

COMMISSION OF INQUIRY INTO
MOUNT MURRAY –
PART ONE REPORT



A REPORT BY THE COUNCIL OF
MINISTERS

October 2003

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To: The Hon. Noel Q. Cringle, President of Tynwald, and the Honourable Council and Keys in Tynwald assembled.

Introduction

At its sitting in July Tynwald resolved:-

“ that Part 1 of the Report of the Commission of Inquiry Into Mount Murray be received, and that the Council of Ministers accepts the need for change and gives an undertaking to assess the recommendations of the Mount Murray Report, and convey to the October sitting of Tynwald as to how those recommendations can as far as practical be implemented”.

Prior to the debate in July, the Council of Ministers published a summary of responses to the Recommendations as at 3 July 2003. Since that date, further consideration has been given to the Recommendations contained within the Commission’s Report, and the purpose of this Report, is to articulate the outcome of that further work and respond to Tynwald’s July Resolution.

The Report which follows, reproduces each of the 23 Recommendations contained in the Part 1 Report and identifies beneath each, the actions being taken, if appropriate, and as far as practical, to implement the Recommendations.

Those recommendations which relate specifically to the planning process have been considered by the Department of Local Government and the Environment. Several of the changes recommended by the Commission have already been implemented in one way or another. Others can be implemented by amending or updating office procedures. Finally, some will require a change to the current procedures for dealing with planning applications which are set out in the current Isle of Man Planning Scheme (Development Plan) Order 1982. Members will recall that the Department undertook a major public consultation on Modernising the Planning System in 2002.

The Department was about to consult on the draft orders, which are required to replace the existing order when Parts 2 to 5 of the 1999 Town and Country Planning Act are introduced, when the Commission’s Part One Report was published.

Having considered the recommendations the Department will modify the draft orders, where necessary, and consult on them before bringing them forward for approval by Tynwald in due course. As a consequence it is generally intended that the recommendations will be implemented when Parts 2 to 5 of the 1999 Act are brought into effect.

The Department of Local Government and the Environment intends to consult on the draft orders shortly after the October Tynwald. It is then hoped that the orders can be laid before Tynwald towards the end of the year with a view to the new procedures coming into operation, subject to resource availability, in April 2004.

Recommendation 1

Government, in future, explicitly endorse the principle of transparency in the decision making process, and ensure that such a principle is carried forward by the Department of Local Government and the Environment into all procedures and systems for the determination of planning applications, and the documentation which underpins them.

- 1.1 Addressing first the Recommendation that Government, in future, explicitly endorse the principle of transparency in the decision making process, Council of Ministers would refer to its Code of Practice on Access to Government Information which took effect from 1 September 1996. The aim of the Code was, *inter alia* :-

“to protect the interests of individuals and companies by ensuring that reasons are obtainable for administrative decisions, except where there is statutory authority or established convention to the contrary.”

- 1.2 The Government already endorses, an open and transparent approach towards decision making where the information in question would, assist public understanding of an issue subject to current debate or, improve the transparency and accountability of a particular function of Government.
- 1.3 Having said that, the Council of Ministers is conscious of the need to ensure that the principle is being applied across Government and therefore intends to conduct a Government wide review to determine whether any improvements can be made within particular functions of Government. In relation to the planning system, the Council of Ministers response is articulated in the paragraphs below and in the responses to later Recommendations.
- 1.4 Making the planning process more open and transparent was one of the main thrusts of the consultation document “Modernising the Planning System (MTPS)” issued in August 2002, by the Department of Local Government and the Environment (DLGE).
- 1.5 Therefore the Council of Ministers fully accepts that the principle of transparency should be applied throughout the procedures and systems for the determination of planning applications, and the documentation which underpins them.

