

**THE JOINT STANDING COMMITTEE ON ENVIRONMENT, RESOURCES AND DEVELOPMENT MET IN LAUNCESTON ON THURSDAY 23 JULY 2009.**

**Mr FRED SPITERI** WAS CALLED, MADE THE STATUTORY DECLARATION AND WAS EXAMINED.

**CHAIR** (Mr Hall) - Welcome, Mr Spiteri. This is a public hearing. Everything you say today is covered by parliamentary privilege. That allows you to speak freely but I would ask that once you leave the committee room you do not speak in general terms on the evidence you have given. Any questions on that?

**Mr SPITERI** - Not at all.

**CHAIR** - Thank you. As we all know, yesterday we had an on-site visit to where Fred lives, therefore giving us somewhat of an understanding of the issues. We have your written submission, which is number 28, and I am sure the members have read that, so what I would invite you to do now is present your evidence to the committee and then the members will ask you some questions.

**Mr SPITERI** - I have produced an introductory letter which I would just like to put forward first. It states:

I am here as a part-owner of shack 2 at Ansons Bay and also representing the licence holder of the shack, Mr Les Gittus.(?) As you would be aware, shack 2 is deemed for removal, and I now refer to the terms of reference in order to make some specific final points for the committee's consideration. As my written submission states, I am contesting the claim that shack 2 is located on Aboriginal middens or artefacts on the advice of the Aboriginal artefacts officer. I now have reason to believe that the alleged middens are in fact discarded mussel shells from bait collections.

Mr Gittus and myself were discouraged from lodging any appeal because the issue was considered to be an Aboriginal heritage issue. We now regret this decision. An appeal would have been lodged to the Crown Land Shack Sites Office if we had not been led to believe it would be a fruitless exercise. Also, had we lodged an appeal, it would have addressed the other minor issues referred to in this matter.

You will see from my submission that I have been a victim of circumstances that has led to the position that I now find myself in. I cannot stress enough that shack 2 represents a significant financial and personal investment over the past 10 years. This has been a stressful time, as I have uncovered and revealed a number of inconsistencies and flaws in the shack sites assessment process. Therefore I am grateful to have the opportunity to come forward before you today.

In summary, the implementation of the Crown Land Shack Sites Act 1997 has had a significant impact and stress upon Mr Gittus and myself. I

believe we have received incorrect advice which resulted in the following: my loss of other shacks; and Mr Gittus and I being discouraged to lodge a formal appeal against the minister's decision for the retention of shack 2.

I am here today to ensure that my submission is duly considered. There does not seem to be any equity, transparency or justice in the decision-making process. I am at a loss to understand the final outcomes. For example, some shacks on alleged middens are being retained and others are being removed. The owners of the retained shacks stand to receive a significant financial gain, and the owners of shacks to be removed will receive absolutely nothing.

Had Aboriginal middens not been found we would have appealed against any other matters preventing the retention of shack 2 for the purpose of free title. In closing, if there were authentic middens at site 2, then at the very least we would expected an extension of the lease.'

That is my introductory letter. I would like to start a little bit before my involvement with shack 2. Back in, I think, 1998, shack number 66 was advertised for sale. I came forward with interest to purchase this shack and we just had to wait for an assessment on it. It was deemed to be removed because it did not have access, as were several shacks nearby. I uncovered an access via legal advice -

**Mr HARRISS** - Before you go on, can you give an indication where shack 66 is, Fred?

**Mr SPITERI** - It is closer to the boat ramp. It is actually not far from that shack that is at present having a problem with the boundary eroding from beneath it.

**Mr HARRISS** - So most likely along Casuarina Drive?

**Mr SPITERI** - That's it, yes. This shack was, at that time, not being offered for retention, purely because it did not have an access. I, through investigations, found from legal advice that because it had access for 46 years there was probably still a good chance of appeal and put this case to the Crown's shack sites office. I was told by the then project manager that I had no right of appeal and if the present owner of that shack chose to part with her shack, that shack would be deemed for removal as it would be for any other shack owner. The Crown was only offering the free titles to present shack owners or licence owners. Therefore I had no win with that case. That, you will see later on in my conversation, was my first dealing with the office, which led to a disappointment as well.

Getting back to shack 2, which is what my submission is all about, in 2000 the owner of that shack advertised the shack for sale. I called upon her to look at the shack and she showed me a letter from the Crown's shack sites office that she was permitted to sell the licence and the shack. I rang the office to confirm this and a Mr Pravin Ram (?) did confirm that that was right. He also made me aware that shack 6 from that group of shacks was to be removed because of the Aboriginal middens and any shack with that classification would have a similar outcome, they would definitely have to be removed.

Up until 2005, in all documentation that Mr Les Gittus received there was no mention of Aboriginal middens at all. The issues were related to private land issues and Mr Harry

Ford being a neighbour. Eventually in 2005 Mr Les Gittus did get a letter from the shack sites office. He was most depressed, ringing me and telling me that we had lost the case, it was all to do with the Aboriginal middens issue and nothing to do with land issues, whereas all documentation prior to that said nothing about Aboriginal issues.

Whilst we accepted the fact that being a heritage issue we did not stand a chance, purely from all the conversations we had had with previous project managers, shack owners who had problems with Aboriginal issues, we accepted the fact that we were going to lose the shack.

In 2006 another shack 29 was advertised and it was below the high-water level. I got in touch with the Break O'Day Council to make inquiries as to what could be done to resolve the building being rotted with flooding and those sorts of things. The council inspector at the time did say to me that nothing would be accepted by council for me to raise the shack onto stumps to prevent the floor rotting, nor would we be permitted to replace the concrete. The shack would stay as it is because if the council had their way they would sooner all those shacks be gone from that area of the below the high-water mark.

In July 2007, I then spoke with John Dowling from your office, I believe, and mentioned the matter to him, that Mr Gittus at the time of the appeals was unable to appeal because he had a mental breakdown, was diagnosed as having bipolar disorder, and also went through a stressful period with his marriage break-up. He was in hospital after trying to commit suicide. Therefore he did not appeal. I mentioned this to the project officer, I think the person was Mr McArdle, and he said at that time that regardless of any issue, the main reason for the shack to come down was the Aboriginal middens and that Mr Gittus missed his appeals process time. There is no department in place to handle any further complaints because the minister had signed legislation and the whole matter was over.

In 2007 - I had accepted the fact that shack 2 was going to be removed - I met another shack owner nearby the previous shack 66, who then said to me that shack 66 was retained to another party who was not the owner of that shack. That depressed me, knowing that I put so much effort into shack 66 and the Government advised me that shack 66 could not be purchased by anyone other than the present licence owner. That was found to be false because it was another person who got the licence and also won the case and the access was what I discovered.

In 2007, looking elsewhere for a shack, another shack owner who is nearby shack 66 suggested I get in touch with the Aboriginal Artefacts Officer, which I did. He could not recall that shack 2 was being removed because of Aboriginal middens. He did not have any documentation of that. But he did suggest he would meet me on one of the trips that he had planned in the near future with his children at the Lighthouse houses. We had met and the first thing he said quite clearly and firmly after looking at the so-called middens was that they were not Aboriginal middens, they were purely discarded mussel shells from recent years of mussel bait collection. That concerned me because I thought a shack was to be deemed to be pulled down purely on a person scratching the surface of the ground and saying they are middens or they are not middens. I then got in touch with Paul Harriss's office and passed that information on to Paul. Sometime in 2008 I also got

in touch with the shack sites progress office again to ask if I could take on the leasing of the jetty which was connected to shack 2.

The office did suggest that that may have been a good idea, and the fact that shack 2 was coming down on account of Aboriginal middens meant there was no reason we could not keep the jetty. But it was only several weeks later that Les Gittus received a letter in the mail saying that the jetty had to come down because the shack was coming down because of Aboriginal middens. Mr Maynard, the Aboriginal Artefacts Officer, says they are not middens. I have documentation here which I will leave for the committee so they can go through it. It touches on every issue that I have touched on here. It states that the shack is coming down purely because of Aboriginal middens while at the time we thought all the problems we had was the private land issue.

The private land issue was broken up into three categories, being effluent, encroachment and access. Shack 2 was grouped with four other shacks and that is why the private land was being requested: to service the five shacks. Two shacks had since gone. Therefore we did not need quite as much land for the effluent dispersal. But if the shacks were assessed individually we would have stood a fair chance of appeals for shack 2 if the Aboriginal issue was not an issue purely on the basis that encroachment of shack 2 is only to the boundary of Mr Floyd and a portion of the shack that is on the boundary could have quite easily been removed. As far as effluent is concerned, the allotment has been allocated 604 square metres. It only requires 180 square metres for a biocycle. Therefore, we would not need that access for shack 2. As you would see from looking through these reports, shack 2 is bounded by a road reserve, so we do not have an access problem. The problem we had was that we were grouped with all these other shacks that encroached onto private by 50 to 60 per cent, as we do not, and the crown was looking at dividing an area of land for the effluent dispersal, whereas at one stage Mr Floyd did approve of parting with some of his land to service shacks 2, 3 and 4 but not 5. Mr Llewellyn did remind Mr Floyd that if he gave us the land for servicing all five shacks then he would be provided with an access to his caravan park. I believe this is what upset Mr Floyd. I am only assuming, but this is what it looked like to me, because at the beginning he was prepared to assist with the retaining of shacks 2, 3 and 4. That is basically it.

**Mr HARRISS** - Fred, can you indicate in more detail about the Aboriginal Artefacts Officer who was involved in the original delivery -

**Mr SPITERI** - Yes, he was. That says it in this information.

**Mr HARRISS** - He then came to your property, that is Mr Maynard -

**Mr SPITERI** - Yes.

**Mr HARRISS** - and he has indicated to you that the shells identified - we have seen the area and it is a very small concentration - were nothing more than mussel bait shells, in his view?

**Mr SPITERI** - Yes.

**Mr HARRISS** - Did you question him as to why, in his original preliminary assessment, it was indicated they were middens?

**Mr SPITERI** - He advised me that all he was to do was to walk around with the other gentleman concerned and if any sites looked like having shell remnants then he could put forward that they could be Aboriginal middens. He assumed a further investigation would be held on these sites. He did ask me why we did not seek a further investigation and my reply to him was that we had tried once to employ a company and as soon as we mentioned the words 'Aboriginal middens' they backed off.

**Mr HARRISS** - You said also that you were led to believe any appeal would be a fruitless exercise.

**Mr SPITERI** - Exactly.

**Mr HARRISS** - By whom were you led to believe that to be the case?

**Mr SPITERI** - That was said on several occasions. Once it was said to Les Gittus when he rang the crown shack sites department and inquired as to when he received the first letter stating that his shack would be removed due to middens and he was told that it was a fruitless exercise. It was also said to me when I spoke to Pravin Ram at the very first conversation about shack 66 that shack 6 was to be removed because of Aboriginal artefacts and that any shack with that classification would have the same outcome. So whenever we discussed the problem with Aboriginal middens we were told it would be a fruitless exercise. I believe the owners of shack 92 sought legal aid and their legal person also advised them that it would be a fruitless waste of time and money.

**Mr HARRISS** - So based on that, you took no further action?

**Mr SPITERI** - Exactly.

**Mr HARRISS** - You were completely and utterly deterred by legal opinion.

**Mr SPITERI** - That is right, exactly.

**Mr HARRISS** - Subsequent to that, when Mr Maynard revisited your site on your invitation and said that they were nothing more than mussel bait shells, why didn't you take that further, given that Mr Maynard had indicated that to you? If I could go a bit further with that for a moment, I am aware from my previous lengthy conversation with you that there was a suggestion that, for some consideration, a further assessment might be forthcoming. Is that the matter on which you want to provide evidence to the committee?

