ANNEX 4

INTRODUCTION

As explained at paragraph 5.28 of this report we have given each person criticised, or who might feel or be perceived as criticised, an opportunity at draft report stage to provide a full written response to the points of criticism. We also offered publication to those persons who wished this in respect of those comments or representations which have not led to an appropriate modification in the report. This annex contains those responses where the wish for publication has been expressed. Where we have accepted or partly accepted the response we have indicated this in the annex and have modified the response to reflect the removal from or adjustment to the draft report.

The responses are set out in alphabetical order and are indicated in the index of the annex.

Annex 4 Index

ANNEX 4

RESPONSES TO CRITICISM IN DRAFT PART ONE REPORT
(in alphabetical order)

1. From Hon A J Bell MHK

I write by way of substantive response to your letter dated 12th May 2003, and the criticisms of me contained in those sections of the Draft Report forwarded to me on 30th May 2003.

Clearly, I take this matter very seriously, since I consider that much of the cri5icism is totally unwarranted. For this reason I have taken detailed legal advice from Cains Advocates in the Isle of Man, and also from the Chambers of David Pannick QC in London. Having said that, however, I do not wish to engage in a battle of the lawyers but rather to discuss with you my concerns over the criticism, with a view to achieving amendments to the Draft Report, which are fair and accurate from both our perspectives.

I have to say that I do not consider that much of the criticism of me is supported by the evidence that the Commission has relied upon in reaching its conclusions, and I am supported in this view by the forensic analysis of that evidence by my lawyers, a summary of which is enclosed at Annex 1 to this letter.

Since the enclosed summary deals specifically with each of the major criticisms of me contained within the Draft Report, I will not repeat my lawyers' conclusions here, but instead I will discuss the criticism of me as a whole.

In very broad terms the Draft Report alleges that:-

(i) I had a close relationship with the developer;

(ii) As a result of that close relationship, I surrendered my powers of independent judgment and placed undue pressure on planning officers to grant consent for the development; and

(iii) I knowingly misled Tynwald on the 7th April 1992.

These are very serious allegations which I totally refute. Whilst I appreciate that the Commission has a very difficult job to do in reviewing events which took place over 10 years ago, it is clear that the evidence does not support any of these conclusions.

I do not claim that I am above criticism, and I fully accept that:-

(i) I developed a working relationship with Mr Spence, the agent for the developer. In my opinion, however, this is neither unusual nor improper in the Isle of Man. In this regard I would draw the Commission's attention to the judgment of Acting Deemster Hall QC in the High Court of Justice of the Isle of Man in the case of Manx Ices Limited v Department of Local Government and Environment and Department of Agriculture, Fisheries and Forestry (CP 1995/18) (12th July 2000, copy enclosed at Annex 2) who found, at page 10, that:-

> *"Ministers and civil servants in the Isle of Man are approachable and wonderfully easy of access for those who have genuine problems and at one time or another during the eleven years of so that Mr Gullan was in charge of the Petitioner's manufacturing operations he discussed the Petitioner's affairs with and corresponded*

with a number of Ministers, including the Chief Minister, and with senior civil servants in various Departments."

Indeed, I was one of the Ministers with whom Mr Gullan in the above case had discussions, as referred to with approval by Acting Deemster Hall QC.

The judgment of Acting Deemster Hall QC was approved by the Staff of Government Division on appeal (2001-03 Manx Law Reports 64).

This close relationship between the Manx Government and the private sector has always been promoted as a very positive advantage enjoyed by the Isle of Man over other jurisdictions. Accordingly, the co-operation given to Mr Spence was no different from that which would have been available to any similar developer who was prepared to invest in the tourist industry at that time. In 1989 the Department of Tourism made strenuous efforts in support of Novotel to build a 100-bedroom hotel at the airport for exactly the same reasons that it supported the Mount Murray scheme. Indeed, on a personal level I was actively involved in promoting the Novotel scheme too, because of the benefits that I believe that it would have brought to the Island. In this regard I would refer the Commission to the Tynwald debates reported in Hansard during 1989 at T.880 and T.1106 (copy enclosed at Annex 3).

Accordingly, I see nothing wrong in having developed a working relationship with Mr Spence in order to assist the progress of the development, which I considered crucial for the continued existence of tourism in the Isle of Man in 1991 and 1992. I have to say that the expression "close relationship" as contained in the Draft Report is inaccurate, and contains misleading and pejorative overtones;

(ii) I enthusiastically supported the project wherever possible, since I believed that the development was crucial to revive tourism in the Isle of Man at the time. I believe that I would have failed in my duties as Tourism Minister had I not done so.

The Draft Report suggests that I must have known that permission for permanent residential, rather than tourist, accommodation was what was actually being sought by the developer. I can categorically state that I was not aware of this fact, and I would make the point that had I known this fact I would not have supported the housing element of the development, since there would have been little benefit to the tourism industry in the Isle of Man by my doing so.

My understanding consistently throughout this period was that this project was essentially a tourist project, albeit in the form of a new concept for the Isle of Man – the Village Resort Concept. My belief was that whilst it would have a core of traditional tourist facilities, these would be supplemented by individually owned properties in which the bed spaces would be leased back to the Hotel Management Company for additional tourist use. This was how it was described to me by Mr Spence and my officers, and formed the basis of my discussions with the Planning Officers. I remain absolutely clear in my mind that on no occasion was this development discussed in terms of being residential property for year round permanent occupation by the owners.

In my evidence to the Commission I made reference to the project being a form of timeshare. On reflection that was probably inaccurate, as I recognise that the Village Resort Concept, as described in the Notes of Presentation falls outside the accepted understanding of timeshare.

Also, having had further time to research and consider the issue since 12th May 2003, I recall that the problem was not so much with the Planning Office finding a definition of timeshare,

as a demand from the developer for greater clarity of the planning conditions to ensure that its multi-ownership and leaseback proposals would fit within those conditions. Indeed, I clearly stated in my letter to Mr Spence of 9th May 1991 that the Department would endeavour to identify a more acceptable way forward "with an emphasis on multi-ownership and associated letting thereof".

This is entirely consistent with my understanding of the Notes of Presentation and in no way indicated support for a change to permanent year round residential use. I attach the Notes of Presentation as Annex 5, for ease of reference.

I must also emphasise the following point. Had this project been at any stage presented to me as a straightforward housing scheme, it would not have had my support, or the Department's support. In 1991 there was a shortage of quality sites for tourist developments, and the Department was very anxious not to lose any sites to residential or other non-tourist use.

Prior to my phone call to Mr Spence of 13th May 1991, I had a meeting with the Planning Officers to try and clarify their interpretation of the planning conditions attached to the application. I am unsure as to exactly who was present, but most certainly it included Mr Vannan and Mr Savage. Any references to the Planning Committee in that telephone message undoubtedly refer to the impression given to me by Officers of the Department of Local Government and the Environment that the views that they were expressing had the Planning Committee's endorsement, including the offer of a letter of comfort to reassure the developer of their interpretation of the planning conditions.

Mr Vanna, in his letter to me of 13th May 1991, which was copied to both Mr Watson, Chief Planning Officer, and to the Minister for Department of Local Government and the Environment, refers to his belief that conditions 5 and 6 to the planning approval (which related to two issues of the site) "are in no way in conflict with the principle of the development as set out in the documentation attached to the application".

I understood this attached documentation to be the Notes of Presentation in which the concept of a Resort Village was explained in detail as being basically a tourist development.

Accordingly, my clear intent was to help clarify the position for the developer to enable this vitally important scheme, as described in the Notes of Presentation, to go ahead. I now know that the documentation attached to the planning application was the Buyers Guide. I did not see the Buyers Guide at any time prior to giving evidence to this Inquiry in July 2002, when it was shown to me. In any event I understand that even if I had been provided with a copy at the relevant time, the reference to permanent residential occupancy was restricted to one page, was far from directly stated and could easily be missed (as per Professor Crow at paragraph A5.63 of Annex to his Report – copy enclosed at Annex 6).

I did say in my evidence that a late proposal for 25 permanent homes was made by the developer, and I was aware of that application, as was, so far as I know, everyone involved with the scheme. This was a matter for the Planning Committee, and if they saw fit to approve it then I had no concerns over a small number of permanent residences being built on the periphery of the development. I believe that was a price worth paying to prevent the collapse of the tourist industry.

The thrust of the Draft Report's criticism of me in this regard is that I had knowledge of the permanent residential element in the Planning Application of 16th January 1991, and put pressure on the Planning Officer to grant that element in order to ensure that the developer built the Mount Murray Hotel. This is totally untrue. I also must state that I am amazed that the Commission should suggest that the Chief Minister, the Department of Local

Government and the Environment and the Department of Tourism had full knowledge of the permanent residential element of the application of 16th January 1991, since this is tantamount to a suggestion that these parties agreed to use their political influence to subvert the planning process. This is absolutely untrue, and was never suggested to me at any time whilst I gave my evidence to the inquiry. Had it been, I would have pointed out to the Commission that, if the Chief Minister, the Department of Local Government and the Environment and the Department of Tourism had agreed that a permanent residential element of 150 houses was justified by the building of the hotel, they would simply have informed Tynwald of this fact, and proposed a re-zoning of the area plan to allow for permanent residential dwellings. Further the evidence that the Commission seek to rely upon in support of their conclusions does not bear close scrutiny, as demonstrated by the analysis of that evidence at Annex 1.

The simple fact is that I believed that the development was a Resort Village concept as described in the Notes of Presentation; whereby the properties were individually owned, and the bed spaces therein were leased back to the Hotel Management Company for additional tourist use, but the property owners did not have a right of permanent residence. That way if the properties were not rented for some periods, the loss fell on the owner and not on the Hotel Management Company. This is not uncommon, for example in relation to apartments at ski resorts. I never believed that the properties would be used as permanent residences, as is clearly demonstrated by my comments at a meeting of the Isle of Man Tourist Board on 4th August 1992, when I confirmed that the Department of Tourism would object to any application for change of use regarding the accommodation units at the development, to prevent permanent accommodation (see copy Department of Tourism Board Minute dated 4th August 1992 enclosed at Annex 7). This Minutes amounts to clear and cogent evidence of my belief in relation to the development at all relevant times, and there is no good reason why the Commission should not accept it.

As I stated in my evidence to the Commission, tourist arrivals reached an all time low in 1991 and the UK was in recession. The propsect of a major tourist development on the scale and content proposed, and to be managed by Radisson, a well-known hotel brand worldwide, was hugely important for the Isle of Man. As Minister of Tourism I had an absolute responsibility to try and deliver this project which fully complied with Tynwald's recently agreed (at that time) policy. Indeed, I believe that I would have been severely (and rightly) criticised if I had not actively supported this proposal.

Whilst the Commission may consider that I was over enthusiastic in my support for this project, in my opinion that enthusiasm cannot be characterised as placing undue pressure upon the Planning Officers. Indeed, if Mr Vannan felt in any way pressurised on any issue he could have referred the matter to Mr Malcolm Watson, the Chief Planning Officer, Mr Michael Savage, the Chief Executive of Department of Local Government and the Environment, Mr David Cretney MHK, Chairman of the Planning Committee or, ultimately, to Mr Tony Brown MHK, the Minister for Department of Local Government and the Environment. Mr Vannan could also have complained to the Chief Secretary. As far as I know, at no time did Mr Vannan express concern to any of his superiors, nor at any time did he express concerns to myself or my officers that what he was doing was incorrect or only as a result of undue pressure from me.

Indeed, the Draft Report recounts in detail (paragraphs 3.60 to 3.67) the events that led to the Planning Committee's approval of the developer's full application, PA 91/0953, for the development of 150 properties at Mount Murray, on 4th October 1991. In connection with the approval of that application, the Draft Report explains that the land use of the house sites was raised initially by concerned local residents and subsequently by the developer who was unsatisfied with a key condition that limited the land use to tourism. It is apparent that on the 4th October 1991 the Planning Committee on its review of the application agreed (among

other matters) with the developer's desired wording for this key condition. The Commission has commented that the way in which the condition was amended on review by the Planning Committee is not easily understood from the documentation and that the whole process was reviewed and approved in an unusually short space of time. However, it should be easily understood that in relation to the amendment of this key condition in October 1991 neither I nor any officer from my Department had any role to play. In this respect, it is apparent that the Planning Committee was capable of accommodating the developer's own desired wording without any pressure of the type previously alleged to have been exerted by me or my officer in May 1991, which I emphatically deny.

Against these events it is wrong to find that I was exerting undue pressure at any time. This Commission has received evidence from Mr Vannan that, in his own words, he did not consider that the strong support provided by the Department of Tourism put him or any other planning officer under any direct individual pressure. It is also noteworthy to recall that before the Crow Enquiry (see Crow Report Annex 5 – paragraph A5.70 at Annex 4 hereto), Mr Vannan accepted that "he was led to favour the proposal as a whole not only by the strong support given by the Department of Tourism, but also what he saw as an exciting development of benefit to the national interest". I do not shy away from confirming that this project had my strong support but categorically deny that I acted improperly at any time.

The Commission may also consider that I was in error in trusting the developer when it said that it wished to build a Resort Village, and for not anticipating that the developer would subsequently take advantage of the planning permission granted to it to sell permanent residences. This may be so, (with the benefit of hindsight), but that error was caused by my enthusiasm for a project that I believed was vital to revive tourism in the Island in 1991.

With regard to the allegation contained in the Draft Report that I knowingly misled Tynwald, I can state that as far as my answer to the question asked in the House of Keys on 7th April 1992 is concerned, I believe it to accurately reflect my understanding of the development and any relevant planning approvals at that time.

The initial answer was drafted by my officers, as is normal in this situation, and reflected their appraisal of the development. We believed at that time that Radisson Hotels were to manage and market the project, and the strategy outlined in my answer reflected the information given to us by that company.

Mr Delaney's supplementary question was that "no undertaking would be allowed that may finalise this site being for housing permanent resident development". My reply was factually correct, as I understood the position to be at that time. I still believed that this was to be a tourist resort village, and that any change to year round permanent occupation would need the approval of the Planning Committee – in this respect I again refer the Commission to the Department of Tourism Minute at Annex 7 which post dates my answer in Tynwald.

The Draft Report draws attention to the letter from Mr Savage to Mr Spence on 28th May 1991, copied to me, which explained that a revised version of the draft Agreement for Sale had been approved by the Planning Committee.

I did not see the document referred to or the original version of the Agreement for Sale. This was a matter for the Planning Committee and the developer to resolve. However, I would have understood from reading Mr Savage's letter that the Agreement for Sale would have been in line with the original Notes of Presentation proposal, whereby properties could be sold to individual or corporate investors, who in turn would agree to lease back their bed spaces to the Hotel Management Company for letting to tourists.

The Draft Report concludes that I would have known that Government financial assistance would be needed for the highway improvements relating to the C21 and C21/A5 junction at the time of my answer to Mr Delaney. However, the relevant document, numbered Ministerial Decision 92/16, appears to be missing from the file of documents given to the Commission by the Department of Tourism. Nevertheless, since MD92/15 was dated 26th May 1992 and MS92/17 dated 1st June 1992, it is clear that MD92/16 was given between those dates.

As the question by Mr Delaney was asked on 7th April 1992, it is clear that no consideration would have been given by myself to this issue until several weeks after the question was asked.

Conclusion

In the light of the points that I have made above, and the forensic analysis of the evidence relied upon by the Commission in making its criticism of me, as annexed to this letter, I would respectfully suggest that fairness requires the Draft Report to be amended by the Commission.

I fully accept that I had a working relationship with Mr Spence, the agent for the developer and if the Commission feels that I was over enthusiastic in pushing forward this project, so be it. However, I was not aware of the permanent residential element in the planning application, I did not apply undue or improper pressure to Planning Officers, and I did not knowingly mislead Tynwald.

Please confirm that I may review any amendments made by the Commission to the Draft Report before it is published, so that I have a fair opportunity to make a considered response to such amendments.

Yours sincerely

A R Bell MHK

APPENDIX 1
MOUNT MURRAY INQUIRY: ANALYSIS OF EVIDENCE

Introduction

The representations set out below follow a detailed review of the criticisms that the Commission of Inquiry into Mount Murray (the "Commission") has made against Mr Bell within the extract of the Commission's final draft of Part 1 of its Report (the "Draft Report") that has been produced to Mr Bell. The Commission has, upon request, provided to Mr Bell copies of all the evidential material which they say they relied upon in making their findings against Mr Bell.

General

1. The criticisms of Mr Bell amount to adverse findings of fact, and it is clear that the standard of evidence required for the Commission to make such adverse findings of fact must be very high, particularly where the evidence of witnesses has not been tested by cross-examination on behalf of Mr Bell, thereby reducing the weight that the Commission can attach to that evidence.

   In our opinion the evidence relied upon by the Commission simply does not support many of the conclusions reached by the Commission in relation to Mr Bell.

2. We also note that on the afternoon of the 12 May 2003 Mr Bell gave evidence to the Commission for the second time, following which the hearing was concluded for the day. However, on that same day the Commission wrote to Mr Bell indicating that they had now substantially completed the Draft Report, and provided Mr Bell with a copy of "the essence and effect of the criticism".

3. Inevitably, the timing of that letter raises an immediate concern as to how it could have been possible for the commission to have taken any proper account of the evidence given by Mr Bell on the same day, before finalising the Draft Report. That concern has now been fortified by sight of the passages of the Draft Report itself relating to criticisms made against Mr Bell. As is plainly apparent from the absence of a single reference to the evidence of Mr Bell on 12 May 2003 (Day 31), no account appears to have been taken of Mr Bell's evidence on 12th May 2003. This matter only further undermines the Commission's approach to Mr Bell's evidence, and their criticisms of him, in respect of which we have set out our specific responses below.

Draft Report paragraph 3.73

> *"Thus, whatever the details of the recollection and documents may be as to its origin, we consider, from the evidence and the documents, that there was an agency agreement which came into being after pressure was applied by the Dept of Tourism and which forestalled the Commissioners' objection to the application for development of the first phase of the resort"*

4. It is our view that the Commission's conclusion at paragraph 3.73 does not follow from the evidence set out at paragraphs 3.68 – 3.72

4.1 As the Draft Report records, neither Messrs Teare and Quaggin (both then of the Department of Highways, Ports and Properties) gave evidence to the effect that the agency agreement had come into being as a result of pressure being applied by the Department of Tourism. Rather,

> *"Their recollections are that a formal agreement was not drawn up; because of technical implications and the need for experience and resources to act as a drainage authority there were discussions between the department and the Commissioners; and that the idea of agency developed during these discussions, and the Department had already been involved in the drainage planning of the site."* (Draft Report paragraph 3.69)

4.2 As Mr Teare's letter to the Commission of Inquiry (Q41) makes plain, the discussion about Braddan Commissioners utilising the DHPP's expertise was prompted by (a) the fact that the Commissioners had neither the experience nor resources to operate as a Drainage Authority, and (b) initial thoughts about combining, for operational reasons, the sewage treatment with an existing Treatment Plant in Santon.

4.3 That evidence appears to have been overlooked in the conclusion at paragraph 3.73 in favour of the evidence given by Mr Lewin, as Clerk to the Braddan Commissioners. However,

4.3.1 It is highly notable that Mr Lewin did not himself give evidence that the "agency" arrangement came into being after pressure was applied by the Department of Tourism. Such evidence as Mr Lewin gave was as follows:

"That was when Mr Mitchell was putting the pressure on saying "Well, I will come to that meeting and bang heads if necessary" and then the "if necessary the Minister will turn up". Fine, you know. We had a drainage issue."
(Transcript Day 22 p. 74-75)

4.3.2 However, as Mr Lewin had previously made clear, this was simply Mr Mitchell's style (see Transcript Day 22 p.44). It is submitted that this is wholly inadequate evidence upon which to conclude that it was as a result of this "pressure" that the agency arrangement came into being, as the Draft Report purports to do at paragraph 3.73.

