



Parliament of Tasmania

JOINT STANDING COMMITTEE

ENVIRONMENT, RESOURCES AND DEVELOPMENT

INTERIM REPORT

Shack Sites Reference

Members of the Committee

Mr Brenton Best MP
Mr Bryan Green MP
Hon Greg Hall MLC (Chair)
Hon Tania Rattray Wagner MLC

Mr Kim Booth MP
Mr Peter Gutwein MP
Hon Paul Harriss MLC
Hon Jim Wilkinson MLC

Secretary: Dr Colin Huntly

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INTRODUCTION

APPOINTMENT AND TERMS OF REFERENCE

The Joint Standing Committee on Environment, Resources and Development was established for a trial period from 7 April 2004 and was re-established on 30 May 2006 following the State Election on 18 March that year. The Committee as at the date of this Report was re-established by Order of the Legislative Council on 4 March 2008, agreed to by resolution of the House of Assembly on 5 March 2008.

SHACK SITES ORDER OF REFERENCE

On 2 September 2008 the Legislative Council resolved to refer to the Joint Standing Committee on Environment, Resources and Development for investigation and reporting:

The implementation of the Crown Lands (Shack Sites) Act 1998 and in particular to inquire into and report upon —

- (a) *the processes followed in the assessments and determinations relative to shack sites to which the Act applied;*
- (b) *the assessment of Aboriginal middens and whether any original assessments were subsequently reversed and the reasons for such;*
- (c) *infrastructure intended to be taken over and managed by Councils which has not been taken over;*
- (d) *the involvement of the various authorities referred to in the Act;*
- (e) *the appeal processes available to lessees or licensees and the outcome of appeals;*
- (f) *any other matters incidental thereto.*

PROCEDURAL MATTERS

The Committee placed advertisements calling for submissions on this Order of Reference on Saturday, 13 September 2008 in the early general news sections of the three major daily newspapers circulating in the State. Submissions were conditioned for receipt by close of business on Friday, 24 October 2008. Fifty one submissions were received in response to these advertisements.

The Committee conducted site-visits relating to this Order of Reference on Monday, 20 July 2009 in the West Point and Sundown Point areas, and on Wednesday 22 July 2009 in the Eddystone Point and Anson's Bay areas.

To date, the Committee has also held Hearings relating to this Order of Reference at the Burnie Civic Centre on Tuesday, 21 July 2009, at the Launceston City Council on Thursday, 23 July 2009 and at Parliament House, Hobart on Monday, 27 July 2009 and Tuesday, 28 July 2009.

In addition to ten informal on-site briefings, the Committee has heard from more than twenty sets of sworn witnesses.

BACKGROUND

JOINT SELECT COMMITTEE ON PUBLIC ACCOUNTS REPORT

This Committee notes that the Joint Standing Committee on Public Accounts tabled its: "*Administration of the Crown Lands (Shack Sites) Act 1997*" Report on 18 November 2008. That Report made the following three recommendations:

1. The Government establish an independent appeal process where aggrieved shack owners can seek *ex-gratia* compensation/redress for delayed valuation increases, unsatisfactory or incomplete infrastructure and, or, for other costs incurred by a sale which was not completed until after 1 January 2003 with the total sum within a pool accessible by valid claimants to be determined by the Government.
2. Any such *ex-gratia* payment should only be available to the leaseholders of shack sites who were the subsequent purchasers or are to be purchasers of the freehold title.
3. As a benchmark for delayed sales and any increase in valuations, the Valuer-General be instructed to provide a land valuation of all those shack sites which had not been sold by 1 January 2003 and which become the subject of a claim. This valuation is to be calculated on unimproved land valuation as at 1 January 2003.

In addition to the above recommendations, the Public Accounts Committee made 39 findings.

The Government published its response to the Public Accounts Committee Report in February 2009. That response can be shortly summarised as a rejection of the Public Accounts Committee's findings and recommendations.

CORRESPONDENCE WITH THE MINISTER

Recently it became apparent to this Committee that the final round of Shack-Site evictions and demolitions was scheduled to be concluded by the Department of Primary Industries, Parks, Water and the Environment during September and October 2009.

The Committee was concerned that it would not have adequate time to conclude its deliberations on this Order of Reference prior to execution of these orders for eviction and demolition. The Committee resolved to write to the Minister for Primary Industries, Hon David Llewellyn MP on 27 May 2009 seeking a stay of these orders until the Committee had had an opportunity to report to the Parliament (Appendix A). The Hon Minister replied to the Committee by letter dated 30 June 2009 advising that he could not delay the evictions and demolitions (Appendix B) given the current legislative framework. However, during his Hearing with the Committee the Minister indicated that he was open to implementing any reasonable recommendations made by the Committee provided that he had the legislative power to do so.

PRELIMINARY FINDINGS & RECOMMENDATIONS

While this Committee has yet to conclude its assessment of the evidence before it, the Committee can report to the Parliament that a strong prima facie case exists to suggest that the Crown Lands (Shack Sites) Act 1997 has been administered in such a way as to cause some shack-site owners material disadvantage due to a denial of some of their fundamental common law rights, including denials of natural justice and procedural fairness.

