

Response to
Report of the Parliamentary Standing
Committee on Public Accounts
'Administration of the Crown Lands (Shack
Sites) Act 1997, November 2008'

Minister for Primary Industries and Water

February 2009

Contents

1. Background	2
2. Update on Shack Sites Project	2
3. General Comments	2
4. Response to Recommendations	4
5. Response to Findings	6

1. Background

The Inquiry by the Public Accounts Committee commenced in January 2007 and reported in November 2008. During the Inquiry, I provided written information on the shack sites project on four separate occasions and, together with officers from my agency, appeared before the Committee to give verbal evidence.

The Committee made a number of findings (39 in total) relating to its Terms of Reference and three recommendations. I will comment on the findings for the individual Terms of Reference below as well as on the Committee's recommendations. In addition, I have some general comments in response to the Report as well as an update on the progress of the Shack Sites Project.

2. Update on Shack Sites Project

The Shack Sites Project is to all intents and purposes, complete. The Department of Primary Industries and Water has wound up the Shack Sites Project and disbanded the project team. All remaining tasks are now the responsibility of the Crown Land Services Branch as part of its ongoing administration of Crown land.

A total of 1160 shack sites across the state were assessed under the Project and determined for sale to shackowners, to be removed or to be leased.

Of the 1013 shack sites determined for sale, almost all sales have now been complete. Offers of sale for remaining shack sites, including those at Rocky Cape, Brownie Bay and Ansons Bay were made prior to the end of 2008 and the Department expects most of the sales to be completed shortly and all to be settled by the end of 2009.

The 93 shacks determined for leasehold have been issued with leases, except 24 sites at Kingfish Beach, where a suitable and sustainable wastewater system has not yet been found.

All shack owners (54) whose shacks are determined for removal have been notified of their removal date. To date, 27 shacks have been removed and others are in the process of being removed.

3. General Comments

The timing of this Inquiry by the Public Accounts Committee is questioned. As noted above, the sale of almost all shack sites has been completed, with the remaining sites subject to sale offers. All shackowners have purchased their sites legally and by agreement through sales contracts and in many cases have on-sold their sites. All shack sites were sold in accordance with the legislation and at a fair price, that is, the market value of their shacks at the time of sale offer.

Shack owners who have purchased a Crown land shack site are in my view a fortunate minority of the Tasmanian population. They have been afforded the opportunity to own very special properties in coastal or highland lake locations. These opportunities will not occur again.

I note from the Report that the Committee received 23 submissions to the Inquiry and that of these 10 were from Surveyors Bay shack settlement and 6 from Ansons Bay.

This relatively small number of submissions, given the numbers of shack owners directly affected by the project, would seem to indicate that most shack owners are satisfied with the outcome of the project and indeed recognise their good fortune in owning a shack site. Further the grievances of those making submissions are focussed in two settlements, both of which have experienced particular problems in relation to sewerage and waste water infrastructure.

Since early 2007, when submissions were made, all shack owners at Surveyors Bay have completed the purchase of their shacks and sale offers have been made to all Ansons Bay shack owners. (Offers for sale for 14 Ansons Bay shack owners were delayed due to difficulties in obtaining the required permits under the *Aboriginal Relics Act* to enable infrastructure to be installed). I am advised that the waste water system at Ansons Bay was recently turned on and that shack owners are currently in the process of hooking up to the system. In relation to Surveyor's Bay, there have been some operational problems with the waste water system and my agency has been working with shack owners and Council to resolve these problems.

The other large shack settlement for which sales offers were recently made was Rocky Cape. Determinations for sale of these 37 shacks were subject to Council approval for wastewater treatment and disposal. Despite an enormous amount of time and effort by the Shack Sites Project, its consultants and the Circular Head Council, satisfying this condition proved almost impossible to achieve due to the significant site constraints faced at Rocky Cape (small sites, adjacent to the National Park, Aboriginal heritage, flora and fauna constraints, and geomorphology). An agreed solution was finally achieved, involving accredited composting toilets and separate grey water disposal for each site. This was not an easy position to reach as it is not viewed as best practice in wastewater management but is considered to be the only viable solution for Rocky Cape.

While the shack site process is now almost over, during the project shack owners had a number of avenues of appeal open to them under the *Crown Land (Shack Sites) Act 1997* (the Act).

Under the Act, shack owners can appeal:

- The determination of the Secretary to sell, lease or remove. Section 11 of the Act enables an appeal to the Shack Sites Commissioner and sets out the rules and processes to be followed in an appeal.