4.3.3 Rather, the clear, and uncontradicted, explanation for such an arrangement being discussed was that given by Messrs Teare and Quaggin.

5. Accordingly, we submit that the conclusion set out at paragraph 3.73 cannot stand.

Draft Report Paragraph 10.9

"The Commission feel it quite certain that if this was really such a fundamental issue [namely, difficulties in finding an acceptable definition for timeshare] and had in fact been raised with Planning Officer, there would be evidence to that effect by way of correspondence, memoranda or meeting notes. We have not been able to obtain such evidence but we do not accept Mr Bell's reasons for his comments to Mr Spence. There is, in our view, little doubt that Mr Bell's letter to Mr Spence expresses exactly what was intended, and that Mr Bell would use his position to assist the applicant in getting the terms of the consent change. Later events in no way alter the Commission's view on this matter."

7. The Commission has given no adequate reason for rejecting Mr Bell's evidence upon this point, other than the absence of documentary evidence to corroborate Mr Bell's evidence, notwithstanding that events occurred 12 years ago, and that the Commission itself simply states that it has been *unable to obtain* such evidence (emphasis added). However, the mere fact that corroborating documentary evidence is not available 12 years later is not an adequate ground for rejecting the evidence of Mr Bell on this point, in favour of presumptions made by the Commission which are not supported by evidence.

Draft Report Paragraph 11.48

"Mr Bell's statement to Mr Spence that the Planning Committee had given clearance was quite erroneous, but indicated his central involvement in these matters and that he knew what he was doing. Mr Bell himself, in evidence, claimed limited recollection and stated that the information must have been given to him "on behalf of the Planning Committee rather than directly". So far as the Commission are concerned, it is difficult to escape the conclusion that the telephone message to Mr Spence again reflected Mr Bell's clear intent to assist the applicant by securing the permanent residential use which the company was seeking."

8. It is submitted that Mr Bell's statement to Mr Spence, that the Planning Committee had given clearance, does not "indicate his central involvement in these matters" nor "that he knew what he was doing". Rather, Mr Bell's statement is an entirely credible explanation as to how he, as the Minister for Tourism, passed on information which he believed had been given to him on behalf of the Planning Committee, for which he was not directly responsible. It is our view that the Commission does not give any adequate reason for rejecting Mr Bell's evidence in this respect.

Draft Report Paragraph 11.54

"This document significantly reinforced the intent to achieve permanent residential occupancy ready forming part of the Buyer's Guide and in the boxed footnote signed by Mr Savage stated that use in accordance with the Buyer's Guide was acceptable notwithstanding condition numbers 5 and 6 of the approval. The Commission find it difficult to arrive at a conclusion other than that Mr Vannan and Mr Savage, as well as Mr Bell and Mr Mitchell, were at this stage aware of the implication of the Planning Committee's approval of the Agreement for Sale. As to the Committee itself, the type of document it had approved lay quite outside the matters defined as the Committee's remit in the 1982 Order. Mr Magee referred generally to similar earlier documents but was not able to substantiate this when invited to do so and there is little, if any, credible evidence to support his view that such a document had any parallel either before or since. Although the official minute is vague, the record set out in the informal Meeting Book (see paragraph 3.56 and 3.57 above) makes it clear that the Committee members did have an understanding of the significance of what they were approving. See also paragraphs 18.55 and 18.56 below as to the Committee members understanding on these matters."

9. It is submitted that there is no evidence that Mr Bell saw the original version of the draft Agreement for Sale (see analysis of evidence at paragraph 17 post), or indeed the Buyer's Guide, and that in these circumstances there are no grounds for the Commission to arrive at the conclusion that Mr Bell was aware of the implication of the Planning Committee's approval of the Agreement for Sale. Mr Bell has given clear evidence that he left planning details to the Planning Committee, and there is no evidence that would entitle the Commission to reject Mr Bell's evidence on this point.

Draft Report Paragraphs 11.120 to 11.128

"The Commission nevertheless finds a system which leaves a major and sensitive part of the planning office without ministerial support and allows another minister to exercise undue influence upon that office with impunity, to be in need of fundamental reconsideration.

The minister exercising such influence was Mr Bell, the then Minister for Tourism. We have already referred to certain of the evidence given by Mr Bell, particularly in relation to events and correspondence in May 1991 in sub-section (v) and we return to this below in the context of the pressure which was exerted by Mr Bell and his department on the officers (not the minister) within the planning office."

10. In reach the conclusion that Mr Bell and his department exerted undue influence and pressure upon the officers of the planning office, the Commission has relied upon the evidence of three witnesses: Mr Quine (paragraph 11.126), Mr Vannan (paragraph 11.127) and Mr Lewin (paragraph 11.128). However, neither individually nor cumulatively does their evidence provide adequate support for the Commission's conclusion.

In relation to Mr Quine:

10.1 The Commission records that pressure was placed on the planning office

> "to the point where Mr Quine was to state that the development was "in effect sponsored by the Department of Tourism". They [the planning office] were being pressured "to be more amenable to the proposition" whilst at the same time being "up against the Development Plan." "I find that a quite intolerable position to put the planners in."

10.2 The Commission's reliance upon Mr Quine's evidence in this context is, with respect, wholly misplaced. In 1991 Mr Edgar Quine was effectively a member of the opposition in the Tynwald. He played no role in the business of either the Department of Tourism or of the Department of Local Government and the Environment. Indeed, nowhere in the extract of the Draft Report is it suggested that Mr Quine played any role in the events concerning the Mount Murray application, and nor does Mr Quine suggest in his evidence that he had any first hand knowledge of the matters about which he purported to give evidence. Rather, as he made clear elsewhere during the course of his evidence (Transcript Day 1 page 72), Mr Quine's evidence essentially appears to have consisted of his comments on Professor Crow's Report, rather than any direct knowledge of the facts and matters to which he refers.

In relation to Mr Vannan:

10.3 The Commission has relied upon two short passages from the transcript of the evidence of Mr Vannan. However, the Commission's approach to Mr Vannan's evidence is far from satisfactory:

10.3.1 No-where in his evidence did Mr Vannan suggest that Mr Bell had personally put pressure on him, or any other member of Department of Local Government and the Environment. Rather, he stated that he did not "recall any direct individual pressure" (Transcript Day 20 p.28), which evidence is not contradicted by a reference to a general perception of pressure *(ibid).*

10.3.2 Mr Vannan's stated that "the Chief Executive was persuaded that we should try and accommodate the wishes of the Department of Tourism, and, in effect, this was the letter that I was, not instructed to write that would be wrong, but I was under pressure to do something of this sort." However, this statement raises more questions than it answers, such as:

10.3.2.1 Who it was who apparently persuaded the Chief Executive in this way, it being clear from the syntax of Mr Vannan's sentence that it was not Mr Bell himself?

10.3.2.2 What in fact were the wishes of Mr Bell apparently sought to be accommodated?

In fact, Mr Vannan's evidence is entirely in line with Mr Bell's evidence that his Department was very anxious to see the development go ahead, but that there was no more pressure applied to this than there would be on any other major project which they were dealing with (Transcript Day 31, p.6)

10.3.3 Accordingly, the evidence of Mr Vannan relied upon does not provide an adequate basis for the Commission's conclusion that undue pressure was exerted by Mr Bell and his Department.

In relation to Mr Lewin:

10.4 The Commission rely on a number of passages from the evidence of Mr Lewin, whom they apparently "found to be an impressive witness". However, in significant respects Mr Lewin's evidence is inadequate to support the conclusions based upon it.

10.5 The Commission refer to Mr Lewin's evidence that pressure that apparently came from Mr Mitchell to extend the development after the initial approval, and that Mr

Vannan was put under "horrendous pressure" to do so. When Mr Lewin was asked to expand upon how this "horrendous pressure" was exerted, he gave as his example an incident which apparently arose in the context of the drainage issue (i.e. August/September 1991). However, the incident that Mr Lewin describes falls far short of the description "horrendous pressure": Mr Lewin simply referred to Mr Mitchell, having heard of Braddan Commissioners' concern over drainage, had indicated that he would arrange a meeting with the Chief Executive of Transport "for heads to be banged together" (Day 22 p.45). Indeed, as Mr Lewin earlier made clear, the use of such expressions was simply Mr Mitchell's style, by which Mr Lewin was entirely unflapped (Transcript Day 22 p.44).

10.6 Further, the Commission appear to have placed weight on Mr Lewin's observation that "it's extremely rare in my experience for a letter to go out from the Minister to the applicant" (Transcript Day 22 p.52). However, Mr Lewin's experience is as the Clerk to the Braddan Commissioners and there is no evidence as to how this could have given him any insight into the circumstances in which Ministers do, or do not, send letters to an applicant in a planning matter. As Mr Bell made clear, the small number of letters which went backwards and forwards between himself and Mr Spence was inevitable in any Department and was not specific to the Mount Murray project but rather typical of the close or accessible relationship that ministers have with any people with new ideas for the Manx economy (Transcript Day 31, p.39). We would also draw attention to the judgment of Acting Deemster Hall QC in *Manx Ices Limited –v- Department of Local Government and the Environment and DAFF* (CP 1995/18) [12th July 2000] at page 10, who found that *"Ministers and civil servants in the Isle of Man are approachable and wonderfully easy of access for those who have genuine problems…"*

10.7 As for the Commission's erroneous reliance on Mr Lewin's evidence in relation to the agency agreement discussed between the Braddan Commissioners and the Department of Highways, Ports and Properties, see the response to paragraph 3.73 above.

Draft Report Paragraph 11.129

"It is important here to note that Guidance Note 3.1 of the document entitled "Miniters and Civil Servants: Duties and Responsibilities" requires that ministers are expected to refrain from asking civil servants to do things they should no do. Mr Bell, in the view of the Commission, seriously exceeded the intent of that guidance, a situation made worse by the fact that the civil servants under pressure were not even in his department. It is true that the guidance document was not published until 1992 and the pressure of which we write here was in 1991 but the document in this regard merely formulised a truism.

11. From the foregoing analysis of the facts it is submitted that the Commission has erred in finding that Mr Bell seriously exceeded the intent of the Guidance in "Minister and Civil Servants: Duties and Responsibilities".

Draft Report Paragraph 11.131

"The impression given to the Commission by Mr Bell is that permanent residential accommodation, although not necessarily to the extent which it has occurred, was a price worth paying as the scheme was seen as preventing the tourist industry from dying. That decision was one for government and not an individual minister to take and, in failing to consider this before offering unwise and premature support to the scheme, Mr Bell's judgement can only be regarded as questionable. Indeed he became so closely associated

with the developer that he virtually surrendered his powers of sensible independent judgement."

12. The Draft Report does not provide any references to those parts of Mr Bell's evidence from which this "impression" was apparently drawn. It is unfair and inappropriate for the Commission to base so serious a conclusion as Mr Bell having "virtually surrendered his powers of sensible independent judgement" merely on an unsupported "impression".

13. In fact, there is no evidence that Mr Bell considered at the time that permanent residential accommodation was a price worth paying. Rather, when Mr Bell was asked by Mr Solly whether *"if it was a price worth paying, why was it not possible for either the developers or the Officers who were examining these documents, to say "This is going to be mixed occupation. It is a price worth paying. Let's do it properly"?"* he responded as follows:

    "… had a proposal come along containing that and, in addition, containing a mixed use housing development alongside it, I think the Tourist Department would have seriously considered it. But it wasn't put to us at that stage. It may well be that, had we been in possession of all the facts at that stage, as to precisely how it was going to turn out, the Tourist Department may well have though, as you say, it was a price worth paying and to allow a small amount of residential accommodation out there would be acceptable if we were to get this bigger tourist investment alongside" (Transcript Day 9 p.75)

14. Accordingly, it is submitted that the conclusion at paragraph 11.131 cannot be sustained.

Draft Report Paragraph 11.133

"This reply was incorrect, and mislead the House of Keys and Mr Bell, we find, knew that it was incorrect. The language of the question was in very similar language to that used by Mr Bell almost a year earlier in his recorded telephone call to Mr Spence: "There's no need for you to apply for change of use for permanent accommodation, residential accommodation out there, the present condition will allow you to do exactly what you want." It is relevant also to draw attention to the letter from Mr Savage to Mr Spence on 28th May 1991 which was copied to Mr Bell. This letter explained that a revised version of the draft Agreement for Sale had been approved by the Planning committee. If Mr Bell was copied in on the revised version it is a reasonable inference that he was aware of the original version which said in explicit terms that the houses could be used for permanent occupation. Furthermore, given Mr Bell's intimate close connection with the developer, we are fully satisfied that Mr Bell would be aware that the position he set out in his recorded message was formalised by the Planning Committee on 24 May 1991. The Planning Committee had already made their decision on change of use and Mr Bell knew that."

15. It is not accepted that the Commission's conclusions that Mr Bell's reply was incorrect or that Mr Bell knew it was incorrect, are sustainable.

16. First, as Mr Bell clearly explained to the Commission in relation to his telephone call to Mr Spence,

    "Where we're talking about residential accommodation and permanent accommodation, it has to be understood that it's in the context of a planning definition for timeshare. My use of language might not be as specific as you would like to see but I can assure you that that was the feeling behind it. It was purely and simply to

find a way forward to enable the timeshare aspect to go ahead" (Transcript Day 9 p.15)

17. By contrast, when Mr Delaney asked Mr Bell to indicate that no undertaking would be allowed that might finalise the site being for permanent resident development, it was clear that Mr Delaney was referring to non-tourist use of any kind. Insofar as the Commission based its conclusion on their being a similarity of language, it failed properly to take into account the quite distinct contexts of Mr Bell's telephone message and the question of Mr Delaney.

18. Secondly, the Commission's inference that Mr Bell was aware of the original version of the Draft Agreement for Sale as he was copied in on the revised version is not supported by the evidence.

18.1 On 22 May 1991 Mr Spence sent the first draft Agreement for Sale to the Chief Executive of Department of Local Government and the Environment. Neither the Department of Tourism nor Mr Bell personally was copied in on this letter.

18.2 On 23 May 1991 Mr Moroney sent a revised draft to Mr Savage. Again, neither the Department of tourism nor Mr Bell personally was copied in on this letter.

18.3 The only letter to which Mr Bell was copied was Mr Savage's letter of 28 May 1991 that informed Mr Spence that the Planning Committee had approved the revised version of the draft Agreement of Sale. As the Planning Committee had not previously approved the earlier version, it follows that there would not have been any earlier letter from Mr Savage to Mr Spence attaching the earlier version.

18.4 Accordingly, there is no evidence to support the inference that if Mr Bell was copied in on the revised version he was aware of the original version.

19. Thirdly, the Commission's reference to "Mr Bell's intimate connection with the developer" is a manifest mischaracterisation. The Commission have subsequently indicated that:

"The reference to "intimate connection with the developer" is based on evidence showing close connections with the developer. If it is preferred that the word "close" rather than "intimate" is used, then the Commission would make such a change." (Schedule A).

20. The Commission appears to accept that they have over-stated the position in the Draft Report and have indicated a willingness to amend the word "intimate" to "close": with respect, it is difficult to see how they could ever have been justified in describing a connection as "intimate" on the basis of evidence that it was "close". However, as Mr Bell explained to the Commission on 12 May 2003, which evidence appears to have been disregarded in the circumstances set out above,

"It happens every day, it happens now, nothing has changed, that we do meet developers from time to time. We do meet people coming to us with proposals for one development or another, or whatever the ideas may be. This is one of the big attractions of the Island and why we've done so well over the years, that we have a close relationship or an accessible relationship to people coming along with new ideas for the economy. If we didn't have that relationship we would seriously be struggling because we would not be able to identify schemes which ultimately will bring benefit to the Isle of Man. So, on occasions, and there were very few occasions, I met Mr Spence, I spoke to him on the phone, I suppose, a handful of

times, and, as we've seen, there were a small number of letters which went backwards and forwards. That's inevitable in any Department. It's nothing specific to this particular project." (Transcript day 31, p.39)

21. In this connection the Commission's attention is again drawn to the decision of the High Court of Justice of the Isle of Man of 12 July 2000 in the Matter of Manx Ices Limited (above) and the finding of Acting Deemster Hall QC that:

"Ministers and civil servants in the Isle of Man are approachable and wonderfully easy of access for those who have genuine problems and at one time or another during the eleven years of so that Mr Gullan was in charge of the Petitioner's manufacturing operations he discussed the Pettioner's affairs with and corresponded with a number of Ministers, including the Chief Minister, and with senior civil servants in various Department." (p.10)

22. In the circumstances, the Commission's conclusion at paragraph 11.133 is wrong and a more accurate description of the connection would be that of a working relationship.

Draft Report Paragraph 13.44

"This letter and the previous letters referred to, and the corroboration provided by Mr North below, indicate to us again that further pressure was being applied by the Minister for Tourism in favour of the development."

23. It is our view that this conclusion overstates the nature of the involvement by Mr Bell in the issue of road improvements.

23.1 The letter of 2 March 1992 (paragraph 13.42 simply refers to a suggestion made by Mr Bell that the Department of Highways, Ports and Properties review the schedule of costs and look more closely at the department's requirements. We submit that this does not constitute "pressure" being applied "in favour of the development".

23.2 Equally, the letter of 26 May 1992 (paragraph 13.44), referring to the apparent impression that Mr Bell had that the development was being delayed, does not indicate that "pressure" was being applied.

23.3 Finally, the evidence of Mr North was that such pressure as there was, "was pressure from the Department of Tourism to try to ensure that the timetable for the development did not slip" (Q52). Again, we submit that this does not constitute "pressure in favour of the development".

Draft Report Paragraph 17.36

"Mr Bell is not identified on the evidence as having personally had pre-application meetings with the developer. However Mr Spence, in the letter of 19 October 1994 which we have accepted, states the Department of Tourism was fully conversant with the project as described in the Notes of Presentation. We have found that Mr Mitchell was fully informed prior to the initial application. The totality of the papers which we have seen make it clear beyond doubt that Mr Mitchell was Mr Bell's right hand man on this project and that Mr Bell was personally closely involved in not merely supporting but in promoting the project. We find it outside the realms of reasonable belief that Mr Mitchell did not inform Mr Bell at a very early state of the true position with regard to housing. It is plain beyond doubt that Mr Bell knew of the position by 13th May 1991, the date of his recorded telephone conversation to Mr Spence, and this is consistent rather than inconsistent with knowledge earlier than that. A

letter from Mr Spence to Mr Bell dated 21st March 1991 identifies this personal involvement by Mr Bell in the form of meetings with Mr Spence prior to the date of this letter. We also note that Mr Bell's department was involved in the change of the wording of the schedule of the draft Agreement for Sale from crystal clear wording that units were to be permitted for permanent residential use to the less obvious words of the approved draft Agreement (see paragraph 3.55 and ante, above). This is seen from Mr Spence's letter to Mr Mitchell dated 2wrd May 1991 in which there is a reference to their meeting on 22nd May 1991 at which some form os dissatisfaction with the wording must have been discussed, as indicated by the words "2. Mark Moroney will contact Mr Savage to see if any alternative wording can be formalised". Aware that this letter was threatening to withdraw the whole project unless the Agreement for Sale was approved, it seems more likely than not that this would be brought to Mr Bell's attention by Mr Mitchell. Mr Bell denied any knowledge of permanent residential use in 1990/1991. For reasons given above we do not accept this denial."

24. As this paragraph makes clear, there is no direct evidence whatsoever that Mr Bell was aware of Mr Spence's apparent intention in terms of permanent resident use in 1990/1991. The Commission's conclusion at paragraph 17.36 is based wholly on speculation and inference and, for the following reasons, the basis for rejecting Mr Bell's evidence that he had no such knowledge is inadequate and inappropriate.

