

**THE PARLIAMENTARY JOINT STANDING COMMITTEE ON ENVIRONMENT,
RESOURCES AND DEVELOPMENT MET IN BURNIE ON 21 JULY 2009**

SHACK SITES

Ms JUNE McLAREN AND **Mr IAN McLAREN** WERE CALLED, MADE THE STATUTORY DECLARATION AND WERE EXAMINED.

CHAIR (Mr Hall) - Welcome and just relax, we will be as informal as we can. If, at any stage, you feel that you need to go into camera you can ask me, as the Chair, and we can consider that.

Ms McLAREN - We have nothing to hide.

CHAIR - Everything you say today to this committee is protected by parliamentary privilege. This is to allow you to speak freely. However, once you have left the committee room, I must advise you not to specifically discuss your written or verbal evidence with anyone until the committee has made its report. You are free to speak generally about any issue to anyone but please do not refer specifically to anyone about the evidence you have given to the committee until the report has been published.

Your submission is number 59 and I understand you have had conversations with someone - Dr Huntly was on leave at the time - but I think you spoke to Ms Mann. I will now invite you to tell us your story.

Mr McLAREN - When we received the determination, we agreed with everything except the roads. There was a map that came with it that showed a turning circle right behind our shack. We appealed this to the Central Highlands Council because the commissioner never had the power over roads and the council upheld our appeal.

CHAIR - Sorry, just explain where your place is?

Mr McLAREN - Southern Brownie Bay, Great Lake. The council upheld our appeal and that was more or less it. They came up in February and said that they agreed. They told the Government and Scott Marston was the chap who was there. The mayor and deputy mayor were there and a couple of other council blokes and they said, 'Take that from there and get rid of it.'

The shack sites project came up. We worked out where the turning circle was to go. They put it there and in May they came back with a plan, version 2, May 2002, which shows that the turning circle had been moved. The chap next door, who was using that other road, was given what they call an 'axe-handle effect' - you come across a bank and face onto a council road. That was it. There were no hassles with that. We were pleased with it, the Government was pleased with and everyone was pleased with it.

After Scott Marston left and Mr Jones took office, someone suggested that Pitt and Sherry go in and they came up with a figure that it was going cost \$90 000 to put a road

across a bank. We said that we did not ask for this, we only asked that it had to be a private access road and not a two-lane highway. So we went to see some people. Byron was one whom we saw and he said he agreed. We came up with a second and cheaper version of that - it came down around another corner of his block into his land off the middle road. We sent that down to the Government and we heard nothing.

They came up to our property 12 months later and had a big meeting and Pitt and Sherry were there. A man called David Cole was there and I said to him, 'How do you come up with a figure of \$90 000? He said, 'I am taking the worst case scenario, if anything moves.' I said, 'Well, the bloody bank has been there for the last 50 million years, I do not think it is going to move now.' Anyway, we put the second option up to him and he said, 'That is brilliant, I agree with it. You go and get it profiled - that is, graded - and if it is over one in 10, send it down to the shack sites project and I will push it through government and also council.' We got it done and we paid money out of own pocket to do it. We sent it down in November, I think, 2004 or 2005 and they sat on it for six months and we heard nothing - never heard a thing back.

Michael Jones and Vicky Shawok(?) started to say that it was going to cost \$40 000 per block and I said, 'How much for that road again?' and they said, 'We're waiting on the council's quote for it'. I said, 'I've got one here for \$20 000' and they kind of went green around the gills. I then said, 'What about the second option?' and she said, 'That's out. We're selling those blocks up there and you can't do it'. She also said, 'We can't move pegs'. We just started laughing. I said, 'How can you sell something that's under dispute?' and she said, 'We're the government, we can do what we like'. At the time we said to her, 'We sent that down with you from the minister and he agreed with us' - and they said, 'What minister?' and we said, 'Minister Green', and they laughed. They actually called him stupid - worth nothing. I am sorry, Bryan, but they did. So we went home, I wasn't even interested in talking to them. Then they tried for four years - it was an argument between DIER and DPIWE about a road that had to go down off the highway 60 metres. DIER said they were not paying for it. Henry and Luke Millington went in and said, 'It is well within the Australian standard. All we have to do is put up a concealed entrance sign and that will do'. When Bryan said he was not paying for it, that it was within Australian standards, they came back and said that the shack owners will pay for it. We said, 'Like blazes we will. We're not paying for something that doesn't have to be moved. If you want to move it, you pay for it'. After about 12 months things kind of died off and then they came back and said, 'That's been fixed up here now but we're putting a covenant on your land'. I said, 'What allows you to do that? They said, 'We're the government, we can do what we like'. I said, 'But we've appealed it' and they said, 'Oh no, there was no appeal. It was just an objection'. We were amazed. For seven years they've kicked the living crap out of us to relent and go to the council and say, 'McLarens give in. We want this culvert to go through this property'. We have been in touch with the deputy mayor and one of the chaps was there and he said, 'What are they doing this for? They can't do it. We've made a decision'.

Mrs McLAREN - To cut a long story short, they put the road round the back behind our block and now they have said, 'You wanted it moved, you have to pay for it' and they have put it on our bill. Why should we have to pay for a private access road to another gentleman's property that we can't ever use or own?

Mr HARRISS - What is the cost of that extra on your bill?

Mrs McLAREN - It is \$5 108. We got a gentleman up there with earthmoving equipment to give us a quote to put that road across there ourselves and it was \$2 500. We sent it down to the shack site people and they wrote back to us and said, 'No, we can't accept that because you haven't quoted in any covenants, drain pipes or anything like that'. When they came and put the road in there were no covenants or drain pipes in the road they put in. Now they have said, 'You wanted that road removed from going through your shack site so you pay for his road'. They haven't asked him to pay any money for his own road.

Mr HARRISS - Mr McLaren, you mentioned that somebody, through that process that you are just explaining to us, had agreed with a different form of road.

Mr McLAREN - The second option? Bryan asked us to send it down and then the man from Pitt and Sherry, David Connelly, was there and he said, 'Yes, that would be the best option'. He walked over with us and another chap up there at the time had a shack there, Max Triffett, and David Connelly said, 'That would be the best option out. If you come down round there, there would be no problems. You're not near a bank and it'd be perfect'.

Mr HARRISS - And from there the shacks project team got involved and it was they who said, 'No, you're not getting that', as I recall you saying.

Mr McLAREN - Yes. They kept it for six months and then just said to us, 'No, you cannot have that. We cannot move pegs'.

Mrs McLAREN - Those shacks up there have been sold.

Mr HARRISS - That was an on-site visit?

Mr McLAREN - Yes.

Mr HARRISS - And you mentioned Mike Jones and the big issue block too?

Mr McLAREN - Yes, Pitt and Sherry was there, David Connelly and Ken Bye from the Shack Owners Association.

Mrs RATTRAY-WAGNER - Was the Mayor at that meeting?

Mr McLAREN - No, not that one. But we did send down another option to the Deputy Mayor later on. It was the same kind of scenario.

Mrs McLAREN - We sent the same thing down to him.

Mr McLAREN - We brought the turning circle back up the bank because the contractors, Shaw's, went up there to give a contract price on doing the work. They looked at that and said, 'No, we will not even touch it because that turning circle where it was put was dangerous to the shack that was in front of it.'

Mrs McLAREN - This is the middle road you are talking about.

Mr McLAREN - Yes, the middle road. I said, 'Bring that back up 70 metres' - it was just a suggestion - 'Come off there with the three shack driveways, two down the hill and one around the corner, as we suggested'. But that never got anywhere either. We took that through to Steve Kons as well and Steve Kons said, 'Yes, I agree with it. It would be a good idea'.

CHAIR - So here basically you have a stand-off, at the moment? Is it where we are at?

Mr McLAREN - Yes. Actually, we have been told now if we do not pay the \$5 100 we cannot get our title.

CHAIR - So you've yet to get title.

Mr McLAREN - Yes.

Mr GREEN - Did you pay any money?

Mrs McLAREN - No.

Mr McLAREN - We sent our \$1 000 and they sent it back to us. What we are after now -

CHAIR - What is the time line they have on here?

Mr McLAREN - We have until 8 December.

Mrs RATTRAY-WAGNER - This year?

Mrs McLAREN - Yes.

Mr McLAREN - We asked for a revaluation in December 2008 and it took us until 15 June to get it. Then we had to write a letter to the Premier to get him to kick someone's backside to get that.

Mrs McLAREN - So they sat on it for five months. Because when you tick a box on the notification saying whether you want a review, you send it back to the Shack Sites and they are supposed to get all the information together and send it to the Valuer-General to do a 30-day review on it. Well they sat on it right until 15 June before we actually got our review and now we only have until 8 December to try to get this sorted out.

Mrs RATTRAY-WAGNER - When the review of the valuation happened, did it decrease?

Mrs McLAREN - No. When the Valuer-General's valued all the shacks up on the western side of Great Lake in 2003, the actual price for ours was \$22 250. They sent the bill now for \$23 800-something plus this \$5 108 on top of that for this gentleman's road. Also, in the formula that came, if you put in your own septic tanks up there you got that deducted off the Valuer-General's price. They did not do that, so I wrote and asked Kathryn Clark why she did not deduct my septic tank, because we installed it, and she just politely said, 'We did not put it on the bill, you do not get it off'. Yet every other shack up there -

Mr McLAREN - Works under what they call 'the formula'.

Mrs McLAREN - all received their septic tanks deduction off the Valuer-General's price.

CHAIR - Do you have that in writing, that they would deduct that amount off?

Mrs McLAREN - Yes, it is here in the formula.

CHAIR - Okay.

Mrs McLAREN - We have had this going for seven years. It is ridiculous.

CHAIR - If there are any pertinent bits of paper you might like to table and we can copy them.

Mrs McLAREN - I have copied all that. You can take the lot.

Mr McLAREN - Take it all with you and look through it. Somewhere on the second page you will find it.

Mrs McLAREN - It comes under 'Waste Water' there on the second page.

Mr McLAREN - It is specifically made for Brownie Bay.

CHAIR - We have highlighted that. 'Scott Marston has negotiated a formula with the Valuer-General' - that's about the valuation. Going down there a bit further. No doubt I will see it somewhere.

Mrs McLAREN - Yes, it comes under 'Waste Water'. Over the page it shows you how they set out what your price is, your infrastructure price, the deduction of waste water and everything. On our notification we never received any of that set out. We were just told straight out 'That is your price'. I wrote to ask if they could put it all down into components so I knew how much the infrastructure was - fire tank and septic tank- and they did not even answer me. I never received anything back from them.

Mrs RATTRAY-WAGNER - The access to the other property that you referred to, do you know if that particular property has any component of infrastructure works on it?

Mr McLAREN - We asked him if there was any component on his bill for the road and he said no.

