

# **STANDING COMMITTEE ON PUBLIC ADMINISTRATION AND FINANCE**

**TRANSCRIPT OF EVIDENCE TAKEN  
AT BUSSELTON  
ON WEDNESDAY, 28 AUGUST 2002**

## **SESSION 9**

### **Members**

**Hon Barry House (Chairman  
Hon Ed Dermer (Deputy Chairman)  
Hon Murray Criddle  
Hon John Fischer  
Hon Dee Margetts  
Hon Ken Travers  
Hon Sue Ellery**

**COURT, MR TERRENCE JAMES**  
**Director, Shellbay Holdings Pty Ltd,**  
**examined:**

**OWENS, MR BARRY ARTHUR**  
**Director, Shellbay Holdings Pty Ltd,**  
**examined:**

**The CHAIRMAN:** You will have signed a document titled "Information for Witnesses". Have you read and understood that document?

**The WITNESSES:** Yes.

**The CHAIRMAN:** These proceedings are being recorded by Hansard. A transcript of your evidence will be provided to you. To assist the committee and Hansard, please quote the full title of any document you refer to during the presentation. I remind you that the transcript will become a matter of public record. If for some reason you wish to make a confidential statement during today's proceedings, you should request that the evidence be taken in closed session. If the committee grants your request, any public and media in attendance will be excluded from the hearing. Please note that until such time as a transcript of your public evidence is finalised, it should not be made public. I advise you that premature publication or disclosure of public evidence may constitute a contempt of Parliament and may mean that material published or disclosed is not subject to parliamentary privilege. The Hansard transcript will be provided to you as soon as possible, probably within a week of this hearing. Would you like to start by making an opening statement?

**Mr Court:** Thank you very much for allowing us to appear before the committee. I have given you some papers consisting of a summary and conclusion. As this saga has been going on for seven years, we have reams and reams of paperwork. I have cut the amount down so that it will be easier for you to understand it. The letter in front of you is the introduction. Barry and I are two of three directors of the company known as Shellbay Holdings Pty Ltd. Shellbay Holdings purchased Nelson location 7965, known as Sandy Peak, in March 1995. Location 7965 covers some 353 hectares and is situated on the south west coast between Northcliffe and Windy Harbour. It is freehold land surrounded on all sides by the D'Entrecasteaux National Park. It has been freehold for over 70 years.

The third page of the submission is a map showing its position. On the right hand side of the page is Windy Harbour Road. The left hand side shows location 7965. Adjoining the two is a gazetted road that runs more or less east-west. Shellbay has been endeavouring to gain legal access along the gazetted roadway linking Windy Harbour Road to location 9765 since April 1995 - some seven years now - but to no avail. Those efforts have caused us considerable cost. For example, the Manjimup Shire Council has been taking rates and taxes to the tune of over \$10 500, state land taxes have been nearly \$4 000, solicitor's fees have been nearly \$46 500, and fines and expenses have been nearly \$33 500. That makes a total of over \$94 000. Over the years we have enlisted the help of several politicians, such as Graham Kierath, Paul Omodei and Cheryl Edwardes; and the Manjimup Shire Council; the Department of Environmental Protection and the Department of Conservation and Land Management.

We went to the trouble of preparing a full scale public environmental review at a considerable cost, only to have it thrown back into our face by the Environmental Protection Authority. The three directors travelled to Perth from Manjimup for a half-hour meeting with the full board of the EPA on 11 February 1999. We came out of the meeting firmly believing that we had approval to open up the gazetted access so that further environmental surveys could be carried out. These surveys, including flora and fauna surveys, were required so that we could complete our public environmental review, given that the bush along the gazetted access is so thick that people cannot walk through it. The gazetted access was then opened up by means of a bulldozer, used blade up, which means that we kept it above the ground and pushed the scrub over. We had a four-wheel drive behind it as we drove in there. There was also a licensed surveyor. We did not venture off the gazetted access once, because you must understand that on both sides is the D'Entrecasteaux National Park. However, due to publicity by the greenies, who started jumping up and down and saying that we had done irreparable damage, the EPA rushed off a letter telling us to proceed no further. In fact, Bernard Bowen's letter - you have a copy of it - states that even if the rest of the surveys were carried out "it is most unlikely that the proposal will be found to be environmentally acceptable". Therefore, we could see no reason to carry on with the rest of the surveys.

No action was taken against Shellbay by the EPA or Manjimup Shire Council; in fact, both parties congratulated us on doing a very sensitive job. On 4 June 1999 the three Shellbay directors, plus the company, each received a summons charging them with 32 counts of taking flora and fauna under the Wildlife Conservation Act. They were found guilty and charged over \$20 000. We took an appeal to the Supreme Court, which was unsuccessful.

