

## **PART E**

### **13. INFRASTRUCTURE CONCERNS**

#### **i) Introduction**

- 13.1 Professor Crow reported on these concerns in chapter 3 of his report. The items which he reported upon were first, arrangements for completion and maintenance of roads and footpaths, and maintenance of communal spaces; second, the standard of the roads, including design standard, but with particular reference to Fire Service access; third, pedestrian access to the A5 Castletown Road and a bus stop; fourth, street completion and lighting; fifth, surface water drainage and sewage; and last, refuse collection.
- 13.2 He made some recommendations in respect of his chapter 3.<sup>1</sup> Of these it need only be mentioned here that his recommendations included steps intended to alleviate and resolve the Fire Service and pedestrian access problems. We deal with these issues.
- 13.3 We have approached infrastructure concerns in a different way from Professor Crow. We have identified matters which do not appear in his report and which we find have significance in terms of government handling of matters which do fall out from the irregularities to which he drew attention.
- 13.4 Overall, in simple terms, we see problems which have arisen because the housing element at Mount Murray was viewed by the regulating authorities and other authorities as tourist provision, and construction and development design was permitted on this basis. Had it been understood from the start that this was to be, or could be, purely or substantially a permanent residential development, then there would have been different design requirements from government departments, which would affect the quality of life of the residents. This is amply demonstrated from the evidence sufficiently summarised in this report and particularly this section which we accept and which demonstrates that there is no misconception on this matter as claimed by Mr Willers in written representation.<sup>2</sup> We have a clear understanding of what happened in 1990-1992 and why it did, and also of the continuing and consequential problems which are still evident to any impartial observer who has considered the evidence and looked at the facts on the ground.
- 13.5 In addition to these matters we found that there were, in infrastructure matters, further examples of unusual features in actions of government departments which again favoured the developers, and which have deserved our attention, investigation and comment.
- 13.6 Accordingly we have concentrated our attention in this section upon issues connected with access, sewerage provision, road improvement and its funding, services, facilities and amenities, and road design.

#### **ii) The Perception of the Infrastructure Authorities**

- 13.7 At the relevant time, so far as this section of our report is concerned, the government department primarily involved with the delivery of infrastructure was the Department of Highways, Ports and Properties. We heard evidence from a number of senior

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<sup>1</sup> Document C6 Crow Report paragraphs 5.16 to 5.19

<sup>2</sup> Annex 4

officers from the department who were involved at the time of the approval and early stages of construction of the Mount Murray development,<sup>3</sup> and we are satisfied from the evidence which was given and provided to us that it was a common understanding that the development was for tourism purposes and not for permanent residential use.<sup>4</sup> Given the circumstances which we have identified earlier in this report, this perception, although not, in the event, correct, is perfectly understandable and not really susceptible to criticism. Mr Willers has claimed<sup>5</sup> that it is a fallacy to look at the perception of this department because the matter is simply one of fact and law. We disagree. It is not perpetuating a fallacy to listen to and accept evidence from the relevant officers who give rational and logical evidence on oath that they would have sought different infrastructure requirements had they understood that the development was to be for substantially permanent residential use, one of whom went so far as to say that he would have sought refusal of the application had such requirements not been met. A flavour of this evidence is seen in sub-section (vii) below.

- 13.8 The Department of Local Government and the Environment was directly concerned with one of the issues but we have already sufficiently explained their perceptions.

iii) **Fire Service Access**

- 13.9 This is appropriate for consideration as the first substantial infrastructure concern, because the residential element of the Mount Murray estate contains an element of risk which is greater than would otherwise have been the case had there been a proper and full understanding and appreciation that this was to be, or was permitted to be, a permanent residential housing development or if the planning office had accepted the views of the Fire Service as given on consultation.
- 13.10 As indicated in the introductory passages in this section of our report, Professor Crow addressed difficulties for the Fire Service which arose from the standards of the roads.<sup>6</sup> He identified such problems as fire appliances being able to get to many of the properties only at a crawling pace. He identified the reasons as ground clearance over bridges (they would have grounded we were told),<sup>7</sup> narrow roads with very tight radii and obstruction from trees, and turning areas being frequently blocked by parked cars. He hoped that the first two difficulties would be resolved at once, though he saw no immediate remedy for the third point, the turning difficulty.
- 13.11 Our site inspections indicated to us that off road parking provision especially in the Village and adjacent areas appeared to be below the higher standard originally sought by the Department of Highways, Ports and Properties (on consultation) although not in respect of the larger detached dwellings in the woodland area and on Fairways Drive. Parking issues can reasonably be considered to be relevant to the turning difficulties referred to by Professor Crow and we refer to them later. It is sufficient to note here, as we have, that the Department of Highways, Ports and Properties did, on consultation, request a higher parking standard.<sup>8</sup>

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<sup>3</sup> Mr Cooil Q38, Mr Wilson Q26, Mr Hannay Q40, Mr Teare Q41, Mr Winstanley Q39

<sup>4</sup> Evidence of Mr Cooil Q38 Transcript Day 19 page 68; Mr Wilson Q26 Transcript Day 16 page 34; Mr Hannay Q40 Transcript Day 19 pages 33-35; Mr Teare Q41 Transcript Day 19 page 85