Recommendation 2

- (a) To ensure proper consideration and understanding by the Planning Committee, all reports under Standing Order 8 (1) (c) be in writing (as is required by the Development Control Handbook) and all such reports with the exception of defined minor applications be provided to the members of the Committee with the agenda before the date of the meeting and with recommendations as appropriate.
- (b) The recorded minutes of Committee meetings contain not only the decision or decisions made but also make clear the reasons leading to the decision or decisions made.
- (c) To increase the transparency of the process the formal signed minutes of all meetings of the Committee be made matters of readily available public record by means to be identified by DLGE

Recommendation 2a

- 2.1 This Recommendation is accepted and will be implemented as part of the implementation of Parts 2 to 5 of the Town and Country Planning Act 1999 (TCPA 1999)

Recommendation 2b

- 2.2 As indicated in the Council of Ministers position statement in July 2003, this is already being done where there is a change from the Recommendation or additional requirements are imposed. The proposal to record the reasons for all decisions within the minutes, even in cases where the reasons are given in the Recommendations contained within the Agenda, has been accepted and will be implemented as part of TCPA 1999. However, there is some doubt concerning the value of recording in the minutes, the reasons given for every approval (where approval is already recommended by the Planning Officer in the published agenda) and this matter is currently being considered by DLGE.

Recommendation 2c

- 2.3 This Recommendation has been accepted and will be implemented as part of TCPA 1999.

Recommendation 3

- (a) The requirement for written reports to be circulated with the agenda to members of the Planning Committee (as referred to above as an extension to Standing Order 8 (1) (c)) be incorporated into the Development Control Handbook, to include a direction as to how long in advance of meetings members should receive an agenda and its supporting written reports and what information and analysis a report should contain as a minimum.
- (b) To ensure a proper record of decisions, all plans forming part of a planning application be stamped as approved or refused together with date of such approval or refusal and the application number. All decision notices where planning permission is given to refer to the plan numbers forming part of that permission.
- (c) To secure proper Committee control, the Department, in those cases where the conditions attached to a notice of permission are not standard, introduce arrangements to ensure that the Committee sees and approves such a notice before its issue.

Recommendation 3a

- 3.1 This Recommendation effectively flows from recommendation 2(a) and has been accepted. It is important to emphasise however that this may lengthen the time it takes for the Planning Committee to determine applications.

Recommendation 3b

- 3.2 This Recommendation is accepted and, indeed, was introduced prior to the publication of the Commission's Report.

Recommendation 3c

- 3.3 This Recommendation is accepted and the procedures are already in place to ensure its compliance.

Recommendation 4

The restriction on the distribution of such plans be lifted by the Department at an early date.

- 4.1 This Recommendation is accepted although there are a number of practical issues to resolve including the issue of plan reproduction and copyright infringement. A mechanism is to be established to enable plans to be copied subject to the consent of the copyright owner.

Recommendation 5

Planning Committee meetings are held in public and that the agendas for such meetings are made publicly available on request not less than three days prior to the date of the meeting.

- 5.1 This Recommendation has been accepted and arrangements are to be made to introduce this as soon as practicable. The most appropriate time being as part of the implementation of TCPA 1999.

Recommendation 6

The Planning Committee be enlarged and that the Council of Ministers consider the means by which such enlargement be examined and achieved, the preference of the Commission being for a maximum of eight including two political members to allow for deputising and continuity of government input.

- 6.1 As the present panel of lay members to sit on the Planning Committee was increased from four plus the Chairman to six plus the Chairman in 2002, a complement of eight lay persons on the Committee is considered inappropriate, considering the membership of other decision making bodies within Government and the relatively small number of persons available on the Island to serve. It is therefore intended to retain the number of lay representatives at its current level.
- 6.2 It is also not considered practical to increase the number of political members on a permanent basis, although it has been agreed to incorporate into the proposed new Development Procedure Order, provision to enable a second political member (who may not necessarily be a member of the DLGE) to be appointed to deputise for the Chairman in his/her absence.

Recommendation 7

The review stage currently forming part of the procedures in Schedule I to the 1982 Order be discontinued in favour of a simplified system of initial (and only) application and appeal, but subject to the recommendation 8 as set out in 19.12 below.

- 7.1 This was proposed as an option in MTPS and this proposal has now been formally approved. It will be implemented when TCPA 1999 is introduced.