Mrs McLAREN - You mean whether he has been asked to pay for anything?

Mrs RATTRAY-WAGNER - Yes.

Mrs McLAREN - I asked and he said no.

Mrs RATTRAY-WAGNER - So this was just a straight-out purchase of his block without any road infrastructure, even though the road is actually his access.

Mrs McLAREN - Yes. His block has a tail, which comes off the council turning circle. As far as I know, he did not have to pay anything for that road that was put in. They just came to Ian and me and said, 'You wanted that road put there, you pay for it'. It's on his land, not ours.

Mr McLAREN - It is his private access road, no-one else can use it but him.

Mrs McLAREN - They said they couldn't put the price of it on the other six shacks in there because they don't use the road, it's nothing to do with them. Well, neither do we use it.

Mr McLAREN - The Valuer-General's price that was given to us on 17 June, apparently Minister Llewellyn has overridden it. He has told the Premier that he is not going to accept it, that he wants full infrastructure plus \$1 000. I didn't think he could do that.

Mr GREEN - How do you know that?

Mr McLAREN - He said that in a letter to the Premier. The Premier sent us a letter saying that David Llewellyn told him that he wanted full infrastructure plus \$1 000.

Mr GREEN - For cost recovery on the road?

Mr McLAREN - Yes.

Mrs McLAREN - We've always been led to believe - and even in the formula - that the Valuer-General's price was the price that you pay, that they couldn't go over it and we couldn't go under it.

Mrs RATTRAY-WAGNER - Is it possible to have a copy of that letter?

Mr McLAREN - You can have all of it.

Mrs McLAREN - We've been told if we haven't got all this money paid by 8 December they will come in and revalue the property to today's valuation. I wrote and said that asking us for that money is blackmail. I believe it is blackmail, to say that unless you pay the money up front you don't get your notification of sale or your deeds. I didn't think they could do that. I couldn't walk up to Mr Green on the street and demand \$5 108 out of him.

Mr GREEN - It's not so much about the \$5 108, the thing is that the other shack owners wanted to keep that additional cost going as part of that subdivision.

Mrs McLAREN - They weren't asked to pay for it.

Mr McLAREN - If the council moves the road under appeal then why isn't the cost included in all the infrastructure up there if the Government has to put it in, not just one shack? The minister went into the Public Accounts Committee last year and stated that out of the 379 shacks, which is the true state of the western side of the Great Lake, that he paid \$11 000-odd infrastructure costs over every shack. He stated that he's paid that. If he has paid that upfront and they took off with the money, then that is not our fault either

because if he has paid it, they are trying to dib twice. He has let his people pay infrastructure twice. If he wants to try to recoup it, he can recoup it somewhere else.

CHAIR - What you have explained to us falls under our Terms of Reference 1, the processes that have gone on, so we can have a look at that. Anything else you would like to say at this stage?

Mr McLAREN - Not really.

CHAIR - It is very good, you have given us what we need; in terms of paperwork and documentation it is all there.

Mr HARRISS - Mr Chairman, I raise the question to the McLarens as to whether there is anything else in that pile of documentation they have. They have offered a number of times for us to take all the documentation but it is a matter of whether we want to, it might be easier for you to address your mind to the controversial pieces of correspondence you have rather than us taking the whole lot of it and wading through correspondence that might not be relevant to these issues.

Mrs McLAREN - We actually have our quote for getting that road done, for \$2 500.

Mr HARRISS - I think that would be useful.

CHAIR - Was that the Shaw's or another one?

Mr McLAREN - That was another one.

Mrs McLAREN - That was done through Frank Moore. He gave us that quote, that he could put it in for \$2 500.

Mr McLAREN - And we were willing to pay that. That was our quote - we said we would pay the \$2 500 to make this go away.

Mrs RATTRAY-WAGNER - Was there ever any indication by the Shack Sites project team of why they would not accept that \$2 500?

Mr McLAREN - Yes, they said they had to have culvert heads and pipes put through - and open drains - and when it was put through it was exactly the same kind of road that we were going to put through. Actually, the bloke saw us after it was finished and said, 'What a mess'. We had to go in front of that and put up a retaining wall because they just sat big stones on other stones and if there was a bit of rain it was going to slide. So we had to go along and shore it all up.

Mr HARRISS - Did you make a representation to the Public Accounts Committee?

Mr McLAREN - Yes, but we didn't get on that.

Mrs McLAREN - I also have copies of other shackowners' notifications of sale, of how they got all their tanks off and how theirs were set out - and that was worked under that formula that was given.

Mr HARRISS - Include that please.

Mrs McLAREN - Also our notification of sale of which none of it was set out like that.

Mr HARRISS - That comparison will be useful.

With regard to the other people's information, Dr Huntly has just mentioned to us that there would be a breach of Commonwealth privacy legislation without the authority of the other people for you to provide that to us.

Mrs McLAREN - You couldn't use that?

Mr HARRISS - No.

Mrs RATTRAY-WAGNER - I notice there was one with the name whited out though.

Mr McLAREN - Still can't have it?

CHAIR - I have just been advised by the Secretary that you can identify those people and we can make contact with them, if you think you would like to do that. It is up to you, that's your call.

Mrs McLAREN - Mr Bellchambers.

CHAIR - Where is he?

Mrs McLAREN - 25 Forth Main Road, Ulverstone. There was also one There was also Vicki, but she crossed her name out.

CHAIR - Mr Bellchambers?

Ms McLAREN - Yes. That is our notification of sale. Do you want Bellchambers' there or not or are you not allowed to accept it?

CHAIR - No, we will contact him.

Ms McLAREN - That is our notification of sale and that is the \$2 500 for that road that we had a quote on. I cannot think of anything else.

CHAIR - I think you have explained it pretty well. Thank you very much for the documentation. It is the aim of the committee to report as soon as we can because there are some issues with some shack demolitions and there are other issues. So there are a lot of cases that are quite different, as you understand.

Mr HARRISS - Mr Chairman, before we close, what are the ramifications for you, if you stand your ground for the moment, pending a resolution of the stand-off and do not pay the requested amount?

Mr McLAREN - Revaluation of the block.

Ms McLAREN - They will come in December and revalue at today's prices.

Mr HARRISS - Okay. The valuation that you are operating under at the moment is dated when?

Ms McLAREN - 2003, when the valuer went in and did all the western side of the Great Lake.

Mr McLAREN - The only thing we have left with this is an appeal to the Administrative Appeals Division of the Magistrates Court. That is the only avenue we have left.

Mr HARRISS - Has the department made it abundantly clear to you that if you do not settle by that identified date, there will be a new valuation and that will be the price you will be required to pay? They have made that very clear?

Mr McLAREN - Yes, that is from Sue Chapple.

CHAIR - We had better take that.

Mr McLAREN - We even have a letter that we wrote to Lou Rae, the old Valuer-General and he stated in there that the actual road price did not really come into it. If he went in and valued it, he would value it as if it had a fire tank and a septic tank and the roads were in there.

Ms McLAREN - Did I give you the recent Valuer General's valuation that came up in June, for \$22 250? That should be here too. Even, our lawyer wrote and asked them how they came up with that figure of \$5 108 and they did not even answer that.

Mrs RATTRAY-WAGNER - They did not answer your lawyer's letter?

Ms McLAREN - No. That is the Valuer-General's 2003 valuation and that is Sue Chapple's letter, where she says it will be revalued.

CHAIR - You have given us plenty of reading material.

Ms McLAREN - Yes, I have oodles of it!

CHAIR - On behalf of the committee, thank you very much for coming in and giving your evidence.

THE WITNESSES WITHDREW

Mr RON FREEMAN WAS CALLED, MADE THE STATUTORY DECLARATION AND WAS EXAMINED.

CHAIR (Mr Hall) - It is a public hearing and so it is transcribed on *Hansard*. If there is anything that you want to say in private then you can ask to have it heard in camera if you wish. I will just reconfirm that everything you say today in this committee is protected by parliamentary privilege. This is to allow you to speak freely. However, once you have left the committee room, I must advise you not to specifically discuss your written or verbal evidence with anyone until the committee has made its report. You are free to speak generally about any issue with anybody but please do not refer specifically to anybody about the evidence you have given the committee until the report has been published. We have your written submission, which is number 50.

Mr FREEMAN - I did not put one, did I? I was too late.

Mr HARRISS - It is just a notification that he wanted to give verbal evidence.

CHAIR - This is the one dated 23 December.

Mr FREEMAN - I have it here.

CHAIR - That was the one that you probably gave to the Public Accounts Committee on 23 December.

Mr FREEMAN - Is that a copy of David Llewellyn's letter?

CHAIR - Yes, it is. I will leave you to it.

Mr FREEMAN - Just reading from that David Llewellyn letter, where Marian and I outlined our concerns - our total dissatisfaction of the shack sites process on many counts, but in particular with the length of the process, the cost of land valuations, the land being valued on the precept that working infrastructure was in place, lack of working infrastructure, the Government having the Infrastructure Fund and shack owners missing out on interest, and the exorbitant cost of the power.

I would like to stress that the reason there were not more submissions sent to the inquiry is that most crown land shack owners at Ansons Bay and around the State did not see the small notice in the paper, which I found later was only supposed to be gazetted in one paper in the State, the *Mercury*. This, I believe, is a big problem. About 98 per cent of the people at Ansons Bay did not even know about the last inquiry, let alone this one. They just did not get the notification of it. I think that is bad. I think all the shack owners in Tasmania should have been notified of the inquiries so that the ones concerned had a chance to voice their opinion.

When it was all going on and when I got the bill of sale in late 2005, I paid the money and it was nine months before I got my titles. You can't get a bank loan without titles - and this is what came out in the last inquiry. I sent an account to the Government for compensation of \$3 000 for interest lost that I had to pay to that. Nine months to issue titles after you pay the money is absolutely ridiculous and this is what the whole process has been since the blocks first came in in 1997 or 1998 and there were delays after delays

and then the exorbitant prices we were charged for the block. There is a letter here from Mr Llewellyn saying, 'I wish to assure you that these amendments do not mean that you will be faced with increased costs ... It has been asserted in the media that amendments will take into account any extraordinary administration charges that might result from the repeated surveys, design changes, and valuations necessary to satisfy ...' - and he is talking about the values in 2003.

Mr HARRISS - Just on those issues, Mr Freeman, trying to get the chronology right, you indicated that you got the bill of sale late 2005 and you paid fairly soon after that, I presume, either late 2005 or early 2006?

Mr FREEMAN - Yes, late 2005.

Mr HARRISS - You have already mentioned that it took nine months before the title was issued. You sent a request to the department to compensate you for lost interest, did you get a response to that?