Suffice it to say that it is now over seven years later and we are no further advanced than we were in 1995 and are considerably out of pocket. We approached CALM through our solicitors in April but as yet have not received a reply. The reason we did that is that the EPA advised us to contact CALM to make sure. The committee is probably aware that CALM is drawing up the new management plan for the D'Entrecasteaux National Park. We were advised that we should make sure that the plan includes access to Sandy Peak, even though we have the road survey. A verbal approach to the district manager of CALM in Pemberton, John Gillard, appears to be a dead end, inasmuch as he pointed out that the new management plan still would not grant approval to open up the gazetted access. All it would have was an overriding statement to the effect that enclosed private property within the park would be granted access rights. The district manager in Pemberton is overseeing the drawing up of the new management plan.

We can only hope that the committee can assist us to gain our rightful access. Everyone we have talked to - people involved in law and elsewhere - say that we should have been able to gain access there as soon as we had bought the land, given that it was a gazetted road. We believe that a gross dereliction of duty by the Manjimup Shire Council, the EPA and CALM has been responsible for holding up Shellbay's endeavours to gain access to Sandy Peak. We have been shunted from pillar to post. Manjimup Shire Council handed us to the EPA, and the EPA handed us on to CALM, and we have gone backwards and forwards probably up to a dozen times. As the committee will probably recognise when it reads the documentation I have included in the submission, we are a very frustrated company and especially when it was fined. Very rarely does CALM prosecute people for taking flora, even

though they may have done much worse than we did. For some reason CALM seemed to think that we must be small people and it could have a go at us, and that is what it did. As I have said, it has cost us over \$45 000 in solicitor's fees, and there have also been fines.

I thank the committee for the opportunity to have our case heard. We were beginning to wonder what avenues were left open to us. I hope the committee will be able to help us.

**Mr Owens:** The Manjimup Shire Council, Bernie Bowen and Jim Sharp are the three bodies that have stopped us from going there. They suspended Terry from work for nine weeks while he was with CALM. They reckoned that because I was a contractor I was paying him off. They had him legally examined and found out that they could do nothing and that I never paid him a penny. Those people want to be looked at. Not only that, before the D'Entrecasteaux National Park was made, road B and the gazetted road were looked at as being the only access to that property. The land is vested in the shire and legally has public access. I reckon that somewhere along the line we should be able to get our \$96 000 back. I would like to think that this committee could have a look at it and advise us in which direction to go to get our money back.

I have heard that CALM and the Manjimup Shire Council will spend \$250 000 at Windy Harbour on bulldozing tracks around the top of the cliffs within two kilometres of our property, and they will not grant us access. They do not need an EPA study or anything. I would like to know why they can do all those things, including bulldozing a national park and a road that is not gazetted, and we cannot even drive down a gazetted road to our property. If we want to go to our property, we must ask permission. We must state what time of the day we will go in there, what colour vehicle we will use and how many people we will take. They then give us a letter to say that we can go in there.

I was 14 when I first went to that property. We used to ride horses, tractors, trucks or anything we could get in there. We could drive from the property to the beach. Last year John Gillard said that we could not drive to the beach any more. He banned us from driving onto the beach.

**Hon KEN TRAVERS:** To where does the freehold title extend?

**Mr Owens:** It is 50 metres from the beach. We used to drive down the old Doggerup Road onto the beach. However, someone decided that it was a no-drive beach and stopped us.

**Mr Court:** It was in the first D'Entrecasteaux management plan that it became a non-vehicle beach, the same as Salmon Bay. It is situated between Salmon Bay in the south and Doggerup Beach in the north. Both those beaches became non-vehicle beaches under a 10-year plan, which has probably gone on for about 15 years. That was when they drew up the original D'Entrecasteaux National Park management plan.

**Hon KEN TRAVERS:** Is the road that you are trying to have opened the original Doggerup Road which you used to use as a kid?

**Mr Court:** No. You will see another road heading north.

**Mr Owens:** There used to be a road with a power line. Since we bought the property they have put a gate across the road and banned us from driving up and down it. The track is part of the D'Entrecasteaux National Park and shown heading out towards the

north east. That was the original Wheatley Coast Road. We can use it in the summer if we get permission. It is 15 kilometres long and gets inundated with water during the winter. The gazetted access is only six and a half kilometres long.

**Hon KEN TRAVERS:** Has the gazetted access ever been opened up as a road?

**Mr Owens:** Over the first one and a half kilometres the shire council formed and cleared a road probably 10 metres wide.

