable shed/dwelling 8. A Shell service station across the road has not been classified and had a memorial placed on the title 9. The proposed transportable dwelling is 12m from the nearest original concrete forecourt. There is about 80m² of uncontaminated area surrounding the proposed dwelling. 10. The Memorial on the Title prohibits transfer of land 11. No hazard concerns, the current site has a Muzz Buzz drive through coffee shop, the principle sources of pollution have been removed. The site was remediated in 2003 and the non contaminated areas of the site can be used 12. The WA Government knew or ought to have known that most of the forecourt has been designated as a road reserve and cannot be used. 13. The right, fair and proper course is to allow the erection of two transportable buildings and/or change the minimum classification should be 'Remediated for restricted use'. 14. DEC should have tested the groundwater.
Committee's decision?	Appeal Upheld: Re-classify the site as <i>Remediated for Restricted Use</i> for the current land use of Industrial/Commercial
Reasons for decision	<p>Grounds 1, 3, 7, 11 and 12</p> <p>The URS Soil Validation Investigation report dated May 2003 noted the hydrocarbon impacted area is beneath the southern concrete forecourt and workshop, and that discussions with the Department of Environment in 1999 that no further action is warranted on the site, provided the intended land use remains industrial and/or commercial; the Department may require further investigations or remediation if the site is to be developed or the intended use is changed.</p> <p>DEC's response to the appeal documents noted that while the hydrocarbon impacted soils were overlain by a concrete floor, this prevents the risk of exposure to occupiers of the site. DEC also noted that it was unlikely hydrocarbon concentrations would have substantially reduced due to microbial degradation over the time frame as this form of remediation is slow, and even slower when oxygen levels are low and hydrocarbon concentrations are high, as in this case.</p> <p>The Committee decided to uphold these grounds of appeal to the extent that the site should be reclassified <i>Remediated for</i></p>

	<p><i>Restricted Use</i> for the current land use of industrial/commercial and be subject to appropriate restrictions on groundwater abstraction, and excavation of contaminated soils.</p> <p>The Committee dismissed all other grounds of appeal, for the following summarised reasons:</p> <p>Ground 2 – the classification was in accordance with s15 of the Act, and the memorial was placed on the title in accordance with s58(1).</p> <p>Ground 4 – DEC advised no Form 1 was filed for this site, rather it was classified based on historical information DEC had on file, including correspondence with the appellant in 2003.</p> <p>Ground 5 – analytical testing should be carried out on groundwater being abstracted to ensure it is suitable for its intended use</p> <p>Ground 6 – ongoing monitoring is required to demonstrate the effectiveness of natural attenuation</p> <p>Ground 8 – the classification of a neighbouring site is not relevant to the classification of this site</p> <p>Ground 9 – the proposed future land use of a site is not relevant to its classification. DEC advised that the City of Swan has a discretion as to whether a caretaker’s dwelling is permitted on a commercial or industrial property.</p> <p>Ground 10 – this ground of appeal is incorrect, the memorial does not prevent sale of the site, and the memorial complies with s58 of the Act</p> <p>Ground 11 - the Committee noted there is a risk to the health of a caretaker living 24 hours 7 days a week on this commercial property, effectively using it as a residence</p> <p>Ground 13 – the classification <i>remediated for restricted use</i> does not permit residential land use, this site is only suitable for industrial/commercial use</p> <p>Ground 14 – this is not a valid ground of appeal as the person responsible to undertake investigations is not relevant to the classification of a site. DEC advised the owner of a privately owned property is responsible for investigations</p>
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