



Decision in respect of appeal against classification

Contaminated Sites Act 2003, Part 8, Division 2

Appellant: Greg Moore

Site: Lot 4 (9 Roscommon Crescent), Beaconsfield

Date: 31 March 2010

1.0 SUMMARY

- 1.1 The Department of Environment and Conservation (DEC) classified the property known as **Lot 4 (9 Roscommon Crescent), Beaconsfield** as *remediated for restricted use* (with a restriction on the use of groundwater and excavations below 1.0m) under the *Contaminated Sites Act 2003* (the Act) on 18 November 2008. DEC's reasons for the classification were set out in the 'Notice of Classification' given in accordance with section 15 of the Act on 18 November 2008.
- 1.2 On 8 January 2009 the Contaminated Sites Committee (Committee) received from the Appellant an appeal against the classification, lodged in accordance with sections 18 and 79 of the Act. The letter of appeal specified several grounds of appeal that are addressed in detail below.
- 1.3 The Appellant advised that further information may be forthcoming, but no such information was received by the Committee.
- 1.4 On 14 July 2009, 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 a report.
- 1.5 The CEO's report, dated 27 August 2009, was forwarded to the Appellant for response. No response was received.
- 1.6 The Committee considered the appeal and the CEO's report and decided that **Lot 4 (9 Roscommon Crescent), Beaconsfield** should be classified *remediated for restricted use*, and that the restrictions on excavation and the use of groundwater established by the DEC should be retained. Under section 82(2) this decision of the Committee is final and without appeal.

REASONS FOR DECISION

- 2.0 APPEAL GROUNDS (Appellant's wording in *italics*)
- 2.1 GROUND 1 *"Our property is a strata town house on which it is realistically not possible to either dig or sink bores or wells to access ground water ... the classification is thus of no practical effect."*
- 2.2 The purpose of the memorial on the title is partly to advise future landowners who may seek to change the land use and so gain access to the underlying waste or groundwater.
- 2.3 The Committee dismisses this ground of appeal.
- 2.4 GROUND 2 *"It is illogical to restrict access to groundwater at Salentina but not in any surrounding established areas. Clearly groundwater does not observe the surface boundaries of the Salentina subdivision."*
- 2.5 This is not a valid ground of appeal. The validity of the classification of the subject lot is independent of whether or not adjacent lots have or have not been classified.
- 2.6 The Committee dismisses this ground of appeal.
- 2.7 GROUND 3 *"The property is already subject to a WAPC memorial restricting groundwater access. This provides the protection required without the classification under the Contaminated Sites Act which because of the purchaser discloser obligations has a far greater impact on the potential value of the property."*
- 2.8 Once suspected contamination is reported DEC is required by the Contaminated Sites Act to investigate and classify the site, imposing restrictions if necessary. In this instance the restriction on excavation is additional to the groundwater access restriction imposed by WAPC.
- 2.9 The Committee dismisses this ground of appeal.
- 2.10 GROUND 3 *"The disclosure to purchasers that there may be chloride in the groundwater is meaningless as the memorial protects against the extraction of groundwater in any case."*
- 2.11 The Appellant under this ground does not provide grounds for questioning the classification or restrictions applied to the subject lot.
- 2.12 The Committee dismisses this ground of appeal.

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 DEC 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