



DECISION IN RESPECT OF APPEAL AGAINST CLASSIFICATION

Contaminated Sites Act 2003, Part 8, Division 2

Appellant: Aloï Holdings Pty Ltd
Site: Lot 873 on Plan 48248, Certificate of Title Volume 2791 Folio 280
Known as 177 O'Connor Road, Stratton
Decision: Appeal Upheld
Date: 22 May 2013

1.0 SUMMARY

- 1.1 The Department of Environment and Conservation (DEC) classified the site as *possibly contaminated – investigation required* under the *Contaminated Sites Act 2003* (the Act) on 4 September 2012. DEC's reasons for the classification were set out in the 'Notice of Classification' given in accordance with section 15 of the Act on 5 September 2012.
- 1.2 The reasons given for classification were because the site is an operating service station, which is an activity specified in the guideline "Potentially Contaminating Activities, Industries and Landuses", Department of Environment, 2004, and a report that hydrocarbon odours had been observed and there was possible soil contamination during excavations around a UST. No investigations were available regarding groundwater and soil condition.
- 1.3 On 10 October 2012 the Contaminated Sites Committee (Committee) received from the Appellant an appeal against the classification. The Appellant is the owner of the site. The appeal was lodged in accordance with sections 18 and 79 of the Act.
- 1.4 The Appellant provided a number of technical reports and other evidence to be considered by the Committee, including:
- A tank test Diagnostic Report by Leighton O'Brien Field Services dated 27 March 2012
 - Letter from Justin Aloï Managing Director of SLS Sales Pty Ltd re Better Choice Stratton Service Station, dated 5 November 2012
 - Letter from Equinox Fuel Services dated 18 October 2012
- 1.5 On 13 February 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 its report.
- 1.6 The CEO's s80 Report dated 2 April 2013 was forwarded to the Appellant on 8 April 2013 for response. The CEO concluded that the classification for the site should be changed to ***report not substantiated***, however DEC did not have the power under the Act to make this change of classification. DEC provided a draft new reasons for classification of *report not substantiated*.

1.7 The Appellant responded on 29 April 2013, agreeing with the proposed classification.

1.8 The Committee considered the appeal and supporting documents, and the CEO's report on 22 May 2013. The Committee decided that the appeal should be **upheld** for the reasons set out below. Under section 82(2) of the Act this decision of the Committee is final and without appeal.

REASONS FOR DECISION

2.0 Appeal Grounds (Summary)

Ground 1

The report was malicious – because of a dispute between a former employee of Better Choice Stratton which is operating the site

Ground 2

The site is not contaminated to their knowledge – regular maintenance is carried out by Equinox Fuel Services and no reports of contamination had been made

3.0 COMMITTEE'S FINDINGS

The Committee concluded that there was no evidence to support Ground 1, and in any case this was not a relevant ground of appeal.

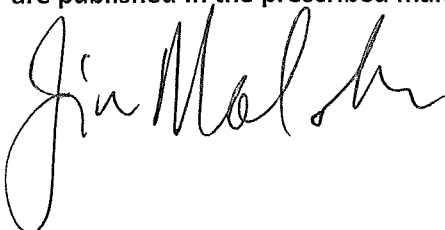
The Committee concluded with respect to Ground 2 that the evidence provided did support this ground of appeal.

In the light of both the Appellant and the CEO approving of a classification of **report not substantiated**, and given the evidence provided in the appeal supports this classification, the Committee determined to uphold the appeal.

4.0 CONCLUSION

The Committee upholds one ground of appeal and alters the classification of the site to **report not substantiated**.

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**