24.1 The Commission appears to accept without reservation Mr Spence's letter to the Chief Minister of 19 October 1994. However, this letter must be read in context. Mr Spence was writing to the Chief Minister to

[THERE FOLLOWS A PASSAGE WHICH IS SUBJECT TO LEGAL PROCEEDINGS WHICH THE COMMISSION OF INQUIRY HAS UNDERTAKEN NOT TO UTILISE. THEREFORE IT IS NOT BEING REPRODUCED HERE]

It is wholly unsurprising, in that context, that Mr Spence should have sought to show himself in the best possible light in which to argue that the Government's conduct had been inappropriate. The Commission does not appear to take into account the inherent likelihood of Mr Spence over-stating the position.

24.2 So far as Mr Mitchell is concerned, the Commission's conclusion is based on a two-stage inference rather than primary evidence:

24.2.1 First, that Mr Mitchell was in fact fully informed prior to the initial application; and

24.2.2 Secondly, that being the case, that Mr Mitchell informed Mr Bell of this at a very early stage.

24.3 However, the Commission's inferential findings in this respect merit careful scrutiny.

24.3.1 The basis for their finding that Mr Mitchell was fully informed is set out at paragraphs 17.33 – 17.34. However, the Commission appear to have failed to take any proper account of the Chief Minister's evidence that in late 1990 he told Mr Spence that permanent residential housing was unlikely to get planning permission. The only logical inference from this was that thereafter Mr Spence took pains not to raise or emphasise this element in his subsequent discussion, including with Mr Mitchell. The Commission's reasons for considering this scenario "to be unlikely" are flawed, particularly insofar as they rely upon Mr Spence's letter of 19 October 1994 without reservation.

24.3.2 Mr Bell's evidence on 12th May 2003 was that had there been a clear indication of residential development, he would have expected Mr Mitchell to have reported that

back to him, but there was not, no information of this sort was passed to him. (Transcript Day 31, p.14). As set out at the beginning of these representations, the Commission appear to have wholly overlooked the entirety of Mr Bell's evidence on that day.

24.4 Further, Mr Bell's telephone message of 13 May 1991 does not make it "plain beyond doubt" that he knew of the position by then: as he expressly stated, he did not.

24.5 Finally, even if the commission's surmise is right that it was more likely than not that Mr Mitchell would have told Mr Bell of Mr Spence's threat to withdraw the project unless the Agreement for Sale was approved, this of itself does not support the Commission's inference that Mr Bell was therefore aware of Mr Spence's proposals for permanent residential use.

25. Accordingly, the Commission are wrong not to accept Mr Bell's denial.

Draft Report Paragraph 17.37

"For the reasons set out above we find that the Chief Minister, the Department of Tourism and the Department of Local Government and the Environment had full knowledge of the permanent residential element in the application of 126th January 1991 by the time that it was submitted. Also for the above reasons we find that Mr Bell, Mr Mitchell and Mr Vannan had such full knowledge."

26. From the foregoing analysis of the facts it is submitted that the Commission has erred in finding that Mr Bell had full knowledge of the permanent residential element in the application of 16th January 1991 by the time that it was submitted. Mr Bell has stated several times in evidence to the Commission that he had no such knowledge at any time, and here are no good grounds for the Commission to reject Mr Bell's evidence.

27. The finding that the Chief Minister, the Department of Tourism and the Department of Local Government and the Environment each had knowledge of the permanent residential element by the time that the original planning application was submitted is tantamount to an allegation that these parties were prepared to combine their political influences to carry into effect a purpose harmful to the due planning process. If true, a conspiracy is being alleged which to be sustained should require proof of the highest standards, and should not be sustained in circumstances in which –

27.1 key witnesses were not interviewed: Mr Mitchell from the Department of Tourism, Mr Savage from the Department of Local Government and the Environment and Mr Spence from the developer;

27.2 knowledge of material matters is based upon inferential findings or the Commission's own impression of events; and

27.3 in the round the events under inquiry took place more than twelve years ago.

28. Accordingly, we submit that again the Commission are wrong not to accept Mr Bell's denial.

[The remaining Appendices are available in the Commission's Library apart from Annex 5 of Professor Crow's Report which, for reasons stated in the body of this Part

One Report, the Commission does not propose to publish. This is referred to in paragraph 3.4 of the report.]

At Mr Bell's request the Commission sent to him the changes which had been made to the draft report following consideration of his submission already set out in this annex. These changes were in paragraphs 11.130 to 11.132 and 17.36. He has consequently submitted a further response in a letter to the Commission dated 25th June 2003, which is shown at the end of this Annex. We have given due consideration to this letter and, based on the evidence which is set out and referenced in the report, and taking full account of all matters in the letter, our findings and conclusions remain as they were. However, given that the letter makes reference to the Commission's conduct in relation to Mr Bell the Commission considers it appropriate to draw attention to three matters. (1) The Commission reached its final draft conclusion in respect of Mr Bell in meeting immediately following hearing Mr Bell on 12th May 2003. Full consideration was given to the evidence which the Commission had just heard. Mr Bell had previously appeared before the Commission on 3rd July 2002. (2) Mr Bell received the gist of our criticism by letter dated 12th May 2003 and apparently received by him the following day. The relevant text of the draft report was submitted to him on 27th May 2003 on a request to do so in a letter dated 23rd May 2003. He was allowed until 17th June, some five weeks, to respond. (3) Mr Bell was sent paragraphs 3.44 to 3.58 which constitute sub-section 3 (vii) of the draft report and the final report.

2. From Hon J A Brown SHK

I acknowledge receipt of your communication of 2nd May and note all you say. I do not accept the criticisms contained in the four sections of the attachment that you have supplied to me and in relation to these matters I comment as follows:

1. Issue a):

[a) The draft report indicates, with regard to the practice prevailing that Ministers in the Department of Local Government and the Environment detached themselves with respect to development control as a result of their ultimate responsibility for appeal decisions, that you took this too far in terms of detachment from events, for example by saying that the Chief Minister's involvement with the Mount Murray development was nothing to do with you, and that, as Minister, you were not allowed to have an opinion upon the significance of the Mount Murray application in the context of whether you should have drawn the proposal to the attention of the Council of Ministers. This refers to matters considered in paragraph 11.117 of the report.]

This was not just a practice it was a legal requirement, which had been confirmed to me when I became Minister for the DLGE by the then Attorney General, William Cain QC in response to discussions I had had with him regarding the role of the Minister and potential or actual planning applications. This was subsequently confirmed by the next Attorney General, Michael Kerruish QC and, has recently been confirmed to me by the present Attorney General, John Corlett QC in a letter to me when he states, "I concur with the advice you have previously received that it is not appropriate for the Minister of the Department of Local Government and the Environment to discuss the merits of a planning application, whether in principle or a detailed application, with any person who is interested in the outcome of the application. The Minister may have to adjudicate a recommendation by an independent planning inspector and, to that extent, would have to act in a quasi judicial capacity. It is important that any person acting in a judicial or quasi judicial capacity should not discuss the merits of the case with an interested party or witness.

Whilst, inevitably, the Minister of the Department of Local Government and the Environment will wish to contribute to a debate on general matters involving the development of the Island and the broad policy to be adopted by Government in the context of proceedings in the Council of Minister, I do not consider that it is appropriate that the Minister should express a view or become involved in discussions in relation to particular planning applications whether or principle or of detail, again for the reasons mentioned above."

I therefore do not accept the contents of paragraph a) and especially in relation to the statement by the Commission that, "… you took this too far in terms of detachment from events, …" It is clear from the advice I have consistently received from Her Majesty's Attorney Generals' over the years that the involvement of the Chief Minister in this matter or indeed in any planning matter was not a matter for myself and that I was not permitted to express an opinion on such a proposal or on the subsequent planning application.

As I stated in evidence to the Commission, the Planning Committee, did not consider The Mount Murray planning application, in planning terms, to be of such significance that it merited being specifically drawn to the attention of the Council of Ministers. If it had been considered so, then the Planning Committee or in fact the Council of Ministers, could have taken action under the Town and Country Planning Acts. It was not a matter and, it would have been totally inappropriate, for myself, as the Minister for Local Government and the Environment to become involved in the issue of referral to the Council of Ministers.

2. Issue b):

[This refers to matters considered in paragraph 6.4 of the report.]

I do not believe this to be a matter for consideration or comment by the Commission as this relates to matters regarding the Tynwald debates. And whilst it may be argued by the Commission that Mr Karran 'made no allegations of corruption' in Tynwald Court, that certainly was not the view of members and it was not only myself who interpreted that he made such allegations on the 19th February 2002. In fact at the March 2002 sitting of Tynwald Court, Tynwald unanimously supported my amendment, "that the Commission of Inquiry be requested to investigate the allegations of corruption made in Tynwald Court at its sitting in February 2002."

My amendment was supported by Mr Karran MHK therefore, one can only deduce from that, that he did indeed feel that he had made allegations of corruption in Tynwald at the February 2002 sitting, otherwise he would have made it clear during the debate that he was not making such allegations and would then have voted against the amendment; he did not.

I noted with interest that on Day 1 of the Inquiry (see pages 8 to 11 inc.) that the Chairman Mr Macleod had considerable difficulty getting Mr Karran to explain what he had actually meant by what he had said in Tynwald on the 19th February 2002 regarding corrupt practices. Clearly the Chairman had the opportunity to cross-examine Mr Karran at length to try to clarify what he actually meant. It is fair to say that Members of Tynwald did not have the opportunity to cross-examine Mr Karran during the debate and therefore could only respond during debate as to how they felt matters were unfolding before them. It was clearly felt by many Members that Mr Karran was insinuating that there had been corrupt practices.

It is worth reminding the Commission of what Mr Karran said in Tynwald on the 19th February 2002 in relation to the Mount Murray, (See Hansard page T524) he stated "we are dealing here with fundamental issues involving good government; the integrity of the law, the competence of ministers and the fitness of such individuals to hold ministerial office, and the placing of profit over the rights of the electorate outside this hon. Court. …." Mr Karran continued "The Mount Murray development has been the cause of the deepest discontentment and has created the profoundest suspicions that corrupt practices have taken place:…"

I can assure the Commission that there was no misunderstanding by myself or indeed by many Members during the debate in Tynwald on the 19th February 2002 of what Mr Karran was saying and by saying it what he was insinuating.

There is no doubt in my mind that these statements made during his contribution to the debate, a debate which he initiated, caused serious concern to Members of Tynwald, as it was to Members a clear and strong insinuation from Mr Karran that corrupt practices had taken place. I note that the Commission have said in relation to accusations of corrrupt practices that, "Mr Karran had not said that." However this was in relation to a specific statement of corruption; Mr Karran did however say that there were "profoundest suspicions that corrupt practices had taken place;" and that this was in my opinion, knowingly and deliberately said so as to give credence to his motion and ensure that it was successful, as he would know how Members would react to such serious comments.

Having made these points I must again make comment that I do not believe that the issue of statements made in debate in Tynwald Court is within the remit of the Commission. I append a letter from the Clerk of Tynwald in relation to the propriety of the Commission offering comments on Tynwald proceedings. (See attached letter at Appendix one)

3. Issue c):

[c) The draft report draws attention to your awareness of pressures being exerted on officials in your Department by Messrs Bell and Mitchell from the Department of Tourism but that you seem, on the basis of your detached position, not to have considered whether such pressure was reasonable, nor to have appreciated that such pressure was an indication of the importance attached to the proposal by another Minister. This refers to matters considered in paragraph 11.118 of the report.]

With reference to pressure being exerted on officials in my Department, which unfortunately is not an uncommon occurrence in political life, both here on the island and elsewhere; whilst I was aware of pressure being brought on certain matters, I was not aware of any real concerns of pressure or lobbying in this particular matter and certainly as Minister no one brought any such concerns to my attention. If it had been a cause for concern either to the officers of my Department – planning or otherwise – or to the Chairman of the Planning Committee or his Committee members none of them would have hesitated to have spoken to me either formally or informally and expressed their concerns. I had a good, close working relationship with officers and members in my Department and all knew that approaching me, or the Chief Executive of my Department, was a matter of considerable ease. As no one did approach me I can only assume that any pressures being exerted in relation to the Mount Murray proposal were not a cause for concern to those involved.

The officers and members of my Department and the members of the planning committee knew that they could raise their concerns with me directly and that I would have immediately passed them over to my Chief Executive to investigate and to report back to me for the consideration of any appropriate action; clearly in relation to a case such as the Mount Murray any concerns would have been referred to the Chief Executive for investigation and determination as this was a matter which was likely to be the subject of, or was the subject of, a planning application and could therefore not be dealt with by myself as Minister. It would have been inappropriate for me to become directly involved in such a matter, as has been confirmed by the Attorney General where in correspondence to me he states, "Insofar as complaints against planning officers and others within the Department are concerned, I confirm that such complaints should be referred to the Chief Executive of the Department and, ultimately, in an appropriate case, to the Civil Service Commission. I would foresee the role of the Minister to be to refer any such complaint to the Chief Executive for investigation."

Therefore, the fact that no one brought this matter to my attention indicates to me that whilst there was some concern the seriousness of those concerns was limited and not felt to be of such as to merit, by those concerned, to be of such importance as to be brought to my attention. In addition I attach an excerpt from the Report of the Select Committee of Tynwald, which investigated complaints of maladministration by Mrs A E S J Pilling, which was unanimously approved by Tynwald as recently as December 2002. (See attached letter at Appendix two). The Report makes it clear that it is the constitutional practice in the Isle of Man for a clear distinction to be drawn between the political and policy functions of a Minister and, the administrative responsibilities of a Department's Chief Executive. It would be apparent from this also that for me as Minister to interfere with the administration in any way but the most exceptional case would be improper.

4. Issue d):

[This refers to matters considered in paragraph 11.120 of the report]

I totally refute the statements made in this paragraph by the Commission. At no time did I detach myself from the management of my Department and, this statement by the Commission clearly demonstrates that they are not aware of the procedures in place. During my time as Minister I met with my Chief Executive virtually everyday to discuss

matters relating to the work of the Department, there were also informal and formal opportunities for management, at all levels, to refer matters requiring my attention to me, again I was available on a daily basis. Further when I was in the office I had an open door policy, which staff knew about.

Also as well as attending the Department most days for numerous meetings and general work, I held formal monthly Departmental briefing meetings, which I would chair and at which all senior officers and the members of my Department attended. The meetings provided an opportunity for all the senior officers to make an oral report, backed up with papers as necessary on matters arising within their division; it also allowed for any issues to be raised by members or officers and there would have been ample opportunity and time at such meetings for any serious concerns or inefficiencies within the Department to be raised, members and officers also knew that if they only wished to raise an issue informally with me then this could be done after the meeting. I always made myself available to the members and staff of my Department.

[The Commission accepts that Mr Brown did have a system both formal and informal for maintaining contact with his department as indicated in paragraph 11.120 of the published report]

The problems associated with staffing levels within the Government, especially within the planning section were known to me and I was aware that they were causing problems with the efficient operation of the Department. This was a serious concern to myself and my Chief Executive and I referred to this in my evidence to the Commission. I also advised the Commission that we were endeavouring to deal with the matter with the civil Service Commission, who in fact have the responsibility for staffing departments. Even as Minister of a Department I cannot employ additional staff without the approval of the Civil Service Commission and the Treasury.

Therefore, I find the statements made in section d) and in fact in all four sections of criticism made by the Commission to be inappropriate, misleading and without foundation.

I would therefore ask you to bring my response to these issues to the attention of the Commission as I do not consider that it is appropriate or accurate for the issues to be made within the published report as suggested by you.

I would wish for my response in full to be included within the Commission's Report if the Commission determine to comment adversely in relation to my involvement in this matter.

Yours sincerely

The Hon J A Brown SHK
And Member for Castletown

Appendix 1

Dear Mr Speaker

You have asked me whether it would be appropriate for the Mount Murray Commission of Inquiry to offer criticism of, or adverse comment on, observations which Members of Tynwald have made during a sitting.

Bearing in mind that the commission is sitting in a quasi-judicial capacity, I think that it would be proper that very considerable caution should be observed. In the constitutional law and custom of the Isle of Man, the Court of Tynwald is the highest court in the Island and it is not competent to any other court, tribunal or inquisition to pass upon its proceedings or to call

them into question in the exercise, or purported exercise, of its jurisdiction. It would be possible for a breach of privilege to result if that were to happen.

That said, however, it is of course entirely proper for any person or body to take note of what is said in Tynwald and to comment on it, or its accuracy, whether favourably or otherwise, and that is done all the time in the course of public democratic debate. What could give rise to difficulties is, as I say, even the impression that the proceedings of Tynwald are being reviewed and found wanting in the course of legal proceedings.

Yours sincerely

Malachy Cornwell-Kelly

Appendix 2

Dear Mr Speaker

You have asked me whether there is an accepted view by Tynwald on the relative position and functions of Ministers and their officials. I can say that Tynwald, in December 2002, considered the Report of the Select Committee on Complaints of Maladministration by Mrs A E S J Pilling, which necessarily examined a wide range of issues concerning the conduct of Government Departments, and this was unanimously accepted by the Court. This is the most recent and thorough review on this subject.

The Select Committee addressed the particular question you have alluded to in connection with allegations that you should have intervened with officials in relation to complaints about their behaviour under the Standardised Complaints Procedures (the SCP), of which you had been aware. The Committee said in relation to this:

> 11.24 We find that Mr Brown received no communication at all from Mrs Pilling, still less anything which could be construed as a complaint by her. Quite clearly, Mr Brown acted as Minister on the advice of his officials, as he was entitled to do. As Minister, he was entitled to expect that if any statement had been made which was or should have been taken as a complaint it would have been dealt with according to the requirements of the SCP. The SCP, as we have noted at paragraph 6.4(d), is concerned with complaints against officials, and it is for the management of the Department to ensure that it is respected.
>
> 11.25 The Minister is not an official and his essential function is not that of administering the department: that is a matter for the Chief Executive and his deputies; by contrast, the Minister's functions relate to policy and to choices concerning the implementation of policy. In the event of it being brought to the Minister's attention that a complaint has been made and the SCP not applied, it may then of course be appropriate for him to require an explanation of why correct administrative practice has not been followed.

Yours sincerely

Malachy Cornwell-Kelly

3. From Miss S Corlett

Thank you for your letter dated 7th May, 2003 relating to the above and outlining criticisms which may be related to me in respect of general practices undertaken by planning officers, particularly with reference to the inclusion of conditions on planning approvals which refer to works which were not part of the original planning application.

I would refer to your letter which contains an attachment which reads "The draft report considers that officers, which can be said to include yourself, should not have allowed the practice of modifying applications by condition so as to permit something which was regarded as acceptable although different from the development proposed and actually sought, such practice being dangerously flawed". **[This refers to matters considered in paragraph 17.77 of the report.]** I would also refer you to my letter to your Commission, dated 30th July, 2002 which addresses this issue (paragraph 2 of that letter).

I am concerned that your Commission appear to maintain the view that as a general policy a planning authority should not attempt to modify proposals by condition. This appears to ignore the suggestion I made in my earlier letter that in certain circumstances the attachment of conditions to planning approvals can be appropriate, and even helpful where the conditions apply to minor revisions to the scheme such as the colour or type of roof tiles, the form of opening of a replacement window or nature of finishes. I would refer to Circular 11/95 (Department of the Environment) which states "If used properly, conditions can enhance the quality of development and enable many development proposals to proceed where it would otherwise have been necessary to refuse planning permission" (paragraph 2).

As such, I would express concern that your Commission should not make the general conclusion that the Department should refrain from imposing planning conditions which modify the proposed development as this is a general practice which is not only provided for but endorsed in the above Circular and in planning practice within the Island and the UK. I can appreciate that you may feel that a specific criticism could be levelled at the approvals which were granted in respect of the development at Mount Murray but this is a matter which should be addressed separately, under the tests outlined in the above Circular and bearing in mind the nature of the proposal expressed in the application, as advertised by the Department and as finally given planning approval.