**Mr SPITERI** - Could you clarify that just a little bit?

**Mr HARRISS** - When I say 'for some consideration', I mean for the payment of some fee.

**Mr SPITERI** - The outcome was that the first thing he did once he got out of his vehicle was go straight to the supposed midden site. He examined the site and stated that they were not middens. I invited him into my shack, offered him a coffee, and then said to him,

'What now?'. He suggested I wait for a week when he would be back in his office and could put together a report stating his findings, but it was going to cost me a fee, and he wanted the fee at that time. I was not expecting to pay at that time but I said to him I would be in touch with him within the next week or so.

**Mr HARRISS** - Did you consider that a further process might be available to you, given that the original assessments were made for no payment of any fee by any shack owner?

**Mr SPITERI** - Certainly. Going on his statements to me I thought we should be offered the right to have this site investigated by some reputable company.

**Mr HARRISS** - At no cost.

**Mr SPITERI** - At no cost. I felt I shouldn't have to pay to have this verified if that is what they are. If they are not true, then we should be given the opportunity. If it is true then I will accept the fact that they were Aboriginal heritage issues.

**Mr HARRISS** - But in your view, here is the same assessment coming again and saying they are not middens, and you started to feel you were on pretty solid ground to have the middens issue dismissed.

**Mr SPITERI** - Exactly.

**Mr HARRISS** - Why didn't you take the punt, then, and pay the fee being asked and then submit that documentation to the minister?

**Mr SPITERI** - Because I think if I had paid the amount and there was any mention of ill-dealings then I would become a part of it, and I wasn't prepared to do that. I didn't want ill-dealings, I just wanted to make sure that the middens were authenticated and I wasn't going to pay to have them overlooked. If the same officer who said 10 years previously that they possibly could be middens, and the minister took his word for that, then I would assume the minister would have also accepted his words to say they are not, but I wasn't prepared to pay anything towards its not being true.

**Mr HARRISS** - The committee is aware that in your submission you have written to the minister indicating that you might be able to prove that the shell deposits are not middens and therefore -

**Mr SPITERI** - He's uninterested.

**Mr HARRISS** - the minister could put a stay of demolition on the shack pending possible confirmation that they are not middens.

**Mr SPITERI** - Yes.

**Mr HARRISS** - The committee is also aware that the minister has written back and said no.

**Mr SPITERI** - That's right, he's not interested. The minister will not acknowledge the fact that I have any claim to the shack. The owning of the shack is not the issue, it is the reason it is being demolished. The issue of owning the shack is between the licence

owner and myself, so if the shack stays then that vexed issue is crossed by Les and myself.

**Mr GUTWEIN** - In the assessment that was done regarding the middens, we have heard from other witnesses before this committee that auger testing was carried out. Was auger testing carried out on any of the occasions that your shack was inspected for Aboriginal heritage?

**Mr SPITERI** - Mr Maynard didn't mention that, no.

**Mr GUTWEIN** - Do you mind if I ask what amount was discussed in regard to your having to pay to receive a second assessment?

**Mr SPITERI** - Am I under protection of privilege?

**Mr GUTWEIN** - Yes, you are.

**Mr SPITERI** - Okay. It was an amount of \$750 there and then on the day, and then another \$750 upon receiving a written report. This has also been said to me by another shack owner who paid a similar amount of money to have his plans accepted by council. His issue was also an Aboriginal midden.

**Mr GUTWEIN** - I don't want to have too much hearsay evidence before the committee, but are you aware that that other shack owner had previously received an Aboriginal heritage determination and then paid to have a second one conducted, or did he pay to receive only the one?

**Mr SPITERI** - He paid to have a report put forward to council so that the renovations to his shack would be accepted by council.

**Mr GUTWEIN** - Are you aware that that was a second report and that there was an original report in the same circumstances as yours?

**Mr SPITERI** - I presumed it was the first report.

**Mr GUTWEIN** - Okay. I can understand your not wanting to engage in 'ill-dealings', as you have explained them, but what action did you take a week after? Obviously there has been a lot gone on; I have read the correspondence and I must admit I have some sympathy for your circumstances. When the Aboriginal heritage officer arrived I would imagine that after that initial discussion you believed there was a glimmer of hope that this matter might be finalised. Then the question of a payment was made and you made a decision in regard to that. What were the next steps you took?

**Mr SPITERI** - I then got in touch with the Crown shack sites office and was told basically that the process of appeals was over, I had missed my opportunity, and there was no department in place.

**Mr GUTWEIN** - What sort of time frame was that after the visit?

**Mr SPITERI** - That would have been probably within a couple of months. Straight after the artefacts officer investigated the site I got in touch with Mr Harriss and passed the information on to him.

**Mr BEST** - I am interested in the 'ill-dealings', if that's what you were concerned about. Did you think at the time that there could have been some way to verify whether it was incorrect to get a second opinion? If you thought there was something that wasn't quite right about getting a second opinion in the manner that was offered, did you test to see whether in fact that was the case?

**Mr SPITERI** - My daughter got in touch with a geological company to see if we could further our own private investigations, but the moment we mentioned the shack was being removed because of Aboriginal midden issues they reneged instantly; they said, 'You've got to be kidding'.

**Mr BEST** - What I am trying to work out here is that you contacted Mr Maynard, he came and had a look and agreed with your assumptions that it was mussel shells for bait that was around the shack and not a midden. He then said, 'I can give you a report.'

**Mr SPITERI** - If I can just clear that up, I did not think that those shells were anything other than middens. I did accept that, until Mr Maynard said to me on the phone that he had no recollection or any documents saying that. Then, when he investigated the site himself, it was only at that point that I became very concerned that we now could be losing the shack purely on the basis that these shells are middens. He was the officer present in 1999 who made the initial investigation of the area and he is now saying that he cannot recall this site ever being deemed for removal because of middens.

**Mr BEST** - But we are pretty sure there has not been any auger testing of the site, aren't we?

**Mr SPITERI** - I am not really sure about that. The owner is not really in a state to discuss the whole thing because he is out of the State.

**Mr BEST** - I understand that.

**Mr SPITERI** - From what I gather from the years of associating with Mr Gittus, he has never mentioned this.

**Mr BEST** - It is just that we have had other people who have had auger testing where they have had some indigenous investigation.

**Mr SPITERI** - This is why Mr Maynard said he honestly could not understand why this lot - shack 2 - was being deemed for removal on the basis of Aboriginal middens. He said he has no documentation saying that these exist.

**Mr BEST** - But in the context of the review surely it would have been quite fair and reasonable to have a further study.

**Mr SPITERI** - You would have thought so. But our problem right up until Mr Gittus had received the very first letter stating why that shack was not going to be retained was that we

were led to believe every issue was based on private land with Mr Floyd, the neighbour, and nothing to do with Aboriginal middens. That was just thrown in at the very end.

**Mr BEST** - Thank you.

**Mr WILKINSON** - And just like anybody properly identifying whether a site is a site of significance or not, testing would have to be done, you would think.

**Mr SPITERI** - You would think.

**Mr WILKINSON** - What type of testing took place in your presence by Mr Maynard?

**Mr SPITERI** - Basically, picking up the fragments of the shells, breaking the shells apart and his saying these are definitely not middens. He said a midden is a mud oyster gone through a burning process, and these shells are definitely not that. These shells are mussels. These are remnants from recent years of boat collection. He said, 'It is obvious', and the fact that they are right beside the garage door.

**Mr WILKINSON** - So that took how long?

**Mr SPITERI** - Fifteen, 20 minutes.

**Mr WILKINSON** - So it was after that 15 to 20 minutes of looking around the area, having that conversation, that you believed, and believed on good grounds, that they were not middens.

**Mr SPITERI** - Exactly, yes.

**Mr WILKINSON** - Right. And there has been no other testing in your presence to suggest otherwise?

**Mr SPITERI** - No.

**Mr WILKINSON** - There have been no other diggings in and around your shack to suggest otherwise?

**Mr SPITERI** - No.

**Mr WILKINSON** - Have you been told why and, if there has been testing, what type of testing it was to state that they were middens?

**Mr SPITERI** - Not at all.

**Mr WILKINSON** - So the only evidence that you have before you is that they are not middens but you are told to take the shack away because they are middens.

**Mr SPITERI** - Exactly.

**Mr WILKINSON** - Without any evidence that you know of to support that fact.

**Mr SPITERI** - Exactly.

**Mr GREEN** - Who is the licensee?

**Mr SPITERI** - Les Gittus.

**Mr GREEN** - Has he been told?

**Mr SPITERI** - No. He rang me, concerned that the shack was being removed purely on the basis of middens. That was the first he heard of it.

**Mr GREEN** - In any of the correspondence to the licensee was he informed of any testing or any work that had been undertaken with respect to this?

**Mr SPITERI** - No, not from what he told me. He basically told me everything that he had experienced with his shack. He has no documentation.

**Mr GREEN** - I am just trying to clarify the point where you told us that the department will not deal with you, the minister will not deal with you because you are not the licensee. We just need to make sure that just because you do not understand it, that the licensee does not understand it.

**Mr SPITERI** - He has not mentioned it at all, even when I have asked him in previous years; as far as he is concerned, there has been no testing on his site to prove the authenticity of these Aboriginal middens. I have every single bit of documentation that he has been sent from any government department.

**Mr GUTWEIN** - Just as a matter of clarification, in your submission you said it was around April, May of 2007 that notification was provided to Les Gittus that the shack would be removed on the basis of Aboriginal heritage issues.

**Mr SPITERI** - Yes.

**Mr GUTWEIN** - Then you contacted Mr Maynard or managed to have a conversation with him at some time about this.

**Mr SPITERI** - Yes, that would have been in March 2008. I had spoken with Mr Maynard and that is when he visited to site.

**Mr GUTWEIN** - That was specifically to request what are the Aboriginal heritage issues and what was -

**Mr SPITERI** - That was his suggestion. It was suggested that I call this gentleman, and it was then that he suggested he would meet with me at Eddystone Point because he had planned, in the near future, a trip to the Eddystone Point Lighthouse dwellings with his children.

**Mr GUTWEIN** - Okay. But you did ask him whether or not there was any information on file available at that time?

**Mr SPITERI** - No, he just put that forward to me. He said, 'I do not have any documentation' and that shack 2 was to come down because of Aboriginal issues. He said, 'The only documentation I have is that this shack and those four shacks remaining within our group, is purely an issue with Floyd.' That is all he had.

**Mr GUTWEIN** - Taking one step off that, just in regard to Mr Floyd. You mentioned that the offer was made by Mr Llewellyn to Mr Floyd that access could be provided to the caravan park if he were to provide access to the shacks. Is that right?

**Mr SPITERI** - As you can see, if you read through this, that is what it leads up to. Basically, Mr Llewellyn is thanking Mr Floyd for approving the sale of land to retain shacks 2, 3 and 4, requesting him to reconsider allowing shacks 5 and 6 to stay. He would not reconsider and said, 'May I remind you, for your proposed caravan park, you would require us for access to your caravan park'. That is what you will find in here. It is headed by a letter from David Llewellyn to Mr Floyd.

**Mr GUTWEIN** - I take it that you had indicated that Mr Floyd was unhappy with that offer?

**Mr SPITERI** - I gathered that Mr Floyd would have been upset because at the beginning he was more than prepared to allow shacks 2, 3 and 4 to stay. Then, it just so happens, from reading conversations from Floyd back to the minister's office that he was upset with now being told what he should be doing. At the beginning he was asked would he mind assisting and at the end he was told this is what the Government expects of him.

