



1994

PARLIAMENT OF TASMANIA

PARLIAMENTARY STANDING COMMITTEE OF PUBLIC ACCOUNTS

SALE OF PROPERTIES PENGUIN, TASMANIA

Laid upon the Table of both Houses of Parliament. The Committee was appointed under the provision of section 2 of the Public Accounts Committee Act 1970 (No. 54)

MEMBERS OF THE COMMITTEE

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SALE/PURCHASE OF PROPERTIES—PENGUIN

SOURCE OF ENQUIRY

1. During early August, 1994 a Mr P. J. Kirkpatrick of Penguin approached his local Member of Parliament, Hon. H. J. Hiscutt M.L.C., Member for West Devon, with concerns that his property had been purchased by the Department of Main Roads for an amount of money which seemed unreasonable compared to the amount paid for the purchase of his neighbour's property. The matter was verbally referred to the Chairman of the Public Accounts Committee.
2. Mr Kirkpatrick then formally wrote to the Public Accounts Committee stating his concerns. The contents of that letter are shown as Attachment A to this report.

THE COMPLAINT

3. In brief the complaint by Mr Kirkpatrick refers to the fact that the Department of Main Roads (now Transport and Works) purchased his property at 18A Lester Road, Penguin for a price of \$158 000 yet purchased the property at 20 Lester Road, Penguin for \$320 000.

WHY THE LAND WAS PURCHASED

4. The properties were purchased by the Department of Transport and Works and proclaimed under section 9A and 52A of the Roads and Jetties Act 1935 to make provision for the intended new line of the Bass Highway. The land was not required for the Highway until about 1997.

COMPARISON OF THE TWO PROPERTIES

- 5A. Mr Kirkpatrick's property at 18A, Lester Road, Penguin was purchased for \$158 000.

As at 1 October 1993 the Government land valuation was \$43 000 and the Capital valuation was \$150 000.

The property comprised 2.74 hectares and contained a substantial brick house of 6 rooms.

Year of sale August 1992.

- 5B. The property at 20 Lester Road, Penguin was purchased for \$320 000.

As at 1 October 1993 the Government land valuation was \$58 000 and the Capital valuation was \$200 000.

The property comprised 3.876 hectares and contained a substantial brick house of 5 rooms.

Market garden/nursery business.

Year of sale August 1994.

N.B. Capital valuation includes land valuation.

EVIDENCE

6. On 8 September 1994 members of the Public Accounts Committee inspected the properties and were accompanied by Mr Wayne King, Regional Property Officer North West for the Department of Environment and Land Management. For the inspection of the Kirkpatrick property, Mr Kirkpatrick was also present.
7. Prior to sale, Mr Kirkpatrick had arranged two private capital valuations on his property, those valuations being \$150 000 and \$153 000. Mr Kirkpatrick was then offered \$158 000 and whilst he had been asking substantially more, his claim was not supported by a professional valuation and was considered to be an ambit claim. As part of the offer to purchase agreement, the Kirkpatrick's were to have continued occupancy, rent free, for six months.

On 22 June 1992 Mr Kirkpatrick advised the Office of the Valuer-General that the offer of \$158 000 was not acceptable. However, 5 August 1992 correspondence from solicitors Messrs Kay, Ruddle and Lillas acting for Mr Kirkpatrick, advised acceptance of \$158 000 for the property and the six month rent free condition. The settlement was agreed between Office of the Valuer-General and the solicitors during late August 1992.

8. During inspection of the Kirkpatrick property on 8 September 1994 Mr Kirkpatrick indicated that one of the factors which influenced him to sell was the fact that he was restricted (because of the 9A proclamation) in improving his property.

9. The matter of the purchase of the property at 20 Lester Road, Penguin is more complex. A relatively small portion of the property was required for the Bass Highway and a market garden/nursery business had recently been developed on the property.

In March 1994 the District Valuer, Office of the Valuer-General, recommended that the business conducted on the property is considered to be the owner's livelihood and total acquisition of the property should occur. Between 6 July 1994 and 4 August 1994 the following took place:—

