



PROCEDURE AND PRIVILEGES COMMITTEE

INQUIRY INTO ALLEGATIONS ASSOCIATED WITH THE REMOVAL OF 'THE CLIFFE' FROM THE STATE REGISTER OF HERITAGE PLACES

**Report No. 5
in the 38th Parliament**

2009

Published by the Legislative Assembly, Parliament of Western Australia, Perth, September 2009.

Printed by the Government Printer, State Law Publisher, Western Australia.



Procedure and Privileges Committee

Inquiry into Allegations Related to the Removal of The Cliffe from the State Register of Heritage Places

ISBN: 978-1-921355-69-1

(Series: Western Australia. Parliament. Legislative Assembly. Committees.
Procedure and Privileges Committee. Report No. 5, 38th Parliament)

328.365

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Report No. 5

Presented by:
Mr Michael Sutherland, MLA
Laid on the Table of the Legislative Assembly
on 17 September 2009

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COMMITTEE'S FUNCTIONS AND POWERS

Legislative Assembly Standing Order No. 284 provides the following functions, powers and terms of reference to the Procedure and Privileges Committee -

- (1) A Procedure and Privileges Committee will be appointed at the beginning of each Parliament to -
 - (a) examine and report on the procedures of the Legislative Assembly; and
 - (b) examine and report on issues of privilege; and
 - (c) wherever necessary, confer with a similar committee of the Council.
- (3) Membership of the committee will consist of the Speaker and four other members as the Legislative Assembly appoints.
- (4) Standing Order 278 will apply except that where possible any report of the committee will be presented by the Deputy Speaker.
- (5) When consideration of a report from the committee is set down as an order of the day it will be considered using the consideration in detail procedure.

FINDINGS

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Finding 1

That there is no evidence to suggest that the Hon Michelle Roberts deliberately provided false information to the Legislative Assembly.

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Finding 2

That there is no evidence to suggest that the Hon Michelle Roberts considered the Creasys' legal action a 'threat' to which she improperly responded by supporting the motion moved by the Hon Colin Barnett in the Legislative Assembly on 14 May 2008.

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Finding 3

That there is no evidence of any inducement offered to either the Hon Michelle Roberts or the Hon Colin Barnett in exchange for their support to remove The Cliffe from the state Register of Heritage Places.

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Finding 4

That there is no evidence that the appointment of Mr Russell Barnett to the board of Solbec Pharmaceuticals was influenced in any way by Mr Mark Creasy. Therefore, there is no evidence that Mr Mark Creasy could have improperly influenced the Hon Colin Barnett to present a grievance regarding the removal of The Cliffe in order to secure a board position for his son.

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Finding 5

That there is no evidence that the Hon Colin Barnett was offered an inducement by Mr Mark Creasy to move the grievance relating to The Cliffe in the Legislative Assembly on 20 August 2007, or to move the motion supporting the removal of The Cliffe from the state Register for Heritage Places on 14 May 2009.

HON. GRANT WOODHAMS, MLA
CHAIRMAN OF THE COMMITTEE

17 September 2009

CHAPTER 1 INTRODUCTION

1.1 Initiation of the Inquiry

On 29 June 2009, the Hon L W Roberts-Smith, Commissioner of the Corruption and Crime Commission, forwarded to the Speaker of the Legislative Assembly complaints dated 31 March and 15 April 2009 sent to the Corruption and Crime Commission by a Mr Brian Waldron. The complaints contained allegations concerning the Hon Colin Barnett, MLA, and the Hon Michelle Roberts, MLA, in relation to the removal of a Peppermint Grove property called The Cliffe from the state Register of Heritage Places. The substance of the allegations, and the events preceding them, are discussed in Chapter 2.1 below. The Corruption and Crime Commission forwarded the complaints to the Speaker of the Legislative Assembly because:

it is clear that the allegations centre crucially on what Mr Barnett and Ms Roberts said in the Parliament, both as to the truth or accuracy of it and their motivation for saying what they did. Those matters are protected by parliamentary privilege. Specifically, the allegations cannot be investigated without impeaching or calling into question what was said in the Parliament by Mr Barnett and Ms Roberts. If done by the Commission, that would constitute a breach of article 9 of the Bill of Rights 1688 (UK), imported into the privileges of the Parliamentary [sic] of Western Australia by section 1 of the Parliamentary Privileges Act 1891 (WA).¹

The Commissioner further stated that ‘given the nature of the allegations the Commission has decided pursuant to section 152(4)(d) [of the *Corruption and Crime Commission Act 2003*] to disclose to you a copy of the complaint for your information and consideration of any possible further action by the Privileges Committee.’²

On 6 July 2009, the Speaker of the Legislative Assembly, the Hon Grant Woodhams, MLA, replied to the Hon L W Roberts-Smith, Commissioner of the Corruption and Crime Commission, stating that:

In my view, that provision [152(4)(d) of the Corruption and Crime Commission Act 2003] only allows disclosure to either House of Parliament or to the Joint Standing Committee on the Corruption and Crime Commission, and consequently it would not be appropriate for me to consider forwarding the matter to the Procedure and Privileges Committee. However I certainly can and will table your correspondence in the House, in accordance with the section, when the Legislative Assembly resumes its sittings on 11 August 2009. It will then be a matter for the House to decide what action may be necessary.³

On 11 August 2009, the Speaker of the Legislative Assembly duly tabled the correspondence in the House, along with a copy of his letter dated 6 July 2009 to the Commissioner.⁴

On 12 August 2009, the Legislative Assembly of Western Australia agreed to a motion in the following terms:

¹ Hon L W Roberts-Smith RFD QC, Commissioner of the Corruption and Crime Commission, Letter, 29 June 2009.

