



## Decision in Respect of Appeal Against Classification

Contaminated Sites Committee Reference No. CSC 2/2014

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

**Appellant:** Vestigio Investment Pty Ltd

**Site:** Lot 17 on Diagram 9791 as shown on Certificate of Title Volume 1059 Folio 540  
Known as 261 Moylan Road, Wattleup

**Decision:** **Appeal Dismissed**  
**Classification remains *possibly contaminated – investigation required***

**Date:** 3 September 2014

### 1.0 Summary

- 1.1 The site was formerly used as an unlicensed landfill for disposal of construction and demolition waste. The site is currently used for storage and transport.
- 1.2 The CEO of the Department of Environment Regulation (DER) classified the site *possibly contaminated – investigation required* (PC-IR) by a Notice of Classification, dated (Friday) 20 December 2013, pursuant to the *Contaminated Sites Act 2003* (CS Act). The reasons for classification noted that the site has previously been an unlicensed landfill, and a site inspection was undertaken by DER officers in 2010 during which they identified potential asbestos containing material (ACM) on the site. No investigations had been carried out on soil or groundwater at the site, so there was no information regarding the site's suitability for its current land use.
- 1.3 The Appellant, Vestigio Investment Pty Ltd (registered owner of the site from 10 August 2012), is represented by its Managing Director, Gerhard Liebenberg. The appeal was first lodged by email with the Contaminated Sites Committee (CSC) on 24 January 2014 with some supporting information. A formal Notice of Appeal in the appropriate form was received 31 January 2014.
- 1.4 The grounds of appeal were:
  - (1) The previous owners advised the Appellant in writing (prior to purchasing the land) that the site was free from contamination, and supported this information with a Landgate Withdrawal of Caveat.
  - (2) Groundwater assessment analysis was undertaken after purchasing the property (which does not show contamination).
  - (3) An aerial photo of the site showing only the remains of a limestone quarry.

- 1.5 CSC made multiple requests for additional information. Some information was provided. However, a Dust Management Plan and a Staging and Rehabilitation Plan which was attached to a Deed setting out the conditions for the previous use of the Site was requested by the CSC's administration, and was not provided.
- 1.6 Pursuant to section 80 of the CS Act, CSC requested a report from the CEO of DER regarding the site on 20 May 2014. The CEO's Section 80 Report (Report) dated 27 June 2014 was forwarded by the CSC to the Appellant by letter dated 3 July 2014, requesting a response by 1 August 2014. No response was received.
- 1.7 The CEO of DER's Report provided responses to the grounds of appeal it considered relevant:

- 1.7.1 Appeal Ground 1

The Report notes that information was not provided as part of the appeal, and therefore DER is not aware of what level of rehabilitation the City required in order to comply with the Management Plan noted in the Deed. The City did not report the site, so DER is unaware of the type, quantity or concentration of potential contaminants that were present on the site (from its previous use as a landfill). The site was reported (Form 1) by an Authorised Inspector under the *Environmental Protection Act 1986* (an officer of the former Department of Environment and Conservation) following an original site inspection in 2010 and another in late 2013, at which potential ACM and other unidentified fill materials were identified. A copy of the Form 1 (dated 6 November 2013 – see page 2 for reasons) and accompanying photos and information were attached to the Report.

- 1.7.2 Appeal Ground 2

The water sample analysis only exceeded the Australian Drinking Water Guidelines with respect to water hardness. No information was provided with respect to how the sample was taken, the bore location or construction; there was no chain of custody information.

- 1.7.3 Appeal Ground 3

Not commented on.

## 2.0 Documents

CSC considered the appeal on 3 September 2014 and took into account the following documents and information:

- 2.1 Email from Appellant to CSC – Notice of Appeal dated 24 January 2014
  - 2.1.1 DER Notice of Classification dated 20 December 2013
  - 2.1.2 Letter from (former site owners) Mr & Mrs Vozzo to Fremantle Freight and Storage Pty Ltd (Director of the Appellant is also Director of this company) dated 23 January 2012 with attached Withdrawal of Caveat dated 9 September 2009
  - 2.1.3 Agrifood Technology (water sample) Analysis Report for Fremantle Freight & Storage Pty Ltd dated 17 September 2012
  - 2.1.4 Development Site Plan with aerial photograph of site dated 5 June 2012.

- 2.2 Email from CSC staff member LO to CSC staff member FT dated 24 January 2014 noting the Appellant advised he had received the Notice of Classification "that day"
- 2.3 Notice of Appeal form dated 28 January 2014
- 2.4 Certificate of Title for the site
- 2.5 Email from FT to Appellant dated 26 February 2014
- 2.6 Email (page 2) from Kevin Sim, City of Cockburn to Appellant dated 4 March 2014
- 2.7 Email from Appellant to CSC dated 11 March 2014 attaching the Deed of Agreement
  - 2.7.1 Deed of Agreement dated 26 August 1999 between the City of Cockburn and Rosaria Catalano, Sebastiano Catalano, Guiseppina Fazio, Rudolfo Fazio, Vincenzo Fazio, Ilario Vozzo, Maria Vozzo & William John Ellement
- 2.8 Email from FT to Appellant dated 1 April 2014
- 2.9 Letter from CSC to Appellant dated 5 May 2014
- 2.10 CEO's Section 80 Report dated 27 June 2014.

### **3.0 CSC's considerations**

#### **Ground (1)**

CSC considered that there was no evidence before it as to the standards the City of Cockburn required to withdraw the Caveat. Further, the fact that the Notice of Classification was based on evidence of the presence of potential ACM after the date of ownership by the Appellant (in 2012), without evidence that the contamination identified in 2013 had been appropriately remediated, some classification under the CS Act is appropriate for the site.

#### **Ground (2)**

CSC decided that the absence of potential contaminants in one groundwater sample was not sufficient to demonstrate that the site was not contaminated. Further, this evidence provided no information regarding the potential presence of ACM on the site.

#### **Ground (3)**

CSC did not consider that this aerial photograph provided any information or evidence as to what the situation is on the ground at the site at this time, particularly given the evidence of the potential presence of ACM fragments.

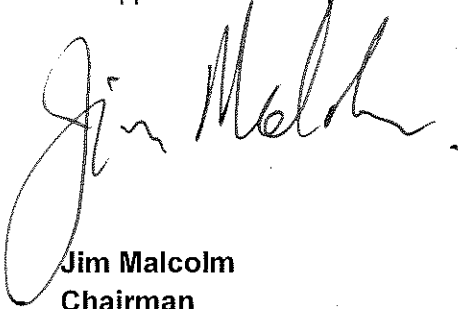
### **4.0 CSC's decision**

- 4.1 The appeal was lodged within the relevant time.
- 4.2 This appeal is dismissed because there was no evidence provided to successfully support the grounds of appeal, and no evidence to show that the site is not contaminated.
- 4.3 The classification of *possibly contaminated – investigation required* is appropriate in the circumstances as there is evidence of contamination being present onsite, and the historical use of the site indicates a risk of other contamination in soil and groundwater.

## 5.0 Conclusion

CSC considers that the current classification of ***possibly contaminated – investigation required*** is appropriate for this site and dismisses all grounds of appeal.

**Note:** section 82(2) of the Act provides that the CSC'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, appearing to read "Jim Malcolm". The signature is written in a cursive, flowing style with a large initial "J".

**Jim Malcolm**  
**Chairman**

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