<sup>5</sup> Annex 4

<sup>6</sup> Document C6 Crow Report paragraph 3.4

<sup>7</sup> Evidence of Mr Cliffe Q27 Transcript Day 21 page 43

<sup>8</sup> File A page 24

- 13.12 Mr J R Cliffe, Divisional Officer in the Isle of Man Fire and Rescue Service, produced a written statement and also gave oral evidence to us.
- 13.13 Mr Cliffe's concluding words to us are, we find, of much importance and significance. He identified a number of problems for the Fire Service on the Mount Murray estate. Then, he was asked<sup>9</sup> whether it was his view that the people at Mount Murray could be much safer, so far as fire was concerned, if these problems were not present. He replied that all he could say was that there was less chance of the Fire Service being delayed in attendance if the roads were in accordance with what he described as "the approved document". He was then asked what difference time does make in the ability of the Fire Service to have an effective presence at the fire scene. It is the answer he made to this which is of especial importance and this answer deserves setting out as he put it:<sup>10</sup> "Well, the expression fire kills in minutes, smoke kills in seconds is applicable. The first four minutes of any fire are very, very important to anybody who is in the house. There's a lot of variables: is the door shut, do you have a smoke alarm, is there an internal staircase that comes down in to a living room. There's so many variables, but, in the first four, maybe five, minutes of a fire is when you get the big build ups of heat and smoke and noxious fumes, and the sooner we can get there, the sooner we can get the people out. It's as simple as that."
- 13.14 The 'approved document' and the problems require explanation. First, the approved document. Mr Cliffe explained<sup>11</sup> that there is a document known as Approved Document B of the Buildings Byelaws which sets out a requirement for access for emergency vehicles, including the Fire Service vehicles. Second, the problems. If those byelaws had been complied with Mr Cliffe confirmed that his Service's access requirements would be met. However, access was not in accordance with these byelaws at Mount Murray; Mr Cliffe said that they had not been properly enforced.<sup>12</sup> The enforcing authority is not the Fire Service, but, he believed,<sup>13</sup> the Department of Local Government and the Environment. At our request Mr McCauley of that department commented on these matters. He confirmed that the building byelaws do apply to a private development, however those in force at the actual time did not have specific provision for access for fire vehicles. Approved Document B is now the correct basis for considering building regulations applications but this position was not brought into effect until 1993, so it would not be fair to say that the Department of Local Government and the Environment did fail to enforce the byelaws. Mr Willers has maintained in written representation<sup>14</sup> that Mr Cliffe's evidence was not relevant on the basis that Document B did not apply at the time the housing permissions were given. The position on this document is not disputed, as just stated, but access for fire appliances is not made unsatisfactory simply because of its issue. The need for later action to remove trees and lessen gradients over bridges bears out the unsatisfactory nature of the initial provision, and
- 13.15 Nevertheless, it remains relevant to look at the detail of this matter. Mr Cliffe explained the inadequacies of access for fire vehicles into housing at Mount Murray.<sup>15</sup> They have been explained by Professor Crow as indicated above. We can add that access will be further restricted as the trees mature, and that the

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<sup>9</sup> Evidence of Mr Cliffe Q27 Transcript Day 21 page 55

<sup>10</sup> Evidence of Mr Cliffe Q27 Transcript Day 21 page 55

<sup>11</sup> Evidence of Mr Cliffe Q27 Transcript Day 21 pages 39 & 40

<sup>12</sup> Evidence of Mr Cliffe Q27 Transcript Day 21 pages 41 & 42

<sup>13</sup> Evidence of Mr Cliffe Q27 Transcript Day 21 page 41

<sup>14</sup> Annex 4

<sup>15</sup> Evidence of Mr Cliffe Q27 Transcript Day 21 page 42 seq

bridges' weight limit, even in November 2000, was unknown, even though a minimum of 12.5 tonnes is required for a basic fire appliance.