² Ibid.

³ Hon Grant Woodhams, Speaker of the Legislative Assembly, Letter, 6 July 2009.

⁴ Hon Grant Woodhams (Speaker), MLA, Western Australia, Legislative Assembly, *Parliamentary Debates* (Hansard), 11 August 2009, p5625d-5625d.

That this House refers the matters raised in the Corruption and Crime Commission documents relating to The Cliffe to the Procedure and Privileges Committee for inquiry.

1.2 Conduct of the Inquiry

During the course of the Committee's inquiry, members met on 6 occasions.

The Committee requested submissions from several persons and organisations, as well as conducting its own research of available documentary and electronic records in relation to the matters under consideration. The Committee also considered the statements made to the Legislative Assembly by the Hon Colin Barnett and the Hon Michelle Roberts.⁵

The findings of the PPC are set out in the following chapters.

⁵ see the Hon Colin Barnett (Premier), Western Australia, Legislative Assembly, *Parliamentary Debates* (Hansard), 12 August 2009, p5817b-5829a; Hon Michelle Roberts, MLA, Western Australia, Legislative Assembly, *Parliamentary Debates* (Hansard), 12 August 2009, p5788b-5790a.

CHAPTER 2 ALLEGATIONS AGAINST THE HON COLIN BARNETT AND THE HON MICHELLE ROBERTS CONCERNING THE CLIFFE

2.1 Background

On 30 August 2007, the Hon Colin Barnett, MLA, raised a grievance with the then Minister for Heritage, the Hon Michelle Roberts, MLA, concerning a house known as The Cliffe, located at 25 Bindaring Parade, Peppermint Grove on a site of around 5000 square metres.⁶ The Cliffe was built in the late 1890s by engineer Neil McNeil, in part to demonstrate ‘the suitability of timber as a building material’,⁷ and was originally part of a luxurious residence which included tennis courts, croquet lawn, stables, summerhouse and cottages for staff.⁸ The extensive grounds were subdivided by McNeil in 1915, and after McNeil’s death, the property was sold to industrialist Lance Brisbane; Brisbane’s brother resided in the property until 1960.⁹ The property underwent further subdivision into six lots in 1962 by Cotswald Investment Pty Ltd, with the lot containing The Cliffe being passed over at auction.¹⁰ However, following the auction, plastic surgeon Dr Harold McComb bought The Cliffe, and lived in it until his death in 1995. Title was transferred to Christopher Langdon Shellabear, acting ‘by a Declaration of Trust dated 22 March 1995’ as ‘Trustee and Agent for Sharon May Creasy’ on 7 April 1995.¹¹ On 27 June 1995, the Heritage Council received correspondence from lawyers acting for Mr Creasy inviting ‘any proposal from your Council to acquire the building.’¹² The first Stop Work Order was then issued by the Minister for Heritage on 30 June 1995 ‘in reaction to concerns that the new owner would seek to demolish The Cliffe’.¹³ According to the Certificate of Title, the memorial giving advice of the Stop Work Order, as required under section 59(13)(a) of the *Heritage of Western Australia Act 1990*, was processed on 3 July 1995; and the property was transferred to Sharon May Creasy in her own right on 17 July 1995.¹⁴ The Register of Heritage Places – Permanent Entry documentation shows that the property received an interim entry on the Register for Heritage Places on 10 October 1995.¹⁵

The grievance raised by the Hon Colin Barnett concerning the heritage listing of The Cliffe concluded with a request to the then-Minister:

⁶ Ian Baxter, Director, Heritage Council of Western Australia, 28 May 2007, np.

⁷ Heritage Council of Western Australia, Register of Heritage Places - Assessment Documentation, 19/07/2005, p3.

⁸ Submission No. 1 from the Heritage Council of Western Australia, 21 August 2009, np.; Hon Colin Barnett, MLA, Legislative Assembly of Western Australia, *Parliamentary debates* (Hansard), 30 August 2007, p4586b-4588a; Heritage Council of Western Australia, Register of Heritage Places - Assessment Documentation, 19/07/2005, p4.

⁹ Heritage Council of Western Australia, Register of Heritage Places - Assessment Documentation, 19/07/2005, p5.

¹⁰ Ibid.

¹¹ Submission No. 4 from Mark Creasy, 31 August 2009; Certificate of Title, Vol 1265 No 334.

¹² Submission No. 1 from the Heritage Council of Western Australia, 21 August 2009, np.

¹³ Ibid.

¹⁴ Certificate of Title, Vol 1265 No 334.

¹⁵ Submission No. 1 from the Heritage Council of Western Australia, 21 August 2009, np.

*I urge her to use her powers as minister to remove this property from the heritage list. It is one of the very few private homes placed on the state heritage list. It is serving no useful heritage function. I believe that after 12 years, the Creasys should have the right to demolish the building and redevelop the site for their family home.*¹⁶

In her response, the Hon Michelle Roberts stated that she had visited the property and ‘share[d] the views of the Member for Cottesloe’, stating that:

*It has been said that this action might set a bad precedent because no place has yet been taken off the register. My response to that concern is that while it will certainly set a precedent in Western Australia, I do not believe that it will necessarily set a bad precedent. In fact, it may well be a good precedent. The Heritage Council is composed of experts in their fields. Their views have weight. This house is composed of representatives of the people of Western Australia, and their views also have weight. Arguably, they have greater weight. This precedent will demonstrate to the people of Western Australia that they have a Parliament, a government and a minister who hear and understand their fears and apprehensions about heritage listing and are also prepared to uphold their rights and prerogatives.*¹⁷