- The determination in relation to leasing hardship, under section 17A of the Act may be appealed to the Magistrates Court (Administrative Appeals Division).
- A review of the assessment of land value for shacks determined for sale can be sought from the Valuer-General, as per section 26 of the Act.
- A further review of land valuation is available as per section 27 of the Act, if the lessee/licensee still does not agree with the valuation. This is to the Magistrates Court (Administrative Appeals Division).

As well as being able to appeal decisions under the Act, shack owners also were able to apply for hardship assistance to purchase or lease their shacks. This assistance was primarily aimed at shackowners whose shacks were also their principal place of residence and five shack owners have been granted a Crown mortgage to assist them purchase their shacks. In addition, 17 shack owners have been granted hardship leases and remain eligible to purchase their shacks should their circumstances change.

4. Response to Recommendations

The Public Accounts Committee recommends that:

"the Government establish an independent appeal process where aggrieved shack owners can seek ex-gratia compensation/redress for delayed valuation increases, unsatisfactory or incomplete infrastructure and, or, for other costs incurred by a sale which was not completed until after 1 January 2003."

In addition, the Committee recommends:

- that the total sum of the pool to be accessed by valid claims be determined by the Government;
- any payments be to leaseholders of shacks who were the subsequent purchasers or are able to be purchasers of the freehold title; and
- as a benchmark, the Valuer-General be instructed to provide a land valuation of those shack sites which had not been sold at 1 January 2003 and which become subject of a claim.

These recommendations are not supported by specific arguments, but sit alone at the beginning of the Report. It is therefore unclear how they were arrived at and unclear how the numerous findings of the Report relate to the recommendations. The findings are addressed separately below.

In relation to the main recommendation of the Committee, I cannot agree that some shack owners should now be able to receive compensation, when all shack site sales have been carried out in accordance with the Act and by contractual agreement between the parties.

The premise of the recommendation is that the Government is/has been unfair to shack owners whose shacks were sold later in the shack sites process and that these shack owners have been disadvantaged compared to those who were given the opportunity to purchase

earlier. The property boom from approximately 2002-5 has certainly resulted in increased prices. However, all shack owners have been offered their shacks at market price, as determined by the Valuer-General, at the time the properties could be sold. That is, once access, infrastructure and other requirements, all of which affect the price, had been met. The value of the asset transferred to the shack owners has been the current value at the time. This in turn is the value that could be realised by selling the asset.

The project has sold over 900 shacks around Tasmania, following exchange of contracts. Many of these have subsequently been on-sold at considerably higher than the purchase price from the Crown. Property markets rise and fall and the only fair way to set prices is current market value as recognised in the *Valuation of Land Act*.

The recommendations of the Committee run counter to the process approved by Parliament in the Act, which stated that the sale price should be based on the land value of the shack as determined by the Valuer-General. (The Valuer-General in turn is governed by the *Valuation of Land Act* and must value to market.)

The recommendations would also lead to inconsistent treatment of shack owners, with some shack owners getting a windfall gain in the form of compensation, over and above the value of the asset they have purchased. The compensation recommended would therefore favour and subsidise a minority of shack owners.

It is not clear why the Committee has chosen 1 January 2003 as a cut off date for their recommendation. There appears to be no argument supporting this date in the Report and no reason for this rather than any other date. It appears to have been chosen simply to maximise the advantage to individual shackowners. Certainly the Act contains no reference to 1 January 2003 and no requirement for sales to be completed by then or any other date. (The Act has no obligation for the Minister to sell any shacks. Sale is entirely at the Minister's discretion. Any sale, however, must be using the valuation methodology set out in the Act.)

The Committee's recommendations resemble, although they are not identical to, the intent of a Private Members Bill introduced into the Legislative Council on 20 November 2007, by the Hon. Paul Harris, MLC. This Bill, which is yet to be debated, sought to have shack owners reimbursed for any additional sale valuation after 31 December 2003, on the erroneous basis that that date was the end of the Conversion Period under the Act. (Parliament had extended the Conversion Period to 30 June 2005 and in any event this was the date by which shack assessments and determinations were to be finalised and was not related to when sales should be completed.)

I am opposed to both Mr Harris' Bill and to the Committee's recommended compensation scheme.

5. Response to Findings

The Committee Report is divided into sections in accordance with the specific term of reference. Each section has a number of 'Findings', totalling 39 in all. I will respond to each section rather than deal with all individual Findings. No comment on a Finding does not imply agreement.