Yours sincerely

Miss Sarah Corlett
Planning Officer

4. From Hon D C Cretney MHK

Thank you for your letter of 7 May with its enclosure.

I observe that the Commission has concluded that the Planning Committee of which I was Chairman at certain of the material times was successfully misled by Mr Vannan, the Planning Officer advising the Committee.

As I made clear during my oral evidence and in my written submission dated 8 July 2002, at all times Mr Vannan and the other professional town planners employed by the Department were aware that the members of the Planning Committee were firmly opposed to residential development at Mount Murray. Further, Mr Vannan was fully aware that the Committee supported development for tourist use only and that any condition or document incorporated by reference into planning approvals which contravened this fundamental requirement was against the policy of the Committee for this development.

Despite that clear position, Mr Vannan appears to have misinformed the Committee as to the consequences of the incorporation of the Buyers Guide into the ultimate approval knowing full well that the Committee, relying on his professional guidance, was unaware that the effect of this document was to produce an approval which was contrary to the Committee's clearly expressed wishes.

On several occasions during my oral evidence, I candidly accepted that my Committee was open to criticism for failing to closely examine the contents of the Buyers Guide which had been summarised for us by Mr Vannan (as it turned out, selectively). Against that, I suggest that it is perfectly reasonably and normal for a lay Committee to rely upon the advice of its professional Planning Officers and not to assume, as seems to be the Commission's conclusion, that documents referred to it may say something other than what the professionals claim. This is particularly so when it is remembered that no problem of this nature had ever arisen in the past.

Can I also record that although I have accepted, with the benefit of hindsight, that some of my actions and those of the Committee in this respect have been somewhat naïve, on any analysis of the evidence we have at all times acted honestly and in good faith and this should be recorded in the Report.

Turning to the specific criticisms which are listed in the attachment to your letter, I comment as follows. Please note that where I do not specifically respond to a criticism express or implied, it is not to be assumed that I accept the Commission's conclusions without reservation.

[a] The draft report indicates that as Chairman of the Planning Committee you relied on officer advice to the point that you failed in your responsibility to ensure that you and the Committee sufficiently understood what you were being asked to decide. This refers to matters considered in 17.57 of the report.]

a) This is not accepted. The decision was made by the Planning Committee having taken into account all relevant factors including the advice of the Planning Officer assigned to it. It is not unreasonable to expect such advice to be accurate. No decisions could be made in a timeous fashion if the lay Committee is expected to question the accuracy of all information supplied to it by professional planning officers.

[b] A consequence of (a), the draft report concludes, was that in real terms it was the officers who were making planning decisions, rather than Committee members, at

least so far as Mount Murray applications were concerned. This refers to matters considered in paragraph 11.88 of the report.]

b) This is not accepted. See my response in a) above.

[c) The draft report finds that the Planning Committee under your chairmanship approved an Agreement for Sale, which was a unique item of business, but which you and other members did not read though you had some understanding of its significance, and which explicitly contravened an earlier decision. This refers to matters considered in paragraph 11.88 of the report.]

c) I respectfully suggest that this is a distortion of the evidence. The transcript of my oral evidence makes it clear that it was put to me that the minutes in question referred to Mr Vannan "reporting on an exchange of correspondence concerning a draft Agreement for Sale" (see for example page 17 of the transcript). A copy of an Agreement for Sale was then shown to me (see page 20 of the transcript) but I made it clear that I had never seen it before. It follows that I did not "approve" it as a member of the Planning Committee and that I had not had the opportunity to read through it or to appreciate the significance of the matters listed in the schedule to it. The Commission's conclusion is based on the false assumption that the document was shown to the Committee and approved which it was not.

[d) The draft report also finds that you, as Chairman, and the Committee agreed modifications to an approval for 150 dwellings at Mount Murray, incorporating the Buyer's Guide which neither you nor other Committee members had read, and therefore did not understand the condition relating to the Buyer's Guide which you were imposing. This refers to matters considered in paragraph 11.9 of the report.]

d) It is correct that the Buyers Guide was incorporated into the approval and that I had not at that time read it. For the record, I did not read it for the first time until the time of Professor Crow's report. My understanding of the document (and I believe the understanding of the other lay members of the Committee) was based on a summary provided to us by Mr Vannan which in good faith and in accordance with normal practice, we accepted as accurate. As I endeavoured to explain in my oral evidence, my recollection of Mr Vannan's explanation was based upon the fact that these tourist units would also be available to purchasers of timeshare and that, although I accept that timeshare is essentially a form of tourism, there was a need because of the potential US market to expressly refer to it by name. In short we believed that we did understand the condition that was being imposed, albeit that our understanding was that the condition related to tourism and was based on the advice of a professional planner which we accepted.

[e) The draft report indicates that you accepted that the approval notice issued on 2nd October 1991 contained a condition restricting use of the site to tourism, and that tourism included timeshare. Nevertheless the draft report notes that you could not satisfactorily explain why you accepted that this condition needed to be changed and why you did not apparently look at, or ask to look at, the so-called previous agreement which officers claimed was the basis for change. This refers to matters considered in paragraph 11.87 of the report.]

e) I believe that I have dealt with this paragraph in my response at d) above.

[f) The draft report records that you, as Chairman, should have taken steps to ensure that all Committee members were in a position to give due consideration to all applications and to be sufficiently well informed so as to understand appropriately the

decision which they were being asked to make. The draft report finds this was not done for, or by, the Committee considering the Mount Murray applications when you were Chairman. It further finds that members did not seek to read the Mount Murray applications in a reasonable manner, for example failing to seek information to achieve a better understanding of documents being referred to, or failing to ask for basic documents, and being party to inadequate and superficial evaluation of planning applications, and to a development control system which was extremely poor. This refers to matters considered in paragraphs 2.2, 8.10, 10.3, 10.4, 10.6 and 17.54 of the report.]

f) I believe that I have dealt with this paragraph in my response above.

[g) The draft reports critically upon the practice of the Planning Committee, of which you were Chairman, of approving a form of development which the Committee found supportable although differing from what the applicant sought, rather than face up to and possibly have to refuse what was actually applied for. This refers to matters considered in paragraph 11.32 of the report.]

g) I do not understand this paragraph. If, as it seems to be saying, the Planning Committee gave an approval which did not reflect what the applicant was asking for, then I do not accept it. Without further clarification I cannot comment further.

[h) The draft report states that the Planning Committee's failure to accept the Fire Service's request for fire appliance access standards at Mount Murray does not appear to be reasonable. This refers to matters considered in paragraph 13.16 of the report.]

h) The Planning Committee's alleged failure to accept the Fire Service's request was not a matter which was put to me during my oral evidence and I therefore respectfully suggest that it is not legitimate to criticise me for it. In so far as this criticism is therefore deserving of a response, I would record that matters such as this (which are exclusively planning matters) are usually evaluated by the Planning Officers and the Planning Committee would normally accept such advice on the subject as is given to it.

[i) The draft report states that a condition covering detailed sewerage and disposal requirements at Mount Murray changed significantly from earlier 1991 conditions so as to favour the developer but the 4th October 1991 Planning Committee of which you were Chairman, appeared to have no awareness of this. The effect of this change of condition is reported to be that the developer was allowed to start building houses before what was to happen to sewage had been finalised, but that before the change in this condition the developer had not been so permitted. This refers to matters considered in paragraph 13.31 of the report.]

i) Again, I can see no record of this matter being put to me during my evidence and consequently it is simply unfair to criticise me for matters on which I was not given an opportunity to comment. I was aware that there was an ongoing concern about the sewerage infrastructure but I am not clear that this was something which the Planning Committee was highlighted to.

[j) The draft reports that the way in which the Committee members carried out their duties and made their decisions within the Committee setting provides an important and material illustration of the highly unsatisfactory handling of irregularities concerning Mount Murray by government. That Committee setting was

provided by government and, in the Commission's judgement it is reported, deserves severe criticism. This refers to matters considered in paragraph 17.48 of the report.]

j) This seems to be something of a generalisation and not specifically directed at me. For my part, I can do no more than repeat what I have said above.

[k) From the evidence, the draft Report infers that the reason the Committee, of which you were Chairman, took its actions over Mount Murray on 24th May and 4th October 1991, despite having some understanding of the real intent of the proposal, was that it did not think permanent residential use would be significant, and because the proposal was important for tourism. The report accepts that there was an attempt by Mr Vannan to mislead the Committee, and that that attempt was to a material extent successful. This refers to matters considered in paragraph 17.51 of the report.]

k) In so far as this paragraph seeks to infer that the members of the Planning Committee were truly aware of the intent to create a residential development at Mount Murray, this is most certainly not accepted. The Committee's stated objective was tourism. The planners were aware of this. The Committee had no reason to assume that they would be misled by their professional adviser in such a way as to achieve an approval which was contrary to the Committee's clear objective. I accept the Commission's conclusion that the Planning Committee was misled by Mr Vannan.

I ask that this letter be taken into account during preparation of the final Report. Unless my response leads to wholesale withdrawal of the criticisms of me in the draft Report, I confirm that, subject as below, this response should be included in the appendix to the Report and the relevant part of the appendix should be highlighted in the body of the Report so that the criticisms and my response to them may be considered together.

Finally, at the beginning of my oral evidence the Chairman made it clear that witnesses giving evidence to the Inquiry will have qualified privilege against actions for defamation. I make this submission to you on the clear understanding that this privilege also extends to response such as this which are to be included in the final report. If for any reason that is not the case, you must revert to me before you have my permission to refer to this response or include it in the appendix to the Report so that I may take independent legal advice.

Yours sincerely

Hon D C Cretney MHK

5. From Mr C Faragher

I write in response to your letter of 7th May.

I have not sought legal representation, nor did I before submitting oral evidence to the Commission at the public hearing last July. I answered all questions put to me by the Commission honestly, and to the best of my ability given the length of time that has elapsed since the Planning Committee dealt with the Mount Murray applications.

I refer to the attachment bearing my name:

[This refers to matters considered in paragraph 8.8 of the report.]

a) Your draft report criticises the degree to which members of the Planning Committee came to rely upon advice and recommendations of the officers. The officers with whom we worked were not only professionally qualified, but also time served and had substantial experience of the workings of the Island's planning policy and procedures. Of course we relied upon them to offer sound options and guidance. At that time we had no reason to doubt that conditions of approval would be framed adequately to reflect the stated views of the Committee.

It is self evident that with a committee composed of lay persons, that the input of professional and expert advice will be from those suitably qualified, i.e. the officers of the Department of Local Government and the Environment, and on occasions other Departments.

[b) The draft report finds that the Planning Committee on 24th May 1991 of which you were a member approved an Agreement for Sale, which was a unique item of business, but which you and other members did not read though you had some understanding of its significance, and which explicitly contravened an earlier decision. This refers to matters considered in 11.88 of the report.]

b) My evidence to the Commission on 2nd July (page 114) describes the nature of the proposed development as it had been put to the Committee by Mr Vannin. It was in the context of multi-ownership that I viewed the proposal. We were assured that this was a tourist development with a variety of 'tenancies' being available to 'buyers'. Whether the occupants of these buildings were to stay for days, weeks or months, their rights over the property would fall a long way short of freehold.

[c) The draft report finds that understanding of the applications at Mount Murray was readily achievable had the Committee sought to read them in a reasonable manner. But finds that members themselves do not appear to have sought information or application documents to achieve a better understanding of applications and that it is difficult to see how responsible and comprehensive consideration of the main applications could conceivably have been achieved in those circumstances. This refers to matters considered in paragraphs 8.10 and 10.3 of the report.]

c) More information and a fully explanation of aspects of the application would have been required were the Committee at the time not satisfied with assurances given by the professional Planning Officer.

[d) The draft report considers that the Committee failed to address the question at its meeting on 4th October 1991 that, unless it knew what the Buyer's Guide was, it could not know what modified condition 5 meant. The draft notes that that matter was readily appreciated by third parties who read the Buyer's Guide and realised that it

allowed permanent homes. The draft report further notes that there is no explanation as to why the Committee accepted, on 4th October 1991, that the condition restricting to tourism use needed to be changed, nor any request made to look at the so called previous agreement which officers claimed was the basis for change. This refers to matters considered in paragraphs 11.16, 11.87 and 17.73 of the report.]

d) In the absence of detailed minutes of the meeting on 4th October 1991, I cannot recall the manner in which this matter was presented to the Committee. I have no doubt whatever that if the tourist-use of the development was seen to be compromised and jeopardised by this amendment that the Committee would have refused it.

[This refers to matters considered in paragraphs 11.96 and 17.55 of the report.]

e) I was asked to serve on the Planning Committee which was a functioning committee of Department of Local Government and the Environment. Its policies and procedures were already established, and the inadequacies to which you refer should perhaps be accounted for by the professionals of the Department.

Your draft report criticises the Committee for being **[wording adjusted.]**

If we were uninformed and unprepared it was due to inadequate or misleading briefing.

If we were untrained it was because 'training' was not a requirement specified at that time.

We were not unquestioning.

As it was, we were confident that the professional advice we were receiving was sound and adequate.

[This refers to matters considered in paragraphs 13.31 to 13.32 of the report.]

f) I do not recall any of the discussions relating to sewerage disposal requirements. This is not a subject that would be dealt with other than on the specific advice of professional officers.

[g) The draft reports that the way in which the Committee members carried out their duties and made their decisions within the Committee setting provides an important and material illustration of the highly unsatisfactory handling of irregularities concerning Mount Murray by government. That Committee setting was provided by government and, in the Commission's judgement it is reported, deserves severe criticism. This refers to matters considered in paragraph 17.48 of the report.]

g) This paragraph appears to be a general criticism of the planning system in the Isle of Man. The second sentence in particular does not read clearly.

[h) From the evidence, the draft Report infers that the reason the Committee took its actions over Mount Murray on 24th May and 4th October 1991, despite having some understanding of the real intent of the proposal, was that it did not think permanent residential use would be significant, and because the proposal was important for tourism. The report accepts that there was an attempt by Mr Vannan to mislead the Committee, and that that attempt was to a material extent successful. This refers to matters considered in 17.51 of the report.]

h) The draft report refers to "the real intent of the proposal" without stating what the Commission views that to be. I described in my evidence to the Commission what I had perceived to be the nature of the proposed development. The fact that I was assured on the

tourist use of the development may well have been the result of the “attempt by Mr Vannin to mislead the Committee” which you quote.

The “importance to tourism” of the proposed development was not a factor we were obliged to consider.

[i) The draft reports critically upon the practice of the Planning Committee of approving a form of development which the Committee found supportable, although differing from what the applicant sought, rather than face up to and possibly have to refuse what was actually applied for. This refers to matters considered in 11.32 of the report.]

i) The Planning Committee on which I served was not slow to “face up to and possibly have to refuse what was actually applied for.” It did exactly that on many occasions – on applications big and small.
……..

The Committee considered this application on its apparent merits and in the light of professional advice received, just as it considered hundreds of other applications. If we had thought refusal to be the correct course, we would have refused it without hesitation.

With the 20/20 vision of hindsight it is evident that the Planning Committee was (willingly or otherwise) mislead, but at the time we acted in good faith and genuinely believed the assurances given to us that conditions of approval would be adequate to safeguard the tourist use of the development.

My faith in the integrity of my colleagues on the Planning Committee was and is complete. There was no wilful misconduct on our part.

I request that all of the contents of this letter be included in the relevant appendix of the draft report.

Yours sincerely

Charles Faragher

6. From Mr C Guard

Thank you for your letter dated 7th May 2003 appraising me of the draft material relating to myself in the forthcoming report on Mount Murray, and asking for my comments. There are indeed a number of points I would like to make and they refer specifically to certain of the paragraphs in the draft.

These points are as follows:

[This refers to matters considered in paragraph 11.91 of the report.]

At para a) it states …. 'you did not see Mount Murray as any more important than other applications…' This is indeed the gist of what I said. But there follows, in parenthesis a statement which runs "despite its apparent critical importance to tourism and the Island's economy". It is not made clear that this latter statement is not mine, nor does it represent anything I said. This is a comment made by the author of the report. This comment shows a deep lack of understanding of the planning system and regulations on the Isle of Man. I made it clear in my evidence and I will reiterate it here that the Planning Committee were not at liberty to consider the financial implications of any planning application, nor were they empowered to guide or develop the Island's economy by subtle or judicious use of planning consents. The results of such acts would be to distort and compromise the planning regulations. For example, we might decide that giving-in to the economic threats of a developer was desirable in order to make sure such a development went ahead. Such acquiescence might require us to override good planning practice, to change zonings (which only Tynwald can do) or to disregard other material considerations in the planning process. In all these cases we would be ultra vires. This would be a totally unacceptable state of affairs. Clearly the economic development of the Island, and Tourism in particular, is a matter for Government and was dealt with in the appropriate manner by the use of grants, tax breaks &c. The matters which the Planning Committee must take into account are set out in part 3 of the Isle of Man Planning Scheme (Development Plan) Order 1982 and includes such matters as the zoning of the land, the character and amenities of the area, roads, sewerage &c. I will make it clear once again, the Planning Committee regarded every application as being important, and gave no weight to the person of the developer or its supposed economic benefits.

[b) The draft report refers to the lost opportunity for enlightenment on the nature of the Mount Murray development proposal when a comment from Mr Gubay to you on site led you to believe that you should not be so naïve as to think that only timeshare or holiday use was intended in the housing units. It notes that your query to Mr Vannan, you said, was dismissed as being a matter too complicated to understand. This refers to matters considered in paragraph 12.68 of the report.]

At para b) it refers to a 'lost opportunity for enlightenment'. Whilst I did indeed find my request from Mr Vannan dismissed, I made it clear in my evidence that I followed this up with an enquiry to Miss Corlett who gave me a further assurance that Barry Vannan had told her that the Committee were 100% happy with the conditions and arrangements.

As we, the Committee, at all times during the planning process, had made completely clear our requirement that this development should be a tourist development, then I was satisfied that this was what Barry had conveyed to Sarah. It is also worth pointing out that by this stage it was too late to make any difference to the nature of the planning permission as the hotel was nearly complete and the construction of the first phase of housing was already underway.

[This refers to matters considered in paragraph 8.8 of the report.]

At para c) it is stated that …'the draft report finds with regard to the Committee as a whole that reliance by members on officers was to a point that there was a failure by the Committee members in their responsibility to understand properly the decisions they were making.' I have to emphasise again that our reliance on our professional officers was completely normal, acceptable and reasonable.

We certainly sought further information when we required it and we certainly argued and questioned their advice and recommendations when the occasion required it, but at no time did it occur to us to question or doubt their integrity and candour.

To have doubted those qualities in an officer would have brought the planning process to a grinding halt immediately. To have suspected officers of withholding information of manipulating applications or of trying to change the planning conditions without our knowledge would have made it totally impossible to work with those officers, and would certainly have been a breach of trust which would have meant the referring of the matter to a higher authority.

I do not agree that relying on professional officers meant that we didn't know what was going on. Unless there were indications to the contrary, we were justified in assuming that the officers were telling us precisely what was going on and what the result of our decisions would be. For it to have been otherwise would have been a very serious matter indeed.

[d) It further finds that understanding of the applications at Mount Murray was readily achievable had the Committee sought to read them in a reasonable manner. But that members themselves do not appear to have sought information to achieve a better understanding of documents and that it is difficult to see how responsible and comprehensive consideration of the main applications could conceivably have been achieved in those circumstances. This refers to matters considered in paragraphs 8.10 and 10.3 of the report.]

At para d) I can only respond that the sentiments of this paragraph are misguided and that we have already made it clear that it was impossible to know about documents not revealed to us and perhaps deliberately withheld from us.