On 3 September 2007, as Minister for Heritage, Hon Michelle Roberts, wrote to the former Director of the Heritage Council ‘requesting that the Council advise the Minister within 28 days on the removal of the place known as The Cliffe (Place No. 4094) from the Register of Heritage Places.’¹⁸ The Heritage Council wrote back to the Minister on 14 September 2007 to advise that under section 54(2) of the *Heritage of Western Australia Act 1990* the Council was required to ‘advertise the proposed removal and solicit public comment for a period of six weeks’, after which it would consider the submissions received, liaise with other stakeholders, and then provide advice to the Minister.¹⁹

On 20 November 2007, the Heritage Council set out its recommendation to the Minister regarding the removal of The Cliffe from the state Register of Heritage Places. In it, the Council advised that after notices were placed in the Gazette and *The West Australian* on 7 September 2007, 30 submissions had been received by the Heritage Council, 25 of which supported the removal of The Cliffe from the Register of Heritage Places, while three indicated that they were opposed to the removal, and two did not indicate a position.²⁰ The Council had considered four confidential condition reports on The Cliffe, two produced for the Heritage Council and two for Sharon Creasy, as well as the 1995 condition report by Ian Hocking of Hocking Planning and Architecture, on behalf of the Heritage Council, which supported the interim registration of The Cliffe. The Council also listed the numerous meetings that had taken place between the Heritage Council, the Minister and the Creasys, dating back to the lawyers’ letter of 27 June 1995, as well as detailing correspondence sent between the concerned parties. The Council’s advice to the Minister concluded:

¹⁶ Hon Colin Barnett, Western Australia, Legislative Assembly, *Parliamentary debates* (Hansard), 30 August 2007, p4586b-4588a.

¹⁷ Hon Michelle Roberts (Minister for Heritage), Western Australia, Legislative Assembly, *Parliamentary debates* (Hansard), 30 August 2007, p4586b-4588a.

¹⁸ Submission No. 1 from the Heritage Council of Western Australia, 21 August 2009, np.

¹⁹ Ibid.

²⁰ Ibid.

*The Council is concerned that removing a place from the Register on the grounds of deterioration caused by neglect could result in a number of other requests for removal on the same grounds, resulting in a loss of significant places. The fact that the place is not accessible to the public is an argument that applies to numerous places on the state register. If this principle is adopted as a reason for not registering a place then some owners may request removal on the same grounds resulting in an inability to both recognise and protect places of state significance in the future.*²¹

On 14 May 2008, the Hon Colin Barnett moved a motion in the Legislative Assembly in the following terms:

That this House resolves, pursuant to section 54(7) of the Heritage of Western Australia Act 1990, that the property known as The Cliffe, which was permanently entered into the Register of Heritage Places on 19 July 2005, notice of which appears in the Government Gazette of 29 July 2005 at page 3365, should be removed from the Register of Heritage Places.

The Hon Michelle Roberts, as Minister for Heritage, spoke in support of the motion, noting that she had placed the notice in the Government Gazette on 7 September 2007 indicating her intention to remove The Cliffe from the state Register of Heritage Places. At the conclusion of the speech she said:

*This decision has been made after much consideration has been given to a whole range of issues. If it were practical to do so, I would have liked to find another location to transport and relocate The Cliffe and re-establish it to its former glory. That would have been good to do, but it is neither practical to do nor would it be a cost effective use of heritage dollars. If we were to have significant amounts of money to spend on heritage issues it might be different, but my view is that there are much higher priorities.*²²

The Legislative Assembly agreed to the motion. The Legislative Council concurred with the same motion, moved by the Hon Peter Collier, MLC, on 29 May 2009.

On 31 March 2009, Sydney resident and public servant Mr Brian Waldron wrote to the Hon L W Roberts-Smith, Commissioner of the Corruption and Crime Commission, alleging, among other things, that the Hon Michelle Roberts, in supporting the motion to remove The Cliffe from the Register of Heritage Places, 'withheld expert information [from the Heritage Council] from her parliamentary colleagues and provided them instead with information she knew to be false.'²³

On 15 April 2009, Mr Brian Waldron wrote again to the Commissioner alleging that the Hon Colin Barnett may have moved the grievance and motion concerning The Cliffe as a favour to Mr Mark Creasy in order to secure a position for the Hon Colin Barnett's son, Mr Russell Barnett, on the board of Solbec, a company in which Mr Creasy's Yandal Investments is the largest shareholder.²⁴ Kirke Securities, chaired by Mr Russell Barnett, underwrote Solbec's April 2007 share issue. Mr Waldron alleged that the appointment of Kirke Securities as underwriter to Solbec Pharmaceuticals may have been the result of a mutually beneficial deal: 'Col Barnett tells Creasy that he'll do what he can about *the Cliffe* if Creasy can influence Solbec to use Russell's Kirke

²¹ Submission No. 1 from the Heritage Council of Western Australia, 21 August 2009, np.

²² Hon Michelle Roberts (Minister for Heritage), Western Australia, Legislative Assembly, *Parliamentary debates* (Hansard), 14 May 2008, p3006b-3008a.

²³ Brian Waldron, Letter to the Commissioner of the Corruption and Crime Commission, 31 March 2009, p2.

²⁴ Brian Waldron, Letter to the Commissioner of the Corruption and Crime Commission, 15 April 2009, p1.