**CHAIR** - Would you like to table some of those documents, the ones that you are referring to?

**Mr SPITERI** - I could leave these documents here because they all make reference to my points. Is that okay?

**CHAIR** - Yes, that is fine.

**Mr HARRISS** - Fred, in your evidence you mentioned another shackie who, as you understand, has paid for a second assessment. You might like to consider identifying the shack number. We can then do further homework on that. You might not want to give that evidence in open session -

**Mr SPITERI** - To interrupt, I am not sure of the number but it is within the same area of shack 66.

**CHAIR** - Order. That is something which you ought to do in camera.

**Mr HARRISS** - That is what I was just suggesting, that Fred might like to give that evidence in camera.

**Mr SPITERI** - It does not bother me either way but I really do not know his number. But I can say, he is two or three doors up from shack 66 because, at that time I was -

**CHAIR** - Yes, it has to go in camera.

**Mr HARRISS** - Let us not pursue that because it is your understanding. You also indicated to us on-site yesterday and the maps you showed us indicated that there were a number of other shacks with identified existence of middens, which do not have to be removed. Can you identify those for us now for the record, please?

**Mr SPITERI** - I believe, from counting -

**Mrs RATTRAY-WAGNER** - I think the committee will have to get a copy of that.

**Mr SPITERI** - I will leave this with the committee as well. If you go through all the shack sites it does illustrate every shack that is of Aboriginal importance and I have counted 41 shacks within the whole of Ansons Bay. I do not know how many of these 41 shacks are to be removed but I do know that shack site 92, for example, and 2 and 93 from our end of our of the bay have to be removed on account of Aboriginal middens.

I also believe that just out the front of their doorway there was a road constructed on the largest deposit of Aboriginal middens to service four or five shacks at the other end of Ansons Bay, which is known as Shark Bay, that are also on Aboriginal middens but they do not have to be removed. I cannot understand the inconsistency of that where some can stay and some cannot.

There is also another point that I want to make in regards to shack 92. They were told that because of there being Aboriginal middens they had to go and as well that their shack borders very closely to a road. But their road is a gravel track which is not a through road. It just services these shacks that lead to Shark Bay. Yet at the other end of the bay back to where shack 66 is, which I believe is Acacia Drive, down that end, there are shacks that are just as close to a bitumen road and yet they are not going. There just seems to be a lot of inconsistencies.

**Mr HARRISS** - I want to go back to the matter of the payment for the assessment of your site. What process was indicated to you as to how that should be paid and to whom that should be paid? That might be something that you would like to deal with in camera.

**Mr SPITERI** - Yes, I would rather. May I make another point in regards to shack footprints? If shack 2 was deemed to be removed because -

**Mr HARRISS** - That is your shack?

**Mr SPITERI** - Yes, our shack; when I say 'our' I mean Mr Gittus and myself. The footprint apparently is on the boundary of the private land. If that by chance was to be retained and I purchased that or Les Gittus purchased that site to become free title then would we not have the privilege of pulling down that shack and reducing the so-called footprint to a smaller building? If we do not wish to have a three-bedroom building we could therefore only want a two-bedroom or a single-bedroom building; we would be permitted to do that upon building codes. Therefore why should we look at our shack having to come down because it is sitting on a boundary? Why can't we just remove the portion of shack and take it back off the boundary? It is just a point I meant to make earlier.

**Mr GEOFFREY EMBERY WAS CALLED, MADE THE STATUTORY DECLARATION AND WAS EXAMINED.**

**CHAIR** - Just remember you are under parliamentary privilege which allows you to speak freely but please do not be specific; once you go outside you can speak about general matters but not be specific. What we will do now is to get you to say your piece, if you like, and then the committee will ask you some questions.

**Mr EMBERY** - Twenty years ago I came to Tasmania after I was divorced in Queensland, for a restart on my life. I worked for 12 months down here. I helped my sister build her house and my friend who came from Queensland who moved to Marrawah. I left after 12 months, went back up to Queensland for three months and then I came back to Tasmania. Within two days of my arrival back in Tasmania, the shack that I bought at West Point came up for sale. A friend rang me up and said, 'There is a shack that just came up for sale at West Point'. I have surfed all my life, and my shack is actually within walking distance of one of the best surfing beaches in Tasmania. I rang up my mum and said, 'A shack has come up for sale'. My mum had early signs of cancer at that stage and she said, 'Looks like you are going to make a start in Tasmania now so I will help you buy the shack'. So I acquired the shack.

When I bought it I asked rangers in the area, anyone else - the Government - and they said there was no trouble with the shack, I would have it until I died. Then all this started coming up. I do not know why I am having the shack taken off me really. They did surveys. I have a file about this thick of every test they have done in the area. Nobody had been causing pollution or water seepage. There was no evidence of grey water or anything doing any damage or anything like that. The whole process of this thing has been that nobody has known what is going on. They keep changing the goalposts all the time. Originally it was just that they were doing a survey and a review and they said, 'Good chance you'll be given freehold, or at worst probably you will just still remain on your lease'.

**Mr WILKINSON** - Can I ask, before you go any further, how much did you pay for the shack in the first place?

**Mr EMBERY** - \$26 100.

**Mr WILKINSON** - When you paid for that shack, did you get title of it?

**Mr EMBERY** - Yes.

**Mr WILKINSON** - Did you have to do anything with council prior to purchasing the shack to ensure that everything was in order in relation to the building?

**Mr EMBERY** - No, it came up for sale, I checked with everybody that I could what the leasing arrangements were. They said, 'There is no trouble. No lease has ever been stopped. You virtually have it as long as you like. You can resell. You can do what you like'.

**Mr WILKINSON** - Even though there is no actual title to the property, I imagine - or did you get a title to the property? I doubt that very much.

**Mr EMBERY** - No. It is leasehold, you see.

**Mr WILKINSON** - It is leasehold, that is what I am saying.

**Mr EMBERY** - You get your rates and the lease notes.

**Mr WILKINSON** - Yes. You went through the process of purchasing it through a solicitor?

**Mr EMBERY** - No, through a real estate agency. The real estate was selling it.

**Mr WILKINSON** - Did you get a lawyer to act for you though?

**Mr EMBERY** - No. Everybody with any authority in the area was of the same notion that they would not be taken, that a lease is as good as buying it, that there was no difference buying it on leasehold. You just paid your lease and it was the same as buying it freehold virtually. We had the same rights and everything. They said nothing about it.

**Mrs RATTRAY-WAGNER** - At that point you said there had been no environmental issues that you were aware of, no seepage or anything.

**Mr EMBERY** - No.

**Mrs RATTRAY-WAGNER** - So your shack is deemed for removal because of Aboriginal middens, is that correct?

**Mr EMBERY** - I really do not know. I do not even know if they are taking the land off us to give it back to Aboriginals.

**Mrs RATTRAY-WAGNER** - So you have not been told why it is deemed for removal?

**Mr EMBERY** - No, I have no idea why. We seven chaps have been to the Supreme Court - six old-age pensioners and me. I don't have the money to pay for lawyers and barristers and things. We had the council lawyer for Smithton working on our behalf, the Mayor of Smithton spoke on our behalf, and basically when we got into court there were about 20 lawyers against the Smithton lawyer. I have shown the documents to a friend of my wife's sister who teaches law in Adelaide, but she's from Tasmania originally, and she said that if we had had the money to get a barrister we probably would have won this case. As far as I can see the whole thing is political; that is why it is getting done. My main gripe about the whole thing is that I paid for it and now they're offering us \$5 000 and that is on a pro rata thing of about three years after the shack has been removed; that is a removal fee -

**Mrs RATTRAY-WAGNER** - Were you offered an alternative site?

**Mr EMBERY** - They started off saying they would give us block further down the coast. We went and looked at those. At the moment I drive from Launceston to Marawah, which is three-and-a-half hours, and they wanted me to drive another hour down the coast to these other sites.

**Mrs RATTRAY-WAGNER** - Where was that?

**Mr EMBERY** - At Couta Rocks. I said if they gave me a site down there I would have to drive down to there and every time I wanted to go for a surf I would be driving back to where my shack is now, so it would virtually be a two-hour trip every time I wanted to have a surf. That did not really interest me, but they sort of gave those and then took them away anyhow before anybody could get any.

**Mrs RATTRAY-WAGNER** - So those blocks have never come to fruition?

**Mr EMBERY** - No, they were offered and, as you know, when this shack thing first started prices in Tasmania were very low and then they jumped by \$100 000 on every property in Tasmania virtually overnight. So they have gone cold on it; we did not hear information for 12 months or two years. Then they came back and said that they were going to offer us crown land blocks but we'd have to buy them at crown land prices.

**Mrs RATTRAY-WAGNER** - Market value.

**Mr EMBERY** - Yes, market value. I told them it did not really interest me to get a block down further and they said that if I wanted somewhere on the east coast I could have a look at crown land there. They offered a couple of things to have a look at but there was nothing that appealed to me and, anyway, they sort of stopped that as well. From start to finish nobody has really known what is going on. As far as everything goes, I have no qualms about them giving the land back to the Aboriginals but I do not see why it should be coming out of the pockets of the few shack holders they are taking the shacks from. Why can't we be compensated properly so that we can eventually get a shack somewhere else? Why should we be footing the bill? I really can't understand why.

**Mrs RATTRAY-WAGNER** - So can I take it from what you've just said that you would be happy with market value compensation, given that you've not been told why your shack is being removed?

**Mr EMBERY** - Yes. There are Aboriginal things there.

**Mrs RATTRAY-WAGNER** - They have been identified?

**Mr EMBERY** - There are midden sites that you could drive over but in the last four or five years I have not driven into my shack; I have walked into it. I park at the old lighthouse site and I walk up to my shack. I do not drive my vehicle over there at all.

**Mr GREEN** - Yours is a stone shack?

**Mr EMBERY** - Yes, a stone shack.

**Mrs RATTRAY-WAGNER** - We visited that on Monday.

**Mr EMBERY** - I have not driven to my shack for five years, probably.

**Mrs RATTRAY-WAGNER** - We did not drive either.

**Mr EMBERY** - I just park at the lighthouse and walk over, carrying my sleeping bag, and I stay there. But since all this started, we have not been allowed to do anything to maintain our shacks or anything anyhow. I was happy on the lease set-up that I have on the shack. I didn't really care if I had freehold or anything like that. It didn't worry me; the lease was fine.

**Mrs RATTRAY-WAGNER** - Would you be happy to hold a lease, say, for 30 years, and at the end of that period relinquish it?

**Mr EMBERY** - Yes, I would be, but at the moment it is virtually just get out and tough luck. What bugs me the most about the whole situation is that we're not getting a cent for it and are just told to get out. We haven't done any harm to the place. I was talking to a ranger a couple of years ago at my shack as he drove through and he stopped and said, 'This is a really good area here, it hasn't been wrecked by four-wheel drives and motorbikes and all those things', and it is because those couple of shacks are there. You would go and tell people if they were burning around not to do it there. There is a bit of responsibility between the local people who surf there and the things they do stop vandalism and rubbish being thrown in the area. They are all my age or older; it is not like they are kids. They're grown-ups and if they see rubbish on the beach and they will pick it up themselves. If they see somebody throw it, they will go up and front them and tell them not to chuck their rubbish around here, put it in their car.

**CHAIR** - But you're surfers.

**Mr EMBERY** - Yes, but I've surfed all my life. I was in the lifesavers up in Queensland.

**CHAIR** - I admire you for being able to surf there - it's pretty wild there.

**Mr EMBERY** - Well, I've gone through lifesavers and everything like that, so I'm competent in the water. Like I say, I have surfed since I was nine years old.