Recommendation 8

The Director of Planning & Building Control prepare proposals for extending both Permitted Development Rights and the Use Classes Order based in the former case upon but not necessarily limited to the type of development listed at paragraph 8.2 of the consultation document, “Modernising the Planning System.”

- 8.1 It has been agreed to extend permitted development rights although DLGE has concluded that, based on the responses to the consultation exercise, this may not be as extensive as suggested in MTPS. This issue will also be included as part of the introduction of TCPA 1999.

Recommendation 9

All applications by the Department of Local Government and the Environment be determined by the Planning Committee, unless that committee decides otherwise, and that any subsequent appeal be referred to an independent Inspector for final decision or to the Council of Ministers for determination following an Inspector’s recommendation.

- 9.1 The requirement that all applications by the Department be dealt with by the Planning Committee goes completely against the measures taken over the recent years to avoid, as far as possible, accusations of bias or prejudice in dealing with the Department’s own development proposals. The Scheme embodied in the 1982 Development Order (as amended), and in the proposed new Development Procedure Order maintains the right balance, by requiring the advice of an independent inspector and a decision by the Council of Ministers. To return this to the Department’s own Planning Committee would be a retrograde step. It appears further to be inappropriate in the context of Recommendation 13 (see below) which recommends that the Minister for DLGE has greater involvement in development control matters.
- 9.2 Notwithstanding its concerns, the Council of Ministers has agreed to refer this recommendation to its Sub-Committee established to consider Recommendation 13.

Recommendation 10

The guidance provided by the Department of Local Government and the Environment to applicants concerning the requirements for the submission of acceptable planning applications be incorporated in the Development Control Handbook and be given the widest possible publicity.

- 10.1 This guidance has been included in revised application forms and will be introduced in the near future into the Development Control Handbook (which constitutes the Department's practice directions for the way in which applications should be dealt with) and given the widest possible publicity. Furthermore, it is intended that the minimum requirements in terms of plans and drawings be prescribed by the Development Procedure Order.

Recommendation 11

The post of Enforcement Officer be provided with specific defined terms of reference directed to the appropriate duties of enforcement as opposed to complaints response and not in future be occupied without an appropriate process of instruction and training being provided. The present post holder to be subject to the same process.

- 11.1 This Recommendation is accepted, although it must be stressed that the Enforcement Officer post already has specific defined terms of reference and the postholder has received training. Nonetheless, TCPA 1999 introduces better enforcement procedures and it is the intention to revisit the enforcement function when the new procedures are introduced. This will form part of a new induction package, for future recruits.

Recommendation 12

The Mount Murray Residual Issues Committee be reconvened for the purpose of preparing and implementing proposals to:

- (a) Acquire land, by agreement or by compulsory purchase, to facilitate the proper passage of emergency fire service vehicles, to provide footpaths within the estate, improved vehicle turning access, and additional off road parking;
- (b) provide improved highway and pedestrian safety on the A5 by means of a safe pedestrian crossing, central island(s), parking and speed restrictions, visibility improvements and bus lay-bys and any other appropriate and effective measures. Consideration be given to associating these measures with a new pedestrian access footpath to the A5 from the estate at a point close to its junction with the C21, as well as with the newly constructed footpath;

- (c) Inspect and test highways and surface water drainage systems and insofar as they do not achieve suitable standards from safety, highway integrity, and reasonable affect upon domestic curtilage aspects, the appropriate work be done to achieve such standards.

Recommendation 12 a, b & c

- 12.1 The Mount Murray Residual Issues Committee has been reconvened to discuss the outstanding issues raised by the Commission. The Committee has also been charged with addressing the outstanding issue raised in Annex 6 of the Crow Report (concerning the Maintenance and Management Company at Mount Murray). In addition, the Committee has received representations on various issues, from a number of residents at Mount Murray, and has undertaken to address consider these matters.
- 12.2 Further work has still to be done by the Committee to assess the practicality or otherwise, of implementing the Recommendations, and it would therefore be premature at this stage to confirm acceptance or otherwise to the Recommendation. The Council of Ministers aims to report further on these matters in time for February Tynwald 2004.
- 12.3 The Residual Issues Committee is chaired by the Chief Secretary and includes the following members:-

