



Special Commission of Inquiry into LGBTIQ hate crimes

SUPPLEMENTARY SUBMISSIONS OF COUNSEL ASSISTING

18 October 2023

IN THE MATTER OF SIMON BLAIR WARK

Introduction

1. This matter proceeded to a public hearing by way of documentary tender on 18 May 2023. At the hearing and in written submissions dated 22 May 2023, observations were made concerning the location at Gap Bluff where items belonging to Mr Wark (including some clothing that had been recently purchased) were found. Subsequently the Inquiry took some further steps in order to see if any further light could be shed on the precise location of Mr Wark's items, and the extent of any fencing in the area.

Further statement obtained from Mr Neil Champion

2. Inquiry officers made contact with Mr Neil Champion, the member of the public who located the items at Gap Bluff on 11 January 1990 and took them to Vacluse Police Station on the instructions of the police (see Counsel Assisting's written submission at [92]-[94]). Mr Champion, a civil engineering contractor, was at Gap Bluff in order to scope the work required for the construction of a pathway at Gap Bluff for which his business was going to tender.¹
3. After meeting with Inquiry officers, Mr Champion provided a statement as to his present recollection of the precise area where he found the items. Mr Champion has marked on an aerial image from Google Maps (annexure 2 to his statement) the location where he believes it is most likely that he found the items. Although he is not certain as to the location, he believes that, if not

¹ Exhibit 23, Tab 68, Second statement of Neil Champion, 9 August 2023, [7] (SCOI.85465).

accurate, it would have been within 50 metres to the northeast of the location that is marked.² He also observes that the clothes were positioned in a “neat and tidy” manner.³

4. Mr Champion’s best recollection of any fencing in the area is as follows:⁴

I cannot remember any fencing at the location where the clothes were. I think that the works were an extension of the fence section; in that there was some low fencing (about one metre or less) in the area, but that at the point where the clothes were, that fencing had stopped.

Information obtained from the National Parks and Wildlife Service

5. By summons, the Inquiry also sought and received documents from the National Parks and Wildlife Service (“NPWS”) concerning the state of any fencing in the vicinity of Gap Bluff as at January 1990.⁵ The NPWS has been responsible for the management of the relevant area since 1982.⁶
6. Consistent with Mr Champion’s statement, the NPWS material suggests that as of early 1990 tenders were being sought for the construction of a coastal pathway through the relevant area.⁷ The manner in which the pathway proposal is described suggests that safety fencing was to be installed as part of the process (implying that there was not pre-existing fencing). However, it is noted that associated diagrams do appear to indicate that at least in some parts of the area immediately north of Gap Bluff there was a degree of pre-existing fencing that was to be removed and replaced.⁸ There also appears to have been fencing in the area to the south of Gap Bluff that was maintained by Woollahra Council. This fencing consists of green “mesh” and appears to be one meter or less in height.⁹

Conclusions in relation to the location where the items were found

7. Mr Champion’s statement speaks for itself in relation to the likely location where the clothing was found.

² Exhibit 23, Tab 68, Second statement of Neil Champion, 9 August 2023, [10]-[12], Annexure 2 (SCOI.85465).

³ Exhibit 23, Tab 68, Second statement of Neil Champion, 9 August 2023, [8] (SCOI.85465).

⁴ Exhibit 23, Tab 68, Second statement of Neil Champion, 9 August 2023, [14] (SCOI.85465).

⁵ Exhibit 23, Tab 70A, Summons to produce (summons NPWS1), 1 August 2023 (SCOI.85463).

⁶ Exhibit 23, Tab 71A, Gap Fence Timeline, Undated, 1 (SCOI.85295_E); Exhibit 23, Tab 71F, South Head Sydney Harbour National Park: Conservation Management Plan (extract), March 2010, 2 (SCOI.85299_E).

⁷ See Exhibit 23, Tab 71B, Gap Bluff Track Proposal, Undated (SCOI.85291); Exhibit 23, Tab 71D, Tender Document – Walking Track Construction, Gap Bluff – Part 1 (extract), 19 March 1990 (SCOI.85296_E).

⁸ Exhibit 23, Tab 71A, Gap Fence Timeline, Undated, 2 (SCOI.85295_E); Exhibit 23, Tab 71D, Tender Document – Walking Track Construction, Gap Bluff – Part 2, 19 March 1990, 4 (SCOI.85293).

⁹ Exhibit 23, Tab 71A, Gap Fence Timeline, Undated, 1 (SCOI.85295_E).

8. The material from the NPWS tends to confirm Mr Champion's recollection that there was probably no fencing in place at the location as at January 1990, and that relevant fencing nearby was one metre or less in height.
9. To the extent that uncertainty remains in relation to the precise location and the nature of any fencing, as noted in the principal written submission, it is most unfortunate that there is no record of police having documented the location at the time.

Peter Gray SC

William de Mars

Counsel Assisting