**Mr WILKINSON** - Can I ask how much the value of the property is now, if you have a value?

**Mr EMBERY** - This is a rates notice.

**Mr WILKINSON** - So your rates have gone up?

**Mr EMBERY** - Yes, they've probably doubled, I suppose. Land value is \$86 000, capital value is \$118 000.

**Mr WILKINSON** - So it has gone up from \$26 000, approximately, to \$216 000?

**Mr EMBERY** - Yes, but it was \$130 000 in the last rates notice I received.

**Mrs RATTRAY-WAGNER** - So it's dropped a little bit?

**Mr EMBERY** - Yes.

**Mr WILKINSON** - Therefore, your rates have gone up from what?

**Mr EMBERY** - I think I used to pay two lots - there were rates and the lease - and I think it was about \$250 for both of them and they are up to about \$416 now.

**Mr WILKINSON** - And they want to take that property from you for nothing, but you still have to pay the rates?

**Mr EMBERY** - Well, see, this is the thing - it was supposed to be taken by the office in October and I have just received this to pay it again. So one hand does not even know what the other hand is doing, as far as I can -

**Mr WILKINSON** - One hand is in your pocket and the other one is taking the shack?

**Mr EMBERY** - That's basically it. When I first came to Tasmania there used to be a shack at Lighthouse Beach that people were allowed to stay in for free. It was an old Parks and Wildlife shack and the young guys from Burnie used to go and surf there and about 10 of them used to stay and it was just somewhere you could get out of the weather and cook. It had a water tank there so you could get fresh water and an open fire inside that you could cook on if it was raining, which it quite often does over there. It was a perfect set-up. Then somebody leased that from Parks and Wildlife and started to rent it out for \$50 a night. Then it was burned down.

**Mrs RATTRAY-WAGNER** - Surprise, surprise.

**Mr EMBERY** - Yes. I don't even lock my shack, as you probably found.

**Mrs RATTRAY-WAGNER** - No, we didn't try the door.

**Mr EMBERY** - Well, you could have because I don't lock it. They used to smash windows to get in there so I don't leave anything in there worth stealing now. On occasions, I've actually had people stay there. But I do not care because they do not wreck it; they leave it as they find it. It is fine by me. I think it is a nice sort of thing. I used to appreciate it when I stayed at the other old shack. I used to get out of it and go and stay at one of my friend's places on weekends so that the young fellows could stay there on their weekend when they came.

**Mr GREEN** - Regarding the status of West Point are you saying that it did not have any status that you are aware of, Aboriginal significance?

**Mr EMBERY** - I met with the elders in town here and I went there with the Cattlemen's Association. They indicated to me that it would be nice if they got the land back but they did not really care and they said anything that had been of significance to them would have already been damaged 60 years beforehand virtually. They said they have got sacred sites here in Tasmania but they said a lot of them are in remote areas that you cannot get to anyhow. I really have not got any qualms about the Aboriginal people having it back at all and one of the elders indicated to me that he would like my shack if they got it back. But I would rather them have it than it be pulled down. I did the stonework on the outside of it over about a three-year period.

**Mrs RATTRAY-WAGNER** - Are you just looking for fair compensation?

**Mr EMBERY** - That is basically it. I have nothing against the Government if they want to do the right thing by Aboriginals and give it back to them. But they gave it back to them on the one hand and then took it back off them again. This is during the process. They had it for about a week and then they said, 'No, no, you're not going to have it now'. I really do not know today even if their plans are to give it back to the Aboriginals, rehabilitate the area or what. A lot of people use my little beach there to put in small boats. Young families come down and they put out nets and fish. They go down on that beach, spend the day down there and have a nice time. If they stop access and pull the shacks out of there I imagine they are not going to have any access back onto that beach, and there are not a great number of spots that you can put a little boat in at Marrawah because it is pretty exposed to the elements.

**Mr WILKINSON** - So the only notification that you got that you had to vacate the place was what, a letter?

**Mr EMBERY** - Yes, the last one.

**Mr WILKINSON** - And what did that letter say?

**Mr EMBERY** - Virtually that you are out of there in October; on 1 October you will be asked to move.

**Mr WILKINSON** - Because of anything, did it say why or just that you have to leave by such and such?

**Mr EMBERY** - Yes, that is the final date virtually.

**Mrs RATTRAY-WAGNER** - And you will get \$5 000?

**Mr EMBERY** - No, you do not get \$5 000. The \$5 000 is the removal fee but you do not get that until three years after the shack has been removed. So it is not a pro rata thing; I suppose what it costs them to remove your shack and if it costs them a bit more, I would think personally from my experience that if they are holding money or anything like that you will not see a cent of it.

**Mrs RATTRAY-WAGNER** - Are you happy to table that letter for the committee if you can find it?

**Mr EMBERY** - Yes. I do not know if I have still got it at home or not. I did give a lot of my documentation to somebody to have a look at for me. My wife works for a barrister and he has had a look so I know legally I have not got a leg to stand on and they do not have to give us a cent. But I just do not feel that it is right that that process is happening here.

**Mr GREEN** - Are you aware of any other shack owners or lessees in the West Point area that have different arrangements to you?

**Mr EMBERY** - Yes. There is the shack next to me and the one after that. They do not have to go until they die and that is why I say in my letter that I feel that I have been

discriminated against. The only reason they have done that is that they are about 85 and I think they both have cancer or are unwell.

**Mrs RATTRAY-WAGNER** - They are expecting you to live a lot longer.

**Mr EMBERY** - There are no guarantees of that either, are there? You could be run over tomorrow. The people that have been given until they die have three generations of their families that go to those shacks too. Whether the fight will be over when they do die or the family is going to go again sort of thing -

**Mr WILKINSON** - And you would be saying to me if I gave you that same information, 'You give to the State your house and walk away and not kick up a fuss'.

**Mr EMBERY** - I said that to Mr Llewellyn. I said, 'I'll come to your place, I'll give you \$5 000 and you pack your bags and get out. How would you like it?' He said, 'Don't carry on like that' and I said, 'Well, that's basically what you're telling us to do'. I honestly feel that the only reason that we were virtually the showcase of the shack sites was that there were only seven old pensioners there and myself. I had been divorced, virtually I did not have a cent and I had to borrow the money that I would have been given out of my inheritance off mum to buy the shack. She figured it was a good place to make a start again. My eldest sister and her husband have always lived here. I love Tassie and I always have.

**Mr GREEN** - Can I just make a comment here, Mr Chairman. I just want to assure Mr Embery that that is not the case. The committee is in fact dealing with a number of other shacks around Tasmania that have been removed for various reasons and effectively the reason is that the legislation has existed to ensure that Aboriginal heritage issues had to be taken into consideration as part of the determination. That is the reason, not because it is easy to buy your shack.

**Mr EMBERY** - No, I do not mean easy or anything like that. We went to court and they knew we would not have money to fight them. That is why they did not take someone from Ansons Bay where there are lawyers, solicitors, doctors and everything else.

**Mr GREEN** - We were at Eddystone Point yesterday and it is the same situation.

**Mr EMBERY** - They have money to fight and throw into these things. You were asking the last speaker why did he not pay for surveys to be done. Well, it is just throwing money away virtually. If you have not spare cash to do it, it is virtually impossible for you to do anyhow.

**CHAIR** - I am conscious of the time. Thank you very much, Mr Embery, for your evidence today.

**Mr EMBERY** - Thanks very much for letting me speak.

**THE WITNESS WITHDREW.**

**Mr ANTHONY ROY LONG WAS CALLED, MADE THE STATUTORY DECLARATION AND WAS EXAMINED.**

**CHAIR** (Mr Hall) - Welcome, Mr Long. We have your submission No. 21

**Mr LONG** - Firstly I would just like to say that whilst I am giving evidence and so forth, names and dates may be somewhat fuzzy bearing in mind that this process originally was going to take 12 months and now 13 years on we are still in the process. Had I known that, I would have kept a better diary and so forth but to the best of my knowledge all is as it should be.

My submission basically pointed out what I thought were errors or the poor process that was gone through all the way through. Without taking the time to read through all the points again, I suppose one of the main ones there is the appeals process. Very early on in the piece the minister at the time at the public meetings very much gave the impression that appeals would be followed by documentary evidence and appeals would be low cost and a simple process. I actually embarked upon an appeal over the determination of my shack. I arrived at the appeal and was confronted by the shacks team on the other side with a team of lawyers and so forth, a commissioner sitting there who did his level best but basically I was left in a situation where I had, 'Commissioner, do I speak now? Don't I speak now?' and it was constantly, 'Well, Mr Long, I can't tell you what you have to do'. Once again, that runs contrary to those original commitments as far as I was concerned that the process was supposed to be simple and low cost. Low cost and simple is not my idea of having to engage a lawyer to come along to the process and so forth. That was one thing with it.

During the appeals process I actually undertook the appeal and I believe, and speaking informally with the commissioner and so forth afterwards, that we would have had a fair chance of winning the appeal.

I then received a phone call from the shacks sites member who was at the appeal a couple of days later before our second appearance and basically first of all she apologised because one of the things that I raised was the fact that the shack site team had changed five, 10 times and each time you had to go through the same issue again. She rang to apologise that she was in fact leaving and then went on to point out that, 'Are you aware, Mr Long', because I was only going for leasehold, 'that even if you win this the legislation states that the lease will be 6 per cent of the land value?' and then went on to inform me that Ansons Bay was looking like \$50 000 to \$90 000 for shack sites and as mine was one of the prime shack sites I would be in the \$90 000 range which would equate to the \$5 600 a year for the lease.

The property boom and so forth has come in between; I believe the spirit of the original legislation, 6 per cent taking into account that the land value at the time was \$15 000, was a fair thing. By the time we were actually dealt with it was 10 years or so later, so to then come up with a figure of \$5 600 a year for the lease I believe is outside of the spirit of the original legislation. It could not be taken into account at the time but I believe that it was.

After pointing that and some other things out I would have to say that I was a little bit uncomfortable with the way that the conversation went. It was quite heavy-stick stuff without going overboard. We then decided that it was basically not worth proceeding with the appeal. The appeal was based upon in great part on Aboriginal midden grounds. I am actually site 5 - and I would have been interested to have gone up with you yesterday - which is actually just down from that of Mr Spiteri who spoke earlier. One of the main considerations was middens and the other one was access over Mr Floyd's land. One of the points that I raise is that all the way through this process the shack site team changing so many times just kept on throwing up barriers and more barriers - and forgive me if I am shaking and whatever else. It was basically a process at the end where you were ground down to such an extent that you never thought that you were making ground. Each time you thought you had the situation clear, the shack site team would change again. The one thing I draw a specific conclusion about is that our determination was a lack of being able to get access to our shack over Mr Floyd's land. We were only appealing for leasehold and whatever else. I have a deed of agreement with Mr Floyd over my shack. When we first engaged in it, very similar to the previous gentleman, I went to the then Lands Department and asked for their advice and I was told, 'Mr Long, no worries, you'll never lose your lease up there. It's never going to be freehold. Mr Gray tried and he couldn't do it in his time. There's only one shack in the bay that you've got problems with'. I then went to Mr Floyd and got the licence agreement as well because I wanted to cover myself for that strip of freehold land. I was then different to the other four shacks that were in that group at that time - there's only three left now. Each time the shack sites team said, 'It's too hard for you guys' we would say, 'No, we have a deed of agreement with this gentleman, that whilst we retain a licence over this site in perpetuity we have that right'. After pointing it out many times, the last determination came through and once again it is determined after originally being to stay - for quite some time to stay - that it has to go. I rang the shack sites team and said, 'You've quoted here the access over Mr Floyd's land; what about our deed of agreement?' 'What deed of agreement, Mr Long?' Once again I said, 'You've just made a determination over this. I have provided this information so many times and that's one of the main points that you've made the determination for us to go'. I was going to appeal that.