Mr FREEMAN - Yes, and they did pay it. I have the documents on that, which I presented to the last inquiry, to Sue Smith. In April 2005 we were presented with the land titles. It has been a long road for me. I don't think anyone has got principals that we've tried to contact. The changing of the guard in the shack sites committee was absolutely ridiculous, and that came out in the report from the other lot. I think over the time I have been at Ansons Bay, which is eight years, I think we have had 10 different leaders of the shack sites committee trying to run it. Every time you ring up and try to get an answer to something you have to go back over everything - just as I am doing now - and keep going and going.

CHAIR - Ron, would you be prepared to table the letter dated 23 December 2008 in which you set out the chronology of everything that has happened?

Mr FREEMAN - Yes, sure. Is that the letter to David Llewellyn?

CHAIR - Yes, to David Llewellyn on 23 December.

Mrs RATTRAY-WAGNER - Mr Freeman, it's my understanding that the infrastructure is working now, is that your understanding?

Mr FREEMAN - Yes, the sewerage is working - and that's another issue. We got an account from the Break O'Day Council in April, saying the sewerage was working. But we had to pay back from the beginning of this year for the sewerage -

Mrs RATTRAY-WAGNER - From January, when it was not working?

Mr FREEMAN - Yes. I questioned Mayor Legge on that. I asked, 'Why did they take it over?' They said that when they took it over that it was not working properly and they had to maintain it and whatever. The shack owners' understanding is that they were not taking it over until it was working properly. Why should we have to pay six months sewerage charges when it was three to four months we were without it anyway and were not even notified it was working? And that is everybody at Ansons Bay. There were a lot of people there ready to connect up and they did not even know it was ready to be

connected up. I do not know what it is now, \$400 or \$500 for the first half of the year and it came in two instalments.

CHAIR - Any further questions? That letter that has now been tabled sets it out pretty well.

Mr FREEMAN - There is the submission that I gave to Mr Wilkinson at the last inquiry.

CHAIR - That would be useful, thank you.

Mr FREEMAN - We were pleased with the outcome of the inquiry. But it ended up against a brick wall and I wish the Parliament would take it up and accept the recommendations. To me there were Al Capones down there everywhere.

Mr HARRISS - Mr Freeman, is it the length of time and the disadvantage that has caused you that has had a negative impact on your position with regard to costs? Was that one of the main reasons you made a representation to the Public Accounts Committee, chaired by Jim Wilkinson, to which you referred?

Mr FREEMAN - It was. You are not talking about \$10 or something like that, you are talking about thousands of dollars in the difference we were expecting to pay for the block which were promised anyway. The value of the blocks and then the infrastructure coming out of what you paid of the value of blocks.

Mr HARRISS - Yes, the separation between the two, that is right. That was always the intention, so that it would be clearly identified what the infrastructure costs were and what the unimproved value of your land was.

Mr FREEMAN - Yes.

Mr HARRISS - Mr Chairman, I do not think Mr Freeman has given us the dollar figures. If you want to provide that to the committee -

CHAIR- Yes, it is in the letter.

Mr GREEN - What role did local government have in influencing the decision-making on infrastructure?

Mr FREEMAN - As far as the Break O'Day Council were concerned, they were against Ansons Bay right from the start.

Mr GREEN - So, if the council had their way, your block would not have been sold?

Mr FREEMAN - Yes, that was going back on the years when -

Mr GREEN - Are you happy that you still remain in Ansons Bay?

Mr FREEMAN - That is for sure, it has been my dream.

Mr GREEN - So, the issue of whether the Government pushed ahead with the subdivision went against council wishes - are you happy about that?

Mr FREEMAN - In the report that came out I agreed with a lot of what the engineer for Break O'Day Council, Mr Walker, said in the paper - that they should not have, as far as the infrastructure was concerned. In a meeting here about a month ago he stated that the sewerage system still would not work. Why should we pay this cost from Christmas time to now, pay a sewerage fee when we did not even know it was going on?

Mr GREEN - I accept that that is an issue. I guess the point I am trying to get across or trying to allow myself to understand is whether or not the infrastructure costs associated with Ansons Bay came about as a result of insistence by Break O'Day Council that that infrastructure go in.

Mr FREEMAN - I think it was more so the push by the Government or the Shack Sites to get the project up and going.

Mr GREEN - Yes, or vice versa. So where did the power have to come in from?

Mr FREEMAN - It was so far out the road - it went to Eddystone Point, the lighthouse, and then they were about to bring it in from there. As far as the power goes, I spoke to a Hydro man about any new development and whatever, if you can get 20 customers they will run the line in for nothing. Why do we have to pay \$7 000 or \$8 000? The inequity of it was that only the shack owners paid it - and there are 200 shacks at Ansons Bay - and, say, 80 or 90 had to pay for the power.

Mr GREEN - Some are already subdivided. They probably already had their titles.

Mr FREEMAN - Yes, that was on private land and they hooked up to our power for \$40, just the connection fee. Like I say, the inequity of it.

Mr HARRISS - Mr Freeman, if you could write your script would you go to where the Public Accounts Committee went and suggest that the price that you ought have been obliged to pay would have been the valuation as at 1 January 2003?

Mr FREEMAN - That is right.

Mr HARRISS - Rather than the late 2005 valuation, because the delays were not of your doing?

Mr FREEMAN - That is for sure, yes.

Mrs RATTRAY-WAGNER - Mr Freeman, did you have a shack that was relocated or was yours always an existing shack?

Mr FREEMAN - It always existed.

Mrs RATTRAY-WAGNER - I know they were saying that there were conflict places in Ansons Bay from the relocation aspect.

Mr FREEMAN - That was because they had Aboriginal middens.

CHAIR - Is there anything further that you would like to say, Mr Freeman, at this stage? I think the letter that you provided, the one to David Llewellyn, encapsulates pretty well the whole story.

Mrs RATTRAY-WAGNER - Have you had a response from that letter, Mr Freeman?

CHAIR - The December 2008 letter to Mr Llewellyn.

Mrs RATTRAY-WAGNER - Yes, did you get a response?

Mr FREEMAN - That is my original and copies there if you want one.

Mrs RATTRAY-WAGNER - I was just interested in the response. I have not read the letter to Mr Llewellyn yet.

CHAIR - Yes, we can get a copy of it made if you like.

Mrs RATTRAY-WAGNER - Yes.

Mr FREEMAN - I think there are copies here.

Mr HARRISS - No other correspondence since then?

Mr FREEMAN - I don't think so. We actually sent this to a solicitor to see what legal rights we had. I only got the response the other day. I would just like to read you a couple of extracts from it.

Mr HARRISS - As you are selecting the parts that you are going to read, is that another document which you would be prepared to provide to the committee?

Mr FREEMAN - Yes, it does not worry me. I would put anything on the table because the argument is still there in the end.

Mr HARRISS - That might assist the committee, Mr Freeman, in terms of understanding the legal advice you have received which then might be relevant to other considerations of the committee.

CHAIR - We can, if it helps you, take a document in camera, so it is given and kept in committee - it is confidential - if you are happier to do it that way. It is up to you. It is your call.

Mr FREEMAN - If we are going to do that, I may as well let you read it. But as far as legality goes, the Government changes the rules so many times that it is hard for somebody to actually beat the laws of government. And they did change the rules every time we turned around. Like Floyd down there who wanted to do a subdivision. He wanted to get rid of all the crown land shacks and everything like that. He went to the High Court and could not beat the Government because they kept on changing the rules and doing whatever, which was a benefit to us to keep our shacks. I was in favour of it then but I am not in favour of it now.

Mrs RATTRAY-WAGNER - Because your block might have been much more expensive had his subdivision gone through.

Mr FREEMAN - We would not have been there. He wanted to get rid of all the crown land shacks. Anyway, I am willing to table what Mr Temple-Smith said.

CHAIR - Yes, we will take it into committee.

Mr FREEMAN - He said the only avenue we have now is to go to the Ombudsman and explain our case. Because of time delays and everything, he is saying that we should have gotten a 2003 evaluation from what has been said.

Mr HARRISS - Mr Freeman, what is the price differential between those two dates - 2003 and 2005?

Mr FREEMAN - Our price to buy the shack was \$77 500. The land value was \$51 900. It is split up there with the Hydro power and whatever. The land value on 4 August 2005 was \$22 000, but when they came along and valued it on 21 October 2006 it was \$80 000.

Mr HARRISS - So what was the first one in 2005?

Mr FREEMAN - \$22 000.

Mr HARRISS - So in 14 months or thereabouts -

Mr FREEMAN - Do you want a copy of the valuation?

CHAIR - Yes.

Mr FREEMAN - Especially with the dates there.

CHAIR - I think we did have it in the letter from memory. They were already in that letter, which has already been tabled.

Mr FREEMAN - Fair enough then. From 4 August 2005 to 21 October 2006 it went from \$22 000 to \$80 000. I know all valuations went up - I understand that. But this just does not add up.

CHAIR - Thank you very much for your evidence and the documentation you have provided. We appreciate that.

THE WITNESS WITHDREW.

Mr RUSSELL BARKER AND Mrs VICKY LEE BARKER WERE CALLED, MADE THE STATUTORY DECLARATION AND WERE EXAMINED.

CHAIR (Mr Hall) - Welcome, Mr and Mrs Barker. Everything you say today is protected by parliamentary privilege and that allows you to speak freely, however once you have left the committee room I must advise you not to specifically discuss your written or verbal evidence until such time as a report is tabled in Parliament. You can speak generally about issues to anybody, but just keep out the specific details.

We had the pleasure of visiting you yesterday so we have some understanding of the issues. I will ask you now to present some evidence.

Mr BARKER - Our grievance is with the shack site assessment and saying that the shack had to go. We wonder why they have brought that up because in the information we've got back they are saying that our shack is not impacting on any Aboriginal land issues or things such as that. In the shack site assessment it said that even though most shacks were in good order none of them would comply with council specifics or standards. We dispute that because our shack burnt down 20-odd years ago and we had permission to rebuild. We wonder why they gave permission to rebuild them because at that time they had purchased some other shacks that they were buying then but they gave us permission to rebuild.

Mr GREEN - Do you have any of that correspondence? How did you get the permission to rebuild?

Mr BARKER - We got a letter saying that we could rebuild.

CHAIR - It would be useful, if you wouldn't mind, if we could have that tabled. Are you happy to do that?

Mr BARKER - Yes.

Mrs RATTRAY-WAGNER - The building application and the information.

Mr BARKER - Yes, the building application and it went through and the shack was rebuilt to council standards and was inspected through the process, so it's all been done to council's approval.

Mr GREEN - When that correspondence was shown to the relevant authorities dealing with this matter of determinations, what did they say about that correspondence?

Mr BARKER - Dad would have done that, so I couldn't say honestly what went on.

Mr GREEN - I thought that you might have heard your father talk about what they said when he showed them that correspondence. Did they say it wasn't relevant to what they were talking about?

Mr BARKER - I couldn't honestly say, no.