[e) The draft report considers that the Committee failed to address the question at its meeting on 4th October 1991 that, unless it knew what the Buyer's Guide was, it could not know what modified condition 5 meant. That matter was readily appreciated by third parties who read the Buyer's Guide and realised that it allowed permanent homes. The draft report further notes that there is no explanation as to why the Committee accepted, on 4th October 1991, that the condition restricting to tourism use needed to be changed, nor any request made to look at the so called previous agreement which officers claimed was the basis for change. This refers to matters considered at paragraph 11.16, 11.87 and 17.73 of the report.]

At para e) Again, our response at the meeting on 4th October depended entirely on what was being presented to us by officers and in what manner it was being presented. Had it been made clear to us that the Buyer's Guide was now the basis of the planning consent there is no doubt in my mind that we would have called a halt to any changes in lieu of further clarification. It is also clear to me that if the contents of the Buyer's Guide had been clear to me, there is no way I (or my colleagues for that matter) would have agreed to its inclusion in a planning consent. Neither the Buyer's Guide nor condition 5 were seen or approved by the Planning Committee in October 1991. As far as we were concerned the situation remained the same after 4th October 1991 viz: the accommodation must be for tourist occupation only.

{This refers to matters considered at paragraphs 11.96 and 17.55 of the report.]

At para f) I find that the assertion made in the second sentence that we were… **[wording adjusted]** is simply nonsense. Our Committee was known for its particularly searching questioning at reviews. The Commission might consider that we were untrained by some standard they might care to define, but we certainly weren't confused, unprepared or uninformed.

The criticism of the system of development in this paragraph is not one which should properly be made against me individually or against the Planning Committee collectively. The Committee could only act within the remit given to it by the relevant legislation which, in so far as this inquiry is concerned, was limited to matters set out in Schedule One to the Isle of Man Planning Scheme (Development Plan) Order 1982. The Planning Committee's remit or job was simply to consider initial applications for planning permission and reviews strictly in accordance with the 1982 Order. It did not have any more general control over 'the planning system'. The planning system was a matter for the DoLGE Minister and Tynwald. Regarding the criticism that conditions were dealt with by Officers not Members, it is perfectly acceptable for the Planning Committee to have laid down the general ambit of the required condition and for the precise drafting thereof to be dealt with by experienced Planning Officers.

[g) The draft report states that a condition covering detailed sewerage and disposal requirements at Mount Murray changed significantly from earlier 1991 conditions so as to favour the developer but the 4th October 1991 Planning Committee appeared to have no awareness of this. The effect of this change of condition is reported to be that the developer was allowed to start building houses before what was to happen to sewage had been finalised, but that before the change in this condition the developer had not been so permitted. This refers to matters considered in paragraphs 13.31 to 13.32 of the report and
h) The draft reports that the way in which the Committee members carried out their duties and made their decisions within the Committee setting provides an important and material illustration of the highly unsatisfactory handling of irregularities concerning Mount Murray by government. That Committee setting was provided by government and, in the Commission's judgement it is reported, deserves severe criticism. This refers to matters considered in paragraph 17.48 of the report.]

At paras g & h) The matters referred to in these paragraphs do not appear to relate to me in any way. I do not recall being questioned by you regarding the sewerage and disposal requirements, and paragraph (h) seems to be a general criticism about Government rather than the Committee.

[i) From the evidence, the draft Report infers that the reason the Committee took its actions over Mount Murray on 24th May and 4th October 1991, despite having some understanding of the real intent of the proposal, was that it did not think permanent residential use would be significant, and because the proposal was important for tourism. The report accepts that there was an attempt by Mr Vannan to mislead the Committee and that that attempt was to a material extent successful. This refers to matters considered in paragraph 17.51 of the report.]

At para i) I note that the Commission accepts that there was an attempt by Mr Vannan to mislead the Committee and that this attempt was to a material extent successful. This is a key point and the Committee were placed in an impossible position as the result of Mr Vannan's actions.

The only further comment I have to make is

[j) The draft reports critically upon the practice of the Planning Committee of approving a form of development which the Committee found supportable, although differing from what the applicant sought, rather than face up to and possibly have to refuse what was actually applied for. This refers to matters considered in paragraph 11.32 of the report.]

At para j) The meaning of this paragraph is not totally clear to me. It seems to say that we are criticised for approving a form of development that we found supportable, which doesn't on the fact of it, sound unreasonable. But there also seems to be an implication that we did so rather than face up to having to refuse the application. As I say, the meaning of this is not clear, but what I will clarify is the fact that at no time did the Planning Committee have any compunction in refusing any planning application that it wasn't entirely satisfied with. We refused many large-scale developments and never felt cowed, threatned, under pressure or obliged to accede to requests that we did not consider entirely appropriate in the terms of the planning regulations we were obliged to adhere to. Perhaps I could also note that with reference to the above paragraph (i), had Mr Vannan not been 'materially successful' in misleading the Committee, there would have been no question of the Committee not having 'faced up to' the situation.

Finally I would like to request that my comments above, all of which relate to the criticisms laid out in the draft report, be included in the appropriate appendix.

Yours sincerely

Charles Guard

7. Responses from Mr D Killip

1st Response

Thank you for your letter of 21st May 2003. With regard to your letter of 6th May and the enclosures therewith, I would wish to make the following observations.

1. General Observations

(i) my response is given without prejudice to my right to respond further if I think it appropriate; and

(ii) my response should, also, not in any way be viewed as a waiver of any rights I may have or acceptance of any statements made by the Commission not explicitly dealt with below; and

(iii) I regard it as unfair that the Commission has seen fit to pass critical and potentially damaging comments on my actions based on evidence which it has not afforded me an opportunity to test; and

(iv) I also regard it as unfair that the Commission has required my response within a short period of time. The Commission has been deliberating for many months. I believe the truncated timescale afforded to me is based on extingencies which are by no means co-extensive and with the interests of natural justice.

2. Specific Matters

[a) The draft report finds that much of your evidence was qualified in one way or another, and that you were unclear about your role, and that your recollections of events in October 1991 were more from the perspective of someone standing outside and uninvolved with events of that time than from your key position in the control of Committee business. It further reports that you did not at any stage enquire as to the nature of the so-called previous agreement (referred to at the Committee meeting on 4th October 1991) nor examine the Buyer's Guide despite incorporating this into the minutes. The draft report concludes that you should not have accepted the alleged erroneous nature of the decision notice issued on 2nd October 1991 without investigation or seeking clarification and should not have allowed the Committee to do so notwithstanding your limited experience. It further reports that you also drafted a minute of that meeting which was unclear because you were unaware of the fundamental change which the decision brought about. This refers to matters considered in paragraphs 11.111, 17.73 and 17.74]

Paragraph (a)

i. Whilst opening with the remark that much of my evidence was "qualified in one way or another" the paragraph does not elaborate on why, or how, this is felt to be the case.

ii. Further, whether or not my remarks were from the perspective of "someone standing outside and uninvolved with events", I reported to the Committee as clearly as my recollections would allow after the passage of time in excess of ten years.

iii. At all times, prior to, during, and subsequent to my post as Secretary to the Planning Committee, I have treated my Civil Service posts with the utmost seriousness. The observations of the Commission suggest that I was not applying myself fully to the

tasks in hand, and I contend that this was not the case. As to the extent with which I may have been uninvolved with events, as I endeavoured to make clear to the Commission at the time of giving evidence, the planning application of particular interest to them was very much under the control of the (then) Deputy Chief Planning Officer, Mr Vannan. He had had considerable involvement with the developer, and the proposals for Mount Murray prior to my joining the Planning Office. There was a very limited degree of "involvement" that I could have had, or was offered the opportunity, of having. Again as I have discussed with the Commission, past matters and the "Buyers Guide" were issues reported to the Committee, by Mr Vannan, and which he unequivocally affirmed were acceptable to him, and to other officials of the Department. I consider it reasonable for me to have considered his remarks as both truthful and accurate. I don't consider that the job description or mandate required of the Secretary of the Planning Committee, could reasonably demand of that individual that assertions made by a senior official be automatically challenged, tested or otherwise deemed liable to analysis by the Secretary in cases when they are expressly presented as agreed and acceptable to that senior official.

iv. as to the alleged erroneous nature of the decision notice issued on the 2nd October, I did indeed seek clarification concerning this. The issue of the subsequent notice was at the instigation of, and with the sanction of, Mr Vannan.

v. There is something of a paradox in the final sentence to paragraph (a.) I acknowledge that I was unaware of the change brought about by the Committee's decision, but to then describe my minute as unclear is odd. Subsequent events may illustrate that it was incomplete, but the minute was as clear as I could make it in the circumstances. It should not be forgotten that the minute was reportage of the comment and conduct of others, not of myself.

Paragraph (b)

[This matter is considered in paragraphs 11.107 and 17.76 of the report]

i. **[Initial point accepted]**The practice of planning officers, be it Mr Vannan or others, of bringing planning applications to the attention of the Committee, following the expiration of the advertisement period, as "other business" for Committee meetings did occur, and had done so for a considerable period of time prior to my appointment as Secretary to the Planning Committee. The briefing that they received from Mr Vannan on this occasion appears to have satisfied the Planning Committee, who did not ask for additional time to consider the matter, and were content with the information provided to them by Mr Vannan.

ii. I have made it clear to the Commission that agendas sent out to the Planning Committee, (reflecting a practice that existed well in advance of my appointment to the Planning Office) included the planning application number, the name of the applicant and the nature of the development. The detailed consideration of every planning application was undertaken by the Committee during their meetings, via verbal briefing presented by Planning Officers describing the nature of each planning application. It may be that the Commission considers this process as not providing the Planning Committee members with adequate prior knowledge of each planning application. However, this arrangement, at the time, applied uniformly, and was not unique to PA91/0953. Given that I had not been in the Planning Office for a lengthy period of time, one might observe that the remark that I should have questioned this conduct of business contains more than a little element of hindsight. It is entirely inappropriate to suggest, as the Commission does at the conclusion of paragraph (b.) that the existence of this particular process constitutes a failing on my part for not

having questioned it. I do not recall that the Secretary of the Planning Committee had, in any way, a remit to reform such procedural elements.

Paragraph (c)

[Representation accepted]

Paragraph (d)

[Representation accepted]

Paragraph (e)

[This matter is considered in paragraph 17.82 of the report.]

i. I agree that it is incumbent on Secretaries of the Planning committee to understand the business which is being undertaken. Given the prior history of development of Mount Murray, and my newness to the post of Secretary, (which I am pleased to see the Commission recognise within **paragraph 11.113**) I consider it was equally incumbent on the senior Planning Officer dealing with the technicality and processes of this planning application to have regard to the need to keep the Secretary of the Planning Committee informed. I have my own views on the extent to which this occurred. Again, I think it is germane to the matter that I was operating within an established system, which had been in place for a significant period of time prior to my arrival in the Planning Office, and which was not being contested or questioned by the Chief Planning Officer, his subordinates, the Planning Committee, or the more senior management of the Department as a whole. Again, I therefore consider it to be improper to present this situation as expressly a personal failing on my part.

Paragraph (f)

[This matter is considered in paragraphs 3.61 and 11.60 of the report.]

i. As I think I informed the Commission, the press advertisement, where referring to "150 dwelling sites" was not, at the time, expressly brought to my attention. If the administrative personnel dealing with the receipt of planning applications were unsure as to the accuracy, or nature, of the description the applicant offered, which would thus appear in the press advertisement, they would seek advice from the Planning Officer allocated to report upon that application to the Committee. My comments to the Commission in relation to the description of the site not being shops or offices, was a view expressed as a possible explanation for the wording used, when the question was put to me last year. It would appear that, having in good faith answered the Commission's written enquiry as to how the press advertisement might have been phrased, and the rationale behind that, I am now being criticised, and described as "unconvincing", for having proffered comment intended to aid the Commission's enquiry. This possible origin of the advertisement text was not the rationalisation I applied at the time of the planning application because, as I indicate, the express terms of its advertisement were not drawn to my attention.

ii. The Commission may be correct in its speculation that officials of the Department were aware of the intent to have permanent home use, though I was not among those officials when the planning application was being considered, nor at any time.

[This representation is substantially accepted by the Commission.]

By way of clarification for me, the attachment provided with your letter refers to the draft report, and its anticipated comments, though is not, in itself, an abstract of the report. Could you explain why this is so?

Yours sincerely

David Killip

2nd Response

Thank you for your letter and file of documents dated 28th My 2003.

I have only been able to consider these documents following my return from a period of annual leave on 6th June. However, I am happy to abide by the Commission's request to submit this information by today's date.

I note that some of the observations appearing in the draft report extracts, making reference to myself, remain unaltered from the position prior to my previous letter. Therefore, I hope that the Commission feels able to modify some of its earlier observations in the light of my comments. Consequently, I am not reiterating all of the points that I have previously made, but have made some further comments below in relation to various of the draft paragraphs. In each case, as you will see, I have identified to the relevant paragraph number in the left hand margin, and then given observations thereon.

11.60 Purely as a matter of presentation, in the draft report extracts provided to me paragraph 11.106 was repeated immediately within the text of paragraph 11.60 and then again thereafter.

11.112 Within the body of this paragraph the Commission make reference to the fact that *"the request for a review should have alerted Mr Killip"*. I would refer the Commission to my evidence appearing on Page 60 of the transcript. The issue of the review was addressed at the time of the meeting on the 4th October 1991 and, as you will see from my remarks, it was quite explicitly stated by Mr Vannan that it was proper to issue the second notice (i.e. not to initiate the review process) because the first notice itself was defective. Whilst it can now be seen that this advice and comment was itself inaccurate, I do think I was entitled to place some degree of reliance on the observations of the Department's second most senior planning official.

11.113 I remain of the view that the Commission's choice of wording at the outset of this paragraph, where referring to my evidence, is unduly prejudicial to me. **[The wording has been modified following the initial representation of Mr Killip].** The procedures involved may be without merit and wholly unconvincing, but my explanation was full and accurate. The Commission appears to be confusing flawed processes with the quality of my description thereof. **[Final point accepted following the initial representation of Mr Killip.]**

17.70 Whilst indicating that I did give evidence to the Committee on other matters of relevance, this paragraph makes it clear that my *"particular involvement"* so far as the interest of the Commission is concerned, was with the Planning Committee decision of the 4th October 1991. Given that the events of that day were very substantially driven by Mr W.B. Vanna, who was the Deputy Architect and Planning Officer, and I was, as the Commission justifiably point out, an inexperienced Secretary of the Planning Committee (and had been so for only three months), I think it is unfortunate that the Commission feel able to make a

range of prejudicial comments concerning my performance (and indeed in some cases the evidence that I have given) when this single meeting of the Planning Committee is the only matter where the Commission expresses an "interest" in myself. I would ask the Commission to consider revisiting the tenor and severity of some of the observations that they have chosen to make about me which, in my view, generally lack a sense of proportion. **[The Commission has accepted a number of Mr Killip's points since this representation was made.]**

17.73 At the conclusion of this paragraph, the Commision observe that I should have enquired as to the nature of the prior agreement that Mr Vannan was reporting to the Planning Committee at the meeting 4th October 1991. I do not necessarily dispute this statement, but would ask the Commission to consider the following observation. Mr Vannan was an extremely experienced and senior official in the Planning Office. In terms of grade seniority within the Civil Service, he occupied a much more senior position than I did, as Secretary of the Planning Committee. He made unequivocal statements to the Planning Committee (and myuself) as to the nature of previous agreements between the Department and Developer, in which he invoked the name of the Chief Executive, and, with equal certainty, confirmed that the wording of the original notice of consent, where it failed to refer to the Buyer's Guide, was a mistake. The Buyer's Guide was explained to be a document that he had been accepted as part of an earlier, finalised, planning application. In those circumstances, was it really surprising that the Secretary of the Planning Committee did not feel it necessary to pursue enquiries which, in essence, would have been a direct challenge to the unequivocal assertions of a very senior officer?

I am grateful to the Commission for the opportunity to comment further, and for the comprehensive nature of the information that you sent me under your covering letter of 28th May. Once the Commission have had an opportunity to consider the content of my earlier letter, together with the observations contained herein, I would be grateful for an indication from you as to the extent to which the Commission's observations regarding myself are likely to be subject to revision.

Yours sincerely

David Killip

8. Response from Mr J F Kissack

I thank the Commission for their courtesy in allowing me the opportunity of commenting on their Draft Report to the extent that it makes reference to me. I am surprised to be the subject of criticism by the Commission on issues on which I have not been required to appear before the Commission to give oral evidence. However I would certainly wish to make comment on what is written in the attachment to your letter and, if my comments do not result in amendments to the draft, I would certainly wish this response to be included in the appendix to the Report.

The attachment to your letter divides into two sections marked a) (three paragraphs) and b) (two paragraphs). I will comment on these paragraphs specifically but before doing so would wish to make two general points relating to the correspondence and meetings I had with Mr and Mrs Reeves, because the issue of the second initial approval granted for PA 91/0953 has, obviously, emerged as a matter of key importance.

1. The purpose of Mr and Mrs Reeves' letter of 3rd December 1992, which led to the meeting which I had with them shortly thereafter, was, as the Commission's attachment suggests, to allege that the Mount Murray developers had received preferential treatment. The letter listed six points which evidenced this allegation. The issue of the second initial approval for PA 91/0953 was just one of those six points. It was given no greater prominence than any of the others and was not the essence or the core of Mr and Mrs Reeves' representations. It was, therefore, only a part of their grievance.

2. The second initial approval for PA 91/0953 was granted on 4th October 1991. This was some fourteen months before Mr and Mrs Reeves wrote to the Minister setting out their argument that the developer had received preferential treatment and questioning the events of October 1991. This delay begs the question – If Mr and Mrs Reeves had serious concerns about the process why did they wait fourteen months to voice them; why did they not take their own legal advice if they felt the process was flawed; and why did they not seek a Planning Committee review of the decision, as was their right, and raise their concerns directly with the Planning Committee at the review hearing?

Mr and Mrs Reeves' representations were not wholly or primarily focussed on the second initial approval for PA 91/0953 and, to the extent that they did relate to that approval they were concerned with something that had happened fourteen months earlier and which they had not adequately pursued at the time.

Let me now turn to the attachment to your letter –

a) Paragraph 1

No comment.

a) Paragraph 2

[This matter is referred to in paragraph 12.21 of the report.]

This paragraph includes a quotation from my letter of 11th March 1993 to Mr Reeves. The following is a fuller quotation with the words omitted from the Commission's draft included, but in capitals.

"THE VIEW WAS TAKEN THAT there was no point in issuing a stop notice in view of the advanced nature of the work and that in any case, a short period of work with a bulldozer

would restore the field to agriculture in the event of a planning refusal. THE PLANNING COMMITTEE WERE, HOWEVER, INFORMED ABOUT THE POSITION."

This wording substantially follows that provided by Mr Watson in his Memorandum to me of 9th February 1993. The words are, therefore, a statement of the position adopted by the Department which I was relaying to Mr Reeves. The fuller quotation above makes that clear (Particularly the first five words, as, indeed, does the sentence preceding the ones quoted). Abridging the quotation as the Commission has done in its draft presents the conclusion as one reached by me. This is incorrect.

a) Paragraph 3

[This matter is referred to in paragraph 12.22 of the report.]

It is not clear to me from this paragraph whether it is me or the Planning Committee that is being criticised.

I think, as a matter of law and good practice the Planning committee has discretion, whether or not to issue a stop notice, when faced with premature development or a breach of planning permission. A judgement is involved in each case, but, (setting aside the quality of the decision made), provided the decision is properly and consciously made by persons with the requisite authority, it seems to me that the decision is legitimate. If the implication of this paragraph is that there should be no discretion and a stop notice should be issued in every case, then I must respectfully disagree with the Commission.

If it is the Commission's view that in the particular circumstances of the golf course development an error of judgement was made and a stop notice should have been issued, then that relates to the quality of the decision and is a criticism of the Planning Committee and the Committee should respond to it. My concern was to establish that a conscious decision had been made and that there had been a plausible rationality for that decision.