- 13.16 An important aspect of these matters is that right from the first application in principle (PA 90/1842) the Fire Service had asked for access for appliances to be taken into account.<sup>16</sup> There was however no mention of this in the initial approval, so the Fire Service asked for a review, but even approval on review did not mention access requirements.<sup>17</sup> This can be graphically contrasted with condition 7 attached to the approval under PA 91/0753 for the motel issued on 6<sup>th</sup> September 1991<sup>18</sup> which specifically prevents development commencing before details are approved for arrangements for site access for fire fighting appliances as well as a number of other fire safety requirements. This will no doubt have been included because an hotel was subject to different statutory provisions.<sup>19</sup> The failure to accept the request for fire appliance access does not seem to us to be reasonable. Mr Cretney, chairman of the Planning Committee, in written representation<sup>20</sup> on the issue, considers it unfair to ask him to comment on this as it was not put to him orally, and, as to substance, says that such matters, which he describes as "exclusively planning matters", are usually evaluated by planning officers and the ensuing advice normally accepted by members. This, in a way, illustrates the Committee's unfortunate philosophy of leaving so much to officers, particularly here on the very important matter of human safety, but does not make the decision appear to us to be any more reasonable. Mr Cretney has of course had full opportunity to make in writing whatever representation he wished to make to us.
- 13.17 Professor Crow also referred to a shortage of hydrants.<sup>21</sup> These are not within the jurisdiction of the byelaws referred to.<sup>22</sup> Mr Cliffe informed us that hydrants had been found on the main circulation roads since Professor Crow's report, and that there were just enough of them. He would like to see more hydrants on other roads at Mount Murray as well, but any action on that is to await the outcome of this Inquiry.<sup>23</sup> It is not necessary to say more on this.
- 13.18 Following on Professor Crow's report and recommendation that the Fire Service and Department of Transport continue to confer as to detailed requirements for access improvement,<sup>24</sup> there has been liaison as recommended. Joint recommendations have been agreed by the Fire Service and the Department of Transport. These were produced by Mr Wilson, Development & Planning Manager of the Highways & Traffic Division of the Department of Transport in March 2001. They are identified on the drawing which is Inquiry document C41. It consisted of identification of trees which should be removed, and weight testing of the bridge. The latter has been done and is satisfactory but some of the trees still remain.
- 13.19 It was interesting to hear Mr Cliffe's comments on these recommendations. He said<sup>25</sup> that they would improve access greatly but they still did not comply with

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<sup>16</sup> Mr Cliffe Document Q27 3<sup>rd</sup> page

<sup>17</sup> Mr Cliffe Document Q27 3<sup>rd</sup> page

<sup>18</sup> File A page 68

<sup>19</sup> Evidence of Mr Cliffe Q27 Transcript Day 21 page 39

<sup>20</sup> Annex 4

<sup>21</sup> Document C6 Crow Report paragraph 3.6

<sup>22</sup> Evidence of Mr Cliffe Q27 Transcript Day 21 page 44

<sup>23</sup> Evidence of Mr Cliffe Q27 Transcript Day 21 pages 45 & 46

<sup>24</sup> Document C6 Crow Report paragraph 5.18

<sup>25</sup> Evidence of Mr Cliffe Q27 Transcript Day 21 page 46

Approved Document B of the building byelaws. He went on to say “It’s a half way house for want of a better term. It’s the best we can do with what is here.”

- 13.20 He explained further difficulties. He said that byelaws would provide hammerheads or turning circles at the end of cul de sacs, but that it was not quite like that at Mount Murray. This could result in delays in going to some other call.<sup>26</sup> He also explained what he agreed was a very important point.<sup>27</sup> He referred to the availability of parking spaces and the very narrow nature of the roads at Mount Murray. It required only one vehicle to block a road completely, with the consequence that the appliance has to be left some distance from the fire being attended with the result of very much less efficiency than otherwise would be the case.
- 13.21 However, Mr Cliffe did make another material point; that is that he would wish to see the same provision of access and facilities for the Fire Service whether the development was for tourist purposes or for permanent residential use. Although Mr Cliffe’s evidence should be regarded as being of general importance, so far as our remit is concerned it focuses on the apparent failure of the planning approval to take on board the views of the Fire Service on consultation.
- 13.22 As to the consultation procedure, Mr Cliffe was asked for the Fire Service’s view as to the working, satisfactorily or otherwise, of the planning controls and planning system on the Isle of Man, and he replied in respect of the process as it stands at the moment.<sup>28</sup> He said that the Fire Service recommends specifically on housing schemes that access be provided in accordance with Approved Document B and presumes that the appropriate Building Byelaws Officer will carry that through. He had earlier explained that the Fire Service did examine all plans of relevance and then comment to the Planning Committee. That Committee could follow that comment or not and, if the Fire Service feels strong enough, it can seek review or even appeal, as it has done on occasions. Mr Cliffe did believe that there were some holes in the system - this was basically that, notwithstanding this facility to go to appeal, even if the Fire Service felt very, very strongly on a relevant issue, they could not, with the exception of buildings which fell within the Fire Precautions Act 1975, ensure compliance with their views; they could only put forward requests. The Fire Precautions Act does not apply to individual houses, nor, as a matter of general interest, to offices and shops.
- 13.23 As already noted, we regard these issues in this sub-section as of particular importance, affecting as they do the safety of citizens. Such relief as can be provided should be implemented as soon as feasible.

**iv) Pedestrian Access to the A5**

- 13.24 In his chapter on infrastructure concerns Professor Crow reported complaints from residents that there was no direct pedestrian access to the bus stops on the A5 Castletown Road.<sup>29</sup> He further reported that one of the developers had assured him that his firm would be willing to provide this if requested.<sup>30</sup> He recommended that such provision, complemented by bus facilities, be considered by relevant

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<sup>26</sup> Evidence of Mr Cliffe Q27 Transcript Day 21 page 48

<sup>27</sup> Evidence of Mr Cliffe Q27 Transcript Day 21 page 47

<sup>28</sup> Evidence of Mr Cliffe Q27 Transcript Day 21 pages 49 – 51 seq

<sup>29</sup> Document C6 Crow Report paragraph 3.7

<sup>30</sup> Document C6 Crow Report paragraph 3.7

departments at the earliest opportunity<sup>31</sup> because he had concluded that such access to connect the “village” area to the Castletown Road, the A5, should be provided.