We don't understand why we have to meet those standards. Our second grievance is that once we got that letter and were told that we had to go we got another letter from Mr Llewellyn saying that we would be offered another shack site and that once we had been offered that shack site and decided whether to accept it or not we would then have three years to vacate the site we are now on. So it was either accept another shack site or just vacate. Now we have another letter saying that there would be no shack site offered - because there was none - and that we now have till October to be out of our shack.

CHAIR - Is it possible to table that letter?

Mr BARKER - It just sounds like a contradiction, we expected something and all of a sudden we have less than 12 months to comply with that.

Mr GREEN - With respect to West Point and the general surrounding areas, can you tell the committee generally - without mentioning specific names - what has happened to shacks in the West Point area. What is staying, what is going?

Mr BARKER - At the moment in the area, within a couple of kilometres, there is one shack that the Paines are in which has been purchased by the Government. Their shack burnt down and they did some sort of deal and now that shack belongs to the Government, or crown land or national parks or something.

Mr GREEN - Where is that situated?

Mr BARKER - Do you know where the Kilby shack is?

Mr GREEN - Yes.

Mr BARKER - It is probably a couple of hundred metres back towards the Arthur River.

Mr GREEN - Right.

Mr BARKER - The Paines' burnt down and I know they have done a deal whereby they lease it or whatever from the State anyway.

The Kilbys have been allowed to stay. It is my understanding that Kilby's and Wheat's shacks are allowed to stay until they have died, or something like that.

Ellis's shack, ourselves and the Murphys are in the situation - we all got the same letters saying that we have to go.

Mr GREEN - And the shack to the north west to you, the one you pointed out to us yesterday, which one is that? The one that you can see to the right.

Mr BARKER - That is Murphy's and the next one further around is Trevor Kingston's, or Azza. Azza said yesterday that Mr Llewellyn has given him permission to stay on; he was told that he had to go before ours were because he is not in the Arthur-Pieman - it is a separate issue - but he originally had to go a couple of years before us, when we were first told. But now he says that he has access - because he had to go across a farmer's

property - but if he has access he can keep his shack. I do not know whether there is a specific time but he says he is allowed to keep his.

Mr GREEN - So there are three who have been given removal orders?

Mr BARKER - Yes. There are four, there is another one around Kilby's, around the south west there is another stone place and he has notice too - I can't remember his name.

Mrs RATTRAY-WAGNER - We went past that stone place yesterday.

Mr BARKER - They are our issues of the time frame and everything. If they are saying that no block can be purchased, that that is not another option for us, I think that if shacks have to go that they purchase them at the current market value or something because to get into another shack - there are no blocks there - we are going to have to buy another shack somewhere. Without having the land we cannot build because it is impossible to get blocks, so that is not an option for us. Our preferred option is that we want to stay. We have the heritage, with four generations there now and if we go back to the other shack that was burnt it is five generations. We, our kids and our grandkids all love the area and love being there. If we cannot have that, the other option is for another shack site and it looks as if they are saying we cannot have that either. So, we think that, rather than just an offer of \$5 000, we should be paid out at agreed market value.

Mr HARRISS - Russell, what unexpired period of lease did you have on the shack when the negotiations started, given that it was a licence to occupy?

Mr BARKER - I think the original lease was what they called a 99-year lease, from memory.

Mr HARRISS - At the time negotiations started under this legislation in 1997, are you able to identify what time was left? What is the date of the original licence? I am addressing that because of your most recent comment that you should be compensated at market value of the shack. But you can see where I am coming from - if there were only five years of unexpired licence, at the end of that time the Crown could have said that your licence would not be renewed.

Mr BARKER - My understanding of a 99-year lease anyway is that they can still say tomorrow that you have to go and then you have to go. I do not know if I am right about that or not. Even though they classed it as a 99-year lease, if you are going to take it to the letter of the law, I do not think that really stands up to that.

Mrs RATTRAY-WAGNER - Russell, in an earlier statement you said that you were not aware that there were any Aboriginal connections in the area where your shack is. Yet, in your summary of your submission it says, 'We understand that the shack is in the area of some Aboriginal significance.' Can you explain that?

Mr BARTLETT - Up around Kilby's shack there are what are classed as Aboriginal middens in those areas. But they were saying that under the act, we were not impacting on those.

Mrs RATTRAY-WAGNER - No detrimental impact?

Mr BARKER - Yes. There is not Aboriginal significance there. There are middens around but they are saying that our shack is not impacting on them.

Mr GREEN - The road access into where your shack is, who provided that? It has been hardened to a fair degree, hasn't it?

Mr BARKER - The council maintain road down to the gravel road - where you drove your cars through. Then the track, as far as I know, has always been there or ever since we have been there, the rest of the track is just not maintained, as you can tell.

Mr GREEN - Yes, but to where it goes off into what you would class as a bush track, who maintains that road as it stands at the moment, council or Parks?

Mr BARKER - It does not get maintained much but I think it is Parks. But the council have just done the other road up, so it probably comes under the council now.

Mr GREEN - I think Parks actually supplied the money.

Mr BARKER - Did they? Council did the work and Parks put up the money?

Mr GREEN - Yes. What is your understanding of the area itself? What reserve is it? Is it part of the Arthur-Pieman Conservation Area, or is it a separate reserve?

Mr BARKER - Apparently it is classed as Arthur-Pieman over to the fence line, which is Richard Nicholls' farm, and it is also classed as national park there as well - where the road turns in to come down there, there is a line cuts through there for works done by the national park as well.

Mr GREEN - So West Point Reserve was always a reserve prior to the Arthur-Pieman area being into a conservation area, was it?

Mr BARKER - Yes, there was already a national park there before that came into being.

Mr GREEN - When you had your lease renewed, was it national park then - when your shack burned down?

Mr BARKER - I think so. I don't know if it was ever renewed or we were just given permission to rebuild. I don't know if the licence ever changed. After it burned down we kept applying to rebuild and then they sent the approval saying we could.

Mrs BARKER - The temporary licence that was issued was under the Crown Lands Act but it doesn't say anything about a national park, does it?

Mr BARKER - No. A national park is Crown Land now but at that time Crown Land was a separate identity.

Mr GREEN - Yes.

Mr BARKER - I think it is all one now, Crown Land and National Parks.

Mr GREEN - No, still separate.

Mr HARRISS - I want to try to understand the land classification or whether you are in the Arthur-Pieman Conservation Area.

Mr GREEN - Yes, they are, but their lot was specifically the West Point Reserve. There are Aboriginal heritage issues associated with the whole reserve area. We would be thinking about normal issues, where a shack might be impacting on a midden, for example.

Mr BARKER - The reserve was there originally and now that the Arthur-Pieman scheme has come in I don't know whether that takes over from the National Parks or whether it is still classed as a national park or whether it is all under one banner now.

Mr GREEN - I would need to check that myself.

Mr HARRISS - That is something we will need to check because, as Bryan has just said, the area is determined of Aboriginal significance and, whilst your shack doesn't impact - as we understand, without further checking - because there are no middens, the whole of the area had been determined as of Aboriginal significance. But you have indicated to us, Russell, that the documentation you have suggests quite clearly that you are not impacting the Aboriginal heritage. That being the case, am I correct in suggesting that the thrust of your argument is that your shack ought to be able to be retained because there is no impact, as already identified by the department?

Mr BARKER - Yes, that's right.

Mr GREEN - That's why I was asking the question about the road, because the road exists and who maintains that road. If the road isn't impacting then the shack wouldn't be impacting either.

Mr HARRISS - You have indicated that your dad, sadly, died just recently and the documentation here suggests that your dad was the lessee and you have been identified on this documentation as the co-owner. Was your dad the licence holder?

Mr BARKER - Yes. I say 'co-owner' because we built it together but the licence was in his name, and now it's in mum's.

Mr HARRISS - So has the shack sites project team been prepared to deal with you as well as your dad, recognising that you're a co-owner of the project having contributed to its construction?

Mr BARKER - No, I haven't been involved with that process.

Mr HARRISS - The reason I ask is that there has been a contention in other areas of the State that the project team will only deal with the licence holder, not an alleged or formal co-owner. Am I clear in understanding that the department has clearly been willing to deal with you, and has in fact dealt with you, recognising that you are a co-owner?

Mr BARKER - No, they haven't done that. It has all been done with dad up until now. Mum will be taking on this role down but at the moment she just can't do it.

Mr HARRISS - If you were able to somehow prevail on the department to retain your shack, do you have any indication as to whether, given your mum's fragile circumstances, the department would be prepared to and willing to deal with you?

Mr BARKER - I have not talked to them about that actually.

Mr GREEN - I am asking the committee this: when we were sitting down at the shack yesterday somebody made a point when I asked whether they were coming to the committee tomorrow -

CHAIR - Trevor.

Mr GREEN - Yes, what was the point he made, can you remember?

Mr HARRISS - Trevor had a funeral to go to.

Mr BARKER - His father's funeral, yes.

Mr GREEN - No, there was a point he made and I said, 'Are you coming to put that on the record?' Remember?

CHAIR - Yes, I do recall you saying that but I cannot think what that was.

Mr GREEN - Because I thought it was important from the point of view that it should be put on the record. Was it something to do with the alternative blocks?

CHAIR - The secretary is just checking his notes.

Dr HUNTLY - The only things I made a note of is what happened to cash and what happens on the 1 October. They were the two questions.

Mr GREEN - There was a point that was made.

Dr HUNTLY - Did Mr Llewellyn give Mr Kingston an undertaking to fix this problem?

Mr GREEN - No. If I remember rightly I think it was issues associated with other blocks. You would have accepted a block at Nelson, I think you said at the time?

Mr BARKER - Yes. We did not want that. We wanted to stay, but if that was definitely going then Nelson is better than not being there at all.

Mr GREEN - Yes, that is right. So had the block been provided, you would have been happy to move?

Mr BARKER - Yes. But Trevor did say that, with these other dealings that he has done with different ones down in Hobart, when that requirement went through that was when those blocks were supposed to have gone through. They have made the comment that they stuffed up.

Mr GREEN - That is right, yes.

Mr BARKER - They stuffed up.

Mr GREEN - And therefore the subdivision did not go through.

Mr BARKER - Did not get into the proposal for the scheme, yes.

Mr GREEN - So in those circumstances, you would have been quite willing to move as a result of that? You would move your shack from this point and move to the other -

Mr BARKER - At that time.

Mr GREEN - But you are now saying that, as a result of that subdivision not going through and land not being available - and I want to make this point - your first preference is to save your existing shack but your second preference is to be paid out.

Mr BARKER - Compensated if we cannot get another block somewhere.

Mrs RATTRAY-WAGNER - Can I just follow on from that question then, Russell? You obviously were of a mind to go to Nelson Bay if you had to move.

Mr BARKER - Yes.