The final sentence in this paragraph is unsatisfactory. **[Now the penultimate sentence.]** It sets out the first part of the case advanced by Mr Watson for not issuing a stop notice on the premature works on the golf course, but omits the second part, which seems to me to be the justification for the decision. I would certainly agree that a doctrine which meant that stop notices were not issued simply on the basis that the works were advanced would be unacceptable and I would not argue for such a doctrine.

b) Paragraph 1

[(b) The report notes that you did not refer in your correspondence with Mr and Mrs Reeves to the implication of the change to condition 5 despite the fact that this change was fundamental and that it was pointed out to you. The draft report notes that you claim that this was a matter for the Planning Committee as an issue of land use policy and argued that it was not a legitimate role of the Chief Secretary to question the substance of a decision made by that Committee. The draft report is critical that nothing was done however to alert the Committee to the concern over condition 5. This matter is referred to in paragraph 12.65 of the report.]

The first sentence is factually incorrect. I referred to the changes to conditions 5 and 6 in my letter to Mr Reeves of 10th March 1993 (Section (1) of that letter). I did not, however, discuss or describe the implications of the changes and I am not sure why I should have done so. It was unnecessary to do so and Mr and Mrs Reeves understood them perfectly well.

I stand by my statement as reported in the second sentence.

It is not clear to me whether it is me that is being criticised in the last sentence of this paragraph and, if so, why. Why would it be thought necessary to advise the Planning Committee of the existence of a letter which, in one paragraph amongst many others, raises a concern about a decision taken by the Committee fourteen months earlier? If it was thought necessary to advise the Committee, why should it be the Chief Secretary who does it? What about the Minister, to whom the letter was addressed? What about Mr Savage or Mr Watson who were dealing with my enquiries on behalf of the Planning Committee and who were the Committee's servants?

b) Paragraph 2

[c) The draft report notes that having had the legal validity of the second initial decision notice dated 4th October 1991drawn to your attention by Mr and Mrs Reeves as questionable, no steps were taken to look into this, and reliance was placed (mistakenly as it turned out) on the information supplied by Mr Watson and Mr Savage, notwithstanding that the legal error was quite obvious and could easily have been confirmed by reference to the government's legal advisor. This matter is referred to in paragraph 12.66 of the report.]

It is not correct to say that I took no steps to look into the legal validity of the second initial decision on PA 91/0953. The files in the possession of the Commission show the enquiries that I made with the Department during the period December 1992 to January 1993. It is true that I relied on the information supplied by Mr Savage and Mr Watson. I make two points in defence of that –

(1) As indicated in my preamble, this issue was just one of six raised by Mr and Mrs Reeves and was fourteen months old. It did not appear to me to have any particular potency above the other issues. Nor do I think it had a paramount position in the minds of Mr and Mrs Reeves at that time. (Note that it did not feature at all in their follow-up letter to me of 16th March 1993).
(2) I had worked with both Mr Savage and Mr Watson and they were trusted and respected colleagues of great experience. Mr Savage was a fellow chief officer and had been a short-listed candidate for the post of Chief Secretary three years earlier. Mr Watson had been in post for more than twenty five years and was thoroughly conversant with planning law and practice. Although things can always look different with hindsight, I felt justified in relying on what they advised.

Finally, I wonder at the use of the expression "the legal error was quite obvious" – to whom? Plainly it was not obvious to the Planning Committee or to the officers serving that Committee in 1991, a number of whom were of considerable experience. Judging from their letter to the Minister, Mr and Mrs Reeves appear to have thought it was "manipulative" rather than wrong in law. If a legal error had been obvious to them or anyone else who objected to the development at the time, they would surely have taken the matter further. Nor was it obvious to me, coming to the issue fourteen months later. I could see there was a legitimate question to be asked, but Mr Watson's assurance that "revised approval notices" had been issued in the past confirmed that there were precedents and that the practice had not been successfully challenged.

I am afraid that does not leave very much of the attachment without comments and I have written rather more than I intended – more indeed than the attachment enclosed with your letter. My apologies.

However, I would be grateful if you could bring this letter to the attention of the Commission when next they meet. I should, of course, be more than pleased to try and clarify any point

in the foregoing submission which is not sufficiently clear, either in writing or personally before the Commission.

Yours sincerely

J F Kissack
(Formerly Chief Secretary)

9. From Mr K C McGreal

[The draft report concludes that if the Internal Audit Division, of which you were head, was fulfilling its functions as defined (in its terms of reference) it could and should have made at least some enquiry into the alleged shortcomings in the Planning Committee and its planning office and their procedures, and should have tested the quality of compliance but did not do so, nor did it plan to do so in the absence of any invitation to that effect from the Chief Executive of that department. This matter is considered in paragraph 16.43 of the report.]

Your letter of the 7th May refers:-

Thank your for the opportunity to provide comment upon the conclusion drawn in your draft report which implies a degree of criticism of the Internal Audit Division over the absence of any involvement into the alleged shortcomings in the procedural arrangements of the Planning Committee and Planning Office.

Whilst I do not have the benefit of or appreciation of the outcome of the Inquiry and its overall findings and conclusions it is difficult to place into context the significance and implications arising from the extract of the Report upon which you wish me to comment.

As a general premise the activity of the Division has traditionally been more focussed upon the adequacy of internal controls exercised in relation to financial administration as opposed to procedural and operational issues associated with the business of Government. This is not to say that such matters are not reviewed but invariably given a lesser priority in the audit needs analysis upon which the internal audit coverage is largely based. I believe this point was made during my presentation of evidence to the Committee.

I'm sure you will also appreciate that the breadth and scope of Government activities across all Departments are such that the limited audit resources available are spread relatively thinly over the many demands with the consequential result that actual cyclical coverage of all systems extends well beyond the five year target timeframe envisaged from the Strategic Audit Plan. In this respect the Committee may wish to note that the emergence of a more focussed risk management approach towards internal auditing will help combat this difficulty.

In relation to the issues arising from the Mount Murray Inquiry I am not certain of the exact chronology of events that led up to the initial allegations being laid into the public domain, however, some emphasis should be made that this did not manifest itself into any particular request from the Chief Executive of the Department of Local Government and the Environment (as the Accounting Officer of the Department) for my Division to investigate the matter as prescribed within Government's Financial Regulations (Financial Direction 11 states "Accounting officers are responsible for ensuring that the Chief Internal Auditor of the Treasury is notified immediately of any financial or accounting irregularities, or of suspected irregularities". I was cognisant at the time that the Department, along with the Council of Ministers commissioned an independent review of the Mount Murray development which culminated in Mr Crowe's appointment during the year 2000. Therefore, given the broad acceptance that senior "management" were already aware of and seen to be addressing the issue, the role of the Internal Auditor in such circumstances had already been largely fulfilled.

In conclusion whilst I accept that the Internal Audit Division did not conduct any investigation into the subject of this particular enquiry I am minded to point out that also included within the Terms of Reference for the Division is the clear statement that it remains the responsibility of each Accounting Officer to determine the precise nature and quality of the controls in the various systems that exist within their Department. In this respect, given the

public nature of the allegations made at the time the Chief Executive Officer of the Department was clearly both responsible and accountable for ensuring that the procedural routines employed within the Planning Office and Planning Committee's remit were compliant. In the event of any suspected irregularity being identified or other concerns manifesting themselves the onus would be incumbent upon the Chief Executive Officer to report the matter to myself as Chief Internal Auditor or invite a specific review. As indicated in my statement of evidence to the Commission this did not occur.

Whilst the conclusion as it presently stands may logically flow to a series of recommendations within the Report I believe a key issue may inevitably be the level of resources available to the Division to fulfil the delivery of the Internal Audit Service. In the event that any comment or recommendation is being proffered in this vein I should like an opportunity to provide some further input with regard to the potential implications arising.

Therefore, should the Commission determine that the conclusion as drafted be retained I should request that the responsibility of the Accounting Officer to report "any irregularity" to the Chief Internal Auditor and specifically request an investigation as prescribed within Financial Regulations be more explicitly.

In relation to this response I would like to exercise the option provided to include this submission as an addendum to the Commission's report.

I trust my comments may add a degree of clarity to the role of both the Internal Audit Division and the Chief Executive Officer as Accounting Officer of the Department.

Yours sincerely

K C McGreal CPFA MAPSA
Chief Internal Auditor

10. From Mr C C Magee

1st Response

I refer to your letter of 6 May 2003.

[a) The draft report indicates that the Commission consider that you would have been aware of the developer's intention in respect of permanent housing from at least March 1991. You did not however read the Agreement for Sale considered and approved by the Planning Committee on 24th May 1991 but by your own evidence, you would not have allowed the Committee to approve it had you done so. The draft report concludes that failure to read the document was a serious misjudgement. This matter is considered in paragraphs 11.104 and 17.68 of the report.

b) The draft reports that you did not advise the Committee as you should have done at its meeting on 24th May; what they approved would contravene explicitly the permission given earlier in April; nor did you draw attention to the very unusual nature of the item which a Committee Secretary ought to have done. The draft report finds that you had sufficient experience to realise that such a document needed greater care and should not have been dismissed as trivial, and that your contention that the Committee had considered similar documents in the past is unsupported by any tangible evidence and, to that extent only, your evidence is noted as ambivalent. This matter is considered in paragraphs 11.55, 11.103, 17.61, 17.63, 17.65, 17.67 and 17.68 of the report.

c) The draft report refers to the reliance which you put on the controlling force of an earlier permission as misjudged and considers you to have been naïve about the significance of the decision being sought on 24th May 1991 and that you consequently failed to give the Committee appropriate advice. It is further reported that you had suspicions of the Agreement for Sale as your own informal meeting book record shows and you were apparently aware of the mess which approval would wreak but took no steps to avoid this, although you have accepted that it was your duty to do so. This matter is considered in paragraphs 17.67 and 17.68 of the report.

d) The draft report does find that you had a misunderstanding as to what should have been expected from you in your position as Secretary, and while this is attributed in large degree to the Government handling of your post, the draft report does find that a minimum duty was to bring identified conflict to the attention of members and officers; in this case the conflict was between Buyer's Guide phraseology and the planning condition limiting to tourist use, and it was not brought to attention by you. The draft report also considers that, as Secretary, you should have taken steps to ensure that all Planning Committee members were sufficiently informed so as to be in a position to give due consideration, with relevant documentation, to all applications and to understand appropriately the decisions which they were being asked to make, but they were not so informed. This matter is considered in paragraphs 17.57, 17.62 and 17.5 of the report.]

In the first paragraph of your letter it is stated that the draft Report contains criticism of my role in the matter of the irregularities associated with the development at Mount Murray and that the essence and effect of this criticism is set out in an attachment to the letter. In the second paragraph I am invited to make a written response to the criticism. The second paragraph goes on to state that the Commission may include my response in an appendix to the Report except where the draft Report has been amended to reflect the comments made.

I have to say that the comments I make below are of a general nature as I have only had sight of an un-named authors precis of the criticism levelled against me. May I suggest that it would have been more meaningful and constructive to receive an extract from the draft Report of any criticism of my role. Turning to the treatment of any comment I make, may I

suggest that where the Commission does not amend its draft Report my comments shall be included in the appendix to the Report.

Turning to the criticism set out in the attachment to your letter I would comment as follows.

In the 4 paragraphs set out in the attachment to the letter it is stated that I either did or did not do certain things. I would contend that in my evidence to the Commission I answered many questions by stating that I simply could not remember who said what to whom at various meetings, it being more than 11 years since the events had occurred. In the absence of the Commissions findings, I am unable to make a judgement on these statements.

The Report identifies a number of the duties of a Secretary that I failed to perform and finds that I had a misunderstanding as to what should have been expected of me as Secretary, a situation attributed in a large degree to the Government handling of the post. As I am not sure how Government's handling of the post of Secretary affected my ability to perform my duties and have no recollection of my contribution (if any) to the Committees consideration of this matter, it is difficult to comment on the Commissions statements.

I would contend that having performed the duties of Secretary to the Committee for a period of four and a half years by the beginning of 1991 I would have been well aware of the extent to which the Committee would permit me to perform the duties of the Secretary as envisaged by the Commision and that I would have had to have used my judgement not only as to when I considered that the Committee was in receipt of an unbalanced report from one of its Planning Officers but also as to the Committees wish to be advised by it's senior clerk on what it considered "planning matters". There would also be the matter of how my interjection might be taken by the Planning Officer concerned, although this did not usually concern me and would not have done so in this case.

I do not believe that it would have been possible to perform the duties of the Secretary as envisaged by the Commission at any time during my time as Secretary to the Committee as within the Planning Office there was simply insufficient resource to facilitate what might be termed an ideal. Despite the changes that have occurred within the Planning Office since 1991, I doubt that the administrative staff would be any more able to satisfy the ideal today than then.

In conclusion, having regard to the above, I find that I am unable to advance any argument to rebut the criticisms contained in the Commissions attachment.

I would ask that the Commission give consideration to the inclusion of this response in any appendix attached to its Report save where the draft Report has been suitably amended to address any of the matters contained herein.

Yours faithfully

C C Magee

2nd Response

Thank you for your letter of 30 May 2003 and enclosures. I am grateful for the extension of time to submit views thereon.

[Draft paragraphs 11.98, 11.99, 11.102 to 11.104 and 17.59 to 17.68 accompanied the letter of 30th May 2003.]

I have read the documentation supplied and I now have a much better understanding of the Commission's criticism of my role in the matter of irregularities associated with the development at Mount Murray.

I would comment on four of the criticisms as follows:

1. The production and distribution of Minutes

I can state categorically that during my time as Secretary draft Minutes were prepared and circulated to Members and Officers for consideration as a specific Agenda Item on the next appropriate meeting of the Committee.

2. Ownership/Sale of properties

I would like to make it clear that it was my belief that ownership was not then, and is not now, to the best of my knowledge, generally considered to be a planning issue, and that, in this context, my limited interest in such matters as the Buyers Guide and the Agreement for Sale is completely understandable.

3. Awareness of intention for permanent housing

Despite what my oral evidence may indicate, I remain far from sure that I was, at any of the relevant times, aware of the intention of the applicant to have the proposed dwellings occupied as permanent housing.

4. Evidence of serious disorganisation.

It seems to me to be unreasonable to conclude that there was serious disorganisation within the Planning Office based on my evidence and the views of one Planning Officer 10 years after the event, particularly when you consider that I was not asked to comment on the issues raised by the Planning Officer.

Generally, I am surprised and disappointed that the Commission should think it reasonable to reach such firm conclusions based largely on my recollection of events that occurred some 12 years ago.

I would ask that the Commission give consideration to the inclusion of this response in any appendix attached to its Report save where the draft Report has been suitably amended to address any of the matters contained herein.

Yours faithfully

C C Magee

11. Response from Mr B J Sinden

I thank you for your letter and attachment of the 6th of May, and also thank you for the opportunity to make a written response.

I should like to comment on the contents of the attachment as follows:-

[This matter is referred to in paragraph 11.4 of the report.]

(1) My report on PA 90/1842 referred quite properly to the number of units specified on the application form in response to question 5, i.e. 150 units, rather than to the vaguer, lower total of 120-140 referred to in the "Notes of Presentation".

[This matter is referred to in paragraphs 11.10 and 11.11 of the report.]

(2) At the Review of the Approval in principle, as far as I recall, the condition at issue related to the physical spread of the built development rather than to tourist occupancy, which condition had been accepted by the applicant. I suggest that, in these circumstances, it was understandable that officers and the Committee confined their consideration as they did.

[This matter is referred to in paragraphs 17.41 to 17.44 of the report.]

(3) I accept that the Planning Committee should have been made aware that permanent residential use was one of the proposed uses.

[This matter is referred to in paragraph 17.44 of the report.]

(4) My conjecture (paragraph (d) of the attachment) was meant to be helpful in painting a picture of the prevailing circumstances as I recalled them.

[This matter is referred to in paragraph 17.77 of the report.]

(5) Department of the Environment Circular 11/95 (The Use of Conditions in Planning Permissions) indicates, in paragraph 2, that

> "If used properly, conditions can enhance the quality of development and enable many development proposals to proceed where it would otherwise have been necessary to refuse planning permission."

I suggest that, accordingly, the practice of modifying applications by condition is not always flawed, and that it is more a matter of scale and of ensuring that the fundamental nature of the proposal is not changed thereby.

I understand that the Commission will consider and take into account these comments in preparing the final report. I should like my response to be included in the appendix.

Yours faithfully

B J Sinden
Development Control Officer

12. Response from Mr J M Watson

I should be grateful if you would convey the following to the Commission.

[This matter is referred to in paragraph 11.7 of the report.]

a) There is nothing sinister about an awareness that developers are always on the lookout to improve the value of their property by the acquisition of a more beneficial land use. Indeed it would be unusual for a developer not to try it on. Neither have politicians been naïve about this sort of pressure. It is par for the course. Viz. Current moves regarding the Groudle Holiday Cottages.

[This matter is referred to in paragraph 11.17 of the report.]

b) I would have had to have adequate time to read and understand the Buyer's Guide in order to report the relevant implications to the Committee.

[This matter is referred to in paragraphs 11.7 and 11.162 of the report.]

c) There may well have been weaknesses in the office but to talk of careless attitudes and a lack of professionalism is really putting it too strongly. It must be remembered that I had responsibilities other than planning, including the Island's mapping, architectural services, the maintenance of Government property and numerous other demands all of which had to be undertaken with very limited resources.
The culture of the office had to be pragmatic and practical as it could not afford the luxury of a sophisticated bureaucracy. At the Inquiry Mr Bradshaw appeared perturbed to discover that written reports on all plans were not circulated before meetings. It should be appreciated that the resourcing could not remotely be compared with an English County Council or even the Channel Isles. Without a full management survey it is unfair to make extravagant criticisms based on a single planning application out of the 50,000+ with which I have dealt in my 29 years.

[This matter is referred to in paragraph 11.68 of the report.]

d) I have no copy of my memorandum to the Chief Secretary but I do not think I implied that this was a frequent event, however it was not without precedent. Indeed I recall that there was such a substitution the first week of my arrival in 1964 by the then Secretary of the Planning Committee. You no doubt appreciate that as this is a Civil Service the Secretary is not under the instruction of the Planning Officer (in fact apart from two typists the technical side had no clerical staff whatsoever and as far as I am aware this is probably still the case.) Having said all this, I now understand that the practice is of dubious legality, but with respect I think it is rather hard to say that it reflects upon the quality of the planning office under my leadership.

[This matter is referred to in paragraph 12.25 of the report.]

e) I understand that there was some difficulty over the recording and discovery of plans as mentioned by Professor Crowe. Certainly in the early 90s we were in the throes of a complete move between buildings and were at the same time looking into the conversion of the visual record to G.I.S. The plotting of sites was carried out by only one technical officer, the storage and care of planning applications being the responsibility of the Secretary's staff. Confusion does arise under these circumstances, but to talk about if reflecting poorly on the management of the office at the time is really too sweeping.

[This matter is referred to in paragraph 11.143 of the report.]

f) I know that the first paragraph of Mr Vannan's letter was incorrect, but I did not become aware of that letter until the day of Professor Crowe's interview with me. I appreciate that it was copied to me so that it is assumed that I knew its contents and implications at the time, which to the best of my recollection I did not. Naturally I have to agree that I failed to prevent the issue of a false statement – but not wilfully.

g) I regret to say that although the organisation was far from perfect, I find the tenor of the criticisms sweeping, intemperate and hurtful.

I can only conclude by repeating my reply to Professor Crowe's report – 'It cannot be denied that a Head of Department bears a responsibility for actions carried out on his behalf, however I should not like it to be thought that I was party to an exercise in misinformation.'