Mr Spiteri spoke about the middens to some extent. In this whole process I was never approached once. Part way through the process it became supposedly evident that there were middens at our site in the original consultants report - Haskins, I think it is - that was done for the bay.

**Mr GREEN** - So you are not aware of any testing going on on your block?

**Mr LONG** - No. I believe the process was purely the original surveyors going around, with the Aboriginal Heritage officer accompanying them. It states in the original report that shell deposits were found. There is an admission in the original report that consultants accept the fact that some deposits may be laid down by shack site owners themselves, but it then goes on 'but under the Aboriginal Relics Act 1975 a precautionary approach has to be taken and it declared a site'.

I believe that is all that ever happened with ours. There are shells there and from that point on ours went from a 'blue' shack to a 'red' shack. Nobody ever approached us and all of a sudden we are now 'red'. Looking at the sites myself, without disturbance, there

are some areas where before all this happened we had fire pits and so forth and you can see the layers through it - the layers are all manner of shell, down to the tiniest of little cone shells. My experience with middens at Coffey's rocks in the north-east is that they are usually edible-size shells and form a pile. It seems that through our site it is a layer so thick all the way through, which to me indicates sedimentary shells - a sedimentary layer. Between us and Shark Bay where I once had to walk, where four-wheel drives cut through the dunes for a track - there is an even layer all the way through following the track around. If you extrapolated that out with the precautionary approach that was taken at our shack, that would be a site that covered many acres of midden. I'm no expert but to me it seems like a sedimentary layer. The composition of it doesn't seem right, the shape of it does not seem right but, at the end of the day, that was the other main reason we were told to go. That whole process going through, once again, just leaves you very disappointed -

**Mrs RATTRAY-WAGNER** - Jaded?

**Mr LONG** - Yes - in the situation. I suppose this whole process is one where I am constantly amazed that, whenever you explain the process to somebody who has not been involved, the immediate reaction is, 'No, the Government wouldn't do that to you. They wouldn't take your shack without fair compensation', and so on and so forth. But at the end of the day we paid \$30 000 for our shack. Eighteen months after we paid that and getting the best advice from people at the time, this process started. We did not ask for the process to start, we were happy with it as it was, and this is the situation that we ended up in.

Another main point was that in the consultation that was supposed to take place in this whole process, our group of five shacks, with Mr Floyd's issues, were holding up the determination of the bay. We had a meeting with the shacks team and were basically asked at the time if we would mind if the determination of our shacks was put aside to aid the rest of the bay in the spirit of cooperation. We said, 'Yes, no worries', as it was quite clearly stated at that meeting and intimated to in other documents that the team would then explore all avenues of retaining our shacks and have full and complete consultation with us and do everything in their power to keep us informed. Some two or three years later, the only consultation we ever got was a determination notice which arrived and said, 'You're gone'. There was not one approach on that issue once in the time in between. Once again, we thought we had played fair ball, but in the end it came back to bite us. There is just a litany of those sorts of issues that went on.

At one stage after a meeting midway through the process the shack sites team came up and made a very frank and open admission to us and said, 'You guys are just too hard. You're going to have to go'. I said, 'Hang on. There is supposed to be due process here. When this was all embarked upon it was supposed to be every avenue explored'. 'No. It's too hard. You're going to have to go'. I then contacted the minister at the time - you, Mr Green - and your response to me - I actually have this in the statement - was that you did not believe that your shack sites team would have made that statement and acted in that manner. I said, 'I can only tell you what I was told', and some few hours later your secretary, I believe, at the time, rang back under instruction from you and made the admission that, 'Yes, we have spoken to the shack sites team. They have admitted that they did say that to you, Mr Long, and they were going down that path. Be assured that

we basically told them to pull their heads in and to go back down the proper avenue again'.

Once again, we just had absolutely zero faith in the whole process. This whole thing was just that same process of grinding down and grinding down. Even to the point now, as far as the consultation goes, we got our notice 12 months ago that we had to be out by September this year. It even says on the bottom of that, 'We will keep you informed of the time frames. We will contact you regularly as to the progress of this' and whatever else. There has not been one contact since and September is only a month away.

**Mr HARRISS** - Going to the point you just made where you contacted Bryan's office, did you not say in your submission, following which the shack sites team withdrew their statement that we had to remove our shack at that stage?

**Mr LONG** - Yes, because they made the statement to me that we would be losing our shack, that we would have to remove. It was a verbal statement, but only halfway through the process and with many other avenues to be played out. In all the original determinations, it is interesting that one of the site inspections for ours actually identified that it was just one of only three shacks in the bay at the time, I believe, that possibly could have its own septic system, especially now with the shack next door that opens up even more room. The composting toilet issues and all those sort of things - once again we were told we could not have a composting toilet and a few weeks later the Overland Track at Cradle Mountain gets a composting toilet.

We were told at the public meeting - and I had somebody interested in my shack at the time that knew all the issues - that there is a moratorium on the selling of shacks and transfer of titles. I then watched with interest as 'For Sale' signs went up over the next few years in front of shacks that were sold and transferred and so forth. Each time the shack sites team changed it seems as if the goalposts moved again. The whole process was over such a long period of time that it was just allowed to happen.

**Mr GREEN** - With the interface with the council as well?

**Mr LONG** - Yes. I notice that you wrote the letter to Mr Llewellyn the other day, and he has quite clearly stated that all shack determinations were made in 2002 and that cannot be changed but our determination was made in 2005. Because our shack was taken out we agreed to have our determinations taken out for the rest. His letter quite clearly states 'all'. Well, I'm sorry, but they weren't!

**Mrs RATTRAY-WAGNER** - I want to get some clarification from Mr Long in relation to what your understanding is of whether you received the proposed \$5 000 for taking your shack away or whether you lose your \$5 000 if you walk out and leave the department to take down your shack. Can you give me your understanding? It seems to be a mixed bag around the State.

**Mr LONG** - Very much a mixed bag. The latest offer we have - and I have it in writing - is that due to the issues with the Aboriginal midden sites the department will actually remove our shack for us and we still get the \$5 000, but that is only after the site is completely rehabilitated and all processes followed through with and whatever else. So that leaves it an open-ended thing for the department to confirm when they do. I believe

that is above and beyond what most people have been offered because they have only been offered the \$5 000 to clean their shack up.

Once again, I approached a minister of the time and said that the Aboriginal community had in fact pulled the shack down next door to ours. How the process came about that they were engaged to do it and whatever else, I do not know. I asked if it was fair that we supposedly have the same issues as they and they got their \$5 000 while we have to get rid of this. The next gentleman up told me - so it is hearsay - that his shack had to be rehabilitated to the extent that he had to get screened topsoil brought in, because he could not have normal topsoil in case there were any bone fragments or things like that in it. The minister at the time put me in touch with his secretary, who said, 'I cannot give you the Aboriginal contact, I will get them to contact you but there is probably a good chance that you can come under the same deal'. They never contacted me and it is with some interest that I noticed the shack site next door -

**Mrs RATTRAY-WAGNER** - Four or three? You are five.

**Mr LONG** - Six - the very end one, which is gone, that was cleaned up by the Aboriginal community. I do not know now if this other offer has come out of the fact that they, to all intents, came and smashed it to bits to get it down. It was asbestos and that entire supposed Aboriginal site of great significance is now littered with asbestos, you walk through it and it has all got asbestos fragments and it is just smashed to bits and all through the entire top stratum layer of it. After witnessing that effect from allowing that, I do not know, but this offer then came because by the end of the process once again the procrastination with the process and the time involved originally we had to get rid of our own shack. By the end of it we had to get rid of our own shack, which I assume everybody else was doing. We had to have a demolition permit from the council, we had to have the Aboriginal, the Parks department all through this tip site which has now gone up there as far as handling asbestos issues is concerned and, as I said, the nearest one would be Scamander so you have to cart all the way to Scamander, so all of these issues became very big and hard. Having been given that open door to the Aboriginal community and getting rid of it and then having it shut, I think that perhaps the special offer that was made to us came out of that.

But, having said that, at the end of the day we paid \$30 000 for our shack on the best advice at the time and the original impression given to us was that another block would be found. Originally it was within the bay - there was talk of up the back of the bay but because of the time frame that was involved that then got transferred to national parks instead of staying in crown land so that ruled that out. Regarding Binalong Bay, which is now the laughable Binalong Bay exercise, once again we had, in writing, fourth choice there. Every shack sites team that changed while that whole process was going on then would come back and say, 'It's going into a ballot', and we would say, 'No, hang on, we've been offered fourth choice'. 'We have no record of that'. 'Yes, you have, here you are'. 'Oh, sorry, Mr Long'. You just had to go through all of these things every time and just prior to this the shack sites team made us an offer of some blocks at Bellingham and Weymouth which is nowhere near Ansons Bay -

**Mrs RATTRAY-WAGNER** - It is quite a distance if you walk there.

**Mr LONG** - Yes - and far contrary to the original pledges that were given and once again the original pledges and the exact words used by the minister at the time were, 'This process will be cost neutral'. These blocks at Weymouth, Bellingham and so forth are already-created blocks, they already exist and still they are saying, 'You will pay full market value'. The original statement was, 'We will aid you into another block' and very much the impression given was, 'We don't want to see you guys out of pocket' and so forth. That then metamorphosed into - I will say that Judy Jackson was the minister at the time - that first offer of refusal on a block is good enough to cover all of those original commitments of aiding - that is our aid - and my argument was then that for full market value I may as well walk to Binalong Bay and choose one at my own leisure, and these blocks are still the same issue.

**Mr GUTWEIN** - Earlier on you said something in regard to the intent of the legislation with leasehold. The value of the lease would have been 6 per cent of capital value and now you have been quoted about \$5 400 on the capital value of the property.

**Mr LONG** - Yes.

**Mr GUTWEIN** - What would be a fair leasehold rate, do you think?

**Mr LONG** - Between \$1 000 and \$2 000. I would have been interested in continuing on with the process of appealing to get leasehold of the site at \$1 000 to \$2 000. Anything more than that, the fact that it is only leasehold and you cannot improve -

**Mr GREEN** - What have you been paying?

**Mr LONG** - I think it is \$400 or \$500 now for the licence agreement. The original legislation would have made it \$960.

**Mrs RATTRAY-WAGNER** - How much is your shack valued at today on your rates notice?

**Mr LONG** - I haven't got the rates notice with me.

**Mrs RATTRAY-WAGNER** - A ball-park figure?

**Mr LONG** - It is over \$100 000, from what is being offered up there at the moment. That is without any infrastructure on it. The blocks up there are currently about \$70 000 or so, as opposed to \$15 000 at the time.

**CHAIR** - Thank you very much.

**THE WITNESS WITHDREW.**

**Mr GEORGE AND Mrs SANDRA WILLIAMS** WERE CALLED, MADE THE STATUTORY DECLARATION AND WERE EXAMINED.

**CHAIR** - Thank you, Mr and Mrs Williams - relax.

**Mrs WILLIAMS** - It's nerve-racking.

**CHAIR** - We will try to keep it as informal as possible. We advise you that you are protected by parliamentary privilege at this hearing but anything you say outside is not. We have your submission, No. 32, and I invite you to speak to that.

**Mrs WILLIAMS** - Regarding the assessment of the Aboriginal middens. We are shack owners at the southern end of the Mount William National Park, at Picnic Point, and not far from there is the lighthouse. We have been crown tenants of this area for over 50 years, but George and his family have been going longer than that. . They were one of the first to have a lease of this area and so we find it very devastating to have to go without good reason and a fight.