Securities in the deal to raise capital and to get him on the board.’²⁵ Mr Waldron claimed that if Mr Russell Barnett was appointed to the board, he may have stood to make \$60,000 per year for attending six meetings as director.²⁶

As outlined in 1.1, the Commissioner of the Corruption and Crime Commission formed the view that the Corruption and Crime Commission could not ‘investigate these allegations without breaching parliamentary privilege’, and referred the matter to the Speaker of the Legislative Assembly pursuant to section 152(4)(d) of the *Corruption and Crime Commission Act 2003*.²⁷

Following a request from the Procedure and Privileges Committee, the Hon L W Roberts-Smith, Commissioner of the Corruption and Crime Commission, forwarded a letter dated 19 July 2009 from Mr Brian Waldron to the Commissioner, querying the Commission’s decision to take no further action on the allegations contained in Waldron’s letters of 31 March and 15 April 2009, as well as a further letter dated 7 August 2009, implying the Hon Michelle Roberts ‘must have known’ that the statements she made in the Legislative Assembly regarding The Cliffe were not accurate, and that ‘it was reasonable to assume’ that the Hon Colin Barnett ‘was vouching for accuracy of the statements he made in the Assembly on 30 August 2007 and 14 May 2008.’²⁸ The Commissioner also forwarded a letter dated 17 July 2009 addressed to the Speaker of the Legislative Assembly and copied to the Corruption and Crime Commission from Mr Bleddyn Butcher, who identified himself as a colleague of Mr Waldron, and who suggested that the appointment of Mr Russell Barnett as ‘non-executive director of Solbec (now Freedom Eye) on 20 July 2007 and [the Hon Colin Barnett’s] moving of a grievance motion on 30 August 2007’ was an ‘uncanny coincidence.’²⁹ Mr Butcher further alleged that the Hon Michelle Roberts had ignored Heritage Council advice regarding The Cliffe, and this was a result of the then-Minister ‘conspiring with at least one member of the opposition to conceal from parliament’ the information provided to her.³⁰

As noted in 1.1 of this report, on 12 August 2009 the Legislative Assembly referred ‘the matters raised in the Corruption and Crime Commission documents relating to The Cliffe to the Procedure and Privileges Committee for inquiry.’³¹

2.2 Scope of the inquiry

By virtue of the Legislative Assembly’s Standing Order 284, the Procedure and Privileges Committee examines and reports on matters pertaining to procedure, that is, the way the House conducts its business, and privilege, which includes matters pertaining to the exercise or breach of parliamentary privilege. The terms of reference provided by the Legislative Assembly to the Committee were limited accordingly.

²⁵ Ibid., p2.

²⁶ Ibid., p2.

²⁷ the Hon L W Roberts-Smith RFD QC, Commissioner of the Corruption and Crime Commission, Letter, 29 June 2009.

²⁸ Brian Waldron, Letter to the Commissioner of the Corruption and Crime Commission, 7 August 2009, p2.

²⁹ Bleddyn Butcher, Letter to the Speaker of the Legislative Assembly, 17 July 2009, np.

³⁰ Ibid.

³¹ Legislative Assembly, *Votes and Proceedings No. 40 - First Session of the Thirty-Eighth Parliament*, 12 August 2009.

It is not the role of the Committee to inquire into matters relating to the listing and removal of The Cliffe from the state Register of Heritage Places except insofar as they relate to possible serious misconduct or corruption by Members of the Legislative Assembly, possible breaches of parliamentary privilege, contempt, or similar matters. Consequently the Committee did not inquire into matters under dispute in the original complaint concerning The Cliffe regarding heritage listing, or test the claims made by Mr Waldron outside the matters outlined above.

2.3 Issues arising from the complaints

Within the ambit of the Committee's functions, powers and terms of reference, the Committee considered that the relevant allegations of Mr Waldron were as follows:

1. That the Hon Michelle Roberts provided false information to the Legislative Assembly by failing to reveal the Heritage Council of Western Australia's advice not to remove The Cliffe from state Register of Heritage Places.
2. That the Hon Michelle Roberts was improperly responding to a 'threat' when she supported the Hon Colin Barnett's motion in 2008.³² Mr Waldron suggests that Mr Mark Creasy had 'threatened to force the State Government to purchase *The Cliffe* for \$20 million' by deliberately allowing The Cliffe to fall into disrepair, in which circumstances the state can, under Section 73(2)(a) of the *Heritage of Western Australia Act 1990*, compulsorily acquire the property.³³
3. That the Hon Michelle Roberts and the Hon Colin Barnett engaged in 'close [active] collusion', instead of informing the Parliament of the 'statutory remedy' of the state compulsorily acquiring The Cliffe.³⁴ Mr Waldron suggests that this has occurred because there is 'a financial reward somewhere, or a promise made or owed.'³⁵ Mr Waldron alleges that the financial donations Creasy has made to both parties constitute one possible 'financial reward' for both the Hon Colin Barnett and the Hon Michelle Roberts agreeing to support the motion to remove The Cliffe from the state Register of Heritage Places.³⁶
4. That the motivation for the Hon Colin Barnett raising the original grievance motion in the Legislative Assembly regarding The Cliffe was in order to secure his son's appointment to the board of Solbec (now trading as Freedom Eye Ltd) through the influence of Mr Mark Creasy, as 'Mark Creasy's Yandal Investments is the largest shareholder of Solbec.'³⁷ Mr Waldron posits that Mr Creasy, through Yandal Investments, influenced Solbec to choose Kirke Securities (chaired by Mr Russell Barnett) as underwriter, and to appoint Mr Barnett to Solbec's board, in exchange for the Hon Colin Barnett moving the grievance motion regarding The Cliffe in the Legislative Assembly.

³² Brian Waldron, Letter to the Commissioner of the Corruption and Crime Commission, 31 March 2009, p2.

³³ Ibid.

³⁴ Ibid.

³⁵ Ibid., p3.

³⁶ Ibid., p2.