Chief Executive, Department of Transport
Director of Highways
Director of Drainage
Chief Executive, DLGE
Director of Planning & Building Control
Development Control Officer, DLGE
Senior Forestry Officer, DAFF
Senior Officer, Isle of Man Fire and Rescue Services
HM Attorney General
Government Advocate

Recommendation 13

A sub-committee of the Council of Ministers be established to examine the means by which the Minister for Local Government and the Environment may be enabled to have greater involvement and responsibility for development control matters in his or her Department.

13.1 The Council of Ministers has established a Sub-Committee comprising:-

Hon RK Corkill MHK Chief Minister

Hon PM Crowe MLC

Hon SC Rodan MHK

Hon AF Downie MHK

13.2 The Sub-Committee has been established to examine the matters raised in this Recommendation and in Recommendation 14 (below) to consider the desirability of their implementation and to consider the impact on any changes deemed to be necessary. The Committee is also addressing the issues raised in Recommendation 9 (above).

13.3 The Sub-Committee has commenced its deliberations on these issues and aims to report back to Tynwald during the current session.

Recommendation 14

The sub-committee referred to in recommendation 13 to prepare and authorise a document setting out criteria for determining the nature and extent of the matters which the Council of Ministers requires to be reported to it by the Minister for Local Government and the Environment. Those matters would include the scale, location and nature of the proposal, apparent economic and general importance to the Island, potential divergence of views between government departments and the degree of conflict with the Development Plan. Using such criteria, it would initially be a matter for the Planning Committee to make a recommendation for call in.

14.1 See response to Recommendations 9 and 13 above.

Recommendation 15

- (a) The provision for “variation” within the 1982 Order be not retained in any Order made under part 2 of the Town and Country Planning Act 1999
- (b) Standing Orders be extended to include a provision specifically preventing the Committee from dealing with a planning application other than as submitted, apart from excepted and minor circumstances to be defined.
- (c) Use of the word “modifications” as part of a decision notice issued by the Department of Local Government and the Environment where a proposal is approved subject to conditions as listed be discontinued.

Recommendation 15a

- 15.1 As indicated in the position statement in July, it had never been intended to retain the “variation” provisions of the 1982 Development Order.

Recommendation 15b

- 15.2 This Recommendation is accepted and is current practice to the extent that the Committee does not deal with applications which for one reason or another have changed substantially from that originally submitted. If the change is substantial a new application is required. If of a minor nature (e.g. amended plans to resolve a problem identified as a result of consultation or to improve the scheme), the application is either re-advertised or the amended plans are circulated to consultees and those who have made representations. An opportunity is given for them to comment before the application is determined.

Recommendation 15c

- 15.3 This is easily achieved and will be implemented at the same time as Recommendation 15b.

Recommendation 16

The recently introduced induction and training programme for new members of the Planning Committee to be mandatory, and that its content extend to and include the specific responsibilities of individuals as Committee members, such responsibilities being defined jointly by the Minister, the Chairman of the Planning Committee, the Chief Executive and the Director of Planning and Building Control.

- 16.1 This is happening in practice and the Chief Executive of DLGE will ensure it is formalised into the conditions of appointment of Planning Committee members for all future appointments.

Recommendation 17

The extent and content of a mandatory induction and training programme for a newly appointed Committee Secretary be devised by the Department Chief Executive in consultation with the Civil Service Commission, the programme to include a take-over period overlapping with the outgoing postholder of not less than two weeks, and desirably four weeks.