Mrs RATTRAY-WAGNER - But was that when you also believed that the people around you were moving as well? Now that they are staying -

Mr BARKER - Our understanding was that everyone was going and no-one was staying. So if we did not take that, we were not going to get anything at all.

Mrs RATTRAY-WAGNER - But now other people around you are staying and obviously your mindset has changed in that regard as well. Would that be fair to say?

Mr BARKER - Yes, that is right. We said, 'Why can we not stay? If those others are staying why can't we too?'

Mrs RATTRAY-WAGNER - I am very clear then that you were willing to move to Nelson Bay when you believed that everyone was going and you were not being singled out for moving..

Mr BARKER - No, that is right.

Mr HARRISS - On the matter of the department acknowledging that 'they had stuffed up', can we have your understanding of the circumstances there? As a matter for public record I think this may well be an important matter as we consider the circumstances. Can you explain to us what the chronology of that was, Russell, the history of what was being proposed, what subsequently was not delivered because of this so-called stuff up.

Mr BARKER - I am only repeating what Trevor said because he has been dealing with that there.

Mr HARRISS - Your best understanding will be fine. We can clarify some issues later.

Mr BARKER - It was to do with the proposed shacks. I do not know whether the sites had been surveyed off or were meant to be surveyed off. We have had plans drawn up showing where the blocks were. We have seen those plans.

Mr HARRISS - Which location are you talking about?

Mr BARKER - At Nelson Bay. So we have seen a copy of that. I think it even had Dad's name on one of the blocks, did it not, on that proposal?

Mrs BARKER - Yes.

Mr BARKER - So that was supposed to have been surveyed off and gone through the proposal because there were some other shacks down at Nelson Bay that the boundaries had to be changed on because they were going to be in the Arthur-Pieman district. The surveying of those blocks was supposed to be done at the same time and apparently it was not done and did not go through. That is when they were saying that they stuffed up, that they didn't go through at the time.

Mr HARRISS - And because they didn't go through, that offer, which was on the table at an earlier time, subsequently could not be delivered to you. The offer was not available because the blocks hadn't been surveyed as was intended.

Mr BARKER - Yes, they hadn't been done or hadn't gone into the Arthur-Pieman.

Mr GREEN - How many blocks were there in total?

Mr BARKER - I think there were four at Nelson Bay.

Mrs RATTRAY-WAGNER - Which would have accommodated the people from your area there.

Mr BARKER - Trevor wanted to go to Couta Rocks, if there were one or two at Couta Rocks, and the other blocks there would have accommodated that.

Mr HARRISS - And the ones at Nelson Bay, am I right in assuming, they were to be on crown land? The survey?

Mr BARKER - I think they weren't meant to be in the Arthur-Pieman scheme, they were meant to be surveyed out of that. When they put the boundaries in for where it was, they weren't to be in that.

Mr HARRISS - Would the Crown Lands (Shack Sites) Act have allowed shacks in the Arthur-Pieman Conservation Area? That is what the intent of the legislation was, wasn't it, to set aside compliance with planning requirements and other legislation so that shacks could remain in sensitive areas. Is that your understanding?

Mr BARKER - That is my understanding. It was going to be surveyed off so they could do that, yes.

Mr HARRISS - That has cleared it up for me, thanks.

CHAIR - Thank you very much. Anything else you would like to add?

Mrs BARKER - You did ask for a copy of this letter.

CHAIR - If you would like to table that one there as well, thank you.

Mrs BARKER - It says on this one, where it has asked us to move on 1 October, 'to assist with the removal, you will be offered a relocation site at market value at Arthur River'. That is a copy.

CHAIR - Thank you very much, Mr and Mrs Barker, for coming in. Thank you for your hospitality yesterday, on site, it was valuable to go down there.

THE WITNESSES WITHDREW.

Mr SHANE MALLINSON MADE THE STATUTORY DECLARATION AND WAS EXAMINED.

CHAIR (Mr Hall) - Welcome. If there are times in your evidence that you think you ought to give it in camera you can ask the committee but apart from that, just do it. You are covered by parliamentary privilege so that allows you to speak freely but the qualification is that we ask you not to talk about any really specific matters until we table our report but you can speak broadly about what you speak.

Mr MALLINSON - Yes.

CHAIR - Your submission is No. 16 and I will invite you to make some comments and speak to your submission and then we will allow the committee members to ask some questions.

Mr MALLINSON - Thank you. Firstly, my family would like to thank the committee for the opportunity to speak to you today. Obviously you know that this submission is in relation to a family shack at Eddystone Point on the north-east coast. My family have had a history of five generations on the north-east coast. My great grandfather was one of the first people to have a shack at Ansons Bay and there is a creek that runs into Ansons Bay called Mallinson's Creek which I assume is named after him. My grandfather as a young boy and young man used to walk from Ansons Bay to Eddystone Point to go fishing and due to his love of the area started camping up there and in 1957 was granted a crown land lease which we have had since then.

My family has a great love for the area and we care for it greatly. We have also had a family member killed in the area - he was drowned at Eddystone Point some 30 years ago - so the whole area has significant sentiments for my family. On 12 and 13 March 2002 our shack was assessed by the shack sites team and they indicated that our shack had been given the green light which was that there were no issues that would affect it being granted a 30-year lease. It was also stated in the report that no historical sites were identified on the site and we were under the impression right from that moment that we would be given a 30-year lease.

On 19 March the initial person in charge of the inquiry - and I cannot remember his name - resigned and the inquiry was taken -

Mr HARRISS - What year was that, Shane?

Mr MALLINSON - It was in 2002. Then a Mr Scott Marston took over as the shack sites coordinator -

Mr BEST - Sorry, Mr Chair - so you got your notice of that and when in 2002 would it have been?

Mr MALLINSON - Yes. The area was checked on 12 and 13 March and this document here was sent to us sometime later and basically detailing all the -

Mr BEST - So around the same time you received the information then there was the changeover?

Mr MALLINSON - What happened was after getting this document on 19 March when Mr Marston took over we were invited to go up there and speak to the shack sites coordinators and also members of the Aboriginal community. On that day my son, Jonathon, and I went up to Eddystone and we had an appointment to meet them at 11.30 but they were about two hours late, which was fair enough. When the committee came on site they walked onto the site, they walked a small area near our tank, they were only there less than three minutes and walked off without speaking to us, they actually walked past us. I grabbed Mr Marston and said, 'What's going on?' and he said, 'No, they don't want to talk to you because the other shack owners have given them a bit of stick on the other side of the bay' so they left and as a result of that visit, which took less than three minutes and only went to one small area of our shack, Mr Greg Brown, from the Tasmanian Aboriginal Land Council decided that our shack would have to go because of the Aboriginal cultural issues. Even up to this day, no-one has been able to tell us what changed from the initial assessment to this very brief assessment done by Mr Greg Brown on-site.

Mr HARRISS - Just while you are on that, you referred to the report earlier in your evidence which indicated no Aboriginal heritage significance?

Mr MALLINSON - Yes.

Mr HARRISS - Which is that report, please? Is that the categorisation -

Mr MALLINSON - Yes, basically part of what they sent us.

Mr HARRISS - Do you know who made the assessment, that there were no significant Aboriginal heritage issues?

Mr MALLINSON - Yes.

Mr HARRISS - Do they know?

Mr MALLINSON - This was done by a Mr Sculthorpe who represented the DPIWE and the Aboriginal Heritage Service.

Mr HARRISS - Andy Sculthorpe?

Mr MALLINSON - Yes. Caleb Pedder - he was from the Aboriginal Heritage and DPIWE; Pravan Ram, he was the shack sites project coordinator. Petra Shell was the government archaeologists from Andrew Long and Associates. Mr Jamie Wood was from Sinclair, Knight and Merz; and also a John Kurete from Sinclair, Knight and Merz. That was done on 12 and 13 March. *(Sorry, cannot verify spelling of these names)*

Mr HARRISS - Just on 12 and 13 March, is that the area or your site specifically?

Mr MALLINSON - Our site specifically.

Mr HARRISS - It took them two days to determine there was no Aboriginal heritage significance?

Mr MALLINSON - Yes.

Mr HARRISS - And it took Greg Brown three minutes to say there was?

Mr MALLINSON - Yes, basically they walked on, walked off and the whole thing would only have taken three minutes.

Mr HARRISS - Thank you.

Mr MALLINSON - Shall I continue on?

CHAIR - Yes, please.

Mr MALLINSON - My family cannot understand why this three-minute visit has changed the process for the shack. Right from the start we cooperated fully with everybody and we just feel as though we have been considerably let down. After this, we went through the appeal process. As you know, it was set up by the Government. We believe that the grounds and the powers that the shack sites commissioner had were unfair. I have already outlined the grievances in the letter I wrote to you, which is fairly lengthy so I will not go into that fully. We believe we had considerable grievances as a result of that appeal. So after some time and some effort we wrote a letter to the Ombudsman and he basically sent us back a letter saying they did not have the jurisdiction to look into the shack sites process or appeals. So we were fairly devastated with that.

We thought that, when everything is done correctly, every person has a right to natural justice, and we certainly believe that we have not received any of that. When we had the appeal, we obviously wanted Mr Brown to come as a witness, to cross-examine him to say, 'How come your views differ from the original assessment?' But at the time of the appeal he did not turn up. The commissioner allowed his secretary to give evidence on his behalf, which we strongly objected to but the commissioner overruled us. That lady went up to the shack the day before the appeal for the very first time and gave their evidence which we found was just extraordinary. She had no formal qualifications. Basically the commissioner took everything she said as gospel, even though a lot of it was contradicted by the two archaeologists - the Government one and also the one that we had.

Mrs RATTRAY-WAGNER - Shane, the name of that person that gave evidence. Do you have that person's name?

Mr MALLINSON - It was a Miss Brown.

CHAIR - That was Greg Brown's secretary?

Mr MALLINSON - Yes.

Mrs RATTRAY-WAGNER - And it is Miss Brown?

Mr MALLINSON - Yes, Miss Brown.

Mr BEST - Mr Mallinson, would there be any middens near? Where would the nearest one be to your shack?

Mr MALLINSON - We have explored that area fairly extensively. We have found a midden in the sand dunes probably some 300 yards away from our shack, which we believe is a perfect midden. It is a great big dome and you can sit in the middle of it and look out. You are fully sheltered from the wind and you can look out across the bay. We think that is obviously a perfect place for the midden. Our shack is on top of a hill which is prone to the north-westerly weather. It just about gets blown away and I can't imagine why people would have a midden there. Both the archaeologists agreed that our shack site is not on a true midden. There is evidence of shell scatter there but they both agreed that without scientific examination they couldn't prove how that shell scatter was left there, whether it was by Aboriginal, natural or stuff that has been left there by us. As I said, Mr Brown didn't turn up for the examination and we wanted an adjournment because we believed that it was his decision that changed it for us. We believe we needed to speak to him but the commissioner allowed his secretary to give that evidence.