Yours faithfully

J Malcolm Watson

13. Response from Mr P Willers

1st Response

Thank you for your letter and enclosure of 7th May received at this office on 14th May. I note that the Commission have extended the time for delivery of a response to Wednesday 4th June. I returned to the office on Monday 2nd June.

I cannot sensibly comment on the report in so far as it affects me unless and until I see the actual draft words. This resume can only be indicative and is subject to the predilections of the drawer.

The draft report is in existence and accordingly should be disclosed in full on a confidential basis. A copy has been requested but not provided. Comment otherwise is only on a pro-tem basis and must be subject to alteration to a greater or lesser extent when the report is actually published. So far as the report makes any criticism of Mount Murray Country Club, Mount Murray Country Club reserves it's right to refer the matter to the Courts both nationally and internationally on the basis that Mount Murray Country Club has been totally deprived of a fair hearing on any allegations made against it since it has had no knowledge of these allegations; it had no right to cross-examine any person on these allegations; it had no right to call witnesses to refute these allegations and it has not been able to appear before an independent tribunal. The Commission is Counsel, Judge and Jury and the allegations have never been framed.

My comments on the attachment enclosed with the letter are as follows:-

Point (a)

"The report concludes that a determined commercial organisation, acting within the law, persuaded the tourism department to support and ensure consent for its proposals for a development which comprised hotel, leisure and sports facilities and housing which was to have approval for permanent use."

The housing element had consent for tourist purposes and residential purposes, not for residential purposes only as you state. It is a simple commercial fact that had the Developer not had the support of the Tourist Board, whose role, given the dire state of the tourist industry at the time (1990/1991), was to give that support, the entire development would not have taken place and the Isle of Man tourist industry would be dead.

"During the obtaining of planning approvals and the construction of the development there were continuous pressures from the developer and the tourism department and unique decisions and courses of action, always favouring the developer."

First the report should note that housing could not be commenced until the hotel complex was complete. That requirement did not favour the Developer. The Isle of Man had achieved its more than £12 million investment in new tourist facilities before any housing could be commenced.

Secondly, the report should note that the Buyers Guide accompanies the very first Mount Murray planning application, under Section 12 of the Planning Application Form, listed as item 8, and was sent to the three relevant parties; the Secretary to Planning Committee, the Clerk to Santon Commissioners and the Clerk to Braddan Commissioners. Plainly each of these parties should have read the Buyers Guide and taken it into account.

Thirdly, the report should note that the Commission did not (I believe) call before it the Clerk to Santon Commissioners to question him about the first planning application and the Buyers Guide; it did not ask Mr Lewin, Clerk to the Braddan Commissioners, why he had not obtained a copy of the Buyers Guide and read it on day one and why he had not put forward his views to the Planning Committee at that time.

Fourthly, the report should note that the reference in the Planning Permissions to "occupation in accordance with the requirements of the Buyers Guide" did nothing more than encapsulate in a few words what would otherwise have taken many words. The Buyers Guide was not a hidden document it had been available to all relevant parties from day one. The copy produced by Peter Karran, MHK to the Commission of Inquiry, was simply of a different format to that which first accompanied the Planning Application. The only change was the name of the development.

Fifthly, the report should note that the Developer had no dealings whatsoever with the Planning Committee; that the Planning Committee sat in private (it still does); that the Planning Committee had access to all of the planning files including the Buyers Guide; that the Planning Committee is an arm of Government and could give what approval it chose to, which it did.

Sixthly, the report should note that the only person who spoke at length about pressures was Mr Lewin, Secretary to Braddan Commissioners. Mr Lewin did not speak with the Developer at all and only spoke of "pressures" within the Government itself. Mr Lewin's role in the planning process was limited only to commenting on the planning application and in this regard he failed to even obtain, read or comment on the Buyers Guide. Otherwise he played no part in the planning process or any other process relative to Mount Murray.

Seventhly, the report should note that the main Government Ministers and Officers in the planning development process did not seek to justify their actions by relying on "continuous pressures" from the Developer.

Eighthly, the report should set out the best examples of these continuous pressures from the Developer which the Commission rely upon to justify this statement and who such pressures adversely affected.

Finally, as to the point that the decisions always favoured the Developer the report should note that if the Developer had not obtained a consent in respect of which the Developer was content the £12 million plus investment in the tourist industry would not have taken place. It is only this sort of private high risk investment which generates economic growth and this it did for the Isle of Man tourist industry from that time forward.

"The result of the forces applied to the government by the developer, allied to internal weaknesses within government, was the government could not handle the pressures applied to it on this matter and it succumbed, and in this sense was corrupted, leaving effective control of the tourism and planning departments on this matter to the developer."

The report should set out the forces applied by the Developer which it relies upon for this conclusion and given full detail of these forces and who such forces adversely affected.

The report should note that the Commission of Inquiry did not question any witness to the effect that:

a) the Government could not handle the pressures applied to it by the Developer and it succumbed;

b) the Government was in this sense corrupted; and

c) consequently the Developer had effective control of the Tourism and Planning Department.

And further no witness other than Peter Karran MHK made any statement to this effect.

The report should define what it means by “corrupted” and should make it very clear that it does not mean criminal corruption by the Developer or otherwise.

Point (b)

“The report finds that the result is that there is now a highly unsatisfactory residential development at Mount Murray because it was permitted for a purpose which the decision makers were unable to unwilling to recognise publicly, and they approved it on a basis of tourism which has not come to pass, and is a basis which is quite unfitted for permanent residential use. It would have been possible for permanent residential use to be achieved through open procedures, but this risked refusal and the incremental or covert route was taken.”

The report should note that the Developer provided to the Planning Department, the Santon Commissioners and the Braddan Commissioners, all the documents with the first application upon which the Developer later relied, including the Buyers Guide. There was nothing covert in those documents; they were entirely open and self-explanatory; they only had to be read by the various receivers whose job it was to read them to be plain and apparent. The same applies to all subsequent planning applications.

The report should note that the failure of the Planning Department, the Planning Committee, the Braddan Commissioners and the Santon Commissioners to be bothered to read and understand the application documents including the Buyers Guide has nothing whatsoever to do with the Developer, it simply cannot justify the Commission’s phrase “covert route”.

The report should note that the collective amnesia of the Ministers and Officers of Government Departments involved, resulting in the failure of any person in Government to acknowledge the effect of the planning application documents, has nothing whatsoever to do with the Developer; it cannot be attributed to any covert action by the developer.

The report should state the grounds upon which it relies to justify its phrase “covert route”.

The report should note that there has been no evidence of any nature from any party before it which could possibly support any allegation of corruption in the sense of money changing hands between the Developer and any member or officer of Government to obtain the permissions granted by the Planning Department and should make it clear that no crime has been committed.

The report should note that it is it’s own person view that the housing development at Mount Murray is wholly unsatisfactory; this is a wholly subjective judgement and others have an entirely opposite and equally valid view.

The report should note that the Commission has made no inquiry of the house owners at Mount Murray as to whether or not their property is used for tourist purposes and that even if it is not, that all such property has planning permission for that use, and, if the owner so wishes to do so now or in the future, is able to use their property for tourist purposes without further planning permission.

The report should note that this is it's own subjective conclusion and that it received no factual evidence to support this conclusion from any person.

Point (c)

"The draft report finds that shortcomings in the infrastructure of the estate can be traced almost wholly to the fact that design and development was permitted on the widely understood but incorrect basis that all housing units were relative to the overall tourism concept."

The report should note that the standards in planning terms which would apply to a private wholly tourist use estate should not be materially different from those of a private wholly residential estate and if this is not the Commission's view on what basis and why?

The report should note that the Developer was not asked to make any changes at the planning or construction stage to the proposed and permitted infrastructure.

The report should note that the Commission of Inquiry received no evidence to the effect that the infrastructure would or should have been different.

"The applicant company was therefore able to lay out and build to standards significantly inferior to those that a permanent residential estate would have required, and as the estate was private, the normal involvement by government departments in ensuring proper standards did not occur."

The report should note that the Commission of Inquiry received no evidence and asked no questions as to what the 'significantly inferior' standards which applied to a tourist estate were, against those which otherwise would have applied to a residential estate; which Government Departments were involved and what were their standards; how their standards were not met and if not fully met why they did not ask for them to be met and why they still have not done so.

"The draft report comments as follows:
"We also consider it appropriate to note that an experienced developer (as was Mount Murray Country Club and predecessors), at such point as the decision was made to emphasise sales for permanent residence rather than lettings for tourism, would know that the infrastructure in place would be inadequate and unacceptable."

The report should note that it did not receive any evidence that Mount Murray Country Club and predecessors were experienced residential developers.

The report should note that it did not receive any evidence that sales for permanent residence were emphasised or that the Developer "knew" that the infrastructure in place would be inadequate and unacceptable and nor did it question Mr Willers to this effect or suggest what aspect of the infrastructure was inadequate or unacceptable.

The report should state in what way the infrastructure would be inadequate and unacceptable and upon whose evidence they relied.

"Nevertheless this deficient standard of estate infrastructure, unsuited to permanent residents' needs continued without any material attempt to improve, save when requested to do so after Professor Crow had reported."

The report should state the alleged deficiencies.

The report should note that whilst it describes *"deficient standard of infrastructure unsuited to permanent residents' needs"* the Commission received no evidence to this effect and should also explain why these deficiencies were not unsuited to housing for tourist purposes only.

The report should explain why, in its view, the Developer should make a material attempt to improve these alleged deficiencies.

The report should not that the first time the Developer received any suggestion of alleged deficiencies was in 2000 when the Crow Report was published. The Developer was asked to remove certain trees which it had previously left in road islands or against or adjacent to the estate road to maintain visual amenity. It was said that the location of these trees might hamper a fire engine. These trees were removed. The Developer had not been asked before then to do this by any Government Department at the time of construction or on completion in 1994 or thereafter and accordingly had no reason to be aware of the same.

The report should note that the second request by Professor Crow that a pedestrian access be created from the estate on to the New Castletown Road was not a request made by any Government Department at the time and was a request that the Developer could easily have implemented had it been asked to do so. In the event, at the time Professor Crow made his request the Developer only had one location under its control at which it could give pedestrian access into the estate from the New Castletown Road, and this was adjacent to the front lake. The Developer has since been informed in writing by the Department of Transport on 29th August 2002 that it must close this newly created access; the Developer was also asked to decrease the camber on the small bridges over the stream, which it will do when it puts the final surface on the estate roads.

The report should confirm whether or not it agrees with Professor Crow's Report in this regard and if different explain how, why and on what basis.

"It is reasonable to say that the developer should be criticised for this; nevertheless it must also be recognised that it did not act unlawfully and is a commercial organisation which means that it has primarily commercial rather than social concerns, so it is not altogether surprising that it took the course of actions, or inactions, which it was allowed to follow."

The report should set out the reasons for this conclusion and acknowledge that it's conclusion that the Developer should be criticised is not based upon evidence from any witnesses other than those promoting this Inquiry and should set out the social concerns which the Commission of Inquiry rely upon and the evidence it has received of the same.

Point (d)

"The draft report records that with regard to Murrays Lake Grove you said that the approved plan would be in the planning department and that if it was not, it was because they have lost it."

The report should note that it is not for the Developer to provide copy paperwork, which has been lost by the Planning Department. It is self-evident that the Planning Department had been consulted and were aware of the development at Murrays Lake Grove; the fact that the Developer was able to provide plans showing Murray's Lake Grove location for the housing there; that the Developer laid out the roads to include Murray's Lake Grove; that the Developer was able to show that the name "Murray's Lake Grove" had been submitted to the Government before the houses were constructed; that the Developer had, on any basis, consent for four houses which were not 'additional houses' but were part of the number of houses in the approval; that the location of those four houses in Murray's Lake Grove was always known to the purchasers of houses numbered 64 to 72 (including Mr Vakil) from the

Developer; that the Developer did not build the houses in Murray's Lake Grove; that the builder of those houses was J G Kelly Homes who obtained their revised planning permission for the style of houses to be built on plots 1-63 and plots 73-75B which comprise Murray's Lake Grove; that this revised planning application would have been accompanied by an estate layout plan, which indicated the existence and location of the four houses (73-75B) in Murray's Lake Grove; that the revised consent constituted a full approval for the location of Murray's Lake Grove; that when the Developer sold plots 1-63 and 73-75B inclusive to J G Kelly, having received payment for 65 plots, the Developer had no further interest in the four plots in Murray's Lake Grove; that when the houses in Murray's Lake Grove were constructed by J G Kelly and approved by the Government Building Control Department, no comment was made by that Department that those houses were in the wrong place; that when the purchasers of those houses sought and obtained local Government searches, those searches did not disclose that those houses were in the wrong location and that, in respect of all the above matter, the Commission of Inquiry did not ask any witnesses any questions whatsoever.

The report should also note the conclusion drawn by Professor Crow as to these houses and say whether or not it agrees with that conclusion and if not why not.

Point (e)

"The draft report finds that the plans accompanying the main detailed approvals at Mount Murray were wholly unsatisfactory to secure proper standards of amenity, whilst there is no record of the plans produced later, and to which the developer works, ever having been accepted and approved, or even given informal approval by Mr Vannan."

The report should state what were the *"proper standards of amenity"* not secured and upon whose evidence the Commission have relied to draw this conclusion. I cannot recall any evidence to this effect.

The report should state the evidence for its conclusion that no acceptance of or approval or inferred approval was given to the plans to which the Developer worked and if no such approval was given what action the relevant Government Department could have taken, should have taken, and the explanation given by witnesses as to why no action was taken.

Point (f)

"The draft report refers to Mr Gubay, on whose behalf you appeared when he gave evidence to the Commission. The following points are noted or concluded in the draft report. Mr Gubay is, and was at all relevant time, an experienced property developer. He accepted that he was involved with the construction of Mount Murray but really only as contractor. He denied that he was involved in the development other than as contractor. The draft report does not accept this denial. First, because it is unlikely that someone of Mr Gubay's experience and self evidence developer skills would not know or ever get involved without knowing who his company, Fairport, was contracting with, as he claimed in defence of his denials."

The report should emphasise that Mr Gubay was and is not, as this paragraph seems to suggest, under some form of enquiry, and that I appeared on his behalf. Mr Gubay voluntarily agreed to appear before the Commission of Inquiry not being compellable and I simply advised him from time to time where the nature of your questioning was not relevant other than on the basis of an unaccountable and seemingly insatiable need to know the private business dealings of Mr Gubay, whether or not he was involved in the development and if so, how; this is simply of no material relevance to the Inquiry and it is a measure of the Commission's inability to come to any meaningful conclusion that it even lowers itself to this

level. Fairport received the whole of the construction costs in advance and Anglo International gave a counter-guarantee as to the performance of Fairport. There was thus no risk to Fairport or Anglo International. Mr Gubay made no denial and simply declined to answer the Commission's questions as to his involvement other than as the builder, since these questions had nothing whatsoever to do with the Government's handling of the Crow Report.

"More importantly and persuasively, when Mr Gubay was asked whether the Mount Murray land was assembled through companies he controlled, you intervened. On being asked a point of clarification by the Commission you explained how land was generally assembled by the companies with which you were involved. You said, and you were not referring here in any specific way to Mount Murray, that land assembly was done through nominee companies for logical reasons, and that the group which did this was Anglo International, that being the main operating company for operating property development. But Mr Gubay was a shareholder and director in Anglo International Group Limited and was one or the other or both of other similarly named companies."

On the question of land assembly, any competent advocate would be able to tell how the Mount Murray Estate was assembled, which companies were involved and who the recorded directors and shareholders were. Mr Gubay was neither a director nor a shareholder of any of the companies involved in the Mount Murray land.

The report should note that I intervened, as I did on a number of occasions, on the basis that the questions had nothing whatsoever to do with the Government's handling of the Crow Report. The exchange was as follows:

"MR LEWSLEY: Mr Gubay, was the land assembled through companies that you controlled?

MR WILLERS: Again I think, Mr Lewsley, I would like to interject here. Mr Gubay has been through all of these statements in his statement setting them out and then ended up by saying that is something which is nothing to do with the remit, that Mr Gubay will not be answering questions, and that will be his answer however you press him on it."

The report should note that the point of clarification started before and ended after this. The exchange was as follows:

"THE CHAIRMAN: If Mr Willers wants to take the opportunity.

MR WILLERS: I would be quite happy to. My recollection is that we were having a general discussion about whether or not we used nominee companies to acquire land for development purposes. And I explained to Mr Crow that it was a fairly common practice in the development industry to do that, particularly if you were doing a land assembly, because as soon as people became aware that one named person was buying up lots of land, the land in between suddenly went up in value and you could find yourselves held up in a ransom position, whereas if the land was being sold and assembled for various different companies that wouldn't be so obvious and you would end up being able to create a land assembly at a market price which would enable you to do a development, whereas if you did it all in your own name you would probably end up at a price which you couldn't carry out the development and it would all be pointless. So I explained to him that it was fairly common practice in the development industry to do that and we did that from time to time in the UK and we had also on the odd occasion used that in the Isle of Man.

THE CHAIRMAN: I understand that, it has a great deal of logic about it, if I may say so, but how do you believe that professor Crow misunderstood that so that he understood it to mean that, to use his words, Mr Gubay was the anonymous puller of strings?

MR WILLERS: Presumably because as he says in his statement when you were questioning him on this, he ended up by saying this was the inference that he drew, and that of course was the inference that he drew but it wasn't the correct inference. He drew an inference which wasn't there to be drawn. Because he was there visiting me about Mount Murray we had been discussing about various practical aspects of Mount Murray, we then had a general chat about various things and whether or not this was something that we would do and I explained to him it was something that we would do and something we had done and then he drew the inference.

THE CHAIRMAN: Thank you Mr Willers.

MR SOLLY: Chairman, could I just ask a point for clarification if I may?

THE CHAIRMAN: Certainly

MR SOLLY: Mr Willers, you were using the expression "we" when you were explaining. Who was the "we?" You were talking to Professor Crow on your own behalf, you were using "we", who was the "we?"

MR WILLERS: "We" was the company that I worked for. We were the group. We were, I think at the time it was Anglo International, it still is. It was Anglo International. He came to our offices which is known as Anglo International House because that's the main operating company that we were operating for property development."

Given these exchanges the report should explain how it has been able to rely on this exchange to justify its views and conclusions.

The report should note that both Mr Gubay's ownership of shares in Anglo International Group Limited and directorship in Anglo International Group Limited and of other similar named companies has absolutely no relevance to Mount Murray or the Government's handling of the Crow Report.

Point (g)

Noted.

Could you kindly request the Commission to include this response in the appendix.

Yours sincerely

Peter A Willers

2nd Response

Mr Willers thanks you for your letter and enclosures of the 5th instant concerning the above.

Mr Willers is away and has put the enclosed comments together from long distance. He will be back in the office some time on Monday, 16th instant.

Section 13: Infrastructure Concerns

I INTRODUCTION

13.3 Professor Crow looked at infrastructure through 1990/92 eyes. The Commission have looked at the same through the eyes of 2003.

13.4 There permeates throughout the Commission's Report on Infrastructure a series of conclusions based on an entirely false premise. The fact is that the requirements from all Governmental Departments, including Planning, Highways, Drainage, Transport, Building Byelaws and the like are exactly the same whether or not the housing at Mount Murray was purely for tourist purposes or wholly residential purposes. The only facilities not common throughout is the provision of schooling. There is no suggestion that schools in the area have been a difficulty because of Mount Murray.

II THE PERCEPTION OF THE INFRASTRUCTURE AUTHORITIES

When reading the Commission's Report, it must be borne in mind that there is no tangible difference between the development of an estate of housing for tourist purposes as against the development of an estate of housing for residential purposes. It is not a question of the perception of the infrastructure authorities; it is a simple question of fact and law. This should be borne in mind when reading the Commission's Report which is littered with exculpatory references based upon this fallacy.