- 17.1 The Commission of Inquiry did not recognise that the role of the Secretary of the Planning Committee has changed since the early 1990's. The Secretary is now responsible to the Director and this has been the case for several years. Whilst it is important that the Secretary follows agreed procedures for the preparation of agendas and minutes etc, the Secretary's advisory role to the Committee is limited to procedural matters with the responsibility for professional planning advice undertaken by the Director or his nominee.
- 17.2 There is some difficulty, however, with the proposal for a take-over period overlapping with the outgoing postholder. Whilst fully supporting the principle, the practicality is rarely achievable because of the recruitment processes and notice of termination requirements. The notice period for this civil service grade is four weeks, which effectively renders the proposal impossible to achieve.
- 17.3 It is assumed that the recommendation for a take-over period has been made to ensure continuity and enable a new postholder to be briefed on the requirements of the post by the outgoing postholder. It is important to emphasise however, that there are two additional officers in DLGE who fulfil the role of Deputy Secretary to the Planning Committee. This includes covering leave absences and vacancies, and providing support and advice to incoming postholders. It is argued therefore, that a take-over period is not strictly necessary in the circumstances.

- 17.4 It is accepted however, and the Chief Executive of DLGE will ensure, that any new postholder will have a detailed training and induction course.

Recommendation 18

No more than two new members be brought on to the Planning Committee at any one time.

- 18.1 This Recommendation is accepted in principle subject to issues of practical implementation. For example, if more than two members of the Committee resigned at the same time DLGE would have no option other than to appoint more than two members to replace them. However, DLGE will ensure that the tenure of appointments is such that the risk of this situation arising is minimised.

Recommendation 19

The Director of Planning & Building Control jointly with the local authorities and with the appropriate officers, including those in the Departments of Transport, Agriculture Fisheries and Forestry, Tourism, Isle of Man Fire and Rescue Services conduct a review of the effectiveness of current consultation procedures with a view to revised requirements and guidelines being incorporated into the Development Control Handbook.

Consideration to be given to defined time limits for consultee response which should be in writing and to a requirement for Planning Officers to give reasons where recommendations by consultees are not supported.

- 19.1 Both parts of this Recommendation are accepted and discussions have already taken place on improving consultation procedures with various Departments, Boards and Agencies. A more thorough review will be developed as part of the new procedures when TCPA 1999 is introduced.

Recommendation 20

Section 40 of the Town and Country Planning Act 1999 be not brought into force. The Department of Local Government and the Environment identifies and publishes for consultation a schedule of island wide amenity bodies whose objectives it considers to be the preservation of the environment, the conservation of resources, natural history, or any similar object. The schedule, when agreed, should give the right to such bodies as are named to be consulted and make representations on matters they consider to be relevant and in their own behalf.

Legislation be introduced to authorise and regulate the introduction of the said schedule and its said effects, and that when such legislation is in force section 40 of the Town and Country Planning Act 1999 be repealed.

The Department of Local Government and the Environment or the Council of Ministers give consideration to taking or not similar action with regard to the interest groups set out in sub-sections 40 (1) (b) and 40 (1) (c) of the Town and Country Planning Act 1999.

- 20.1 Section 40 of the TCPA 1999 has two separate requirements. The first is the establishment of a consultative body, the second the involvement of amenity bodies in Development Control.
- 20.2 The intention is that section 40 would be used to set up an all-Island Planning Forum to advise the Department on planning policy rather than make comment on individual applications. It is therefore intended not to repeal section 40 of the 1990 Act as recommended by the Commission of Inquiry, but to continue with the establishment of an all-Island Planning Forum as envisaged by section 40(1).
- 20.3 The Recommendation concerning other interest groups is accepted subject to those groups not being afforded the equivalent of interested party status. Again, this issue will be addressed in the implementation of TCPA 1999.

Recommendation 21

The Department of Local Government and the Environment insofar as it has not already done so by the date of the publication of this Report, conduct an immediate inquiry into the statutory planning position and take such steps with respect to plot 135 Fairways Drive as it considers appropriate to regularise the position by such means as it considers appropriate, not necessarily excluding enforcement.

- 21.1 Taking enforcement action in respect of Plot 135 Fairways Drive is not considered reasonable and instead the owner of that plot has been issued with a Letter of Comfort.
- 21.2 In addition, the planning history of other properties, which were subject to similar circumstances as Plot 135, are to be re-examined by DLGE. The possibility of preparing and seeking approval for an “as built” drawing of the development is to be examined. Such a document would confirm the planning position in respect of the existing development and give clarity for the future, including future land transfers of individual plots.