5.1 Legislative Requirements

It is worth reiterating in relation to this section that the Act sets out processes and procedures for assessing and determining the future of shack sites. The Secretary of the Department Primary Industries and Water is charged with carrying out assessments and making determinations for shack sites. In determining whether shacks should be sold, leased or removed, the Secretary must apply criteria, called conversion criteria, issued by the Minister. These criteria are the same as the model criteria, included in Schedule 2A of the Act.

In carrying out assessments and making a determination, the Act also mandates that the Secretary must consult with the lessee or licensee of the shack, with the relevant portfolio Minister, with the responsible council and with the Aboriginal community through the Office of Aboriginal Affairs.

In addition, the Secretary cannot make a determination to lease or sell the shack site unless he is satisfied that the wastewater can be effectively treated or disposed of and that reasonable public access to coastal foreshore, lake or river is not restricted.

The processes followed by the Shack Sites project were based on the requirements in the legislation and entailed seeking the views of the parties noted above (and others as relevant) and obtaining technical reports into issues such as wastewater, access, infrastructure and heritage for all sites.

The technical reports from consultants, including SKM, were not decision-making documents, but were considered by the Secretary, together with other material in reaching a determination. The Secretary considered all available information in reaching his decisions, in accordance with the requirements of the Act.

Councils, the OAA, Portfolio Ministers, Recorder of Titles, Surveyor-General and Director of National Parks were consulted extensively throughout the assessment and determination of shack sites.

I have no comment on the Findings at page 19, with the exception of one finding: *"There was a significant change in the policy direction with the incoming Minister stating that he wanted as many shack owners as possible to be able to purchase their shack sites"*.

While I was that incoming Minister and certainly agree with the sentiment regarding purchase, as I recall both major parties shared that approach.

5.2 Administrative Costs for each area in each financial year of the program

Under Section 25(2) of the *Crown Land (Shack Sites) Act 1998*, the sale price for the shack site may include "any administration costs or such part of administrative costs as the Minister determines is reasonable in the circumstances." As I have publicly stated previously, the sale price for shack sites determined under the Act was not increased to take into account any administrative costs.

I have no comments on most of the Findings in relation to this section (page 25) except for the following: "*The project was not a high priority for Government from 1998*".

This Finding is not supported. The large number of staff, consultants and immense effort and resources that have gone into this project are evidence of the priority given to it.

5.3 Infrastructure costs for roads, sewerage, power and water for each area in each financial year

Four Findings (page 38) for this section require comment:

5.3.1 "Political decisions prevailed against consultants recommendations"

This assertion by the Committee is not agreed. As noted in the previous section, consultants have no power to make decisions under the Act. Their reports were considered by the Secretary, together with other material in reaching a determination. The Secretary considered all available information in reaching his decisions, in accordance with the requirements of the Act. The assertion that the Secretary made political decisions is not supported by the evidence, is inappropriate and is refuted.

5.3.2 "Government financial incentives contributed to acceptance of inferior infrastructure and potential problems in the future"

This assertion appears to have been based on evidence given by one officer from Break O' Day Council, with no corroborating evidence and is refuted. There is no evidence of additional funding and incentives for this purpose.

5.3.3 "The issue of titles being provided before and without completion of agreed infrastructure requirements and without local government permits is questionable and possibly open to legal action"

Similarly, this assertion appears to be based on the same single source and is not agreed. Titles have been issued legally and it is not considered that they are open to legal challenge as suggested. Issue of titles does not rely on permits being issued by Council (presumably for sewage connections).

5.3.4 "The site installation and management of access to some firetanks poses major safety issues"

The installation and management of fire tanks was done in all cases to meet the safety and other requirements of the Tasmanian Fire Service.

5.4 The methodology used to determine administrative costs for the sale of properties and rental arrangements

I note in the Report that this Term of Reference has been amended to delete the term "administrative". This may have contributed to a misleading statement in P. 45 of the Report, relating to a letter from the Minister in November 1998 (should be November 1999). The Report notes that the Minister's letter stated that recently passed amendments to the Act to extend the period of provisions of the Act would not mean increased cost to owners as had been reported in the media.

This is not an accurate representation. As previously advised to the Committee, the costs referred to were administrative costs, not shack valuations.

In November 1999, the *Crown Lands (Shack Sites) Amendment Act 1999* provided for administrative costs to be included in the shack site sale price if the inclusion of such costs was reasonable under the circumstances. Following the amendment to the Act, I wrote to shackowners assuring them that the changes would not result in shackowners being ". . . faced with increased costs, as has been asserted in the media."

5.5 Any other relevant issues.

No comment.

David Llewellyn
Minister for Primary Industries and Water
February 2009