Mr HARRISS - Is that 'Greg' you're referring to in your submission to us where you say 'the fact that the commissioner was aware prior to the hearing of another witness intending to appear', was that Greg Brown?

Mr MALLINSON - No, that was another one.

Another thing that really upset us in the appeal was that the commissioner accepted evidence on numerous occasions from untrained people, particularly from the Aboriginal community, and a lot of that evidence was disputed by the archaeologists for the Crown and also for us. They just seemed to accept all the evidence they gave. I eventually got them to admit that none of them had any formal qualifications in the area and that is something we find hard to believe. During our directions hearing prior to the appeal we had to submit our grounds for the appeal. We submitted six grounds for the appeal, and three of those were objected to by the Crown on the day. When I asked what the objection was, the Crown wasn't able to give me any so the commissioner had to agree that our six grounds for the appeal were accepted. When we got to the hearing every time I spoke about three of these grounds the commissioner kept cutting me off saying, 'Background's not relevant. You are not to speak on that ground'. I continued to argue with him, 'You've accepted the grounds. Why did you accept the grounds if you're not going to let me speak on them?' He said, 'They're not relevant' and I said, 'They are because you've accepted them'. He would not explain why I wasn't allowed to speak on them and it made the whole thing a bit of a farce in the end. I had spent hundreds of hours preparing for this appeal and basically half of it was disallowed.

Mr GREEN - What were the three grounds?

Mrs RATTRAY-WAGNER - They are listed on your submission.

Mr MALLINSON - One of the grounds was that the shack was not on a significant Aboriginal site. The other ground was the shack assessment was not done on equity, either in regard to other shacks in the area or in other parts of the State. The other one

was damage to the site has not been caused by our use over the years but rather by the mismanagement of the Parks and Wildlife Service.

Mr BEST - How was it ruled inadmissible, the point that your shack was not on an Aboriginal site, given that you have that condensed scientific report of Mr Luttrell?

Mr MALLINSON - I don't know why the commissioner did that. As far as we are concerned, from the report we got from the Government and also the evidence from our archaeologist and their archaeologist we believe that that was a significant point. Why the commissioner disallowed it, no-one can tell us and that is one of the reasons why we wrote a letter to the Ombudsman. That is basically what the whole appeal was about, whether we were on an Aboriginal site or not.

Mr BEST - Would it have been possible, in your own mind, to have had another independent investigation to satisfy the two points of view?

Mr MALLINSON - Certainly, we could have had that. Obviously, as a family, we could not afford to go to the expense of that. If the Government had wanted to go that way we would have cooperated with them but they chose not to. They accepted the evidence of their archaeologist and a lot of what our archaeologist said was the same as what their archaeologist said and that basically that we were not on a true Aboriginal midden. There was evidence of shell scatter and how that got there, no-one knows. There were no bones or any other material which is normally found in a midden. Normally a midden is where they eat but there was no evidence of any animal or fish bones. The assessment team, the engineers, they did some drilling in the area and I think they drilled six holes on our site and there was only one at a depth of 12 inches or 300 millimetres, where they found any shell matter. The other five did not find any shell matter.

Basically, my family was fairly convinced with the report and from the evidence from the archaeologist that we were not on any significant site.

Mr BEST - This is a very subjective question. But, do you have a philosophical view? Are you proud of the fact that, in your own mind, your shack is not on an Aboriginal site?

Mr MALLINSON - From what we have observed in the area over our five generations, we know where there are other middens and they just contradict the area that we are at. Our shack is on top of a hill and it gets very windy there and it does have a nice view and I could well imagine that you would sit up there and look out to sea. But on a really cold day I could not imagine wanting to sit up there and have your lunch or socialise, as the Aboriginals would have done. If the archaeologist said that you are on a true midden, there are bones there and there is evidence of inhabitants being there, we would accept the decision. But we believe that we have been treated unfairly and that we are not on an Aboriginal site.

Mr BEST - So if it had been an Aboriginal site, you do not believe that it would have been appropriate for your shack to have been there?

Mr MALLINSON - If we believed we had a fair deal and if my family believed, if it was proven beyond all doubt that it was an Aboriginal site and certainly if it was burial site, we would go, no hesitation. But none of that has been found on the site. The other

shacks in the area we considered to be more in areas where you would have a midden because they are very sheltered. There are two more shacks at Eddystone Point and both those have been given 30-year leases and I consider that they could be more a midden than what ours are because of their locations. I have not looked at the shells or whatever. But, as I said, our shack is on a hill and it gets blustered by the conditions.

Mr HARRISS - In addition to that then, Shane, you have indicated as you have addressed Brenton's questions, that if it were proven that there were middens, then your respect for the Aboriginal culture would be that you would accept it and let it go. Isn't the contrary true, that on your evidence, that scientific assessment indicates clearly that there are no middens?

Mr MALLINSON - Yes.

Mr HARRISS - So not that you have to have anything proved to you that there are?

Mr MALLINSON - That is what I mean. That is why my family have taken the stance we have. As far as we are concerned, every criterion has been satisfied. The Aboriginal people have been onto the lease and they have checked it and the engineers have been onto to, the archaeologists have been onto it and everybody says, 'No, this is not a true midden, there is no evidence of any historical matter.' I think I read out earlier -

Mr HARRISS - Yes.

Mr MALLINSON - Basically, we have accepted that and we have done right from the start. It is just the fact that Mr Brown goes onto our land some time later and does this ad hoc visit and walks off and all of a sudden this changes. In our society, when we go to an appeal we have a right to question this man and he does not turn up. We think, what is the point. He has made the decision and will not explain why or how. None of the other Aboriginals there were able to say why his decision was that. No-one knew.

Mr HARRISS - Can I then rewind a little bit. You gave us the six people who, in formulating that report, conducted the scientific analysis. I don't think you have indicated to the committee, even though your submission sets out the fact that Mr Jones, Mr Maynard and Mr Pedder, at an earlier time, likewise assessed that there were no Aboriginal cultural issues.

Mr MALLINSON - I am pleased you brought that up, I had forgotten about that. Yes, they had, and actually two of those people were at the appeal - Mr Pedder, he gave evidence, and Mr Jones. At that stage, Mr Jones was actually on the committee or he assisted -

Mr HARRISS - Yes, he was probably project manager of that, Mike Jones.

Mr MALLINSON - Yes. But Mr Maynard, Mr Jones and Mr Pedder had already been on site and done those assessments.

CHAIR - They gave evidence at the committee?

Mr MALLINSON - Only Mr Pedder did.

CHAIR - Only Mr Pedder.

Mr MALLINSON - Yes, and he could not explain why his views had changed. I said to him, 'You have checked the shack site and said it was all right. Now Mr Brown has checked it and now you are siding with Mr Brown'. He couldn't explain why he changed.

Mr Pedder is a very nice gentleman. He has no formal qualifications and some of the stuff he said at the appeal that was accepted by the commissioner was certainly disputed by us and also the archaeologist.

Mr HARRISS - Yet, if I can go back to your submission, Shane, you have indicated that Mr Pedder, giving evidence, said that Aboriginal artefacts were found near the shack but actually outside the boundary of the shack.

Mr MALLINSON - Yes.

Mr HARRISS - You further went on to say, by your submission, that he found Aboriginal artefacts on the shack site. I see those two as mutually exclusive.

Mr GREEN - Yes, but that was in relation to you moving some sand there, wasn't it?

Mr MALLINSON - Mr Pedder stated that he found two Aboriginal, I think he said, stone axe heads in our barbeque area. I said to him, 'Yes, I could imagine that because at one stage we tried to build a barbeque out of the granite - the rocks we found - smashing them with sledgehammers, trying to get them into shape because they are all nicely rounded, as you probably know, and I said, 'Are you mistaken, they may have been stuff that we had left there?'. I said, 'Do you have these artefacts to produce to the appeal?', and, of course, they didn't have the artefacts, and the commissioner said, 'No, I am happy that Mr Pedder found some'.

But Mr Pedder's explanation of stuff found outside our lease, I argued that whatever was outside our lease, doesn't matter, we are only arguing about this small plot of land - our lease. Mr Pedder said the only way that he could explain it was that it was like cutting the bedroom off your house - and you wouldn't do that. I wasn't sure what he meant by that but that was his explanation: 'You wouldn't cut a bedroom off your own house'.

Mrs RATTRAY-WAGNER - You are obviously aware that there has been some talk about the Eddystone Point area being handed back to the Aboriginal community. Do you think at all that this change in the assessment may well have something to do with that? Is that something that you feel, as a family, you have discussed or is it not something that you have even considered?

Mr MALLINSON - Basically, the first we were aware that the Aboriginals were interested in the area was when they took possession of one of the lighthouse houses up there. There was a fair bit of publicity about it at one stage. They did a considerable amount of damage to it and, as a result of that, they were rewarded with the lease on the one house.

The next thing we know, there was 14 acres up there with the three heritage houses and the lighthouse, and the Government was trying to get some entrepreneurs interested in it

but when they, at some stage, advertised for tenders the only expressions of interest they got were from the Aboriginals and the Education department, which wanted to set up a school - a sort of a camp up there.

Nothing was heard after that and then the Aboriginals took possession of one of these houses and got a long-term lease on it. The next thing we know, the Aboriginals had a lease for the whole 14 acres and the three houses. There was no mention at any time that 'we want their shack because it is significant to us'. It was all the lighthouse houses and now it is the Bay of Fires. Our shack is close to the Bay of Fires but it is not actually part of the Bay of Fires.

I do not know what interest they would have in our shack site because our next-door neighbour's lease and our lease are only separated by a road. There are only the two shacks in that area so if the area was significant to the Aboriginals, you would think that they would want both shacks removed. I cannot see the point of removing one shack and giving the other one a 30-year lease. No-one can explain that, it is ridiculous.

CHAIR - I think we will leave it and keep going through the submission because there are two or three very significant points that you make there, including the last one. We will ask questions at the end.

Mr MALLINSON - Thank you. I think the last point I made was that the commissioner only let me speak on three grounds at the appeal. When we had our Direction hearing, I wanted to call Mr Scott Marston to give evidence but the commissioner refused to let me call him. Mr Marston was a very close family friend of our neighbour in his shack and without casting any aspersions on Mr Marston, I really wanted to ask him why the two shacks were treated so differently. Both shacks share the same Tasmanian Aboriginal index number and when you see a picture of what the Aboriginals claim as their index number, it encompasses both the shacks. So I really needed to speak to Mr Marston on why that was so, why the two shacks sharing the same site were treated so differently. But the commissioner would not allow me to call him and actually got quite upset when I suggested that the Government was trying to hide something, the fact of not being open and honest and letting Mr Marston come and give evidence and be cross examined.