Recommendation 22

The Council of Ministers propose the establishment of a statutory board which shall be responsible for the audit of the annual financial accounts of the Isle of Man Government and whose report (in terms to be determined) on such accounts each year shall be appended to the accounts and laid before Tynwald.

The proposed statutory board shall be responsible for:

- examining and evaluating the application of the principles of good corporate governance in each of the government departments, statutory boards and Government Offices by means of periodic inspections; and
- upon completion of such an inspection, making a report to the respective government department or statutory board with a copy to be sent to the Council of Ministers;
- examining and evaluating the operation of the internal controls, financial or otherwise, in each of the government departments and statutory boards by means of periodic inspections; and
- upon completion of such an inspection, making a report to the respective government department or statutory board with a copy to be sent to the Council of Ministers;

- examining and evaluating compliance by officers and staff at all levels with the internal procedures in each of the government departments and statutory boards by means of periodic inspections; and
- upon completion of such an inspection, making a report to the respective government department or statutory board with a copy to be sent to the Council of Ministers.

The proposed statutory board be authorised to investigate and report in respect of any matter referred to it for investigation and report by the Chief Minister and Council of Ministers.

The proposed statutory board be authorised to investigate and report in respect of any matter referred to it for investigation and report by a government department or statutory board.

The proposed statutory board be authorised, after due consideration to investigate and report upon such complaints of members of the public as it shall think fit, such reports to be made to the Council of Ministers.

The proposed statutory board be named “the Audit Commission”.

The Chairman of the proposed Audit Commission be not a member of Tynwald and that he or she should be assisted by two or more Commissioners with competence in the fields of audit, systems and compliance.

The proposed statutory board be required to make a report of its activities each year and each such report shall be laid before Tynwald.

- 22.1 The Government fully supports the principles of Good Governance identified in the Report and indeed, the Council of Ministers has recently endorsed a Code of Conduct on Corporate Governance, for application across the public sector.
- 22.2 With regard to the specific proposals to establish a Statutory Board, to be named the Audit Commission, this matter is being addressed by The Select Committee of Tynwald on the Scrutiny of Public Accounts.

Recommendation 23

The Department of Local Government and the Environment issue practice directions that the policies enabled under the 1991 Act and ultimately under the 1999 Act be implemented in all cases except where special circumstances indicate otherwise

contributions by developers to the cost of infrastructure provision consequential upon the approval of development proposals normally be to the full costs of such provision.

In support of the above, there be confirmation of the practice under Grampian Regional Council v City of Aberdeen [1984] JPL590 that negative conditions which prevented development until certain events, including off site events such as infrastructure improvements, had taken place, may be lawfully imposed

- 23.1 Each of the three parts of this Recommendation have been accepted. All three parts are current practice and have been incorporated into the Development Control Handbook.

Conclusion

In conclusion the Council of Ministers is keen to re-affirm that it accepts the need for change and takes very seriously the issues raised within the Commission of Inquiry's Recommendations. It is important to emphasise however that many of the proposals for the reform of the planning system were already in hand, although it is acknowledged the report gives greater impetus to those reforms.

The reforms to the planning system will have some significant resource implications for Government and in particular, the proposals to abolish the review stage, the need to enhance the administrative systems for determining applications and the opening of Planning Committee hearings to the public. In relation to the first issue, for example, this will inevitably result in an increase in cases being referred to a Planning Inspector on Appeal which will require the appointment of additional Planning Inspectors and associated administrative support.

In overall terms, it is expected that there will be a requirement for an additional two full-time staff within Government to support the whole package of changes which, combined with additional administrative and Planning Inspector costs, is estimated to require further funding of approximately £150,000 per annum. This is not presently budgeted for by Government and will have to be considered in the context of other competing priorities, as part of budget allocation for future years. Finally, Council of Ministers acknowledges that it hasn't, in the time available since the July sitting, been able to respond fully and conclusively to all 23 Recommendations. However, as indicated in the narrative above, Council has identified when it expects to be able to do so in the coming months.