³⁷ Brian Waldron, Letter to the Commissioner of the Corruption and Crime Commission, 15 April 2009, p1.

It should be noted that Mr Bleddyn Butcher echoed many of Mr Waldron's allegations in his email dated 17 July 2009 to the Speaker of the Legislative Assembly. Mr Butcher suggests that the Hon Michelle Roberts, the Hon Colin Barnett and Legislative Council Members of Parliament colluded or conspired to withhold information from the Parliament, in a similar vein to the allegations outlined in points 1 and 3 above. However, Mr Butcher's view is that the matter could be partly resolved if the Hon Colin Barnett indicated whether he had read the Heritage Council's advice of 20 November 2007 before moving his motion on 14 May 2008.

CHAPTER 3 COMMITTEE INVESTIGATION OF THE ALLEGATIONS

After considering the statements made in the Legislative Assembly by the Hon Michelle Roberts and the Hon Colin Barnett in relation to The Cliffe since 2007, as well as considering publicly available information relevant to the allegations, the Committee invited responses from Mr Mark Creasy and Mr Russell Barnett regarding the allegations contained in the initial correspondence to the Corruption and Crime Commission which, as noted, was tabled in the Legislative Assembly on 11 August 2009. In addition, the Committee sought information from the Heritage Council of Western Australia, as well as requesting additional evidence from Mr Brian Waldron and Mr Bleddyn Butcher.³⁸ The conclusions reached by the Committee are outlined below.

Allegation 1

That the Hon Michelle Roberts deliberately provided false information to the Legislative Assembly by failing to reveal the Heritage Council of Western Australia's advice not to remove The Cliffe from state Register of Heritage Places.

In relation to this allegation, the Committee considered the following:

In her response to the grievance raised by the Hon Colin Barnett on 30 August 2007, the former Minister for Heritage gave her initial reasons for agreeing with the Hon Colin Barnett's view that The Cliffe should be removed from the state Register of Heritage Places:

I visited the property in question and share the views of the member for Cottesloe. I believe that the property is dilapidated beyond reasonable repair and that there is no value in maintaining the heritage listing of this derelict, decaying property. I am also mindful of the arguments that the member for Cottesloe has raised. I am mindful that whatever the council has found concerning the property's heritage value, its heritage utility is very limited. The property offers no view from the street, it will not be open to the public and it does not add to or comprise a heritage precinct³⁹.

The former Minister then outlined the process necessary to effect The Cliffe's removal from the State Register for Heritage Places, indicating that she would support this removal. In relation to this support, she added:

It has been said that this action might set a bad precedent because no place has yet been taken off the register. My response to that concern is that while it will certainly set a precedent in Western Australia, I do not believe that it will necessarily set a bad precedent. In fact, it may well be a good precedent.⁴⁰

³⁸ It should be noted that although only Mr Waldron responded to the request to provide additional evidence, Mr Waldron, on page 7 of his submission, stated that the attachments following represent the concerns of both himself and Mr Butcher. However, as the submission is signed only by Mr Waldron, and the footer indicates that the letter has been written by him, the submission is considered to be Mr Waldron's.

³⁹ Hon Michelle Roberts (Minister for Heritage), Western Australia, Legislative Assembly, *Parliamentary debates* (Hansard), 30 August 2007, p4586b-4588a.

⁴⁰ Hon Michelle Roberts (Minister for Heritage), Western Australia, Legislative Assembly, *Parliamentary debates* (Hansard), 30 August 2007, p4586b-4588a.

In the view of the Committee, the Hon Michelle Roberts demonstrated that she had taken into account a range of views in arriving at her conclusion, noting that:

*The Heritage Council is composed of experts in their fields. Their views have weight. This house is composed of representatives of the people of Western Australia, and their views also have weight. Arguably, they have greater weight. This precedent will demonstrate to the people of Western Australia that they have a Parliament, a government and a minister who hear and understand their fears and apprehensions about heritage listing and are also prepared to uphold their rights and prerogatives.*⁴¹

In her address to the House on 14 May 2008, the Hon Michelle Roberts again indicated her support for the removal of The Cliffe from the state Register of Heritage Places, contextualising her remarks by stating that:

*... each year as Minister for Heritage I administer a fund of some \$1 million for heritage grants. Those grants are shared between local government authorities and individuals right throughout the state of Western Australia. The expenditure of a lot of money on one individual property very rarely happens. On occasions, our government, and no doubt previous governments, has singled out some particularly significant buildings and made grants outside that million-dollar grant program ... The house in question is not one of the iconic heritage buildings in Western Australia and I do not think that we could justify spending public money to assist in the relocation of this house.*⁴²

She further stated that she had given ‘much consideration ... to a whole range of issues’, noting the seriousness of the act of removing a place from the state Register of Heritage Places:

*It is not every day that places are removed from the heritage register. I think I have probably added a couple of hundred places to the register in the year or so that I have been Minister for Heritage. This will be the first occasion on which we have moved to take something off the register. It is not a step that I have taken lightly. I did look through the house in some detail. I was expecting to form a contrary view—that this was a place that should be conserved or that we should make other arrangements for. I have now satisfied myself that that is not practical in the circumstances and that, on balance, this is a place that should be removed from the heritage register.*⁴³

After the matter of misconduct was raised in the Legislative Assembly as a result of the tabling of the Corruption and Crime Commission’s documents on 11 August 2009, the Hon Michelle Roberts, in accordance with the Legislative Assembly’s Standing Order 148, made a personal explanation to the House. In the explanation, she rejected accusations of misconduct and further explains the process by which she made an informed decision regarding The Cliffe:

It is a huge leap to draw the conclusion that because The Cliffe was removed from the state Register of Heritage Places against the advice of the Heritage Council, something improper had therefore occurred and that because, as minister, I did not strictly follow the advice of the Heritage Council, something improper had occurred. I certainly was not the first heritage minister in this state to not take the advice of the Heritage Council on a matter, and nor will I be the last. The Minister for Heritage has responsibilities under the Heritage of Western Australia Act to look at

⁴¹ Ibid.

