



AGENDA

LATE REPORTS COUNCIL MEETING

7 DECEMBER 2023

Our Community Vision

"We are a thriving region which is safe, liveable and welcoming.

We value our quality of life and embrace our natural environment which affords us both economic and recreational pursuits.

Our industries are recognised for their resilience, quality and innovation and for their contribution to the state of Western Australia.

Our economic diversity provides business and employment opportunities for all."

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ATTACHMENT**L.1 Starkies Pit Rehabilitation Insurance Claim Settlement Offer**

PROPONENT	Shire of Manjimup
OWNER	Shire of Manjimup
LOCATION / ADDRESS:	Lot 778 Starkies Road, Manjimup
WARD:	Rural
ZONE:	Public Purposes
DIRECTORATE:	Business
FILE REFERENCE:	F200001
LEGISLATION:	<i>Local Government Act 1995</i>
AUTHOR:	Greg Lockwood
DATE OF REPORT:	4 December 2023
DECLARATION OF INTEREST:	Nil

BACKGROUND:

On the 12 September 2019 Shire staff presented a report to Council on two known or suspected Contaminated sites in the Town of Manjimup. The following resolution was passed:

COUNCIL RESOLUTION:

MOVED: Winfield, C **SECONDED:** Tapley, D

27940

That Council note the current and pending activities associated with the contamination investigation and remediation works at Lot 778 Starkies Road Manjimup and 16 Wetherell Street, Manjimup.

CARRIED: 11/0

On 14 May 2019, the Shire received a request from the Department of Water, Regulation and the Environment (DWER) seeking information in relation to a complaint that DWER received from a member of the public about dumping of controlled materials at Lot 778 Starkies Road Manjimup also known as 'Starkies Pit'.

After receiving this information, DWER's Senior Investigator, from their Environment Enforcement branch, conducted site inspections at Starkies Pit and 16 Wetherell Street, Manjimup (Shire depot), on 12 June 2019. During these inspections, the DWER Senior Investigator, Environment Enforcement also met and discussed the Works Department's work practices with a number of staff.

The information gathered by DWER resulted in notice from DWER requiring the Shire to take action at Starkies Pit to mitigate further risk to the environment and address recovery, remediation and disposal of contaminated materials.

ATTACHMENT: L.1(1)

From the first communication with DWER, the Shire ceased and/or modified all works associated with Starkies Pit in accordance with the DWER investigations and has been in regular contact with a number of DWER officers, including meetings with DWER Acting Manager of Contaminated Sites, Science and Planning in order to ensure compliance with DWER requirements and legislation.

Since receiving the “Notice of Classification of a Known or Suspected Contaminated Site Given Under Section 15 of the *“Contaminated Sites Act 2003”* the Shire has undertaken significant works under the direction of consultants 360 Environmental to now have the site classified as “Rehabilitated with Restricted Use”.

The remediation works have come at significant cost to the Shire. Whilst covered by the Shire’s Local Government Indemnity Scheme (LGIS) WA Local Authorities Pollution Legal Liability Policy, there remains approximately \$47,094.83 of the \$387,094.83 unable to be substantiated to the satisfaction of LGIS.

The purpose of this agenda item is to seek Council’s approval to write off the unsubstantiated costs of \$47,094.83 from LGIS and to accept the offer of \$340,000 less excess of \$50,000.

PUBLIC CONSULTATION UNDERTAKEN:

Nil.

COMMENT (Includes Options):

Shire staff and consultants 360 Environmental have worked diligently to rectify the contamination issue at Starkies Pit. With works related to contamination cleanup significant costs have been incurred. These costs were predominantly in the 2019/2020 financial year, with further expenditure early in the 2020/21 year totalling \$387,094.83.

The Shire of Manjimup were eligible to claim the remediation costs through the LGIS WA Local Authorities Pollution Legal Liability Policy with an excess of \$50,000. This particular policy is very specific to the land tenure: Starkies Pit is a Reserve set aside for Public Purposes which meets the very restrictive requirements of the insurance policy.