- 13.25 In April 2001 officials of relevant government departments were brought together to consider how residents’ problems at Mount Murray might be addressed. These problems included the recommendation in the last preceding paragraph. Although it appears from the government file<sup>32</sup> recording these discussions between departments that there were some initial steps to take the recommendation forward, the file does not reveal how they progressed. Nevertheless, correspondence between the end of August 2002 and late October 2002 does explain how the recommendation was addressed in relation to implementation. This correspondence shows that Mount Murray Country Club did construct a footpath access to the A5 on the request of the Chief Secretary.<sup>33</sup> Site inspection shows this to be a helpful facility for part of the development.
- 13.26 However on the 29<sup>th</sup> August 2002 the Department of Transport served notice on the Mount Murray Country Club requiring them to close off the footpath where it adjoined the A5. The reason given was that the footpath resulted in vehicles being parked on the A5 contrary to road safety. It was suggested that if there was not planning permission for such a path, consideration should be given to removing it. Mount Murray Country Club have refused to close the path. The Department of Transport was monitoring the position as at January 2003.<sup>34</sup> It appears that there has been an insufficiency of communication between government departments on this issue, and we would find it surprising if a safe and acceptable solution could not be achieved in discussion between the relevant departments. However, apart from any perceived highway safety problem on the A5 as a result of the new path, site inspection suggests that bus lay-bys could not be provided in that vicinity and that it has not been provided in a position which particularly is of value in providing access for the “village” area. Accordingly, some consideration should be given to an additional pedestrian access closer to the A5/C21 junction and we refer to this in our recommendations. Site inspection also revealed considerable danger for both pedestrians and vehicles at this junction. We saw that pedestrians crossing the A5 after alighting from buses had to run to escape danger from vehicles. We also noted that the position of the bus stops, allied with the right turning facility into the C21 and limited forward visibility allowed by the incline in the road, means that dangerous conditions are present for road vehicles. We witnessed several instances of drivers having to make late avoidance movements in these difficult conditions.
- 13.27 With regard to these matters, we consider it appropriate to draw attention to the representations (dated 14<sup>th</sup> April 2003) made on behalf of Mount Murray Country Club Limited concerning the draft Braddan Parish Plan into which there is a public inquiry with an opening date of 16<sup>th</sup> June 2003. We comment further on these representations in our final conclusions (section 20) but it may be noted here that the representations seek to make the case for the release of a further 18.2 hectares of land at Mount Murray for residential use located adjacent to the existing housing including part of the existing golf course.
- 13.28 Consideration of such a release must of course be a matter for the local plan inquiry, the decision being for the Department of Local Government and the Environment in the light of the Inspector’s findings for ultimate approval by Tynwald. The relevance

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<sup>31</sup> Document C6 Crow Report paragraph 5.19

<sup>32</sup> Residual Issues File F28

<sup>33</sup> Letter Dept of Transport to Mount Murray Country Club 29.8.2002

<sup>34</sup> Letter Department of Transport 16.1.2003

of the representations for this part of our report lies in the fact that in respect of highway and related pedestrian access and safety matters, they wholly reinforce the concerns we have expressed earlier on these matters and the type of actions we consider need to be taken to address them. The representations draw specific attention to the significant number of traffic movements generated at peak by the existing site,<sup>35</sup> and identify factors which themselves clearly identify risks, both to traffic and pedestrians, which exist at the junction of the A5 and the C21.<sup>36</sup> They refer to the (existing) requirement for service and emergency vehicles access into the site as being the “major concern”,<sup>37</sup> and state quite specifically that distances to work especially due to “lack of footpath connections and the proximity of the bus stops”, also “involving a dangerous crossing over an extremely busy road “are detrimental to the use of other modes of transport.”<sup>38</sup>

13.29 The Commission accepts that traffic conditions and highway engineering modelling have changed materially since 1991. It is also acknowledged that the representations made on behalf of Mount Murray Country Club are in the context of proposals for further residential development, but the matters referred to in the immediately preceding paragraphs, particularly the poor pedestrian access to and from the estate and the high risks to pedestrians using the A5/C21 junction are wholly a reflection of problems created by existing, not proposed, development. This report seeks to address these matters in terms of immediate action to which we refer in our recommendations in section 19.

**v) The Sewerage Condition and Drainage Matters**

13.30 It is contextually appropriate to set the scene by referring to a letter dated 10<sup>th</sup> September 1991 from the Department of Highways, Ports and Properties. This letter expressed dismay at the approval of application PA 91/0753 notwithstanding its request for deferral pending further sewage disposal considerations. It was said that the unfortunate consequence of approval was that the layout for the sewers could in no way comply with the department’s requirement for public sewers and the disposal route might have to be altered.<sup>39</sup> The details of these consequences are not set out in the letter and are not material to the point we make, but it does need to be noted that there was, on construction, entirely satisfactory effluent at Mount Murray from the very start. In this regard we are pleased to note the information provided on effluent in the written representation<sup>40</sup> by Mr Willers. The contextual significance of the letter of 10<sup>th</sup> September 1991 is that approval was granted notwithstanding one of the government department’s asking for deferral of approval until the drainage situation, a basic consideration, could be resolved. From the letter it appears that the request was either ignored or not given sufficient weight even to contact that other department for further discussion. This was self evidently inappropriate.