⁴² Hon Michelle Roberts (Minister for Heritage), Western Australia, Legislative Assembly, *Parliamentary debates* (Hansard), 14 May 2008, p3006b-3008a.

⁴³ Ibid.

*the advice of the Heritage Council and to then form a view, and that is exactly what I did. As I explained at the time, it was not a decision that I took lightly. I informed myself by speaking to the local member of Parliament, which I believe was appropriate. The member for Cottesloe is elected to represent the views of the people in his electorate. I am not overly familiar with the member for Cottesloe's electorate and I thought that it was appropriate to speak to the elected member on this issue and for him to speak to me as the heritage minister about an issue that had gone on for 12 years. I note that the complainant has drawn the conclusion that something must be corrupt if the minister did not accept the advice of the Heritage Council. That is a notion that I reject entirely. I believe that a minister has an obligation to form a view on behalf of the whole community.*⁴⁴

In relation to the matter of not providing the Heritage Council of Western Australia's November 2007 advice against removing The Cliffe from the state Register of Heritage Places, the Hon Michelle Roberts stated:

*Frankly, if anyone had entered the debate and asked me what the Heritage Council's position was on this matter, I would have gladly told them, but no-one did that. A motion was put to remove the place from the register and I argued in support of its removal. I acknowledged at the time that it was a difficult decision to make and that I would have preferred it if the building were relocated elsewhere, at the very least. In the circumstances, I supported the motion. I do not think it is general practice in this house for a member to canvass the arguments that disagree with a motion with which the member agrees. That would have been nonsensical. Perhaps I could have noted it, and maybe I should have noted it, but I do not see how it was in any way improper to not make those comments, or that I was in any way obliged to provide that information to the house. I certainly would have done so had I been asked.*⁴⁵

In the opinion of the Committee, this statement provides a convincing and logical explanation as to why the Hon Michelle Roberts did not specifically detail the Heritage Council advice. In relation to claims that the Minister's office refused to provide the Heritage Council advice to the Hon Giz Watson, MLC, the Committee considers that it is a matter for the Minister whether or not advice to the Minister is released to Members of Parliament. Whether the specific piece of advice was given or withheld does not of itself indicate misconduct, and even if the Hon Michelle Roberts had decided not to provide the information sought by a Member, it does not follow that the former Minister therefore intentionally misled the Legislative Assembly.

In addition to the evidence provided in speeches to the Legislative Assembly, the Committee observes that the Hon Michelle Roberts had been provided with advice from the State Solicitor's Office in or about early 2007 advising the Minister of the potential legal consequences of retaining or removing The Cliffe from the state Register of Heritage Places in response to legal action from the owner.⁴⁶ The former Minister was therefore presented with at least two instances of advice, about which she was obliged to form a view, which she duly did. The Committee further notes that there is no obligation for the Minister for Heritage, under statutory provisions or by convention, to accept the advice of the Heritage Council of Western Australia.

The Committee therefore concludes that the evidence demonstrates that the Hon Michelle Roberts, as Minister for Heritage, formed a view about removing The Cliffe from the Register of Heritage

⁴⁴ Hon Michelle Roberts, Western Australia, Legislative Assembly, *Parliamentary debates* (Hansard), 12 August 2009, p5788b-5790a.

⁴⁵ Ibid.

⁴⁶ Submission No. 1 from the Heritage Council of Western Australia, 21 August 2009, np.

Places based on a range of factors, and presented her views to the Legislative Assembly accordingly. The Committee notes that there is no obligation for Members of Parliament, nor Ministers, to reveal every source of information available to them in Parliament, and that Ministers in particular have the responsibility to make decisions based on their judgement of the matters that arise within their portfolios. The Committee does not hold the view that because the former Minister did not specifically mention the advice of the Heritage Council of Western Australia in the debate on 14 May 2008, she therefore deliberately misled Parliament.⁴⁷

Finding 1

That there is no evidence to suggest that the Hon Michelle Roberts deliberately provided false information to the Legislative Assembly.

Allegation 2

That the Hon Michelle Roberts was improperly responding to a ‘threat’ when she supported the Hon Colin Barnett’s motion in 2008.⁴⁸ Mr Waldron suggests that Mr Mark Creasy had ‘threatened to force the State Government to purchase *The Cliffe* for \$20 million’ by deliberately allowing *The Cliffe* to fall into disrepair, in which circumstances the State can, under Section 73(2)(a) of the *Heritage of Western Australia Act 1990*, compulsorily acquire the property.

In relation to this allegation, the Committee considered the following:

From the evidence provided by the Heritage Council of Western Australia and Mr Mark Creasy, the intentions of Mr Creasy and his wife to demolish *The Cliffe* upon purchase were transparent: by the time lawyers for Mr Creasy wrote to the Heritage Council on 27 June 1995, the Creasys had ‘already approached the Shire of Peppermint Grove with this proposal, and had lodged a demolition licence application to effect removal.’⁴⁹ For the following 12 years, the Creasys sought remedies, legal and otherwise, to enable them to either relocate *The Cliffe*⁵⁰ or to sell it to other buyers, including the Heritage Council of Western Australia.⁵¹ According to the Heritage Council’s documentation, in 2005 the Creasys were indeed seeking a legal remedy ‘to force the purchase by the State or force the State to enter a legal agreement to move the house from the property to a public park to allow development of the site.’⁵²

The Committee considers that the Hon Michelle Roberts had formed a view about the heritage value of *The Cliffe* regardless of the intention behind the Creasys’ legal action. To conclude that

⁴⁷ It should be noted that the Hon Michelle Roberts did indicate her awareness that the Heritage Council would oppose the removal of *The Cliffe* from the state Register of Heritage Places in the debate on 30 August 2007.