Shire Finance staff have worked with LGIS from the very beginning of the process, submitting invoices to claim on a regular basis. The majority of costs had been finalised by the Shire in early 2020, however, due to the level of expenditure, the claim is being reviewed by LGIS’s underwriters.

For approximately two and a half years Shire staff have been working through this claim. An extensive amount of information to substantiate the claim has been requested and supplied, even to the point of 360 Environmental (Shire’s contractor) having to request timesheets from their sub-contractors to prove expenditure. This two and half years of negotiation has come at a significant

time cost to both the Shire and Contractor, which has seen the unsubstantiated costs shift from approximately \$120,000 to \$47,094.83 in the current offer.

The unsubstantiated costs are summarised as follows:

- WALGA Fees \$2,660 (360 Environmental Invoices) – Disallowed outright;
- Dronow's Contracting \$1,563 – Activities not described in validation report;
- Cleanaway \$4,690 – Not referenced in remedial works documentation;
- Waves Environmental Liability and Risk - \$11,562 – Unsubstantiated voluntary auditor costs;
- 360 Environmental \$25,512 – Costs related to a 3rd ground water monitoring investigation and voluntary auditor costs disallowed;
- 360 Environmental \$3,850 – Groundwater monitoring believed not to be related to the job; and
- Shire Employee/Plant \$1,138 – Costs do not clearly relate to rehabilitation.

Conclusion

Given the level of coverage offered and the underwriters reasoning for denying the items listed above, Shire staff recommend that Council accept LGIS's settlement offer.

STATUTORY ENVIRONMENT:

Local Government Act 1995 Section 6.12(1)

Subject to subsection (2) and any other written law, a local government may –

- (a) When adopting the annual budget, grant a discount or other incentive for the early payment of any amount of money;
- (b) Waive or grant concessions in relation to any amount of money; or
- (c) Write off any amount of money, which is owed to local government.

POLICY / STRATEGIC IMPLICATIONS:

The Shire's Corporate Business Plan 2023-2027 identifies a number of goals and associated actions ensuring the natural environment is suitably managed, that the Shire works to protect and enhance the natural environment and manage risks to the public and environment.

ORGANISATIONAL RISK MANAGEMENT:

The fines related to not responding appropriately to DWER direction are significant under the *Environmental Protection Act 1986* and *Contaminated Sites Act 2003*.

The risk of not accepting the settlement offer, is investing more staff time, contractor time and effort for very little financial gain, given the underwriter's position on the unsubstantiated costs.

FINANCIAL IMPLICATIONS:

The insurance payment revenue is not budgeted for in the 2023/24 adopted budget. Given the payment is based around the cleanup of Shire based activities, it would be appropriate to set the funds aside into the Waste

Management and Site Development Reserve which will have future rehabilitation requirements.

The purpose of this reserve is *“funding the development of waste facility sites upon the expiry of existing landfill sites and the rehabilitation of existing land fill sites.”*

SUSTAINABILITY:

Environmental: Environmental contamination from the past practices resulting in legacy issues or legacy sites is an issue for most local governments and if not appropriately managed in accordance with the relevant legislation may lead to further environmental degradation including but not limited to ground water pollution.

Economic: Works associated with cleaning up the contamination is covered by insurance.

Social: The community expects that Shire work practices are conducted in accordance with current legislation.