In 2001 we become aware that an assessment was being undertaken to ascertain whether there was any issue of cultural significance in the area. During the time of this assessment, the shackowners formed a committee and as part of the committee we were all informed of what was going on and were helped to understand most of it.

We were on the site when the shack sites project group, an Aboriginal group, visited our shack. We spoke with them for the short five minutes they were and knowing one of the Aboriginal group, who told us we would be okay, we were confident that we would be staying. The shack sites committee did not come back and inform us of the decision before leaving our area, and it was left to the tenants' leader to tell us the bad news.

The literature provided by the Government during the assessment proved we could stay without any problem and we cannot understand how a five-minute visit could devastate us with a false finding of a midden, which is now a shell scatter, which all the shacks in this area would be on.

What we want is to stay in our shack. There is no midden on our shack site, just the scattering of shell fragments. How could it be that a member of the assessment group, when they were on site, could reassure us that our site would not be affected and then the exact opposite happens. This is an administration blunder that no-one will own up to. There seems to be no open-minded process of appeal. Two other shack owners went through the Clayton's appeal process and were fobbed off. I feel that questionable decisions were being made by a department which was constantly changing and very difficult to communicate with. Is there someone we can appeal to and arrange for our site to be reassessed? We are confident that the site assessment found no midden on our site.

We were promised \$5 000 to relocate but had a letter from Sean McArdle saying that this money was for the removal of the shack. I wrote to Sean and then received a letter from Kathryn Clark to say that the shack sites project would remove the shack at no cost to us and we would get the \$5 000 payment after it was removed and rehabilitated. The whole

process is so longwinded and I feel unsure of how this will end. I feel that we will never be compensated for what we have had to endure and now it is a done deal to our loss.

A council valuation says the capital value is \$65 000 and we walk away with nothing at the age of 70. We have invested lots of time and money into improving and maintaining the shack over the years. We were offered land at Weymouth, Bellingham or Lulworth with a price range from \$60 000 to \$80 000 which we have no hope of buying at our age, plus having to rebuild as well. It is just over the river from where we live and so why would we want to go there?

As the time comes nearer it is unbearable to think that our lovely years of going to the shack may come to an end because of the Government's handling of this situation.

**CHAIR** - Mr Williams, would you like to add anything at all?

**Mr WILLIAMS** - Well, not really.

**Mr HARRISS** - Mrs Williams has indicated in her evidence to the committee that there are no middens on the site.

**Mrs WILLIAMS** - It has not been proven to be middens. There are a few shells there. We have been there 50 years and that is all we ever do, go and collect shells. We love just walking along the beach.

Probably the other side of the shack down near the creek maybe, but not where we are. It's nothing like any of the middens. There are middens all around that coast and I know the middens are there, but not where our shack is.

**Mr HARRISS** - Is there any documentation from the department which indicates clearly an assessment of their argument?

**Mrs WILLIAMS** - No, I have not seen any.

**Mr HARRISS** - Have you asked for any?

**Mrs WILLIAMS** - I do not know whether Errol has or not. I rang him and he said they could not prove that were any there. Errol's shack is just behind us. We had an illness at the time and did not do the appeal. We had enough on our plate at the time. We are quite simple people and did not know how to even go through the process so we did not go through the appeal, but now it is getting close it is quite frightening to think that after our 50 years we are going.

**Mr HARRISS** - What is the date for removal of your shack?

**Mrs WILLIAMS** - 1 September.

**Mr HARRISS** - There are some around the State in October.

**Mrs WILLIAMS** - No, ours is September. It is really starting to hit home now.

**Mr GUTWEIN** - I have been there and in fact I stood on your front porch yesterday. It is a very nice spot. In regard to the documentation or evidence regarding the middens or the Aboriginal heritage issues that are on your site, you have received no documentation you say. What was the formal assessment that was conducted on that site that you are aware of?

**Mrs WILLIAMS** - They were only there for five minutes. I cannot see how they can make a formal assessment of it. They came and they looked and they asked us if we wanted to say anything. We talked to one who knew George and he said "You're okay, mate". We had a committee and the committee has even got it in their newsletter.

**CHAIR** - Who was that person?

**Mrs WILLIAMS** - Mansell. What was his first name?

**Mrs RATTRAY-WAGNER** - Was it Leigh Mansell?

**Mrs WILLIAMS** - No, not Leigh Mansell. Oh, it was Brian Mansell.

**Mrs WILLIAMS** - It was Brian Mansell.

**CHAIR** - So he gave you're the impression you were okay?

**Mrs WILLIAMS** - Yes. He stayed with us and said, 'No, you're all right, mate'. The others went over onto the rock and back and we thought we were okay. They went and did the other shacks and had a seven-minute talk. They were supposed to come back to us but they didn't bother to and then our committee member came back and said, 'I'm afraid you're going to have to go'.

**Mrs RATTRAY-WAGNER** - Was that Shane Davis? He provided quite a bit of information to the committee.

**Mrs WILLIAMS** - Yes, Shane was with us. Yes, he was with them.

**Mrs RATTRAY-WAGNER** - Did he represent a number of people at Mount William?

**Mrs WILLIAMS** - Yes, he was our committee leader but once the assessment was done we were left on our own; we just didn't know what to do. There were only three of us.

**Mrs RATTRAY-WAGNER** - He was obviously part of the group that was able to stay.

**Mrs WILLIAMS** - Yes, he could stay. There were only three of us who had to go, so that left us three on our own then to fight on.

**CHAIR** - So that's the only time that that person was at your shack?

**Mrs WILLIAMS** - That was the only presence they had, a five-minute visit - yes.

**CHAIR** - And no correspondence forthcoming?

**Mrs WILLIAMS** - No. We didn't have any correspondence.

**Mr GUTWEIN** - Have you taken any steps yourself in regard to getting any other expert opinion on the site?

**Mrs WILLIAMS** - We are simple people, we didn't know where to go. We knew what Errol - the shack behind us - was going through. He has three families in there - teachers and knowledgeable people. We didn't know anything and we had illness at the time so we didn't bother. We thought we had lost it but with what has been going on now we thought we might have a chance so we have to fight now.

**Mr GUTWEIN** - Were there any other issues? Errol indicated to us yesterday that effluent wasn't a problem because they had a septic system in place. Do you have a septic?

**Mrs WILLIAMS** - No, we've got a long-drop over on the bank.

**Mr WILKINSON** - Were you given any ability to negate the opinion that your shack was on or near a midden?

**Mrs WILLIAMS** - There was an appeal but, as I said, once the decision was made we were left on our own and we didn't have any idea what to do. As I said, we are simple people and we didn't know what to do, so we didn't go to the appeal. This is going back to 2001. We just thought we'd lost it, that's it, and now it's drawing nearer. We were promised land. At the age of 70 we have no hope of getting that - \$60 000 to \$80 000 - and that means we have to start from scratch and rebuild, and we don't have the money now. We didn't want to go there anyway. We just love our shack. We have been there over 50 years.

**Mr WILKINSON** - Have you been present when any investigation has been done in relation to whether it is a significant midden?

**Mrs WILLIAMS** - No, only that one time when we happened to be at the shack and the Aboriginals came through. That is the only one we were at.

**Mr WILKINSON** - What happened then?

**Mrs WILLIAMS** - They came in and had a look around. They were with our committee. A group of them came - Parvin and Scott Marston and all those. We were on site and they came in and had a look around, which only took a couple of minutes. They said, 'Do you want to ask any questions?' We were talking to Brian Mansell and he said, 'No, you're all right, mate. Don't worry'. After that five minutes they went to the other shacks and our newsletter shows they had a seven-minute discussion and said no.

**Mr WILKINSON** - In relation to your shack, though, when you were present, did they pick up any of the shells on the ground?

**Mrs WILLIAMS** - They picked up a little rock and said that was sacred or something to that effect.

**Mr WILKINSON** - Who said that?

**Mrs WILLIAMS** - It was probably Caleb who picked it up.

**Mr WILKINSON** - Was there any digging done at all to see what was under the surface?

**Mrs WILLIAMS** - No, they didn't do any digging. They only picked up a stone in between the two shacks and then walked out onto the rock.

**Mr WILKINSON** - That is the rock in front of your place?

**Mrs WILLIAMS** - In front of our shack, yes.

**Mr WILKINSON** - Which looks out across to Eddystone?

**Mrs WILLIAMS** - Yes.

**Mr WILKINSON** - In relation to that, you said that somebody said to you, 'You're all right, mate'.

**Mrs WILLIAMS** - Yes, that was Brian Mansell, because he worked with George years back at Comalco.

**Mr WILKINSON** - I see. Did he say anything at all other than that? Did he say, 'This shack won't have to come down' or 'You won't have to leave the shack', or anything like that?

**Mrs WILLIAMS** - 'Don't worry, mate, I'll look after you.' That was in our newsletter and that's what he said.

*Laughter.*

**Mr WILKINSON** - Did you say anything to them at all like, 'Look, I don't believe any of these are middens or a significant site'?

**Mrs WILLIAMS** - They didn't actually say it was a midden then. They said it was a sacred site - 'Here's a stone', or something like that. They didn't say it was a midden, though.

**Mr WILKINSON** - Was anything said at all which left you in any degree of uncertainty as to whether you would or would not be staying?

**Mrs WILLIAMS** - No, once we had talked to Brian, we thought we were right.

**Mr WILKINSON** - How long was it after that they came back and said you had to go?

**Mrs WILLIAMS** - They didn't come back. Nobody other than Shane came back. They told us at first that they would tell us their decision but they didn't. They went off and so Shane was the one who had to come back and tell us.

**Mr WILKINSON** - How long after was that?

**Mrs WILLIAMS** - Probably about half an hour to an hour.

**Mr WILKINSON** - So on that same day you were told that you would have to leave the premises?

**Mrs WILLIAMS** - Only by Shane, yes. This is our newsletter and it tells us in here.

**Mr WILKINSON** - As a result of that, as I understand it, you realised the others were going to appeal or fight the issue and so you left the argument to them as opposed to taking it up yourself.

**Mrs WILLIAMS** - It said in one of our letters that we could appeal or go to the parliamentarians and fight for this. George and I just did not know because we have never had to do anything like this before. We couldn't see it getting anywhere, so we just didn't bother fighting at the time and then -

**Mr WILKINSON** - But you knew that Errol in the shack a couple yards away from you was going to do that?

**Mrs WILLIAMS** - Yes, Errol would because they are very knowledgeable. As I said, one is a teacher and they are all very knowledgeable people. But we are just on our own. There are three families who own that back shack whereas we are just on our own.

**Mrs RATTRAY-WAGNER** - I have a question in relation to the potential septic. Was that discussed at all, the fact that you did not have -

**Mrs WILLIAMS** - We have pages of how our septic would work from the government assessment and that was passed and we could do it. I have heaps of pages on how they were going to work our septic tank in.

**Mrs RATTRAY-WAGNER** - So there was never an issue in your mind that you would not be able to accommodate a septic tank?

**Mrs WILLIAMS** - No, because the government assessment said we would be able to do it.

**Mrs RATTRAY-WAGNER** - So to your mind it is only the shell scatter that has caused this?

**Mrs WILLIAMS** - Well, it was our opinion that it was a midden; it has only been a shell scatter in the last year or so when we got the literature.

**Mrs RATTRAY-WAGNER** - So it has been brought down from a midden to a shell scatter?

**Mrs WILLIAMS** - Yes. The whole of the coast is on shell scatter. All the shacks would have to go if it was based on shell scatter because shells run the whole of that coast.