⁴⁸ Brian Waldron, Letter to the Commissioner of the Corruption and Crime Commission, 31 March 2009, p2.

⁴⁹ Submission No. 1 from the Heritage Council of Western Australia, 21 August 2009, np.

⁵⁰ Ibid.

⁵¹ Submission No. 1 from the Heritage Council of Western Australia, 21 August 2009, np; Submission No. 4 from Mark Creasy, 31 August 2009, p2.

⁵² Submission No. 1 from the Heritage Council of Western Australia, 21 August 2009, np.

she reached this view solely and improperly as a result of the legal threat is not supported by the evidence. The Committee accepts the explanation of the Hon Michelle Roberts in relation to her reasons for supporting the removal of The Cliffe from the State Register for Heritage Places.

Finding 2

That there is no evidence to suggest that the Hon Michelle Roberts considered the Creasys' legal action a 'threat' to which she improperly responded by supporting the motion moved by the Hon Colin Barnett in the Legislative Assembly on 14 May 2008.

Allegation 3

That the Hon Michelle Roberts and the Hon Colin Barnett engaged in 'close [active] collusion', instead of informing the Parliament of the 'statutory remedy' of the state compulsorily acquiring The Cliffe.⁵³ Mr Waldron suggests that this has occurred because there is 'a financial reward somewhere, or a promise made or owed.'⁵⁴ Mr Waldron alleges that the financial donations Creasy has made to both parties constitute one possible 'financial reward' for both the Hon Colin Barnett and the Hon Michelle Roberts agreeing to supporting the motion to remove The Cliffe from the state Register of Heritage Places.⁵⁵

In relation to the allegations above, the Committee did not find any evidence to suggest that there was any inducement offered to either the Hon Michelle Roberts or the Hon Colin Barnett in exchange for their support to remove The Cliffe from the state Register of Heritage Places. The statutory remedy referred to in the allegation has never, according to the Hon Michelle Roberts, been utilised, and the Committee finds her explanation regarding the prudent expenditure of state finances a compelling and logical one.⁵⁶

Finding 3

That there is no evidence of any inducement offered to either the Hon Michelle Roberts or the Hon Colin Barnett in exchange for their support to remove The Cliffe from the state Register of Heritage Places.

⁵³ Brian Waldron, Letter to the Commissioner of the Corruption and Crime Commission, 31 March 2009, p2.

⁵⁴ Ibid., p3.

⁵⁵ Ibid., p2.

⁵⁶ Hon Michelle Roberts, Western Australia, Legislative Assembly, *Parliamentary debates* (Hansard), 12 August 2009, p5788b-5790a.

Allegation 4

That the motivation for the Hon Colin Barnett raising the original grievance motion in the Legislative Assembly regarding The Cliffe was in order to secure his son's appointment to the board of Solbec (now trading as Freedom Eye Ltd) through the influence of Mr Mark Creasy, as 'Mark Creasy's Yandal Investments is the largest shareholder of Solbec.'⁵⁷ Mr Waldron posits that Mr Creasy, through Yandal Investments, influenced Solbec to choose Kirke Securities (chaired by Mr Russell Barnett) as underwriter, and to appoint Mr Barnett to Solbec's board, in exchange for the Hon Colin Barnett moving the grievance motion regarding The Cliffe in the Legislative Assembly.

In relation to this allegation, the Committee considered the following:

Mr Mark Creasy's company Yandal Investments Pty Ltd owned 4.41% of the shares in Solbec Pharmaceuticals in 2007.⁵⁸ Mr Creasy asserted that not only did he have no influence regarding 'the Board's choice of Kirke Securities [as underwriter] until such time as the Rights Issue was announced.'⁵⁹ Mr Creasy also stated, in relation to whether there had been any discussion with the Hon Colin Barnett regarding Solbec Pharmaceuticals appointing Mr Russell Barnett to its board:

... at no time did I directly or indirectly offer any benefit or inducement to the Hon Colin Barnett for assisting me with The Cliffe, nor did the Hon Colin Barnett ask for any benefit or inducement from me. The same is true in respect of the Hon Michelle Roberts.⁶⁰

The Committee also sought comment from Mr Russell Barnett concerning the allegations above. Mr Barnett stated that:

... there was no deal between the Hon Colin Barnett, MLA, Mr Creasy and Solbec Pharmaceuticals Limited (now Freedom Eye Limited) relating to my appointment to the Board of Solbec Pharmaceuticals, or any other matter. The Hon Colin Barnett, MLA, and Mr Creasy did not play any role whatsoever in my appointment to the Board of Solbec Pharmaceuticals Limited and the allegation that they did is false.⁶¹

Mr Barnett then explained the process that led to this appointment. Mr Barnett confirmed that at the time of the allegations, he was the independent non-executive chair of the board of directors of Kirke Securities, which:

provided the service of underwriting and managing the placement and rights issue in Solbec Pharmaceuticals... It was a provision of the underwriting agreement between Solbec Pharmaceutical and Kirke Securities that upon the successful completion of the placement and

⁵⁷ Brian Waldron, Letter to the Commissioner of the Corruption and Crime Commission, 15 April 2009, p1.