It is the view of this Committee that the final round of Shack-Site demolitions should be halted immediately to enable this Committee to form a final view on these matters before there is an irreversible detriment to Tasmanian citizens. However, where an individual licence-holder to proceed to demolish their shack, they should be permitted to do so.

The Committee therefore makes the following recommendation:

Recommendation 1

The Government should immediately halt all scheduled Shack Site evictions and demolitions for a period of not less than 12 months pending the Government's response to the outcome of Recommendation 2. In the event that this requires legislative amendment, the Government should introduce the necessary legislation as a matter of urgency so as to ensure its passage through the Parliament prior to September 1, 2009.

The Committee also recommends that

Recommendation 2

The Government should immediately appoint a retired judicial officer, or similarly qualified individual, to conduct an independent inquiry with terms of reference identical to that of the Joint Standing Committee on Environment, Resources and Development's Shack Site Order of Reference to report to the Parliament by 31 July 2010. That appointee should be provided with all evidence gathered by the Committee to date, including *In-Camera* evidence provided on an *in-camera* basis. The appointee should also be bestowed with full decision making powers.

The Committee further recommends that

Recommendation 3

The annual lease fees for shack sites on Crown land, as per section 17 of the *Crown Lands (Shack Sites) Act 1997*, should be set at the lesser of \$1,500.00 or 2% of the land valuation as at 2007, and thereafter adjusted in line with movements in the Consumer Price Index. In the event that this requires legislative amendment, the Government should introduce the necessary legislation as a matter of urgency so as to ensure its passage through the Parliament prior to September 1, 2009.

INCIDENTAL CONCERNS

This Committee has heard evidence indicating that, as a result of implementation problems in the Shack Sites Project, shack site owners and occupiers find themselves caught between the conflicting policies of State and Local government entities. This Committee has formed the initial view that it is inappropriate and unreasonable for both levels of Government to derive rating, fee and taxation revenue from these citizens, while, at the same time fail to resolve these conflicting policies.

HON GREG HALL MLC
Chair

July 2009

Appendix A

Letter from Hon Greg Hall MLC dated 27 May 2009

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FAX: (03) 6233 1849
Email: colin.huntly@parliament.tas.gov.au



PARLIAMENT HOUSE
HOBART TAS 7000

27 May 2009

Honourable David Llewellyn MP
Minister for Primary Industries and Water
First Floor
Franklin Square Offices
HOBART 7000

Dear Minister

**Joint Standing Committee on Environment,
Resources and Development
SHACK SITES**

The above Committee has instructed me to write to you in the following terms relating to the above Order of Reference.

The Committee is aware that a number of Shack Sites are scheduled for demolition from early September 2009. The Committee intends to conduct public hearings on its Shack Sites reference in July/August of this year.

The Committee has not considered any of the evidence relating to the Shack Sites reference at this point in time. I am instructed that the Committee intends to present such evidence to the Parliament in order to assist you in making any final determinations relating to Shack Sites.

The Committee respectfully requests that the Department extend any demolition deadline applying to Shack Sites until the Committee reports to Parliament. At this stage the Committee intends to make its Report to the Parliament by the end of 2009.

Yours sincerely

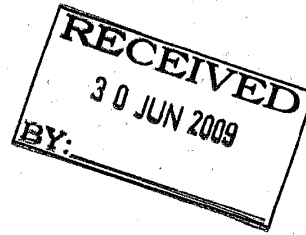
**Per Hon Greg Hall MLC
Chairman**

Appendix B

Letter from Hon David Llewellyn MP 30 June 2009

Minister for Primary Industries and Water

Level 1, Public Buildings
Franklin Square,
Hobart, TAS 7000 Australia
Ph (03) 6233 6454 Fax (03) 6233 2272



30 JUN 2009

Hon. Greg Hall
Chairman
Joint Standing Committee on Environment Resources and Development
Parliament House
HOBART TAS 7000

Dear Mr Hall,

Inquiry into Shack Sites

I am writing in response to your letter of 27 May 2009 seeking to have my Department extend any demolition deadline applying to shack sites until your Committee reports to Parliament at the end of the year. I also note your Committee's advice that the Inquiry will assist me in making any final determinations relating to shacks.

As advised in my submission to the Committee of 28 October 2008, all determinations under the Crown Lands (Shack sites) Act 1998 were completed by 2002. The determinations were able to be appealed by shack owners in accordance with the Act, and indeed a number were appealed and hearings were held by the Shack Sites Commissioner. There is now however no capacity to alter the determinations.

As also advised in my submission to the Committee many of the shacks determined for removal have now been removed. A total of 26 shacks have been removed out of the 53 determined for removal. These 26 shacks were required to be moved by September 2008. A further 22 shacks are due to be removed by September 2009. In view of the fact that the process is so well advanced I am not able to agree to a deferment. In any event, as you would realise, the determinations have been lawfully made and cannot be changed.

Yours sincerely

A handwritten signature in black ink, appearing to be "David Llewellyn".

David Llewellyn MP
MINISTER FOR PRIMARY INDUSTRIES AND WATER