My family has had a long public service history in Tasmania in the health, law and education systems. I added it up the other day and it is almost 200 years. We are honest and law-abiding people who honestly believe that we have been treated poorly by the Government. It has got to the stage now that negotiations with the Government have stopped. My family has decided and told the Government that we are going to refuse to go and resist them in all their efforts to remove us. This has been an extremely hard decision for my family as we believe we are law-abiding but we are going to take this stance and unfortunately could end up breaking the law for our beliefs.

In conclusion, my family believes that we have had no natural justice throughout the whole process, especially the appeal process. Every person in Australia is entitled to natural justice and we believe we have not had any.

The two other shacks in the Eddystone Point area were both granted 30-year leases and immediately were sold to new people. Basically, my family's 80-year history in the area

is going to be sabotaged while these people have only bought their shack three or four years ago. That is very upsetting for us.

Mr GREEN - Sorry - the fact that they have bought the lease -

Mr MALLINSON - No, what happened, Mr Green, was that the leases were granted and as soon as the leases were granted the shacks were put on the market and both were sold. We do not have an issue with the people buying the shacks but we wanted to stay in our shack. If these guys had every intention of selling their shack and getting out -

Mr GREEN - I'm with you now.

Mr MALLINSON - It is something I have told you in meetings I have had with you and other people that compensation has never been an issue for us. In fact just recently, the Government sent me letter saying that if we remove the shack they will give us \$5 000 to assist us. I told them that we are not going to go and we are not going to move the shack. They wrote me a letter saying, 'Yes, we understand that but we are going to remove the shack for you and give you \$5 000' and I wrote back saying, 'That's an insult'. It has never been compensation for us, we just want to stay.

Mrs RATTRAY-WAGNER - Do you have a copy of that letter?

Mr MALLINSON - I would have but I would have to get it to you.

Mrs RATTRAY-WAGNER - I would be pleased if you could.

Mr MALLINSON - It is a letter where they have changed the conditions of the original agreement. The agreement was if we removed our shack by ourselves and returned the area to its natural state, the Government would give us \$5 000. The other option was that they remove the shack and we wouldn't be entitled to \$5 000 but the letters explained to me that because it was a big job to move the shack and there were a lot of sensitive issues, which I am not sure about, they said that they would remove it and give us the \$5 000.

So we took that as a bit of a soft-nut.

Mr BEST - When did you receive that, roughly?

Mr MALLINSON - I would only be guessing, but it would be one of the last few letters I received so it would have been in the last few months. Sometime earlier this year, I think, but I will get that to you.

Mr BEST - Thanks.

Mr MALLINSON - My family also believe that the shack sites commissioner and the crown acted unfairly and improperly in the appeal. Some of the things they did, we believe they wouldn't have got away with in a court of law and also the fact that there was no appeal process open to my family. As I said, if we had of felt that we went to the appeal and we lost it for good reasons, we would have accepted that, but we believe that we

were treated poorly and that we should at least be able to appeal to the Ombudsman. But, of course, the Ombudsman said it was outside his jurisdiction.

So, basically, once the Government had the appeal, that was it. I am not really sure if any appeals actually got through in Tasmania - I haven't heard of one.

As I have explained before, experts state that our shack is not on a true midden and my family accept and believe that.

Another thing that has recently upset us is that this committee can see the Government's attitude in relation to it by refusing to stay the removal orders on the shack until after the decision of this inquiry. To me, that is just typical of the way the Government has acted right through this whole process.

To me, having this appeal is really a pointless exercise, when we get the shack torn down in September and two or three months later, this committee might decide that we were treated unfairly. To me and to my family, that is just ridiculous - very upsetting.

CHAIR - Yes, because the committee have their terms of reference to attend to and report as soon as we can.

Mr MALLINSON - No, I really appreciate that but, unfortunately, time is running out for us.

CHAIR - I know what you are saying.

Mr MALLINSON - Yes, time is running out fairly quickly.

Mrs RATTRAY-WAGNER - The members of the committee were disappointed in that response as well.

Mr MALLINSON - We were devastated. Actually I was going to ask you today if you would be able to suspend the eviction orders but then I received the letter the other week and that put an end to that.

CHAIR - All I can say is approaches have been made to try to extend that time frame.

Mr MALLINSON - I appreciate your people's efforts. It is no surprise to us. We felt as though we really have been running into a brick wall, trying to see some sense about this whole issue.

My last point was the fact that a number of members of the Aboriginal community have been through our shack - through the site - and it would be fair to say five or six have been through and assessed the shack. All of a sudden one person, after a very poor inspection, decides that we have to go, and that is something that my family finds very difficult to accept. I would like to thank you for hearing me.

CHAIR - Thank you very much, Mr Mallinson.

Mr HARRISS - Can you advise the committee please, Shane, who the shack sites commissioner was who heard the appeal?

Mr MALLINSON - I think it was Mr Robin Nolan.

CHAIR - It sounds right.

Mr MALLINSON - Yes, I think it was Mr Nolan.

Mr HARRISS - Did he hear the appeal on his own?

Mr MALLINSON - He was a commissioner; the crown was represented by Ms Perrin - she was from the Crown Law, she was representing the crown - my family was represented by myself and Mr Jones was there. I think he was a clerk of the court type of person and also there was another -

Mrs RATTRAY-WAGNER - Was that Michael Jones?

Mr MALLINSON - I think it was. The Crown Law, Ms Perrin, had an offsider and I cannot remember who that was.

Mr HARRISS - Can I then go to your submission, please, where you say here, 'The commissioner was aware prior to hearing of another witness intending to appear to give evidence on behalf of a witness that was not attending.' What is the significance of that?

Mr MALLINSON - What I was trying to say in that instance was that I made an allegation that there was a collusion on the part of the commissioner and the Crown because in our directions hearing when I gave my six points and the Crown disputed three of those grounds. When asked what her grounds for refusing those, she did not give any, so the commissioner allowed those grounds to go through. In that directions hearing we each had to give the name of the witnesses we calling and we also set a date for the exchanging of statutory declarations. Every witness that I said that I would call gave evidence. All our documentation was sent to the commissioner on time.

At the time of the directions hearing the Crown said that they would be calling a representative from the National Parks department in answer to one of my grounds. On the day of the hearing that person was not present to give evidence.

It seems to my family that the three grounds that we were not allowed by the commissioner to speak about were the same three grounds that Ms Perrin, from the Crown, objected to. Our attitude was, if she knew that the commissioner was not going to allow those three grounds, there was no point in her calling that representative from the National Parks Service. So that is why I believe that there was unfair collusion between the two.

Also, the Crown and the commissioner obviously knew that Mr Brown was not going to turn up to give evidence at the hearing and had enough time to send his secretary up, the day before the hearing to do a check. We found out about Mr Brown not giving evidence as soon as the appeal started. So what I was trying to say in that comment was that there was unfair collusion between the Crown and the commissioner because they

would not have known about these things unless they spoke about it which I think was totally unfair and, in a court of law, it would most likely be illegal.

CHAIR - That clarifies that. I was going to ask the same question. I read that and I was trying to work out where you were coming from with that.

Mr MALLINSON - It is very hard without having a legal mind, to try to put it on paper.

CHAIR - No, you did it very well.

Mr HARRISS - Can I then go to matter of the adjacent shack owner who has been able to remain under a 30-year lease?

Mr MALLINSON - Yes.

Mr HARRISS - If you do not want to indicate to committee the name of that shack owner here in a public session you can do that in camera at the end, if you would prefer that. But I do want to ask you that. So think about that for the moment. It may want to be something you want to give to the committee in camera. It is a matter of public record anyway.

Mr MALLINSON - No, I am quite happy with that. I do not think the gentleman would mind me giving his name.

When the shack was first assessed it was owned by Mr Pennington. When his shack was assessed as having a 30-year lease, he immediately put it on the market and it was bought by a gentleman, I think he is from Scottsdale, Mr Gordon Cuff. He has had the shack for probably three or four years now.

Mr HARRISS - Mr Chairman, my final question to Shane is, at what stage during the appeal hearing were you advised by the commissioner that three grounds of your appeal were not going to be allowed?

Mr MALLINSON - At some stage during the process after our witnesses were giving evidence and the Crown witness was giving evidence and we were both cross-examining them, as soon as I mentioned something, Mr Nolan cut in and said, 'That ground's not relevant'. Every time I mentioned one of those three grounds during the appeal he kept saying it wasn't relevant. We argued about it and he just would not accept evidence on any of those three grounds. I argued that he had accepted them and I had spent hundreds of hours researching them. This is something my family was extremely upset about as well, the fact that half our evidence was not allowed.

Mr HARRISS - I gather from that contribution just now that you clearly were of the view that those three grounds of appeal substantially assisted your case?

Mr MALLINSON - Yes, and specifically the one that says that we were not on a significant area. To me that was the reason for the whole appeal. As I said, my family are reasonable people and if we felt we'd been given a fair deal and if the initial assessment had come from the shack sites committee that our shack was to go because we were on a significant Aboriginal site or if there was a burial ground there, we would have gone, but

the fact that we went through the whole process and then after one very short visit we were told we had to go. And even up until now they haven't explained why we have to go.

Mr BEST - I think you said there were two shacks on the same site identification number, is that right?

Mr MALLINSON - Yes, our shack and Mr Cuff's. There are three shacks at Eddystone Point: one is out of sight just over the hill and the other two shacks are basically separated by a road. I forget what the Tasmanian Index number was, but I didn't even realise that we had a Tasmanian Index number until I got the paperwork. Apparently it was done in 1985 by the Aboriginal Commission, but my family was not aware of it.

CHAIR - What is the distance between your shack and Mr Cuff's?

Mr MALLINSON - The boundaries are separated by a road so it is probably 60 metres between the two shacks. It is a road down into a very narrow turning circle and there is shack on either side. Years ago there were probably up to 10 shacks in there but over the years they have been pulled down or burnt. There are only the two shacks remaining now.

Mr BEST - The third shack is on the other side of the hill?

Mr MALLINSON - Yes.

Mr BEST - You're saying that one was sold as well?

Mr MALLINSON - Yes.

Mr BEST - At what stage were you aware that those shacks were being sold?

Mr MALLINSON - Someone said to me, 'Such and such sold his shack'. At that stage we weren't looking to buy a shack in the area.

Mr BEST - No, because you were still running your case.

Mr MALLINSON - Quite frankly, we couldn't afford to buy a shack in the area, even though they only went for \$20 000-odd. In hindsight we should have bought one.

Mr BEST - Do you think that might have been a fairer option, to have at least been given that opportunity, if you couldn't get through this process?