⁵⁸ Submission No. 2 from Brian Waldron, 26 August 2009, attachment 18; Submission No. 3 from Russell Barnett, 31 August 2009, p2.

⁵⁹ Submission No. 4 from Mark Creasy, 31 August 2009, p3.

⁶⁰ Ibid.

⁶¹ Submission No. 3 from Russell Barnett, 31 August 2009, p1.

*rights issue, that Graeme Kirke, the managing director of Kirke Securities and I would be invited to join the Board of Solbec Pharmaceuticals.*⁶²

Mr Barnett accepted the offer, and he states that ‘such appointments are commonplace when an investment group takes a significant interest in a public company.’⁶³ Mr Barnett further notes that Mr Waldron’s assertion regarding the directors of Solbec Pharmaceuticals were earning \$10,000 per meeting is false, and the correct figure was \$25,000 per annum plus minimum statutory superannuation entitlements for non-executive directors, and \$30,000 plus minimum statutory superannuation entitlements for the Chair.⁶⁴ Mr Barnett said that his appointment to the board of Solbec Pharmaceuticals and the movement of the grievance motion in the Legislative Assembly were ‘totally unrelated events.’⁶⁵ Further, he states:

*I take extreme exception to Mr Waldron’s suggestion that my conduct as a director of Solbec Pharmaceuticals has been anything other than in accordance with the Law and the ethical standards expected of public company directors. I utterly refute Mr Waldron’s suggestion to the contrary.*⁶⁶

Both Mr Creasy and Mr Russell Barnett maintain that they have never met each other.⁶⁷ Mr Barnett recalls speaking to Mr Creasy in the early to mid 1990s when he was an employee of Kirke Securities regarding an issue of securities; Mr Creasy does not recall any contact whatsoever.⁶⁸ Mr Barnett not only denies that he had any discussions with his father, the Hon Colin Barnett, in relation to The Cliffe, he states that he only became aware of the property and the controversy surrounding it following the Corruption and Crime Commission complaint.⁶⁹

Mr Creasy outlined the contact he had had with both the Hon Colin Barnett and the Hon Michelle Roberts, as Minister for Heritage, regarding The Cliffe, in 2006 and 2007. His first wrote a letter to the Hon Colin Barnett, as his local member, on 18 August 2005, providing a briefing regarding his issues with The Cliffe.⁷⁰ He then requested a meeting with the Hon Colin Barnett on 11 September 2006, which he attended with his wife, Mrs Sharon Creasy, the subject of which was The Cliffe: he states that there was no mention of any of Mr Creasy’s business interests, including Solbec Pharmaceuticals.⁷¹ On 1 November 2006 he and his wife met with the Hon Colin Barnett, the Hon Michelle Roberts, and members of the former Minister’s staff to show them through The Cliffe, after which time he had no contact with the Minister.⁷² Mr Creasy and his wife had a subsequent meeting with the Hon Colin Barnett regarding The Cliffe on 1 June 2007, during

⁶² Ibid., pp4-5.

⁶³ Ibid., p5.

⁶⁴ Ibid., p4.

⁶⁵ Ibid., p2.

⁶⁶ Ibid., p4.

⁶⁷ Submission No. 4 from Mark Creasy, 31 August 2009, p4; Submission No. 4 from Russell Barnett, 31 August 2009, p3.

⁶⁸ Ibid.

⁶⁹ Submission No. 3 from Russell Barnett, 31 August 2009, p2.

⁷⁰ Submission No. 4 from Mark Creasy, 31 August 2009, p3.

⁷¹ Ibid.

⁷² Ibid.

which there was no mention of Solbec or Mr Creasy's other business interests.⁷³ He states that he only recently became aware that Russell Barnett was the Chairman of Freedom Eye Ltd (formerly Solbec Pharmaceuticals), and that he was Colin Barnett's son through the newspaper.⁷⁴

In relation to the possible motivation of the Hon Colin Barnett and the Hon Michelle Roberts, Mr Creasy believes that they were motivated by the 'effective imposition of a penalty of \$5.8m or thereabouts on an individual, who purchased a property that was not at the time [of purchase] on the Register of Heritage Places or a Municipal Inventory.'⁷⁵ He notes that he sought the assistance of the Hon Colin Barnett as his Member of Parliament, and adds that 'the allegations that have been made are totally without substance.'⁷⁶

The Committee considers that the accounts of Mr Creasy and Mr Barnett are consistent and plausible. The Committee notes that in his submission to the Committee, Mr Waldron himself notes that his allegations were based on a 'suspicion' that the coincidence of events (the grievance, Mr Barnett's appointment to the board of Solbec Pharmaceuticals) might be linked to 'possible impropriety.'⁷⁷ The Committee is of the view that such suspicions are not supported by any evidence.

Finding 4

That there is no evidence that the appointment of Mr Russell Barnett to the board of Solbec Pharmaceuticals was influenced in any way by Mr Mark Creasy. Therefore, there is no evidence that Mr Mark Creasy could have improperly influenced the Hon Colin Barnett to present a grievance regarding the removal of The Cliffe in order to secure a board position for his son.

Finding 5

That there is no evidence that the Hon Colin Barnett was offered an inducement by Mr Mark Creasy to move the grievance relating to The Cliffe in the Legislative Assembly on 20 August 2007, or to move the motion supporting the removal of The Cliffe from the state Register for Heritage Places on 14 May 2009.

⁷³ Ibid.

⁷⁴ Ibid., p4.

⁷⁵ Ibid., p4.

⁷⁶ Ibid., p5.

⁷⁷ Submission No. 2 from Brian Waldron, 26 August 2009, p5.