

# Contaminated Sites Committee

- Summary of Decision
- Appeal Against Site Classification

<b>Date of decision</b>	12 January 2010
<b>Type of decision</b>	Determination of an appeal against site classification pursuant to section 82 of the <i>Contaminated Sites Act 2003</i> .
<b>Matter</b> (file no.)	CSC 39/2009
<b>Date lodged</b>	18 May 2009
<b>Appellant</b>	McGhee Investment Holdings Pty Ltd, Symons Investment Holdings Pty Ltd and Met Property Holdings Pty Ltd
<b>Site name/address</b>	68 and 70 Kurnall Road, Welshpool
<b>Certificate of title no./ Crown reserve no.</b>	LOT 2 ON DIAGRAM 14554 as shown on Certificate of Title Volume 438 Folio 21A known as 68 Kurnall Road, Welshpool  LOT 1 ON DIAGRAM 15015 as shown on Certificate of Title Volume 1760 Folio 292 known as 70 Kurnall Road, Welshpool
<b>Background</b>	<p>The Department of Environment and Conservation (DEC) classified the properties known as 68 and 70 Kurnall Road, Welshpool as a single site and <i>contaminated – restricted use</i> (with a restriction on the use of groundwater) under the <i>Contaminated Sites Act 2003</i> (the Act) on 27 March 2009.</p> <p>The appellants argued that 68 and 70 Kurnall Road are 2 separate properties.</p> <p>The appellants are the owners of the properties that comprised the site and argued:</p> <ol style="list-style-type: none"> <li>1. the classification was incorrect due to DEC inaccurately combining properties for classification into a single site</li> <li>2. that due to inaccuracies in sampling and analysis the classifications should be <i>report not substantiated</i> and/or <i>not contaminated – unrestricted use</i></li> <li>3. the source of contamination suggested was not possible</li> <li>4. a property owner did not receive notice of the classification and therefore the classification should be set aside.</li> </ol> <p>The DEC conceded the site had 2 properties on it, however the form of the Section 11 Notice it had received reporting the site as contaminated or potentially contaminated had reported as one site. DEC agreed the properties should be classified separately.</p>

<p><b>Committee's decision?</b></p>	<p>The appeal against classification was upheld to the extent of the following decisions:</p> <ol style="list-style-type: none"> <li>1. The Committee agreed there were 2 separate properties that should be classified as separate sites.</li> <li>2. The Committee determined under section 82(1)(c) of the Act that the existing classification of both 68 and 70 Kurnall Road should be set aside.</li> </ol> <p>The appeal against classification was dismissed to the extent of the following decisions:</p> <ol style="list-style-type: none"> <li>3. The Committee decided that each of the sites should be classified <i>possibly contaminated – investigation required</i>.</li> <li>4. The Committee determined to retain the existing restriction on land use (groundwater).</li> </ol>
<p><b>Reasons for decision</b></p>	<p>The Committee recognised there are clearly 2 separate properties with slightly different contamination profiles.</p> <p>The Committee determined that whether or not notification of classification was received by the owner does not invalidate the classification of the property.</p> <p>There were clear inadequacies evident in the sampling and analysis undertaken at both sites. From the information provided it was not possible for the Committee to determine the amount, detailed types or extent of contamination. However it was clear that there is some contamination on both sites, predominantly with heavy metals.</p> <p>The Committee determined that the source of contamination was irrelevant if the contamination clearly existed. If contamination is present, there is a requirement under the Act for an appropriate classification.</p>