**Mrs RATTRAY-WAGNER** - I don't spend a lot of time at the beach but I know that the first thing you do is pick up a shell and take it back to wherever you came from.

**Mrs WILLIAMS** - Yes, I have a collection of them; I love my shells. That is all we ever do down there, walk and -

**Mr HARRISS** - You have indicated just now that the government assessment indicated that septic tank at your disposal would be able to be installed.

**Mrs WILLIAMS** - Yes, it goes off down towards to other shack on the bottom. Because we are on rocks, it goes down towards the other shack on the bottom because we are on rocks and all, and it goes down over. It is all on the plans of how we were to do it.

**Mr HARRISS** - What plans are you referring to? We might like to assess that.

**Mrs WILLIAMS** - I have not got them here. We have big booklets of the whole government assessment of the shacks. It would prove that we could stay there. I did not think to bring all those; it was a huge government assessment.

**Mr HARRISS** - We can get that.

**Mrs WILLIAMS** - We could stay because it worked out that we could drain it down over towards the other shack into that valley there.

**Mr GUTWEIN** - So access and effluent issues were not a problem?

**Mrs WILLIAMS** - No.

**Mr GUTWEIN** - It simply comes back to the fact of the Aboriginal heritage assessment?

**Mrs WILLIAMS** - It was only the midden that was the problem, it was all up to that and that was only a five-minute assessment.

**Mr GREEN** - It was Greg Brown -

**Mrs WILLIAMS** - Yes, Manager of Aboriginal Affairs, Greg Brown, it was too.

**Mrs RATTRAY-WAGNER** - You have a very good memory.

**Mrs WILLIAMS** - No, he read that on here. I should have read it but I did not put my glasses on when I was reading it.

**CHAIR** - Is there anything else you would like to finish up with?

**Mrs WILLIAMS** - No.

**Mr GREEN** - I have one quick question, Mr Chairman. We were told when we were on the site yesterday that there used to be another shack there. Could you explain to the committee what the circumstances of that shack's removal were?

**Mrs WILLIAMS** - There were shacks just shoved up, weren't there, without even proper leases. They would just decide, 'Yes, we'll build here' and they just put them up. There were two, one just as you come in the driveway and one down over the bank towards our house and they just put them up.

**Mr GREEN** - So they did not have proper lease arrangements?

**Mrs WILLIAMS** - No.

**Mr GREEN** - That is the reason they were removed?

**Mrs WILLIAMS** - That is why they were removed. All of a sudden they went around and decided -

**Mr WILLIAMS** - They used to come and check every now and again. They would send someone around just to look at the shacks and that is why they were -

**Mrs WILLIAMS** - We have had a proper lease for over 50 years.

**Mr WILLIAMS** - We had a 99-year lease, Dad and I, years and years ago. I was only a boy then when we got the lease.

**Mrs RATTRAY-WAGNER** - It was not reduced to a yearly or annual lease?

**Mrs WILLIAMS** - No. We have nothing to prove it but we pay it annually.

**Mr WILLIAMS** - Somewhere along the line the 99-year lease got lost. We sent away to Hobart and got it and they sent it back to us.

**Mrs WILLIAMS** - We have nothing to prove it now as it was so long ago.

**Mr WILLIAMS** - We cannot prove it, it is only a hearsay sort of thing.

**Mrs WILLIAMS** - We were not on a national park then. It was not a national park; that was only in later years. I cannot even think how long ago the national park was put there.

**Mr GREEN** - Between 1989 and 1992.

**Mrs WILLIAMS** - Yes, that probably would be right. We used to go shooting and take the dogs and then it was made into a national park.

**Mr GREEN** - There are a few rabbits there now they have taken it on.

**Mr WILLIAMS** - Yes, there are a few rabbits there.

**Mr WILKINSON** - Mr Green was getting edgy when he was there yesterday.

**Mr WILLIAMS** - Yes, I reckon.

**Mrs RATTRAY-WAGNER** - At least there were no leeches like I got down at West Point.

**Mr WILLIAMS** - No.

**CHAIR** - Thank you very much.

Mrs WILLIAMS - Thank you for listening to us.

**THE WITNESSES WITHDREW.**

**Mr THOMAS LOMER AND Mrs DANA LOMER WERE CALLED, MADE THE STATUTORY DECLARATION AND WERE EXAMINED.**

**CHAIR** (Mr Hall) - This is a public hearing and you have parliamentary privilege whilst you are in here. Outside you do not so I would just ask you to be careful of what you say outside, to speak broadly but not specifically until such time as the committee tables their reports. I would ask you to speak to your submission and then members can ask you some questions.

**Mr LOMER** - The submission, basically, is on the process and the way that it was handled - that it was very slow initially. We were told it would be two years and that it was going to be all finalised in that period. It extended to about 10. In the initial conversations we were told that the pricing would be roughly what was on the rates notice. When it came to the end they said, 'No, that was initially', but because the prices had gone up they had re-looked at it and it was not going to happen. It would be whatever the valuer put on it, which in that period had considerably jumped, to our detriment. Then, when we finally decided and went through all the appeal process, because we appealed we were not allowed the early settlement discount because we appealed against the pricing of it. They said, 'No, because you have appealed'. One of the comments one of the representatives made was that the main reason most of them took the job was to get a stepping stone into the government service so they could move on, because they said it was only a very short-term job for any of them. So they were all looking to move on. So anytime we tried to talk to someone there were new people.

**Mrs LOMER** - And they went back to step one again.

**Mr LOMER** - Yes, they would go back to step one or would not know half of what had happened so they would have to go all the way back through and went through all the details. It just drew it out over a long period. From the very first meeting we went to, they went through everyone else's shack except ours and then at the end of the meeting we said, 'You haven't mentioned us'.

**Mrs LOMER** - 'What are you doing here?'

**Mr LOMER** - They said, 'You are going to be a special case because of where you are; we are going to move you'. So that was the initial thing. Then after a while they said, 'No, you can stay where you are but you have to do all this infrastructure'. They asked us if we -

**Mr HARRISS** - I have read through your detailed submission but I could not make out exactly where your shack was.

**Mrs LOMER** - It is 1236 The Gardens Road. It is past the shacks.

**Mr HARRISS** - Yes, but where?

**Mr LOMER** - On Suicide Point. Suicide Point is what it is called.

**Mr HARRISS** - At Ansons Bay?

**Mrs LOMER** - No.

**Mr LOMER** - Binalong Bay. It is at The Gardens, which is north of Binalong Bay.

**Mrs LOMER** - It is 12.36 kilometres north. There were five of us there.

**Mrs RATTRAY-WAGNER** - Suicide Point?

**Mrs LOMER** - We didn't know it was that, but that is what they have called it.

**Mr LOMER** - That is what is on the map all of a sudden. That is what all the things state. Because we are so close to the water we had to do all this infrastructure. We were going to do it and then, I think it was Richard Gilmore who said, it would be easier with all the problems if we did it rather than you trying to do it because we can link it in with everyone else in the area. When it happened, it was only us who did anyway because we could have finished it all off quicker.

**Mrs LOMER** - We are trying to get people down there to do things. We thought we would let them do it and if anything is wrong it is their problem not ours.

**Mr LOMER** - One problem was that when Metz Herz (*cannot find this anywhere - does he mean Sinclair, Knight, Merz?*) did their report they had all the contractors lined up to do the jobs and when I rang them they said that that had all fallen through.

**Mrs LOMER** - It was a year before.

**Mr LOMER** - They said that that was all gone and they hadn't heard anything back so they thought it had all been thrown out. They said from then on it was a problem to get contractors to go there because it was the peak of the building boom and they did not have to travel that far to do anything.

**Mr HARRISS** - The confusion there for you through your submission is that you had been in communication with the shack sites project team and you were asking them for information and they told you to go and talk to Pitt and Sherry. You talked to Pitt and Sherry and they said they had not heard anything from the project people -

**Mrs LOMER** - Yes, for a year, so they thought it wasn't going ahead anymore. All their contracts and things that they had quoted on, I suppose, were all null and void so they had to start again, and they did.

We have solar power down there and we had to put the power on because we had to have an electric toilet that came from America that cost us \$6 000, and I reckon we've spent \$500 a year on bits for it because they rust out all the time so we've probably paid \$10 000 for it already.

**Mr WILKINSON** - Is it gold-plated?

**Mrs LOMER** - No, it's meant to be stainless steel but it rusts out in about a month down there.

**CHAIR** - Is it a biocycle?

**Mrs LOMER** - No, it just burns it.

**Mr LOMER** - It actually burns to ash.

**Mrs LOMER** - It's great because it saves water but it's expensive to run.

**Mr LOMER** - It's expensive to run but we have to put up with that.

**Mr GUTWEIN** - Where are you currently at with this? Did you buy?

**Mrs LOMER** - We've bought. We've paid a fortune.

**Mr GUTWEIN** - What was the final price, if you don't mind?

**Mrs LOMER** - It was \$270 000. The others out there paid about \$60 000 for theirs, including a road they put in for them.

**Mr GREEN** - You were saying there are five shacks at the Gardens?

**Mrs LOMER** - There are two down near the lagoon. Do you know the Gardens at all?

**Mr GREEN** - Only from the sea; I've never been there.

**Mrs LOMER** - There's a big long beach and then you come round over a bridge and there are two there by themselves and we're probably a kilometre on from there.

**Mr LOMER** - They got theirs at the initial bit and didn't have to have any of that infrastructure done, so they paid for it and still haven't done any of their infrastructure. But before we could get ours we had to finish all the infrastructure and have it all done and signed and sealed. They've done a little bit - they've put the road in.

**Mr GUTWEIN** - What day did we raise it in Parliament? Judy was minister.

**Mrs LOMER** - We have the stuff there - she said 'Those poor, low-life Lomers' or something.

**Mr HARRISS** - In the way that only Judy could.

**Mrs LOMER** - Yes, that's what she said.

**Mrs RATTRAY-WAGNER** - So the determination of the value of what you had to pay for could not be made until you had done all the work?

**Mrs LOMER** - That's right.

**Mrs RATTRAY-WAGNER** - Hence it was \$60 000 compared to \$270 000 that you had to pay?

**Mrs LOMER** - We are lucky that we have three sons who have gone in it with us but they are trying to buy their own homes. We have one in England working and two here trying to buy their own homes. Five of us are sharing it sort of thing.

**Mr LOMER** - It becomes a bit of a burden, particularly with the electric toilet. We also had a Queen's Counsel look at it and he said it probably could go to court but it would cost a lot of money. He said ethically it is probably wrong but by law it is in a real grey area.

**Mr LOMER** - And he said whichever way we will be paying for them, whether they win or lose.

**Mrs LOMER** - He also said his fees were going to be about \$25 000 to take it to court.

**Mrs LOMER** - When we put the power on they did not do anything for about six months after that. We rushed to get the power on and that was all done and then it just sat there again.

**Mrs RATTRAY-WAGNER** - So just to help me get this clear, your concern or your query is that had you have been able to do the work yourself you would have finished it in a much more timely manner and therefore the assessment would have been done much earlier and not have cost you \$270 000?

**Mrs LOMER** - It would have been more or less like the others.

**Mrs RATTRAY-WAGNER** - Have you put that to the department?

**Mrs LOMER** - Yes.

**Mrs RATTRAY-WAGNER** - And you still have not had any response?

**Mrs LOMER** - No, they're not interested. It was either pay that or not get it.

**Mr LOMER** - If you settled within so many days you got a 10 per cent discount but because we appealed we couldn't get that discount.