**Hon KEN TRAVERS:** People used to access the area via Wheatley Coast Road, but it was merely a track and not a gazetted road, was it?

**Mr Owens:** That is right.

**Mr Court:** CALM calls them management access tracks and therefore can control who goes on them.

**Mr Owens:** If you listen to what the shire and CALM want to do now, you can hear the fishermen behind me talking about a one hectare or two hectare block that they will cut in half so that they can make more residential blocks there. When we first bought the property we wrote to the shire council and offered to build the road free of charge so that there would be no expense to the shire whatsoever. I used to clear 120 kilometres of road every year for CALM. I had all the gear in the world to build it. We offered to build it free of charge. The shire council is now saying that it has no money to do it.

**The CHAIRMAN:** Obviously your property and the bundle of rights that go with it have been severely impacted upon by not having any effective access. What has that meant for your enjoyment of that land and your plans for it for the future? In other words, why did you buy it?

**Mr Owens:** At one stage of the game we were going to develop it into a big Karri Valley tourist resort type of thing. However, we had so many kicks in the butt over it all, with blokes like Bernie Bowen and John Gillard saying they would not give us access, that we backed off. We simply tried to get the road in, but we could not get anywhere.

**Mr Court:** When we objected to paying that list of land taxes and the like, they said we must pay it. When we asked why, the reason given was that we not deriving an income. We could not get anything in there to enable us to do anything; so we went round in circles again.

**The CHAIRMAN:** Has it been grazed and farmed effectively though in the past?

**Mr Court:** Yes. That was where the Brockmans used to drive their cattle in the old days. They used to leave them down on the coast. A bloke by the name of Muir, in fact, owned that block. He had it all fenced and used to drive his cattle down there and leave them there all winter.

**Hon KEN TRAVERS:** That was obviously pre the national park.

**Mr Court:** Yes.

**Hon KEN TRAVERS:** He put in a cattle run or stock track.

**Mr Owens:** That is right. Because it was freehold land, all the roads around there were shut off and the old maps of around 1894 indicate that the roadways went all the way through there. However, when the D'Entrecasteaux National Park was created, all the roads were shut off, apart from the one that runs six and a half kilometres straight in east-west of the property.

**Mr Court:** It is quite obvious that the gazetted road was put there for one reason only; that is, to give access to Sandy Peak.

**The CHAIRMAN:** I know that you have not formalised any plans for the future but have you drawn up concept plans for the ideas you had in mind for your wilderness lodge and that sort of stuff?

**Mr Owens:** We had a rough plan drawn up. We spoke to a bloke by the name of Peter Gleed from Margaret River, Augusta or somewhere. He spoke to us at length about it and then when we got knocked back, we wondered how much more we would have to spend than the \$90 000 we had already spent on getting knocked back. The most important thing is access and if we got access we would talk.

**Mr Court:** The latest correspondence we got from the Environmental Protection Authority said that it was unlikely that we would be able to open that access on environmental grounds; so, where do we go? We suggested an alternate access to the Department of Conservation and Land Management. When we first bought the land back in 1995, we wrote to CALM and suggested that we could probably get into that block from a different road from Salmon Bay Road and about two kilometres up the coast we could enter our block again. Syd Shea replied - which is part of the correspondence I have with me - that it was not in the management plan so CALM could not grant us any other access. He knew by that time, of course, that we had been in touch with the EPA and were drawing up a public environmental review.

**Hon KEN TRAVERS:** Did CALM want to purchase the block to incorporate it in the national park?

**Mr Court:** It probably would have but it never offered. It was on the market, and still is on the market, but it is very expensive and CALM will not pay our price anyway. The potential of 350 hectares sitting on the top of a cliff with 180 degree views is enormous. Back east it slopes down into swamplands all over the D'Entrecasteaux National Park.

**Hon KEN TRAVERS:** The management plans for the national park must have been reviewed at some stage in the past seven years.

**Mr Owens:** They have just been put out now. We just paid \$5 000 for a lawyer to have a look at it for us and to draw up plans to put in three different accesses.

**Hon KEN TRAVERS:** That was part of the management plan review because, obviously, that opportunity would arise when it came up for review if it was not in the management plan.

**Mr Owens:** Yes, but it does not have to be in the management plan because it is a gazetted road vested in the shire for the public to have access to that property and it is still today a public thoroughfare.

**Hon KEN TRAVERS:** I take the point about the gazetted road being one issue. Was the public environmental review you did for the whole block or just for the road?

**Mr Court:** No, only for the road. It was suggested that we draw up a public environmental review to encompass all of that. However, you must remember that PERs cost a lot of money.

