



## **Decision in Respect of Appeal Against Classification**

**Contaminated Sites Committee Reference No. CSC 02/2013**

***Contaminated Sites Act 2003, Part 8, Division 2***

**Appellant:** Gray River Trust Pty Ltd (represented by Gemec Pty Ltd)

**Site:** 56 George Street, Pinjarra  
Lot 24 on Diagram 27051 as shown on certificate of title volume 1462 folio 477

**Decision:** **Appeal Partially Upheld**  
**Classification remains *contaminated – remediation required***

**Date:** 30 July 2014

### **1.0 Summary**

- 1.1 The Site is currently owned by Gray River Trust Pty Ltd and forms part of a petrol station which has operated since 1977, currently known as the Pinjarra Fuel and Service Centre. It was not initially classified in February 2009 with Lot 23 on Diagram 27051 as shown on certificate of title volume 1462 folio 477.
- 1.2 The Site was classified *contaminated – remediation required* ("C-RR") and a Source Site on 5 February 2013 by the former Department of Environment and Conservation ("DEC") pursuant to the *Contaminated Sites Act 2003* ("Act"). The related affected site in the notice of classification was the road reserve for George Street. The portion of the former DEC which is now responsible for contaminated sites is the Department of Environment Regulation ("DER").
- 1.3 This Appeal was received by the Contaminated Sites Committee ("Committee") on 8 March 2013, within the prescribed appeal period for the classification. All further information and submissions provided by the Appellant and DER (formerly DEC) included arguments relating to both sites.
- 1.4 The Committee received further information from the Appellant dated 17 April 2013 in support of the Appeal, including a report by Pendragon Environmental Solutions regarding the Removal of Underground Storage Tanks on Lot 2 and Lot 4 (number 45) George Street dated September 2012.
- 1.5 On 2 May 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 their report.
- 1.6 The CEO's Section 80 Report dated 14 June 2013 – concluded C-RR is still the appropriate classification. **However, DEC acknowledged that the Restrictions on Use specific to Lot 24 should be amended to remove reference to soil contamination.** The Committee forwarded the Section 80 Report to the Appellant for a response.

- 1.7 Gemec's response to the CEO's Section 80 Report dated 14 August 2013 – included a new report by Gemec – Underground Storage Tank Removal and Soil Validation Report for Shell Pinjarra 54 (Lot 23) George Street dated May 2013. The Committee forwarded the Appellant's response and additional report to the CEO.
- 1.8 The CEO of (the new) DER provided a Supplemental Section 80 Appeal Report dated 16 October 2013. The Committee forwarded the CEO's response to the Appellant.
- 1.9 Gemec's response to the CEO's Supplemental Appeal Report dated 6 December 2013 enclosed a new Gemec Report – Groundwater Monitoring Event (GME) Report for Shell Pinjarra dated September 2013. The Committee forwarded the Appellant's response and GME Report to the CEO.
- 1.10 The CEO provided a Further Appeal Report dated 18 February 2014. The Committee forwarded the CEO's response to the Appellant.
- 1.11 Gemec's submission dated 30 April 2014 (in response to the CEO's Further Appeal Report of 18 February 2014) enclosed the most recent Targeted Soil and Groundwater Investigation (TSGI) Report dated March 2014. The Committee forwarded the Appellant's response and additional TSGI Report to the CEO.
- 1.12 The CEO provided a Supplemental Appeal Report dated 3 July 2014. The Committee forwarded the CEO's response to the Appellant.
- 1.13 Gemec responded to the CEO's Supplemental Appeal Report on 18 July 2014. No new information or arguments were provided.
- 1.14 The Committee considered all documents provided by both the Appellant and CEO throughout the document exchange listed above.
- 1.15 The Committee decided that the appeal should be **partially upheld** for the reasons set out below. Under section 82(2) of the Act this decision of the Committee is final and without appeal.

## 2.0 Appeal Grounds (Summary)

### *Preliminary Grounds of Appeal*

- 2.1 The Ground of Appeal provided was that the Appellant and Gemec "Dispute DEC's statements, inaccuracies, assumptions and reasoning as laid out in the Basic Summary of Records (attached)". The Appellant provided comments and a detailed critique of DEC's Basic Summary of Records (BSR) Reasons for Classification, as well as additional results of Tanknology integrity testing for the Site carried out in Jan – Feb 2013.

### *Supplementary Grounds of Appeal*

- 2.2 In the Appellant's response to the CEO's Section 80 Report dated 14 August 2013, the Appellant advised its intention with the appeal is to contend that Lots 23 and 24 George Street Pinjarra are not a source of fuel additive methyl-tert-butyl-ether ("MTBE") (impacting the road reserve) and therefore should not be classified as "Source Sites".
- 2.3 In the Appellant's submission dated 6 December 2013, Gemec suggested an appropriate new classification for the Site could be *remediated for restricted use*.

Through the course of this appeal, the Appellant provided multiple reports and undertook multiple investigations including groundwater monitoring, and remediation activities such as adding oxygen

releasing compounds to encourage bioremediation as well as the removal of an underground storage tank (UST) and impacted soil from UST pits.

The Appellant also advised that they are in the process of trying to sell the Site, and have applied to the CEO for consent to transfer the property.

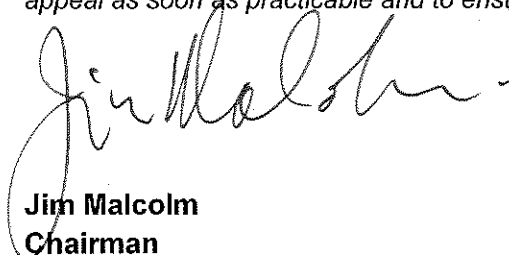
### 3.0 Committee's Decision

- 3.1 This Appeal was received within the prescribed appeal period for the "re-classification", and fulfilled all other statutory requirements to be valid.
- 3.2 The Committee concluded that there was insufficient evidence provided specifically in relation to this Site to be able to easily separate it in its reasoning from the neighbouring appeal site at Lot 23 (54 George Street, Pinjarra).
- 3.3 The classification of C-RR is appropriate – remediation was undertaken after the Site was classified, and even following the remediation that has occurred during the appeal process there remains on-site contamination (including a range of hydrocarbons as well as MTBE) which exceeds acceptable limits in the applicable non-potable use guidelines and which require further investigation and remediation before the Committee could be satisfied that the classification should change to *remediated for restricted use*. Contamination that has been detected on-site has also been detected off-site in concentrations that greatly exceed acceptable limits. Further, there are sensitive potential receptors, being a primary school and river, in close proximity and likely down hydraulic gradient from the identified contamination.
- 3.5 Under Schedule 1 of the Act the criterion for classification of a site as *contaminated – remediation required* is that "The site is contaminated and remediation is required". There is no reference to whether the site is (or is not) a 'source site'. The reasons for classification, therefore, are not required to address the site's status as a source site. The appeal is upheld to the extent that the references in the reasons for classification to the Site being a 'source site' should be deleted.
- 3.5 The Committee agrees with DER that the Restrictions on Use specific to Lot 24 should be amended to remove reference to soil contamination.

### 4.0 Conclusion

The classification ***contaminated – remediation required*** should remain, however the Reasons for Classification should be amended to remove the conclusion that this is a Source Site and the reference to soil contamination in the Restrictions on 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.*



**Jim Malcolm**  
**Chairman**

and as agent for and on behalf of  
the Contaminated Sites Committee