VOTING REQUIREMENTS: ABSOLUTE MAJORITY

OFFICER RECOMMENDATION:

That Council:

1. **Accept the offer from Local Government Indemnity Scheme (LGIS) for \$340,000 less excess of \$50,000;**
2. **Make no further claim for the \$47,094.83 of unsubstantiated costs as detailed in this report; and**
3. **Amend the 2023/24 Shire of Manjimup Adopted Budget as per the table below:**

Description	2023/24 Adopted Budget	2023/24 Revised Budget	Adjustment
Insurance Claim Recoups	(\$10,000)	(\$300,000)	(\$290,000)
Transfer to Waste Management and Site Development Reserve	\$50,000	\$340,000	\$290,000
Net Rates Funds			\$0

ATTACHMENTS

- 1 [!\[\]\(e615ca91639aee4263e67e1cc9ac86eb_img.jpg\)](#) DWER Advice - Starkies Pit 6 Pages



Government of Western Australia
Department of Water and Environmental Regulation

Chief Executive Officer
Shire of Manjimup
PO Box 1
Manjimup WA 6258

Your ref:

Our ref: DMO 11405

Enquiries: Lomas Capelli

Phone: 1300 762 982

Fax: (08) 6364 7001

Email: info@dwer.wa.gov.au

Dear Sir/Madam

This letter is the formal notice of classification of a known or suspected contaminated site in which you have an interest. This constitutes the notice the Department of Water and Environmental Regulation (DWER) is legally obliged to give under the *Contaminated Sites Act 2003* (the Act), which came into effect on 1 December 2006.

The Act was set up to record and manage contaminated sites in Western Australia, in order to protect people's health and the environment. Contamination does not necessarily mean that an area is unsafe to live or work in – for example, it may be limited to groundwater, and only becomes an issue to be managed if a groundwater bore was being considered.

This notice explains why the site has been classified, what restrictions, if any, have been placed on the use of the site and how you can appeal the classification. In some cases, this notice may include other lots which also form part of the classified site, in addition to the lot in which you have an interest.

If, after reading this letter, you have any further queries, please contact DWER on 1300 762 982 (Contaminated Sites Information Line).

NOTICE OF A CLASSIFICATION OF A KNOWN OR SUSPECTED CONTAMINATED SITE GIVEN UNDER SECTION 15 OF THE *CONTAMINATED SITES ACT 2003*

The site detailed below (**the site**), consisting of 1 parcel(s) of land, was reported to the CEO of DWER as a known or suspected contaminated site and has been classified under the Act:

- LOT 778 ON PLAN 189109 as shown on certificate of title LR3123/628 known as Manjimup WA 6258

This notification is being sent to you in accordance with section 15(1) of the Act on the grounds that you, as the recipient, are one or more of the following:

- (a) owner of the site (contact details sourced from the current certificate of title);
- (b) occupier of the site;
- (c) relevant public authority;
- (d) person who, in the CEO's opinion, there is particular reason to notify;
- (e) person who made the report under section 11 or 12; and
- (f) person who, in the CEO's opinion, may be responsible for remediation of a site classified as *contaminated – remediation required*.

Prime House, 8 Davidson Terrace Joondalup Western Australia 6027

Locked Bag 10 Joondalup DC WA 6919

Telephone: 1300 762 982 Facsimile: 08 6364 7001

www.dwer.wa.gov.au

Site Classification

Category of site classification: Contaminated - remediation required

Date of site classification: 28/08/2019

Reasons for classification: This site was reported to the Department of Water and Environmental Regulation (DWER) under section 11 of the 'Contaminated Sites Act 2003' (the Act), which commenced on 1 December 2006. The site has been classified under section 13 of the Act based on information submitted to DWER by August 2019.

The site has been used as a council lay down facility, including the extraction of gravel, and the temporary storage of inert materials used in road construction. The site has also been used for the disposal of hydrocarbon wastes associated with the construction of asphalt roads. Waste disposal and extractive industries are activities which have the potential to cause contamination, as specified in the guideline 'Assessment and management of contaminated sites' (Department of Environment Regulation, 2014).

The site was reported following an inspection by DWER officers in June 2019 which identified an unlined pit within the southern portion of the site which had been used for the disposal of liquid hydrocarbons associated with the washing of equipment used to transport and apply bitumen during road construction. DWER understands that both kerosene and diesel have been historically used to wash bitumen residue from equipment, with the resulting liquid waste being deposited into the unlined pit known colloquially as 'Starkies pit'. Subsequent enquiries revealed the existence of a further pit which had historically received liquid hydrocarbon wastes before being backfilled.