13.31 In section 3 of this report we explained<sup>41</sup> how a perfectly normal planning consent condition covering detailed sewerage treatment and disposal requirements changed significantly as the approvals progressed in 1991 from overall approval in principle to full permissions. The change was subtle, gave a significant benefit to the developer,

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<sup>35</sup> Evidence of Sanderson Associates to the public inquiry paragraph 5.1, Mr Karran Document Q50

<sup>36</sup> Evidence of Sanderson Associates to the public inquiry sections 2 and 5 Mr Karran Document Q50

<sup>37</sup> Evidence of Sanderson Associates to the public inquiry paragraph 5.6, Mr Karran Document Q50

<sup>38</sup> Evidence of Sanderson Associates to the public inquiry paragraph 6.1.4 Mr Karran Document Q50

<sup>39</sup> File A page 80

<sup>40</sup> Annex 4

<sup>41</sup> Paragraphs 3.42, 3.63, 3.65 & 3.66

followed the specific wording proposed with some asperity by the developer<sup>42</sup> and was passed by the Planning Committee with no comment or indeed outward awareness that this change, with its material effect, had occurred. The chairman of the Committee has made written representation<sup>43</sup> on this, as he has been given full opportunity to do, and appears to confirm our findings as to the Committee's role in this matter.

- 13.32 We asked witnesses how this had occurred. Mr Vannan agreed<sup>44</sup> that he had changed the condition on 4<sup>th</sup> October 1991 from its former normal form to that which we now discuss. He was unable to explain why he had done this. He did not dispute that the effect of the changed condition was that the developer was allowed to start building houses before it had actually been finalised what was going to happen to the sewage.<sup>45</sup> We have already drawn attention<sup>46</sup> to the advantages thus given to the developer in the sense of his ability to apply pressure on the planning authority to accept the sewage proposals put forward by the developer. Mr Willers in written representation<sup>47</sup> has said that allowing the developer to start is simply "common sense" and that the more construction that is carried out, the greater the bargaining power of the department. The Commission does not consider this to be the normal approach and self evidently neither did the Planning Committee when imposing the original condition.
- 13.33 There was a further related oddity at the Planning Committee meeting on the 4<sup>th</sup> October 1991. The minutes of that meeting<sup>48</sup> indicated that the Committee had resolved that there be no occupancy of any structure until the Department of Highways, Ports and Properties had indicated their concurrence with the drainage conditions. This would have provided some balance to the position of the respective parties on this matter. But the requirement did not appear in the issued conditions. Mr Vannan was unable to explain to us why this was the position.<sup>49</sup>
- 13.34 The significance of this issue is that it is part of the overall circumstances and of the incremental change in the planning consents. It was yet again an unusual happening in the sense that it was quite different to the way in which such a matter was usually handled in a development proposal. Such unusual happenings, out of the ordinary or unique decisions, have occurred time and time again. We do not accept the contention of Mr Willers in his later representation<sup>50</sup> that changing planning conditions in a fundamental way is common practice throughout the UK. Nor is it common practice to fail to include a condition resolved by a Planning Committee as one which should be attached to the issued permission. This is what happened here. This is an irregularity amongst many others in the handling of the applications by the government. It is part of the circumstantial evidence which helps lead us to our overall conclusions, but it is also direct evidence of unusual actions favouring the developer and weakening public sector control, and without given explanation.

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<sup>42</sup> File A pages 96 & 98

<sup>43</sup> Annex 4

<sup>44</sup> Evidence of Mr Vannan Q32 Transcript Day 20 pages 102 - 104

<sup>45</sup> Evidence of Mr Vannan Q32 Transcript Day 20 pages 102 & 103

<sup>46</sup> Paragraph 3.66

<sup>47</sup> Annex 4

<sup>48</sup> File A page 105

<sup>49</sup> Evidence of Mr Vannan Q32 Transcript Day 20 page 104

<sup>50</sup> Annex 4



- 13.35 It is contextually relevant to refer back<sup>51</sup> to the oddity relating to drainage matters where the Department of Highways, Ports and Properties apparently became informal agents for Braddan Parish Commissioners without the minister or the department's Chief Executive knowing about it, notwithstanding its uniqueness, and the officers having given uninformative accounts of the event. As related in paragraph 3.71 above it is also an issue in respect of which pressure was applied by the Department of Tourism.
- 13.36 There is a further relevant point on drainage. Professor Crow found there to be no problem with surface water drainage. The evidence before us demonstrates a different situation. On 16<sup>th</sup> November 2001, well after Professor Crow produced his report, the Rent and Rating Appeal Commissioners reduced by 5% the rating list gross value of each of numbers 69 to 71 Murrays Lake Drive because of the adverse effects of flooding. There was run-off of storm water into the road drainage which had proved inadequate with the result that flooding affected these properties.<sup>52</sup> As stated in the Commission's reasons, "there had been a run off of storm water into the road drainage which had proved inadequate with the result that the gardens of both properties were flooded." There was no reference by the Commissioners to blocked drains, as might be implied from written representation by Mr Willers.<sup>53</sup> This decision indicates that there was a materially adverse situation of flooding resulting from inadequate drainage infrastructure. We refer to further adverse evidence regarding drainage at paragraphs 13.64 and 15.43 below.