**Mrs RATTRAY-WAGNER** - So the valuer didn't appreciate your appeal and said, 'No, I've leaving it at the same price'?

**Mr LOMER** - He said when the process started it would have been worth about \$60 000, but with the instructions they have to do it on that day. He said if the Government changes it they can back-date it by putting it through Parliament and say the value should be on the day you started negotiating, which is what everyone feels it should be, not when you get all the works done.

**Mrs RATTRAY-WAGNER** - And yet you say the other people around the area haven't fulfilled their obligations?

**Mrs LOMER** - One has actually built a new shack so hers is all right, but the other one hasn't done anything.

**Mrs RATTRAY-WAGNER** - And they were able to purchase at \$60 000?

**Mr LOMER** - Yes, straight away.

**Mrs LOMER** - That included a road being put in for them, too.

**Mrs RATTRAY-WAGNER** - A big inequity, in your mind.

**Mr LOMER** - Yes.

**Mr GREEN** - What's the valuation on the site now?

**Mrs LOMER** - I think the land is \$300 000 now.

**Mr LOMER** - It would be a lot more now. At this stage it's worth the money.

**Mrs LOMER** - Our rates are nearly \$1 200 now and they were \$300 before we bought it.

**Mrs RATTRAY-WAGNER** - Probably as much as your permanent residence.

**Mr LOMER** - Yes. The land value now is \$300 000.

**Mr HARRISS** - As to the matters you've been discussing, is the issue you were going to apply for a discount because of the hardship provision, or is that a different issue?

**Mr LOMER** - No, we never applied for the hardship provision. As far as I know, there have never been any rules written for the hardship provision.

**Mr HARRISS** - And yet you asked for a discount

**Mr LOMER** - Yes, and they said that nothing has been written for the hardship provision.

**Mr HARRISS** - And then you were also told that there were no guidelines and you were not eligible for a discount because you had applied for the hardship provision but, as it happens, the hardship clause has no guidelines. So the wash-up was that you were told, 'Too bad, too sad', because of another path you decided to go down, thinking you were doing the right thing.

**Mr LOMER** - Yes.

**Mr HARRISS** - Another matter that caused you significant discontent was that in regard to connection you were told you would have to lodge a special connection permit application to Break O'Day Council by 14 May, five days after you received the letter?

**Mr LOMER** - That's right.

**Mr HARRISS** - You didn't get the letter until 19 May, so you had to get the special application in before then -

**Mrs LOMER** - Before we got it.

**Mr HARRISS** - so this was a special connection application.

**Mr LOMER** - Which the Government had already put in the application for. If we were going to do the work ourselves we had to redo it all, and that is where it came out that it would be better if they did it. In hindsight, we would have been better to do it all ourselves from the word go. The hold-up was the septic or the sewerage; the toilet was probably one of the slow-downs.

**Mrs LOMER** - We had a perfectly good septic tank, one of those huge Global things. All of our grey water goes into that now and then somehow it goes into an underground tank that has a light underground that comes on if it is not working. We've never seen it!

**Mr GREEN** - Was your shack at any stage determined it should be removed?

**Mr LOMER** - Yes. At the initial stage we were told it would have to be removed and would be moved in between the other two shacks, but then council said there wasn't enough room there for another shack. It took a while for them to decide that we were going to keep it and it was the sewerage that was the hold-up. At one stage we were given the option of composting and worms applying if you are there on a regular basis but if you do not go on a regular basis they do not work, the worms gradually die out because they have nothing to eat and compost stops -

**Mrs LOMER** - It is quite gross really.

**Mr LOMER** - Yes, so we chose the electric thinking that it is going to be spasmodic visits but we could have put the other ones in -

**Mrs LOMER** - And saved a heap.

**Mr HARRISS** - The main source of concern seems then to be of the time taken and therefore you have the property boom, the escalating value of your property and so on.

**Mrs LOMER** - It is the principle of the whole thing really, isn't it?

**Mr LOMER** - Yes, because initially the shack sites people would not admit that they were saying it would be round about the value on the rates notice.

**Mrs LOMER** - Yes, they would not put it in writing.

**Mr LOMER** - They would never put that in writing and they would not admit it. Finally someone said, 'No, that was a guideline that was given in the early stages when it was roughly what we were selling them for' but he said, 'When all the prices went up we decided that wasn't right, it would be what it was valued at then'.

**Mrs LOMER** - Pravan Ram was good. He was the only one who was really any good among the whole lot of them, wasn't he?

**Mr LOMER** - They were all all right but it was just that they kept moving on.

**Mrs LOMER** - You would ring up and they would say, 'Oh, they've left, we'll put you on to the next person'. 'Oh, who are you? What are you doing?'

**Mr LOMER** - So you would go through the whole story.

**Mrs LOMER** - You would go back six years again.

**Mr LOMER** - It just got very frustrating.

**Mr GUTWEIN** - Through the process you spoke with Nick Gee and Bill Griffiths, wasn't it -

**Mr LOMER** - Yes.

**Mr GUTWEIN** - that you looked at exploring options. Yes, it was very, very unfortunate.

**Mrs LOMER** - We have it and that is the main thing.

**Mr LOMER** - We have it now and we will be paying it off for years.

**Mr HARRISS** - Can I just go back to your comment about the value based on your rates notices. Your final dot point there is that in a conversation with Mr P Williams he did admit that all shack project officers at one stage were saying use the valuation notice as a guide and so on, so you identified that in a conversation with Mr Williams on 21 December 2004 and he confirmed to you that in essence -

**Mrs LOMER** - Yes, it will be roughly around the rates.

**Mr HARRISS** - you were on fairly solid ground that relied on that?

**Mr LOMER** - Yes.

**Mrs LOMER** - Which was how much, only \$30 000, wasn't it.

**Mr LOMER** - Yes, it was only \$30 000 on the rates at that stage.

**Mr HARRISS** - And that is all you expected to pay, or thereabouts.

**Mr LOMER** - Thereabouts, yes.

**Mr HARRISS** - If the project had been completed at about that time in 2002 or 2003.

**Mr LOMER** - Yes, and it would have been that plus the toilet and the other infrastructure which I think is about \$15 000 so we were expecting something around \$45 000 to \$60 000 or something like that and then just to get the bill -

**Mrs LOMER** - To open it up and find that.

**Mr LOMER** - on Christmas week.

**Mrs LOMER** - On Christmas week we got it.

**Mr LOMER** - A week before Christmas they sent us the -

**Mrs RATTRAY-WAGNER** - And you are still smiling, Tom.

**Mrs LOMER** - I was driving the car and I stopped because I got the mail out of the letterbox and I could not drive.

**Mr LOMER** - We were on the way down there and that was in the mail.

**Mr HARRISS** - Are you aware that there had been another inquiry regarding the valuation process by a joint committee of the Parliament which recommended to the Government that the clock stop on 1 January 2003?

**Mrs LOMER** - It was in the paper, wasn't it?

**Mr HARRISS** - So you are aware of that?

**Mr LOMER** - Yes.

**CHAIR** - Mr and Mrs Lomer, I thank you both very much for the detailed submission that you put forward.

**THE WITNESSES WITHDREW.**

**Mr LINDSAY DAWE WAS RECALLED.**

**CHAIR** (Mr Hall) - Mr Dawe wishes to make a statement, so we will just take that now.

**Mr DAWE** - There seemed to be a bit of concern about why people did not get a second opinion about the AHO reports. The first thing is, who do you ask for a second opinion? DPIWE had trouble getting archaeologists to do the 2006 one. They had to get Mr Stone from the mainland to come over so there are obviously not very many archaeologists about, apart from the AHO ones who would not, I should imagine, be independent. And then there are the costs. In 2006 when they came over, a few people got some additional work done and I think, from memory - my next-door neighbour did - it was about \$700 to put down about six boards. I had the opportunity to do that but I did not think \$700 was good value. But maybe on second thoughts it was. That was all I had to say. That is the reason it is difficult to get a second opinion.

**CHAIR** - Thank you.

**THE WITNESS WITHDREW.**

**Mr BILL FIELDING AND Mrs JOANNE FIELDING WERE CALLED, MADE THE STATUTORY DECLARATION AND WERE EXAMINED.**

**CHAIR** (Mr Hall) - Welcome, Mr and Mrs Fielding.

**Mr FIELDING** - This will not take long. We are the ones that Fred said earlier went to the lawyer and he said, 'You might as well try to bump your head on the moon as try to fight this'. We have been at shack 92 since I was in nappies. We bought the place together. We are only here because we did not know the meeting was on Tuesday at Burnie.

**Mrs FIELDING** - We had no correspondence.

**Mr FIELDING** - My wife wrote to Mr Huntly last year and lodged a complaint.

**Mrs FIELDING** - We have had no correspondence from that letter.

**Mr FIELDING** - We did get correspondence to say, 'Thank you very much for the letter. We have received your letter'. That was it.

**Mrs FIELDING** - Nothing else. We do not have that nice thick book that everyone has with all the shacks, their numbers and what they are to be removed for. We have not got any. No correspondence.

**CHAIR** - On behalf of the committee, I would like to apologise for that.

**Mr FIELDING** - We are like Mr Long in that everywhere you have gone you have hit a brick wall and every little bit of literature you get is different to the one you had before.

**Mr GREEN** - Can you explain to the committee why the shack is to be removed?

**Mr FIELDING** - Our shack supposedly is on Aboriginal middens and too close to the road. Ours is 93, close to the road. Regarding the shack above us which was Bream Lodge, if his boundaries were lined up fair and square, fair on the corner as you come into our shack, his peg would be in the middle of the road. So the road would have to go out on the rocks on top of the beach and they are saying that our shack is too close to the road.

**Mr GUTWEIN** - And you are saying that the road would, under normal circumstances, run through that property?

**Mr FIELDING** - We have a map. They are going to have to buy some of the property we had on the rocks on top of the water to put the road in.

**Mr GREEN** - Their shack can stay?

**Mr FIELDING** - That is a private block. The map we have has the shack, the road, and the private block above it, but when you get down to tin tacks there is not enough room to put them all in there. With every corner you go round it changes and that is how we have found it all along and the lawyer said, 'You're wasting your time'. We have been in

contact with Fred for quite a while and we said, 'You go for your life, Fred, and we'll support you all the way.

**Mrs FIELDING** - We even talked with Fred too about getting an archaeologist, is I suppose what you would call them, someone who can come and have a look at the middens and we would go him halves in the cost. I do not know what the outcome was with that. I do not think we did anything.

**Mr GUTWEIN** - Is your shack down to be removed?

**Mrs FIELDING** - Yes, it is.

**Mr GUTWEIN** - On what date?

**Mrs FIELDING** - On 1 October.

**Mr FIELDING** - Our last report was that the Aborigines are going to pull it down; we get the \$5 000 to be there and watch.

**Mrs RATTRAY-WAGNER** - After it has been rehabilitated?

**Mrs FIELDING** - Yes.

**Mrs RATTRAY-WAGNER** - So you are not really sure when?

**Mr FIELDING** - When or if.

**Mrs FIELDING** - Mrs Fielding, Bill's mum, rang Kathryn Clark, spoke to her and said, 'Take this down, I'm not writing a letter. I want you to take this down. I want the \$5 000 up front if my shack has to go because it could be 10 years before that is taken back to natural ground' and she said, 'We're not going'.

**Mr GUTWEIN** - How long have you had the shack for?

**Mr FIELDING** - I am 53 now and I was going up there when I was in nappies.

**Mrs FIELDING** - Yes, 50 years. So we are into our fifth generation there.

**CHAIR** - Thank you very much, and once again we apologise for the lack of communication.

**THE WITNESSES WITHDREW.**