Clean-up and recovery works were undertaken in June and July 2019 including the removal and off-site disposal of liquid hydrocarbon waste from the operational pit. Hydrocarbon-impacted soils at the base and sides of the pit were also excavated and stockpiled onsite pending disposal. It is understood the stockpiled soil is stored on and covered with plastic.

Visual observations during clean-up activities indicates that the infiltration and migration hydrocarbon waste was constrained by the clay-based lithology. However, liquid hydrocarbon waste residue has been observed seeping from the base and sides of the excavated pit, indicating that wastes have preferentially migrated along natural sandy clay lenses of higher permeability. The lateral and vertical extent of soil contamination resulting from these migration pathways is yet to be delineated.

Validation samples collected after excavation works indicate that hydrocarbons remain in soils within the pit at concentrations exceeding relevant ecological and human health-based assessment criteria published in the 'National Environment Protection (Assessment of Site Contamination) Measure 1999' (the NEPM).

Groundwater quality has not been investigated.

As the site has only been partially investigated, a comment cannot be made on the suitability of the site as a whole for any land use.

The site is contaminated and remediation is required to reduce risks to human health, the environment and environmental values to acceptable levels, and remedial works are in progress but not yet complete. Therefore, the site is classified as 'contaminated - remediation required'.

At the time of classification further investigation and remedial works were proposed to occur in late 2019.

In accordance with Department of Health advice, if groundwater is being, or is proposed to be abstracted, DWER recommends that analytical testing should be carried out to determine whether the groundwater is suitable for its intended use.

DWER, in consultation with the Department of Health, has classified this site based on the information available to DWER at the time of classification. It is acknowledged that the contamination status of the site may have changed since the information was collated and/or submitted to DWER, and as such, the usefulness of this information may be limited.

Other Relevant Information:

Additional information included herein is relevant to the contamination status of the site and includes DWER's expectations for action that should be taken to address potential or actual contamination described in the Reasons for Classification.

Where the land is part of a transaction - sale, mortgagee or lease agreement, the land owners MUST PROVIDE WRITTEN DISCLOSURE (on the prescribed Form 6) of the site's status to any potential owner, mortgagee (e.g financial institutions) or lessee at least 14 days before the completion of the transaction. A copy of the disclosure must also be forwarded to DWER.

This site is considered to be high priority for action to be taken to address contamination, as described below

Action Required:

Further soil investigations are required to adequately delineate and characterise the nature and extent of contamination at the site. Investigations for groundwater, surface water, and/or soil gas may also be required as the nature and extent of soil contamination is defined. Investigations are to be carried out in accordance with DWER's Contaminated Sites Guidelines and the NEPM.

The investigations referred to above should inform the assessment of remedial options and the subsequent development of a remedial action plan.

At the time of classification further investigation and remediation was proposed to occur in late 2019. A site remediation and validation report documenting investigations and remedial works should be completed and submitted to DWER by January 2020.

Hydrocarbon-impacted soils stockpiled on the site should be characterised and disposed to an appropriately licenced landfill facility or otherwise treated/bio-remediated such that they do not pose an unacceptable risk to human health, the environment, or any environmental value.

General Information

The nature and extent of contamination and any restrictions on the use of the land, if applicable, are listed in Attachment A.

Information in relation to the classification of the site is available free of charge as a summary of records via the Contaminated Sites Database at www.der.wa.gov.au/contaminatedsites.

In some instances DWER has had to classify sites based on historical information. A site may be re-classified at any stage when additional information becomes available, for example where a new investigation or remediation report completed in accordance with DWER's 'Contaminated Sites Guidelines' and the *National Environment Protection (Assessment of Site Contamination) Measure*

1999, is submitted to DWER. The current site classification is the classification most recently conferred on the site.