**vi) The Road Improvements Finance Issue**

- 13.37 Relevant planning permissions had conditions relating to highway improvements. For the purposes of this sub-section it is sufficient, subject to the matter at the end of this sub-section, to look at condition 14 of the permission in principle which was issued after review on 16<sup>th</sup> April 1991, requiring highways improvements to the junction of the A5 and the C21 roads, and condition number 4 of the permission issued on 6<sup>th</sup> September 1991<sup>54</sup> giving full approval to the first phase of the resort including the 60 bedroom motel with associated roads. This latter condition concerned the widening of the C21 between the Castletown Road and the main entrance to the Mount Murray development. These works were known as stage 1 works.<sup>55</sup> There was also a stage 2 of the works that related to the sports hall,<sup>56</sup> but we are here concerned only with stage 1.
- 13.38 Mr B W Hannay, Director of Highways and Traffic in the Department of Transport (formerly the Department of Highways, Ports and Properties), gave evidence before us, and produced substantial correspondence.<sup>57</sup> He explained the general nature of the stage 1 works. The previous standard of the C21 was of a minor country road standard which would only be suitable for occasional traffic and occasional heavy goods vehicles. The department had two concerns, the first being the construction stage and the consequential large amount of construction traffic, heavy vehicles and so on, and the second being the ensuing ongoing usage by members of the public, once the construction stage had been completed, visiting the hotel or development. These concerns required a higher standard of road than there had previously been.

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<sup>51</sup> Paragraphs 3.68 seq

<sup>52</sup> Mr Vakil Document Q28 WS6 (D) paragraph 9

<sup>53</sup> Annex 4

<sup>54</sup> File A pages 55 & 68

<sup>55</sup> Evidence of Mr Hannay Q40 Transcript Day 19 page 6

<sup>56</sup> Evidence of Mr Hannay Q40 Transcript Day 19 pages 2 & 3

<sup>57</sup> Evidence of Mr Hannay Q40 Transcript Day 19 pages 1 & 2

The actual works involved widening of the roadway and footway, provision of foundations, and ancillary matters.<sup>58</sup>

- 13.39 Mr Hannay told us about the stage 1 works costs. There had been a budget estimate cost of £152,000 and the out-turn costs can be regarded as £240,000. Mr Hannay explained to us that this large cost over-run was an unusual event. Normally, he told us, the budget estimate should be greater than the out-turn costs.<sup>59</sup> Mr Hannay was able to give us an explanation of this.<sup>60</sup> He identified the reasons mainly as being items that had not been considered in the original estimate and which had been based on the assumption of the existing road remaining with just widening and an overlay. In the event there were found to be no foundations on the existing road, so these had to be provided; kerbing was provided and other items. There is nothing in this cost over-run in itself which has any significance for our investigations.
- 13.40 The funding was ultimately arranged as 50% to be paid by the government and 50% to be paid by the developer. There was an agreement between the government departments of Tourism and Transport that they would split the cost between them, 50/50.<sup>61</sup> It is the history of this division of funding which has particular interest for us. There was a dispute as to who should fund the improvements. Mr Hannay explained the position in short form.<sup>62</sup> The Department of Transport's position was that it would object to the development at Mount Murray unless there were improvements to the C21 road. The Department of Transport's initial position was that it could not fund those improvements. Ultimately, however, a compromise was arrived at whereby the government funded half the costs (Tourism 25% and Transport 25%) as previously explained. We will return to the events leading to that ultimate position very soon, but it is relevant to draw attention to Mr Hannay's explanation.<sup>63</sup> We will also return to the general question of funding the costs of such infrastructure.
- 13.41 Mr Hannay explained that there was not always set criteria but that the Department of Transport, in assessing whether an agreement for funding should move forward, did work within guidelines constituting the public interest, value for money, and other benefits which would accrue to the public at large or the department. There was no written appraisal of such public benefits in the present case, but Mr Hannay did explain what he recollected them as being. There were, he said, safety benefits for the general travelling public beyond the benefits to the developer. In particular, these related to the junction between the A5 and the C21, turning traffic, main road traffic, pedestrian facility, visibility, provision of a footway and drainage, all providing a benefit to through and other traffic. Looked at in isolation that may well appear rational and reasonable, and we have no reason to doubt that these matters did amount to public benefit over and beyond benefit to the developer.
- 13.42 However, we turn to the correspondence.<sup>64</sup> It seemed that the Minister for Tourism, Mr Bell, became directly involved in this issue also. On the 2<sup>nd</sup> March 1992 the developer's engineers, Muir Associates, wrote to the Department of Highways, Ports and Properties and referred to a meeting a week or two earlier with Mr Bell and the representatives of the Department of Highways, Ports and Properties. The letter pointed out that the developer had indicated that he had no reason to expect that he