**Hon KEN TRAVERS:** I was trying to clarify that point.

**Mr Court:** I thought Mr Owens had a copy of the PER. However, I have a copy of it with me but I could not photocopy it because it is too thick. There is also a copy of

the latest correspondence from McLeods, our solicitors, who wrote to CALM asking it to please include access in the new management plan.

**The CHAIRMAN:** The committee can get a copy of that PER from the EPA if you identify it.

**Mr Court:** It is titled "Shellbay Holdings Pty Ltd: Public Environmental Review: Construction Of A Track Along A Gazetted Road Surveyed Near The South Coast of WA: DEP Assessment No 1117" dated January 1998. The only other information I have is the latest request from our solicitors to CALM to include it in the new management plan.

**The CHAIRMAN:** I want to follow up another issue about your suspension from CALM. I gather, from what Mr Court said a minute ago, that you were a CALM employee.

**Mr Court:** I was a CALM employee for forty one and a half years. I retired last year. I was also the regional roading officer, which was when I ran into Mr Owens. He was a contractor who won contracts to build roads. I was unaware that CALM was trying to get me for collaboration with Mr Owens. We were just sitting around having a beer one evening and talking about freehold land along the coast. I said then that I knew there was freehold land along the coast that might be for sale. A group of us decided to find out. I already knew it was owned by Frank Moss and Sir James Carruthers, who had it in a family trust. I had contacted them probably 10 or 15 years before that and asked them whether it was available for sale, because the land would have been pretty cheap then, and they said no. Ten years later I still had Frank Moss's phone number, so I rang him and asked him whether it was for sale. He remembered me and said that it could be for sale. I then formed a syndicate with 10 people and, with Mr Owens and another director, we purchased it. Although Mr Owens was a contractor to CALM, there was no collaboration or anything like that. I was found not guilty anyway. Syd Shea said that I should have told him that I was a director of the company.

**The CHAIRMAN:** The matter was therefore investigated?

**Mr Court:** Yes.

**The CHAIRMAN:** When you mentioned it, I wondered whether it was investigated and whether it went to the Commissioner for Public Sector Standards.

**Mr Court:** Yes, CALM tried to get me under the Public Sector Management Act but it found there was no case to answer.

**Hon KEN TRAVERS:** When was the property last used? I presume it is currently vacant land.

**Mr Owens:** No, I got permission from the shire and built a shed there.

**Mr Court:** I have a caravan there.

**Mr Owens:** Last weekend I walked seven kilometres in and out of there to go fishing.

**The CHAIRMAN:** That is a good way to keep fit.

**Mr Owens:** That is how to get there. It is disappointing because we paid a lot of money for the property and we want to develop it. People talk of tourism and all that sort of thing and about a shortage of land and water at Windy Harbour. We have more water up there than Windy Harbour could ever wash itself in.

**Mr Court:** In the documentation we have given the committee are letters from the ministers with whom we have been in touch and the shire council and you will find in those letters that the shire refused to become the proponent. Our information is that the management of the shire should be providing us with a service. It has taken rates from us every year, including rubbish rates, amounting now to more than \$10 000. It has upped the rates this year and we intend to appeal that. It refused to become the proponent. I think the management of the shire cannot afford it. That is probably the only gazetted roadway that it has not opened up in the whole shire.

**The CHAIRMAN:** I take it from what you are saying too that you attempted to at least negotiate with CALM the other access which might resolve your situation.

**Mr Court:** Yes, along the southern end. The point is we have since been along our boundary and have established that it is impractical to come in from that end because of the nature of the topography, which is consolidated razorback sand dunes. More damage would probably be done by going in there than going in elsewhere. With the gazetted access there now, there are two creeks that stop us having access. Other than that, with a little bit of work we would probably have all-weather access. This is what we cannot understand. It would be far better access than CALM's management access track for 15 kilometres coming in from the north east.

**The CHAIRMAN:** It is a funny state of affairs when you cannot get into your own property.

**Mr Court:** Do you want a copy of the PER?

**The CHAIRMAN:** We can get that but that would fine if you could provide it to the committee. Please provide any other documents that you wish to. We will return them to you if you leave them with us.

**Mr Court:** I will do that and you can photocopy them.

**The CHAIRMAN:** Yes, if you have a bundle there. Is there anything you would like to finish up with?

**Mr Owens:** I would like to thank the committee on behalf of Shellbay and let us hope that we can settle the matter at the end of the day.

**Mr Court:** Please come and see us.

**The CHAIRMAN:** Thanks a lot. I explained that we are representing a total of seven members of the committee. Thanks very much for your time and your submission.