- Correspondence from the solicitors to Transport and Works expressing concern as to the proposed bases of the purchase of the property and business rather than compensation arising from compulsory acquisition.
 - Correspondence from the solicitors to the Valuer-General forwarding a 'without prejudice' summary of a claim which included compensation and totalled \$582 370, later amended to \$659 980.
 - Negotiations between the Office of the Valuer-General and Mr C. A. Eastaugh registered valuer acting for the owner were held. The Office of the Valuer-General considered all valuation factors and made an offer to purchase the property by agreement for \$300 000. However, Mr Eastaugh did not accept.
 - The solicitors then advised they would accept \$320 000 in full and final settlement. This figure included significant legal and valuation fees that had been incurred by the owner.
 - Correspondence from the Valuer-General to Transport and Works recommending an all up settlement at the figure of \$320 000 negating a potential claim for compensation at some future time arising from items of special value, reinstatement and relocation when compulsory proceedings would have commenced. Sale completed in late August 1994.
10. There was some difficulty in obtaining the necessary financial documentation to support the actual value of the business. Whilst the Profit and Loss Statement for the year ended 30 June 1992 showed a gross profit of \$27 522.27 and a net profit of \$20 639.29, no labour costs were shown. In a letter from the District Valuer, Office of the Valuer-General dated 4 March 1994 it was stated that:—

'In summary the now obtain approximately 96 per cent of their income from the property and since June 1990 the contracting side of the business has diminished to the point where it is almost non-existent which means the near total income is derived from the subject property. The main business is now flower production and propagation, raising and sale of various varieties of palms' and

'I am of the opinion the business conducted on the property is not a hobby or a "lifestyle" it is Mr and Mrs livelihood, a partial acquisition will basically destroy that business and any acquisition should be of the whole property.'

11. As an alternative opinion, other evidence was received that the purchase of the whole property '*probably was not justified*'.
12. In the case of the property at 20 Lester Road, Penguin in examining the considerable difference between the Settlement Price of \$320 000 compared with the claim of \$582 369.78 (later amended to \$659 979.85), the Committee noted that factors involved with the claim were as follows:—
- (a) the agreement was a voluntary settlement initiated by the solicitors acting on behalf of the owners of the 20 Lester Road, Penguin property and was not compulsory acquisition as may have been suggested;
 - (b) solatium is not payable within Tasmania;
 - (c) relocation benefits are payable within Tasmania only and are not payable for interstate movement;
 - (d) in some cases, claims for payment/compensation are submitted without proper supporting documentation. Whether or not such claims may or may not be valid, they are considered to be 'ambit' claims. The Committee fully supported this approach by those Agencies responsible;

- (e) there are occasions when different levels of initiative and effort by owners of properties and their legal representation, may result in a different level of payment where not dissimilar circumstances may be apparent;
- (f) a settlement of the purchase price at \$320 000 in full and final payment was achieved following the request from the Minister's office (Department of Transport and Works) for the Valuer-General to give his personal attention to this matter given the concern of the owners of the 20 Lester Road, Penguin property and their intention to re-establish their business interstate.

CONCLUSION

13. The Committee concluded that:—

- (a) all Agencies and Authorities involved in the purchase of both properties at Penguin acted in good faith and in a responsible manner;
- (b) it is important, both from a departmental/authority and from a public point of view, that the approach regarding purchase of property be consistent in all cases;
- (c) it is important that all claims to the Office of the Valuer-General or relevant Agencies be backed by supporting evidence and documentation; and
- (d) to ensure that there is no room for adverse comment or speculation, all settlement claims made by the Office of the Valuer-General must be supported by documented evidence of value based on:—
 - (1) a clear valuation base; plus
 - (2) additional specific justified claims.

14. The Committee notes that this enquiry could have been referred to the Ombudsman as it is clearly within his jurisdiction. However, on this occasion the Committee chose to investigate this matter as it was already conducting an enquiry into property sales/purchases on the North West Coast of Tasmania and this was seen as a convenient extension to that enquiry.

22 November 1994
Parliament House, HOBART

Hon. G. A. SHAW, M.L.C. (Chairman)

CERTIFIED TRUE COPY

Attachment A to
Public Accounts Committee
Report dated 22 November 1994

35 Westridge Rd,
Penguin,
Tas. 7316
23.08.94

The Secretary,
Public Accounts Committee,
Parliament House,
Hobart.

Dear Sir/Madam,

In October 1992 the Department of Main Roads purchased our house of 26 squares on six and a half acres, for a price of \$158 000. I objected about the low price saying it costs about \$8 000 a square to build and should be compensated accordingly. This price takes in cost of land, fences, paths and all features and fixtures internally. The answer given was, 'You can buy cheaper than you can build!'

A discussion recently with a neighbour who lives about 200 metres from that house, revealed they had sold to the Department for a price of \$320 000. Please tell me why the difference for a house of similar valuation on ten acres?

Thank you.

Signed

P. J. and R. M. Kirkpatrick.