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<sup>58</sup> Evidence of Mr Hannay Q40 Transcript Day 19 page 16

<sup>59</sup> Evidence of Mr Hannay Q40 Transcript Day 19 page 19

<sup>60</sup> Evidence of Mr Hannay Q40 Transcript Day 19 pages 18 & 19

<sup>61</sup> Evidence of Mr Hannay Q40 Transcript Day 19 page 20

<sup>62</sup> Evidence of Mr Hannay Q40 Transcript Day 19 page 24

<sup>63</sup> Evidence of Mr Hannay Q40 Transcript Day 19 pages 25 - 28

<sup>64</sup> Mr Hannay Q40 Correspondence Minister/Contractor/Developer

should finance the costs of the improvements. The letter also drew attention to the statement by the Department of Highways, Ports and Properties at that meeting that it had expected the developer fully to finance the construction of the road, and that there were no facilities available to that department within budgets to fund this work. Mr Bell was then said to have asked the Department of Highways, Ports and Properties to review the schedule of costs and to look more closely at the department's requirements, so that there could perhaps be some reduction in the extent of the works, making a reduction in the total costs and providing the ability for the government to fund those works.

- 13.43 The next relevant letter to draw to attention is dated the 19<sup>th</sup> May 1992 and is from the Department of Highways, Ports and Properties to the Planning Committee. It was pointed out in the letter that there was a problem with the developer over who should pay for the highways improvements, and that the department did not have funds for such improvements as it was not included in the three year revenue programme. It was suggested that agreement should be entered into between the Department of Local Government and the Environment and the developer, with the developer carrying out the necessary work at their expense. Until these matters were resolved the Department of Highways, Ports and Properties would continue to object to planning applications.
- 13.44 Then next we see on the file a letter dated the 26<sup>th</sup> May 1992 from the Drainage Engineer within the Department of Highways, Ports and Properties written to the minister for that department. The opening sentence says: "The information has been passed on to me that the Tourism Minister has the impression that the [Mount Murray] development is being delayed because of spurious and delaying tactics by the Drainage Section." The allegation was most strongly refuted. In the penultimate paragraph it was claimed that the Drainage Section was being "placed as piggy in the middle by the developer, the Tourist Board and the adjacent land owners..." Strong objections to the Minister for Tourism's comments and allegations were made. This letter and the previous letters referred to, and the corroboration provided by Mr D North below,<sup>65</sup> indicate to us again that further pressure was being applied by the Minister for Tourism in favour of the development.
- 13.45 By memorandum and letter of the 27<sup>th</sup> May 1992 and the 28<sup>th</sup> May 1992 respectively, it can be seen that resolution was in sight. The developers had offered 50% of the cost of the road improvements; the Department of Tourism had offered 25% of the costs which would be payable to the Department of Highways, Ports and Properties, which would itself pay the other 25%. It was recommended to the minister that the Department of Highways, Ports and Properties promote a scheme for improving the A5 junction in the 1993/94 estimates encompassing the requirements necessary for the improvement of the access to the Mount Murray development. The tourism contribution and any residue from the developer could then be applied to the completion of improving the C21 to appropriate standard. Matters thereafter proceeded on this basis and the road improvements were constructed.
- 13.46 The significance of this sub-section so far is simply the further illustration of pressure applications by the Minister for Tourism and that payments were made by the taxpayer, through government, towards the provision of infrastructure necessary to accommodate the Mount Murray development. Mr North, the then responsible Minister, confirmed to us that these road works were necessitated by the hotel and its accompanying facilities development.<sup>66</sup>

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<sup>65</sup> Paragraph 13.48