Mr MALLINSON - Absolutely. That is the thing that upsets us the most. These other two shacks over the years have had a number of owners; our shack has been in our family for five generations. Realistically, we believe that we deserve to stay in the area because of our family history, the fact that we've been there and paid our rates and crown land fees for 50-odd years now. We were given the green light to stay and then it was stopped and it is something we cannot accept.

Mr BEST - The site opposite you divided by the road and the third site on the other side of the hill, what reports were undertaken regarding their siting in relevance to Aboriginal relics or middens?

Mr MALLINSON - They were obviously given the green light as well.

Mr BEST - In regard to Sculthorpe's report, were they part of that?

Mr MALLINSON - Yes.

Mr BEST - Did they drill the six holes?

Mr MALLINSON - I'm not sure, but I imagine they would have done. It was all done by the same people. The details of all the shacks are in this document. They were all basically given the green light.

Mr BEST - Did they find anything that was similar to your site - that is, scattering of shells but no middens?

CHAIR - I have just been advised that you cannot testify with regards to other people's evidence. So we have to be careful.

Mr MALLINSON - We were told that the reason the shack across the road from us could stay was that there was evidence of material in the bank in front of his shack. The Aboriginals basically said, 'We are happy for the shack to stay there,' because the evidence that they believed was there was hidden by the bank. It was being protected by that bank. We found that a little bit hard to understand but it was accepted. But within about six months of Mr Cuff being there, he was given permission by the Aboriginal people to put 40-odd posts in it - dig up and put posts in it for his verandah. So we think this is just getting more and more ridiculous. The fact that this area, which was supposed to be significant to the Aboriginal people, is protected by this bank and the next thing you know there is a guy there inspecting it while they are digging the holes, and they are putting all these piers in for a big deck.

Mr HARRISS - You probably mentioned this, Shane, along the way. I have been listening intently to what was going to your submission. But in your submission you say the Crown did not use a witness they had previously indicated - and I have probably gone down this track a bit before but I want to be really clear about this. They did not use a witness they had previously indicated they would. This witness's knowledge applied to one of the grounds for appeal that the commissioner disallowed.

Mr MALLINSON - Yes.

Mr HARRISS - My next question is: who was the witness?

Mr MALLINSON - It was the representative from the national parks.

Mr HARRISS - Any particular person?

Mr MALLINSON - No, in the directions hearing Ms Perrin said that she would be calling a representative from the national parks but she was not able to provide a name for that person. So when we got to the appeal we expected that someone from national parks would be there for us to cross-examine in relation to one of our appeal grounds.

Mr HARRISS - Did the Crown counsel give any indication as to what the issues were that the officer from Parks would give evidence about?

Mr MALLINSON - I think the only reason they were calling the witness was that I made mention of the National Parks Service in my grounds.

Mrs RATTRAY-WAGNER - About the mismanagement?

Mr MALLINSON - Yes.

Mr HARRISS - And your clear belief was that, had that witness been brought by the Crown, you would have been given the opportunity to cross-examine? Again, you believe - if I understand you correctly - that that would have assisted your case as well, the opportunity to cross-examine them?

Mr MALLINSON - We believe so, yes. The fact that these people were supposed to come to the appeal and they did not turn up - normally in a court of law the matter would be adjourned or the officary would say, 'If you cannot produce the witnesses you are going to lose the case', basically. But the fact was that the Shack Sites Commissioner had very broad and, we think, unfair terms - if he decided that he wanted something to go a particular way or a witness did not have to turn up or someone else could give someone else's evidence, he accepted that. As I said, that is something that we find very hard to believe. We believe that we should have been able to cross-examine Mr Brown, and say to him, 'Here you are. This is it. Why have you changed? In the three minutes that you went to one tiny area, how can you go against what has happened here?' That is commonsense. He basically was the reason we could not stay in our shack, and he just did not turn up and then they sent someone up to give his evidence which, to me, is something that cannot be done. It cannot be done in a court of law. We believe that this is one of the reasons the appeal was very, very unfair. The appeal was never set up for people to win.

Mrs RATTRAY-WAGNER - You have no idea of the Christian name of Miss Brown?

Mr MALLINSON - No, I am sorry. I do not. I only refer to her as Miss Brown. But she was at the time Mr Greg Brown's secretary. I think Greg is with the -

Mrs RATTRAY-WAGNER - With local government?

Mr MALLINSON - I think he is with TALC - Tasmanian Aboriginal Land Council. He was at that stage. He may have changed. But it might have even been Karen, from memory. Karen Brown. I know it was Miss Brown.

Mr HARRISS - Just to finally clarify the matters related to Greg Brown's assessment: I have read through your submission, but did you ever write to request the reasons as to why he had made his determination or did you seek that information by telephone?

Mr MALLINSON - No. In the directions hearing we had the set dates for all our witnesses to provide statutory declarations. All the witnesses I said would be there were there and gave evidence. All our statutory declarations were given on time. But we only received one of the Crown's - and it was not a statutory declaration it was just a page of stuff written by Mr Pedder - and we never received any other statutory declarations from any of the other witnesses.

Mr HARRISS - What indication were you ever given that you had appeal rights against Greg Brown's determination? Is there any documentation which indicated to you what your appeal rights were specifically?

Mr MALLINSON - We never received any documentation on the reasons Mr Brown determined we had to go. Basically, all of a sudden, and after this single inspection, our status went from having a green light and most likely getting a 30-year lease to 'no, you people have to go because you are on an Aboriginal site significant to us' and that is that. That is basically all we have had from anybody.

Mr HARRISS - Yet, if I am right and you might like to comment about your understanding, the appeal process allows anybody who feels an inappropriate determination has been made, to appeal all of the issues.

Mr MALLINSON - Yes, absolutely. That is what we are saying. We believe that in the appeal we were treated unfairly because witnesses never turned up. The fact that the commissioner and the Crown knew, obviously in advance, that Mr Brown was not going to be there and they obviously had time to organise for Miss Brown to go up and check on our shack the day before - and that is the first time she had been to the area - and we were told the morning before. Surely, if I received a phone call a couple of days before the appeal and was told Mr Brown could not be there, I would have said, 'Right, let us not waste time, let us set another date when he can be there.'

Mr HARRISS - Was Miss Brown accompanied by anybody on her site visit?

Mr MALLINSON - I do not know. I was not aware that she had been up until the morning of the appeal. And the only reason I did get that information out of her was that I asked her a question, how many times had she been to Eddystone Point and she said, 'Once.' I said, 'When was that?' She said, 'Yesterday.'

Mr HARRISS - Can that be verified, the fact that she even went?

Mr MALLINSON - Not to my knowledge. She was giving evidence under oath, so I would imagine it would be the truth.

Mr GREEN - Were there transcripts there?

Mr MALLINSON - There was a recording but I do not know if it would still be in existence. But the whole thing was taped.

Mrs RATTRAY-WAGNER - I am conscious that I am sitting beside the member who is referred to in this particular submission, Bryan Green. You talked here about obviously

not being able to get any answers about the change of determination and that you had a visit with Bryan Green and yet, no-one was able to inform you. Does that mean that there was nothing that came out of that meeting with Bryan Green, who was a minister at that time?

Mr MALLINSON - Basically, my father and I went to see Bryan to tell him the way we had been treated and ask him whether someone could show a bit of commonsense and stop this because the whole thing was getting to be a real farce. From memory, our conversation with Mr Green was that we did not go into that much detail about it - Mr Green explained his situation and we explained ours and we left there with both my dad and I happy with the meeting.

But the biggest issue we have had is getting people to see commonsense. With this whole appeals process, if somebody were treated as poorly as we were in a court of law, there would be hell to pay. You could well imagine if the Aboriginals were in our position, being treated over something that they felt, there would be huge issues. All we want are a few answers - why one minute we are staying and now we're not. We just cannot understand that. It's not because we are dumb, it is just the people.

Mr GREEN - Is there any proposed change in the status of the road between the two shacks?

Mr MALLINSON - No. I can't find anybody who admits ownership to that road at the moment. The national parks say it is not one of theirs, St Helens Council say it is not one of theirs.

Mr GREEN - So the access to the one with the 30-year lease - that would stop a little further up the road from you, wouldn't it? If your shack was removed, do you think that the plan would be for that area to be rehabilitated?

Mr MALLINSON - We have argued with the national parks and the St Helens Council over getting some work done to the road. From what national parks tell us, that turning circle at the bottom of the two shacks is an overflow camping area for the Deep Creek camping ground. When Deep Creek is full they allow people to come down to that area and camp on it. If our shack goes, it is basically going to be a hill without shack. People will still drive into that area. It is used as a day area for picnics, a lot of fishermen anchor in the bay and their families quite often come up and have picnics in that area. The use of that area will not change. Our attitude is, 'If the area is so sacred to the Aboriginal people, close it off and get everybody out. Don't kick one shack out and keep the other'.

Mr GREEN - That is the point I am trying to make, that the road exists and goes between the two shacks.

Mr MALLINSON - Yes, it goes between the two shacks into the turning circle and then comes back out.

Mr GREEN - And that road effectively goes through the Tasmanian Index - so it goes between the two shacks and therefore right through the middle of the index?

Mr MALLINSON - Yes.

Mr GREEN - Would you suggest to the committee that people travelling on a road through that indexed area would have more impact on that area than what your shack would?

Mr MALLINSON - I imagine so. Over the years we have tried to get some grass growing around our shack because, as you know, it is a very dirty, grey, sandy, dusty soil. We've done a fairly good job by covering up the areas with some grass. The road is constantly being weathered and washed away because there is no proper guttering. It will still erode and will still be eroding in the 30 years that the other shack has his lease. There will still be a lot of people who go into that area, people camping in that area, so all the Aboriginals are going to succeed in getting rid of one shack. What they will probably find is that people then will move up to this area because it's a nice spot on a nice day. We will go up there in years to come, if we ever go back, and we will see people sitting up there in their cars, having picnics. We will shake our heads and wonder why.

Mr HARRISS - We are going to be at Eddystone Point and Ansons Bay tomorrow, is there any chance of your being there to show us the issues?

Mr GREEN - I know where to go. I was planning on going there anyway.

Mr MALLINSON - We have nothing to hide. I welcome you going to the shack tomorrow and having a look around. There are shells scattered all over the place and one of our big arguments was - and my attitude was that there are a lot of shells on our site but there is also a lot of gravelly sand off the beach. Over the years we've carted a lot of that up to the shack. Traditionally Aboriginals did not have sand and gravel in their middens, they had shells and bones. I have said to the Aboriginal people that a lot of that stuff has been carted up by us to stop erosion, for the kids to play in with their trucks - big piles of gravel, sand and shells - and also we have been eating shellfish and fish over the years and just turfed the shells out. By all means have a good look around but, please, note the gravel in the shells.

CHAIR - Thank you very much, Shane, for your evidence. It has been well presented.

Mr MALLINSON - I will post that letter to Dr Huntly.

THE WITNESS WITHDREW.