



## Decision in Respect of Appeal Against Classification

Contaminated Sites Committee Reference No. CSC 09/2015

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

**Appellant:** Deepblue Enterprises Pty Ltd

**Site:** Lot 1 on Plan 40077 shown on certificate of title 2765/369  
128 Redbank Road, Redbank

**Decision:** Appeal Dismissed

**Date:** 7 March 2017

### 1.0 Background

- 1.1. The former Redbank Power Station operated for approximately 30 years from 1968 to 1998 on three (3) parcels of land, Lot 1 (128 Redbank Rd, Redbank) (the subject land), Lot 2 (2 Redbank Rd, Redbank) and Lot 6252 (6252 Redbank Rd, Redbank) (together referred to here as **(the Lots)**).
- 1.2. The former power station was originally reported to the Department of Environment Conservation (DEC) prior to the commencement of the *Contaminated Sites Act 2003* (Act) and was reported again as per reporting obligations under section 11 of the Act in May 2007 and May 2012.
- 1.3. The Chief Executive Officer (CEO) of Department of Environment Regulation (DER) classified the Lots as *contaminated – remediation required* (CRR) on 12 June 2012, based on information submitted to DEC in May 2012. The CEO advised that they were considered to be a **source site**.
- 1.4. Environmental investigations commenced in 1999 after the power station ceased operating. Investigations found metals and hydrocarbons in the soil and groundwater. LNAPL was present in the groundwater beneath the Lots.
- 1.5. Remediation works were conducted in 2001 and 2002, comprising excavation and off-site disposal of contaminated soils across Lot 1 and Lot 2. Validation works indicated that not all impacted soils were successfully removed. Further remediation works were conducted in 2004 comprising the excavation and offsite disposal of 98 cubic metres of soil impacted by metal chromium.

- 1.6. Groundwater investigations were conducted in 2007, which included the installation of monitoring wells. The results found that hydrocarbon-impacted groundwater had migrated beyond the Lot 1 northern boundary affecting the adjacent Lot 6254.
- 1.7. Detailed investigations were conducted across the lots in 2008 and 2013 to characterise the nature and extent of groundwater contamination. Natural attenuation was occurring and concentrations of hydrocarbons within groundwater did not present a risk to human health via the vapour intrusion pathway based on the ongoing commercial industrial land use of the Lots. Residual hydrocarbon impacted soil were found at depth in the north-west portion of Lot 1.
- 1.8. Decommissioning works were conducted in 2014 to remove fuel infrastructure, including a 9 million litre above ground storage tank in the north-eastern portion of Lot 6252. Soil validation works confirmed that the soils beneath the former fuel infrastructure were not contaminated.
- 1.9. Asbestos assessment was undertaken in late 2014, which found fragments of asbestos on the soil surface in numerous locations across the Lots. Investigations indicated that the asbestos found on Lot 2 did not pose a risk to human health.
- 1.10. DER accepted the findings of the Mandatory Auditor's Report (MAR) dated 31 July 2015, which recommend that the Lots were suitable for commercial/industrial land use subject to restrictions on use. The MAR advised that further contamination assessment would be required if the land use were to change to a more sensitive use, such as residential housing or childcare centre.
- 1.11. The Lots were reclassified by DER on 15 September 2015 to *remediated for restricted use*. This reclassification was based on information that the Lots had been remediated to a level that was suitable for ongoing commercial/industrial land use subjected to restrictions on access to groundwater and disturbance of the residual asbestos. The Lots are no longer considered by the CEO of DER as a 'source site'. Further assessment of potential contamination is required before the Lots can be changed to more sensitive land uses such as residential housing or a childcare centre.

## **2.0 Site Classification Appeal**

- 2.1. This site classification appeal relates to Lot 1 on deposited plan 40077, 128 Redbank Road, Redbank (the Site).
- 2.2. Deepblue Enterprises Pty Ltd (Deepblue) purchased the Site on 19 December 2001.
- 2.3. The Site is currently unoccupied with the exception of a 'caretaker's residence', which is located in the south east portion of the Site.
- 2.4. The Site is zoned mixed business and is proposed to be used for commercial/industrial purposes.
- 2.5. The Appellant, Deepblue represented by Mr Bill McSharer (Fides Consulting Pty Ltd) first lodged an appeal with the Contaminated Sites Committee (Committee) on the 16 October 2015 (within the 30 day appeal period).
- 2.6. On 19 October 2015, Deepblue provided further information, including a copy of the DER Notice of Classification and a site map of the Former Redbank Power Station.