Memorials

In accordance with section 58(1) of the Act, DWER will lodge a memorial with the Registrar of Landgate, recording the classification against the site's Certificate(s) of Title LR3123/628. Parcel(s) without a registration number or certificate of title will not have a memorial lodged against them until a certificate of title has been created. Once complete, confirmation of the lodgement of the memorial(s) will be forwarded to the following people:

- (a) each owner,
- (b) Western Australian Planning Commission;
- (c) CEO of the Department of Health;
- (d) Local Government Authority;
- (e) relevant scheme authority.

Given that memorial(s) will be lodged against the site, the Western Australian Planning Commission (WAPC) may not approve the subdivision of the land under Section 135 of the *Planning and Development Act 2005*, or the amalgamation of that land with any other land without seeking, and taking into account, the advice of DWER as to the suitability of the land for subdivision or amalgamation. Furthermore, a responsible authority (e.g. Local Government Authorities) may not grant approval under a scheme for any proposed development of the land without seeking, and taking into account, advice from DWER as to the suitability of the proposed development.

Disclosure upon sale / lease / mortgage of the site

Where the land is part of a transaction – sale, mortgage or lease agreement – and is classified as

- *contaminated – remediation required;*
- *contaminated – restricted use; or*
- *remediated for restricted use;*

land owners MUST PROVIDE WRITTEN DISCLOSURE (on the prescribed Form 6 enclosed) of the site's status to any potential owner, mortgagee (e.g. financial institutions) or lessee at least 14 days before the completion of the transaction. A copy of the disclosure must also be forwarded to DWER.

Important note: Failure to provide written notice is an offence and carries a penalty of up to \$125,000 and a daily penalty of \$25,000.

Transferring responsibility for remediation

This site has been classified '*contaminated – remediation required*'. Where transfer of responsibility for remediation is proposed, the person responsible for remediation must obtain written agreement from the person to whom the whole or part of that responsibility will transfer, and seek written approval of that agreement from DWER in accordance with section 30 of the Act. If it is proposed to transfer responsibility for remediation to the State, then written approval from the Minister for Environment must be obtained.

Appealing the Site Classification

All site classifications given by DWER are appealable. However, only certain people can lodge a valid appeal. The people who can lodge a valid appeal varies, depending on the classification category, as detailed in Fact Sheet 4: *Site classifications and appeals*. Appeals need to be lodged in writing with the Contaminated Sites Committee at Forrest Centre, Level 22, 221 St Georges Terrace, Perth WA 6000, within **45 days** of being given this notification. The appeal should set out

the appellant's relationship to the site, and must include the grounds and facts upon which it is based. An appeal fee (currently \$45) applies.

To find out more about the appeal process, see the Contaminated Sites Committee website at www.csc.wa.gov.au or contact the office of the Committee on (08) 6364 7264.

For further information on all aspects of site classification, please refer to Fact Sheet 4 and the 'Contaminated Sites Guidelines', which are available from DWER's website at www.der.wa.gov.au/contaminatedsites or by contacting the Contaminated Sites Information Line on 1300 762 982.

Yours sincerely



Scott Jenkinson, A/Manager

CONTAMINATED SITES REGULATION
Delegated Officer under section 91
of the *Contaminated Sites Act 2003*

29/08/2019

Enc. Attachment A – Nature and Extent and Restrictions on Use.

[Fact Sheet 4: Site classifications and appeals](#)

[Fact Sheet 5: Buyer beware – buying and selling contaminated land](#)

[Form 6 – Land Owner's Disclosure Before Completion of Land Transaction](#)

ATTACHMENT A – Nature and Extent and Restrictions on Use

- LOT 778 ON PLAN 189109

Nature and Extent: Hydrocarbons (such as from bitumen waste, kerosene and/or diesel) are present within soil in the southern portion of the site at the location of pits formerly used for the disposal of bitumen waste.

Restriction on Use: The land use of the site is restricted to commercial/industrial use with access by authorised persons only. The site should not be developed for a more sensitive use such as recreational open space, residential use or childcare centres without further contamination assessment and/or remediation.