III FIRE SERVICE ACCESS

13.11 As to off-road parking provision, the Commission should state what the level of parking applied to Mount Murray and then what, in it's opinion, was the appropriate level in 1991/2 that should have been applied to the Development. The bland statement that it is *"below normally required car parking standards"*, is easy to make but entirely without merit unless there is specific information to support such a statement. All of the detached properties have permission for double garages and added to this is the ability to park in the access to the double garage; each property can accommodate at least three or four vehicles. It is difficult to see how this is *"below normally required parking standards".*

13.12 – 13.23 The evidence of Mr J R Cliffe from the Fire Service is illustrative of the problem the Commission have run themselves in to by extending their remit. Mr Cliffe's evidence is that the land at Mount Murray does not comply with *"Approved Document B of the Building Bye-Laws".* The answer is "so what?". That document was not in existence when Mount Murray was being designed, approved and built and the Fire Service, who were one of those consulted at the time when permission was being sought, made no proposals that the layout should be altered. They did not mention *"Approved Document B"* because it did not exist. Accordingly the comments of Mr Cliffe have no relevance whatsoever as to what should or ever could have happened at the time.

The Hump-Back Bridges

Professor Crow, in his Report, does not say (para. 3.4) that 'when the Fire Service arranged for one of it's appliances to visit the Estate that appliance grounded on the bridges', it simply said, "The ground clearance on the bridges is insufficient." I informed the Chief Secretary that we would decrease the gradient on the bridges when we put the final surfacing on the roads. I did this in 2000 and since then no-one, in particular Mr Cliffe, has informed me that this needs to be done as a matter of urgency due to safety concerns for residents at Mount

Murray. Accordingly I cannot accept that his is an urgent requirement. If it was, why has not Mr Cliffe raised this with me since 2000?

The Strength of the Bridges

The Commission, in 13.15, make reference to strength of the bridges being unknown *"… even in November 2000".* In November 2000, Fire Appliances went across the bridges without difficulty. Subsequently the Department of Transport tested the strength of the bridges and their strength *"is satisfactory".* It is simply irrelevant to mention the strength of the bridges at all.

Fire Hydrants

The layout of the Fire Hydrants is the responsibility of the Isle of Man Water Authority. Mr John Leece of the Isle of Man Water Authority, in a meeting at Tromode Road on 17th September 1991 with the Developer's Engineer confirmed this. No hydrants were lost, they were always in position and there are exactly the right number of them. Again, this is another non-point, which does not merit any reference.

Trees

Following Professor Crow's Report and a request from the Chief Secretary, I agreed to arrange for the removal of a number of trees indicated on a plan sent to me. I could only arrange for those trees that were within land owned by us to be removed and this I did. The other trees were on land under other ownerships and I informed the Chief Secretary of those details by letter dated 26th November 2001.

Crawling Pace

It is suggested that because of the humpback bridges and road layout at Mount Murray that Fire Appliances may onl;y approach houses at a crawling pace. I do not accept that. Furthermore, since Mount Murray was developed the Government have, on many residential estates in and around Douglas and elsewhere, constricted access to those estates by narrowing the road at access points and reduced the speed of traffic through those estates by numerous speed-humps. Mr Cliffe was not asked any questions whatsoever about the adverse effect of these type of highway safety improvements on the speed at which fire appliances can get to a burning house. There are so such restrictions at Mount Murray.

Pedestrian Access to the A5 – 13.24-13.26

The DHPP could have had any number of access routes from Mount Murray to the A5 in 1990/91. None were asked for and none were provided.

The Draft Braddan Parish Plan – 13.27 & 13.29

The Commission are looking at Mount Murray in 2003 (as are Sanderson Associates). In 1990, the conditions that currently prevail simply did not exist. It is easy to be critical over what happened 13 years ago with 20:20 hindsight and the knowledge of today's conditions. Since 1990- there has been a dramatic increase in traffic-flow from the south of the Island passing by Mount Murray and in addition there has been a significant advance in highway engineering modelling. It is unfair to expect this or any development to be fully compliant with all the requirements and improvements that have arisen in the 13 years since it was originally permitted.

20.9 Mr McCauley is correct, the Commission's Report is of historic relevance only, otherwise Tynwald might as well pack up and let the Commission run the Island. There are no serious consequential problems alleged or at all.

19.17 The Commission have not carried out any meaningful or proper enquiry to make these recommendations. They have simply relied upon untested evidence from witnesses and their own views. The first being a most unsatisfactory process and the second being no better than their lay views on technical matters in respect of which they have no expertise.

V SEWERAGE CONDITION & DRAINAGE MATTERS

13.3 The correct context regarding the sewerage condition and drainage matters is that it is founded in Condition 13 of the First Consent for Development at Mount Murray which required *"All foul sewage must be treated on site such as to produce an effluent complying with the standard of 10/10/5, and details of the proposed method of achieving this standard must be submitted together with the other reserved matters referred to in (2) above."*

Condition 6 reads, "The details of sewage treatment disposal required by Condition (13) of PA90/1842 must be for the subject of further consultation with the DHPP (Drainage); final details after this consultation must be submitted to, and approved by, the Committee prior to the commencement of any development". The Commission should state plainly in what way the layout for the sewers could not comply with the Department's requirements of public sewers and why the disposal route (which had not yet been agreed) might have to be altered.

13.31-13.32 This comment shows the Commission's lack of commercial understanding. No developer would build housing that did not have drainage facilities. It would be commercial madness. A simple change to enable to developer to start the housing, such as by site clearance and foundation construction is simply common sense to enable to developer to make as rapid economic progress as possible, when he has all his heavy plant and machinery on site, in conjunction with concluding an agreement with the Drainage Department concerning sewage disposal. The fact is, the more construction carried out by the developer, the greater bargaining power the Drainage Department has in procuring the best drainage facility. The situation is that the drainage plant at Mount Murray provides the cleanest effluent on the isle of Man and is either one of the few or perhaps the only plant which produces effluent compliant with European Commission Standards.

13.33 The Commission do not appear to understand that you cannot occupy any new building on the Isle of Man unless there is a Completion Certificate. If there is no drainage, there can be no Completion Certificate. The point is self-evident to those who know.

13.34 This is simply paranoia on behalf of the Commission. There is no incremental change in the Planning Consents to the detriment of any party. It is common practice throughout the UK for developers to seek changes to planning conditions where such conditions contain irrelevant or unnecessary commercial restrictions in the Developer progressing. To suggest that a planning authority who amends conditions is committing an 'irregularity' is simply nonsense. Rather than use the bland words, *"weakening public sector control"* should say what public sector control the Department gave up.

13.35 I cannot comment on this because I have not seen the relevant text.

13.36 It is illuminating to read Section 3 of Mr Vakil's Appendix D. Seemingly, Mr Vakil, a long-term complainant at Mount Murray, obtained a rate reduction by alleging flooding from the construction of patios behind his house and flooding on the road in front of his house (probably due to a blocked road drain). It is this which is described by the Commission as *"a materially adverse situation of flooding resulting from inadequate drainage infrastructure."*

15.43 This states that highway and surface water drainage systems have not been tested. This is simply not true. All pipe work was tested and approved by the Building Inspector before the trenches were backfilled. No Building Inspector was called by the Commission to give evidence.

VI THE ROAD IMPROVEMENTS FINANCE ISSUE

The Commission devote paragraphs 13.37 to 13.52 to this matter. The reality is that there is no issue. The matter has been drummed up by the Commission. The facts are simple. Off-site highway works in 1990/91 were the responsibility of the DHPP. At Mount Murray, in order to get such works carried out at an earlier point in time, the Developer agreed to pay 50% of the cost of the same. The Developer agreed to carry out the works and accept payment from the DHPP at the point in time when it had the money in its budget. This is the only occasion ever, in the experience of David North, Minister of DHPP, when the Developer has paid any money at all.

VII ACCESS TO FACILITIES

13.54 Mr Hannay knew, or could have know, the true user position. On 14th August 1991 a copy of, *inter alia,* the Buyer's Guide was sent to the Department of Highways, Ports & Properties – Technical Services Division at the Sea Terminal, Douglas. Presumably Mr Hannay and his Department did not read it either. Being a private development there is no obligation on the Department with regard to snow clearing or gritting and the like. Quite what 'signposting' would add is difficult to understand. All of the schoolchildren who live along the A5 and go to Castle Rushen High School in Castletown have to cross the A5 either in the morning or the evening, depending on the side upon which they live.

13.55 It simply cannot be right to say that what the Department would have wished to see in 1990/91 is now, in 2003, proceeding at least in part. The Department were main players in the Planning Permission and there is no documentary evidence whatsoever to support the current views that they put forward. They are simply self-serving and fit in with the Commission's ideas.

13.56 The DHPP rejected a roundabout at the junction of the A5 and C21. The DHPP rejected the provision of islands in the A5 around the C21 junction. The DHPP rejected a new access to Mount Murray off the A5. Mr Wilson was asked nothing about these matters. The Developer obtained Planning Permission for on-site shopping facilities under PA94/1060 and that plot is in the ownership of J G Kelly. Oil tanker deliveries, coal deliveries and even shopping deliveries are as much a valid requirement for tourist housing as for residential housing.

VIII DESIGN STANDARDS WITHIN MOUNT MURRAY

Paragraphs 13.59-13.65 are all based upon the fallacy that the road network at Mount Murray will be offered up for adoption. Mount Murray is a private estate and will remain so. Accordingly, the whole of this section is irrelevant.

IX GENERAL COMMENT ON INFRASTRUCTURE CONCERNED

13.67 I cannot comment on this since I have not seen the text of Section 19.

13.68 I have already commented on this.

Moving on to the three-page draft Report extracts, my further comments are as follows:

2.1 I have no further comment than in my letter of 4th June 2003.

1.3 As above.

2.5 As above.

2.7 As above.

12.31 In addition to my response under point (d) of my letter of 4th June 2003, the Commission's Report should make reference to paragraph 4.6 of Professor Crow's Report, which confirms the confusion in the Planning Office, which could easily result in them having lost this particular plan.

12.33 I have no comment further to my letter of 4th June 2003.

12.53 In order to justify the extremely sweeping statement that Mount Murray is laid out and built to standards significantly inferior to those that a permanent residential estate would have required and that as the estate was private, the normal involvement by Government Departments in ensuring proper standards did not occur, the Commission should first set out what the standards are in relation to a tourist estate as opposed to a residential estate. The Commission did not and can not do this, simply because it is entirely false to say that there is a difference. There is not. To then go and draw further conclusions from such a false premise is mot unfortunate. On the question of the occupation of the houses at Mount Murray, less than 10% were built by the Developer. The remaining 90%+ were built by individuals and, in respect of all houses at Mount Murray, they may be occupied for a range of uses. I have not received one single complaint from any plot purchaser at Mount Murray that the estate's design was incompatible with the form of occupancy that they chose. Accordingly I have no reason to have any concern whatsoever.

17.16 The Commission should make clear in it's report that Mr Gubay submitted a statement prior to appearing before the Commission in which he confirmed that he would not be giving any answers to the Commission concerning whether or not he was the Developer of Mount Murray. He stated this on the basis that the Commission's remit was not to discover who the Developer at Mount Murray was. Accordingly, the denial referred to as being in transcript Day 27 – Pages 6 and 8 is not a 'denial' as suggested by the Commission in its report, it is simply confirmation that he was not answering the question either way.

LEGISLATIVE BUILDINGS
ISLE OF MAN
IM1 3PW

Our Ref: ARB

25th June 2003

The Secretariat
Commission of Inquiry into Mount Murray
23 Athol Street
Douglas
Isle of Man IM1 1LB

Dear Sirs

Re: Allan Bell MHK - Mount Murray Inquiry - Draft Report

Thank you for your letter dated 23rd June 2003.

I am very disappointed to note that although the Commission allowed itself 5 days to consider my Response to the Draft Report, it only allowed me until 4.00 pm yesterday to consider its detailed reply to my Response, and the amendments that it has made to the Report. As the Commission is aware, I spent much of yesterday at a sitting of the House of Keys, and yet I understand that the Commission will not allow me an extension of time until 9.00 am today (an extension of 90 minutes in terms of normal business hours) to submit a response to its amendments to the Report. These amendments contain further unwarranted criticisms of me, to which I have had no proper opportunity to respond. This is simply unfair, and a breach of the principles of national justice. However, in view of the fact that the Commission appears to have written its Report before it heard my evidence on 12th May 2003, I have no confidence that the Commission would give proper consideration to my response to its amendments to the Report, in any event.

Further, it appears to me that the Commission has not considered my substantive Response in an objective manner, but has simply tried to justify itself, in the light of the analysis of evidence annexed to my Response, which demonstrates that many of the Commission's findings are not supported by evidence.

I find the Commission's approach to evidence very disturbing. At sub-section (d) of the revised section 17.36 of the Draft Report, the Commission alleges that that part of the Draft Report which criticises me was written "within hours of hearing Mr Bell's evidence" on 12th May 2003. However, I finished giving evidence at about 4.15 pm on 12th May 2003, and received the Draft Report at my home in Bride in the first post the following morning, which indicates that the Draft Report must have been posted to me at about 5.00 pm on 12th May 2003. Clearly, therefore, this part of section 17.36 is wholly inaccurate and exaggerates the consideration given by the Commission to my evidence on 12th May 2003. Indeed, it is clear to me that the Draft Report criticising me had been written before I gave detailed evidence on the 12th May 2003. This is wholly improper. It is also disingenuous for the Commission to state at section 17.36(b) that "Mr Bell has appeared at the Commission on two occasions,

giving his responses to matters which are in the Report", when the Report had clearly been written before I gave evidence on the second occasion.

I do not intend to respond in detail to the revised sections of the Draft Report contained in your letter of 23rd June 2003, because the Commission has simply not allowed me sufficient time to do so. However, I would make the following broad comments:

1. At revised Section 17.36(e) the Commission claims that sub-section 3(vii) of the Draft Report gives ample reasoning for its findings at Section 11.48 of the Draft Report. However, I have never been provided with a copy of sub-Section 3(vii), and it is inherently unreasonable and unfair for the Commission to rely upon parts of the Draft Report which have not been disclosed to me to justify its conclusions, especially where the reasoning that has been disclosed to me has been demonstrated to be inadequate;

2. At revised Section 17.36(e) the Commission claims that paragraph 12 of the analysis of evidence contained at Annex 1 to my Response ignores Sections 11.120 to 11.130 of the Draft Report. It clearly does not, however, since paragraph 12 states that "the *Draft Report* does not provide any references to those parts of my Mr Bell's evidence from which this 'impression' was apparently drawn" (emphasis added). Both my advisers and I stand by our view that it is unfair and inappropriate for the Commission to base such a serious conclusion merely upon an unsupported "impression";

3. At revised Section 17.36(f) of the Draft Report the Commission refers to the evidence of Mr Vannan at page 56 of the transcript of Day 20. It is instructive to look at Mr Vannan's evidence on that day. At page 27, Mr Vannan gave the following evidence:

> "Mr Lewsley What I'm wondering is, would it be right to say that there was strong pressure on Officers of the Planning Department from the Department of Tourism and their Minister at around this time, March 1991, to make sure that this development goes ahead?
>
> Mr Vannan We were certainly well aware that the Department of Tourism wished us to proceed.
>
> Mr Mcleod That's not an answer to the question.
>
> Mr Vannan I was just thinking that sir. Pressure, I suppose, in a political sense rather than direct to Officers. We were well aware, as I say, of the background to this, and to the need identified by the Department of Tourism. To that extent, there was pressure, yes. But I can't recall any direct, individual pressure from any Officer nor, for that matter, any politician to ourselves.
>
> Mr Lewsley But were you aware of pressure, in general terms, from the Department of Tourism and their Minister?
>
> Mr Vannan Yes.
>
> Mr Lewsley And that pressure was felt by Officers, one of which was you at the time.

Mr Vannan I think we were all aware that there was, using the word pressure, pressure to have this development proceed.

Mr Lewsley So you did, as Officers, feel that pressure in about March 1991?

Mr Vannan I think we all did yes."

It is clear from the passage above that Mr Vannan had fully answered the questions put to him about pressure being placed upon him by the Department of Tourism, and in a normal tribunal the matter would have been left at that. Subsequently, however, at page 56 of the transcript, Mr Lewsley chose to put a number of highly leading questions about me to Mr Vannan, in circumstances where I was not present, and not represented. I believe that the transcript shows that, in effect, Mr Lewsley put words into the mouth of Mr Vannan:

"Mr Lewsley So, are you saying that you wrote that first paragraph, which you knew was wrong, under pressure from your Chief Executive and the Minister of Tourism?

Mr Vannan I was pressured yes.

Mr Lewsley Are you saying that you wrote that first paragraph under pressure from your Chief Executive and the Minister for Tourism?

Mr Vannan In effect yes."

Accordingly, there is a clear conflict between the evidence given by Mr Vannan in response to straightforward questions at page 27 of the transcript and the evidence given by Mr Vannan in response to highly leading questions at page 56 of the transcript. I cannot understand why the Commission would lead a witness in this way in relation to persons who were not present or represented, and then choose to rely on such unsatisfactory evidence, particularly where it conflicts with earlier evidence given by the same witness;

4. At revised Section 17.36 (f) the Commission also seeks to justify its finding at Section 11.133 that I was aware of the original version of the draft Agreement for Sale by reference to Section 3.51 of the Draft Report. However section 3.51 simply states that a draft Agreement for Sale was sent to the Department of Local Government and the Environment on the 22nd May 1991, and that on the same day there was a meeting between Mr Spence and Mr Mitchell of the Department of Tourism (although not, apparently, with anyone from DOLGE). On the following day Mr Spence wrote to Mr Mitchell, but did not enclose a copy of the draft Agreement for Sale with his letter. Accordingly, there are simply no grounds for the Commission to conclude that I was aware of the contents of the draft Agreement for Sale, (and I had no such knowledge), and the Commission's reliance upon Mr Spence's letter dated 23rd May 1991 is typical of its cavalier approach to evidence throughout;

5. It would appear to me, therefore, that the Commission:

(1) failed to interview either Mr Spence or Mr Mitchell, two of the three key witnesses in this matter, (the third witness, Mr Savage having sadly died), and yet still drew detailed conclusions of fact in the absence of this key evidence;

(2) asked at least one witness leading questions about me when I was not present or represented, and then relied upon answers given to those leading questions which conflicted with earlier evidence given by the same witness;

(3) committed itself to producing its Report in two stages, when evidence given in relation to Part Two of the Report, relating to tax matters, will clearly be relevant to matters in issue in Part One, such as my knowledge (or lack of it) of the developer's intention to use the Mount Murray site for permanent residential occupation. Evidence available to the Commission in relation to tax issues shows that as late as 1994 I considered that this was a tourist development. Accordingly, I am far from certain that the Commission had all the available and relevant evidence before it when it prepared Part One of the Report;

(4) wrote its Report before I gave detailed evidence to the Commission on 12th May 2003;

(5) has drawn conclusions which are not justified by the evidence, as demonstrated by the analysis of the evidence relied upon by the Commission contained at Appendix 1 to my Response;

(6) imposed extremely limited time scales upon me within which to respond to the criticism of me contained within the Draft Report;

(7) refused to allow me a fair opportunity to respond to the amendments to the Report made by the Commission, in breach of the principles of natural justice.

6. In these circumstances, you will understand why I consider that the way in which the Commission has conducted this inquiry is deeply flawed, and why I am not prepared to accept the unwarranted criticism of me contained within the Report. As I explained in my Response, I do not claim to be above criticism, and those areas in relation to which I accept that valid criticism can be levelled against me are set out in my Response. For the reasons set out above, however, I do not accept that much of the Commission's criticism of me is in any way valid.

Please confirm that this letter will be include in Annex 4 to the Report.

Yours sincerely

A R Bell MHK