- 2.7. On 22 February 2016, in accordance with Section 80 of the Act, the Committee requested the CEO of DER to provide a report on the appeal.
- 2.8. The DER Appeal Report dated 24 March 2016 was received by the Committee on 31 March 2016. The Committee then forwarded this report to the Appellant for a response, which was due by 16 May 2016. No further submissions were provided by the Appellant.
- 2.9. On 13 October 2016, the Committee sought clarification from DER on the apparent inconsistencies between the Notice of Classification's 'restrictions on use' which excluded residential use and the zoning under the local planning scheme which permitted the existing caretaker's dwelling within a mixed business zone.
- 2.10. DER provided a response to the Committee's request on the 2 November 2016. DER advised that the Auditor (Mr Jason Clay) had been contacted to provide additional information on the caretaker's dwelling. After further consideration of the remaining contamination of the Lots, Mr Clay recommended that the 'restrictions on use' be changed to permit ongoing use of the south-eastern portion of Lot 1 (remote from the remaining contamination) as a caretaker's dwelling'.
- 2.11. DER reviewed Mr Clay's recommendations and proposed to amend the statements in the 'reasons for classification' and 'restrictions on use' to indicate that the site is suitable for ongoing commercial/industrial or mixed business use, including the existing caretaker's dwelling in the south-eastern corner of Lot 1.
- 2.12. On 11 November 2016, an email was provided to the Committee by Ms Anna Slater on behalf of Mr Graham Slater. Mr Slater advised that Deepblue is in the process of investigating the prior use of the Lots and that Fides Consulting had been hired to investigate the reasons why Western Power (now Horizon Power) sold the contaminated site allegedly without full disclosure prior to sale. The contamination was thought to be due to the usage as a power station and the usage of soakage bunds instead of containment bunds. Mr Slater advised that he only found out about the true nature of the Lots when the DER provided the Notice of Classification letter dated 13 June 2012. Further, Deepblue did not add to the contamination of the Lots.
- 2.13. On 17 November 2016, the Committee provided DER's further information to the Appellant for a response, which was due by 19 December 2016. No further submissions were received.
- 2.14. The Committee has considered all documents provided by both the Appellant and the CEO of DER throughout the document exchange.

### **3.0 Appeal Grounds (summary)**

The Appellant raised a number of grounds of appeal;

- 3.1. The term *remediated for restricted use* (RRU) is inconsistent with the definition of *contaminated*.
- 3.2. In referring to the contamination status of the Lots, the Auditor uses the words "*does not appear to be contaminated*", rather than clearly stating "*the site is not contaminated*".
- 3.3. Due to the presence of contamination, the Lots still pose a risk of harm so the RRU classification is inappropriate.

- 3.4. Reference to zoning under the local planning scheme, including the location of the caretaker's residence on Lot 1.
- 3.5. Deepblue did not purchase a contaminated site with encumbrances and/or restriction for use.

#### **4.0 DER responses to the Appeal (summary)**

4.1. The CEO's Report (pursuant to section 80 of the Act) was received on 31 March 2015. DER recommended all grounds of appeal be dismissed.

4.2. Appeal ground 1:

- The Appellant refers to the definition of '*contamination*'. DER advises that under the RRU classification potential risks associated with the residual contamination are able to be managed through the 'restrictions on use'.
- The Appellant refers to the Auditor's statement that "*the site is not contaminated*" and the use of the word '*appear*' in the MAR. DER advises that the MAR outlined in section 4.7 that the extent of contamination at the site includes the residual contamination post remediation.
- The Appellant refers to the contamination risks to human health and the environment. DER states that the contamination status (RRU) does not present an actual risk to human health or the environment based on the existing land use scenario and the restrictions on use.

4.3. Appeal ground 2:

- The Appellant claims that the person who caused contamination should be accountable for all monitoring, reporting and remediation until the Lots are classified *decontaminated*. DER advises that the RRU classification does not require any ongoing monitoring, reporting or remediation. However, further investigation may be required if the land use changes.

4.4. Appeal ground 3:

- The Appellant refers to the zoning of the Lots. DER advises that under the Shire of Port Hedland's Local Planning Scheme No. 5 the Lots are zoned mixed business zone, consistent with the commercial/industrial land use scenario.

4.5. Appeal ground 4:

- The Appellant refers to the contractual arrangements for the sale of the Lots. DER advises that this is beyond the scope of the appeal and is not relevant to the classification of the Lots.

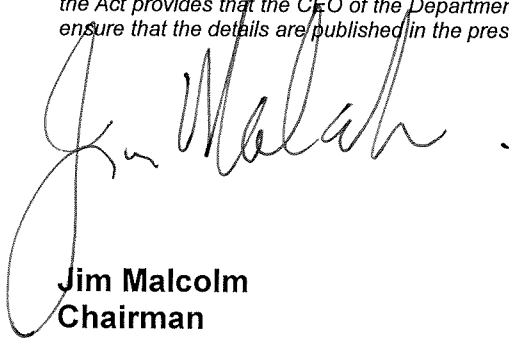
## 5.0 Committee's decision

- 5.1. The Committee has decided that *remediated for restricted use* is an appropriate classification for the Site.
- 5.2. The Site does not pose a risk to human health or the environment based on the existing land use as commercial/industrial. No further ongoing monitoring, reporting or remediation is required under the existing land use.
- 5.3. Contamination may still be present on the Site, however the risks are managed by restrictions on use that are permitted under DER Notice of Classification.
- 5.4. The Committee agrees with the DER's recommendation to amend the relevant statements in the 'reasons for classification' and 'restrictions on use' to indicate that the Lots are suitable for ongoing commercial/industrial or mixed business use, including the existing caretaker's dwelling in the south-eastern corner of the Site.
- 5.5. Contractual arrangements for the sale or purchase of the site are not relevant to the appeal.
- 5.6. The Committee has considered all grounds of appeal and has decided the appeal should be dismissed for the reasons set out above and the classification should remain *remediated for restricted use*.
- 5.7. This decision is final and without appeal under section 82(2) of the Act.

## 5.0 Conclusion

The Committee has decided that all grounds of the appeal should be dismissed and the classification under the *Contaminated Sites Act 2003* should remain as ***remediated for restricted use***.

*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.*



**Jim Malcolm**  
**Chairman**

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