<sup>66</sup> Evidence of Mr North Q52 Transcript Day 30 page 38

- 13.47 Mr North gave us a helpful explanation of general practice and understanding prevailing in 1992 in relation to the general question of funding of such infrastructure, as well as information on the specific circumstances which concern us.<sup>67</sup> The Commission has, of course, also noted and taken into account Mr Willers' comments on this sub-section made in written representation.<sup>68</sup>
- 13.48 Mr North informed us that following the resolution of the funding contributions he had agreed that his department's request for a review on the sewage treatment disposal should be withdrawn. Though he assured us that there was no connection between the two events, he also confirmed that there was pressure from the Department of Tourism based on concern for the timetable for the development.
- 13.49 More particularly, Mr North expressed the opinion that his department ought to be congratulated in having saved taxpayers money, and had done well in achieving a 50% contribution. He based his opinion on his understanding of the law of the time which was that no developer/contractor in the Isle of Man could have any condition, planning or otherwise, imposed on them either to improve or upgrade any roadworks outside the curtilage of their site.<sup>69</sup>
- 13.50 We disagree with Mr North's opinion that the government had done well on this in circumstances where the taxpayer paid, as he estimated it, £154,000 for infrastructure needs arising from the development,<sup>70</sup> although we accept that his view was based upon his understanding of the law as he believed it to be. Mr North was later to express an opinion in the House of Keys on 31<sup>st</sup> May 1994<sup>71</sup> with which we do agree, when, after referring to the above contribution agreement, he said: "My department believes that in future all private developers should contribute towards the costs of major adjacent road and other infrastructure improvements that are required as a consequence of such developments. In the past the cost of such works has been funded 100 per cent by Government after the development has been completed and has resulted in considerable disruption and inconvenience to the travelling public, in addition to the costs of executing the improvement works."
- 13.51 Mr North's understanding of the law when he expressed the first of these opinions may have been correct in the most strict interpretation of what he said, but if that reflected pragmatic practice, as he has said it did, then that is a costly flaw in the legislation or its operation. In England, Wales and Scotland it is normal practice for the developer to pay for consequential infrastructure requirement. This is achieved by the imposition of conditions precedent which, by not allowing development on the developer's site curtilage before appropriate infrastructure is in place, does not conflict with Mr North's understanding of Island law.<sup>72</sup> Alternatively or additionally it may be done by agreement under s106-106B of the Town and Country Planning Act 1991 (England and Wales). It is cost effective. If it had been operated in 1992, it would have saved the taxpayers significant sums. Mr North did explain that he believed that there was a change of law between his two statements.<sup>73</sup> However we have seen nothing which indicates that insistence upon a full or substantial contribution by the developer for the infrastructure required consequential upon its

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<sup>67</sup> Mr North Document Q52 pages 1 & 2

<sup>68</sup> Annex 4

<sup>69</sup> Mr North Document Q52 pages 1 & 2

<sup>70</sup> Mr North Document Q52 page 2

<sup>71</sup> Hansard 31.5.1994 K561 Black file page 25

<sup>72</sup> Grampian Regional Council v City of Aberdeen (1984) JPL590

<sup>73</sup> Evidence of Mr North Q52 Transcript Day 30 page 44

development would have been unlawful, if properly put in place as is just indicated for England Wales and Scotland. Indeed relevant legislation expressly allows this to be done (see s18 and s19 of the Town and Country Planning Act 1991 (Isle of Man), which came into force on 1<sup>st</sup> November 1991, and the successor s13 of the 1999 Town and Country Planning Act. Indeed s6 (1)(a) of the Town and Country Planning Act 1934 appears to allow a similar arrangement). We are not aware of any changes of relevant law between the two statements of Mr North, and do not find there to be any. Notwithstanding any changes in law Mr North was not aware of any developer having to pay for works outside the site curtilage.<sup>74</sup> At Mr North's suggestion we sought information on these matters from Mr Hannay who has confirmed the legal position as we understand it, and has also confirmed that conditions seeking improvements from developers were employed in 1991. He has also identified some instances of highway planning gain by informal agreement.<sup>75</sup> While it is good that there are such examples, we consider that it would be very much in the public interest that, except in special circumstances, the developer should contribute to the cost of infrastructure improvements, and, again except in special circumstances, to the full amount. We refer to this further in our recommendations.

- 13.52 While we discuss highways matters here in detail it is worth drawing attention to the fact that there are some oddities about the highways improvement condition number 12 in the permission given on 4<sup>th</sup> October 1991.<sup>76</sup> It was agreed in evidence that the condition was vague and possibly unenforceable,<sup>77</sup> and that it was an example of an outline permission being overtaken and becoming irrelevant when the full permission was issued.<sup>78</sup> The latter point was acknowledged in respect of the permission issued on 2<sup>nd</sup> October 1991, but the same condition was carried forward two days later, as part of the decision of 4<sup>th</sup> October 1991. This is indication of further deficiencies in that decision. We also note that condition number 12 was changed between 2<sup>nd</sup> October 1991 and 4<sup>th</sup> October 1991 from highways improvements being required to be carried out prior to commencement of any work on the site, to such works being required prior to occupation of any buildings on the site.<sup>79</sup> This was another significant but unexplained change in favour of the developer in terms requested by the developer.

**vii) Access to Facilities**

- 13.53 On this matter we heard evidence from both Mr Wilson, the Development and Planning Manager with the Department of Transport, and Mr Hannay, the Director of Highways and Traffic. We also heard from Mr and Mrs Vakil. We are satisfied on the evidence which we heard that those within the Department of Highways, Ports and Properties proceeded on a clear understanding that the development was for holiday purposes and not for permanent residential use.<sup>80</sup>
- 13.54 We start with the evidence of Mr Hannay, the more senior officer. He stated that the department would have taken "a totally different approach" had it been known what the true user position was.<sup>81</sup> He gave some examples of the different approach which would stem from both the scale and nature of the usage arising from there

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<sup>74</sup> Evidence of Mr North Q52 Transcript Day 30 page 42

<sup>75</sup> Mr Hannay Q40 Letter 27.5.2003

<sup>76</sup> File A page 108

<sup>77</sup> Evidence of Mr Hannay Q40 Transcript Day 19 page 12

<sup>78</sup> Evidence of Mr Hannay Q40 Transcript Day 19 page 14

<sup>79</sup> File A pages 98 & 99

<sup>80</sup> Paragraph 13.7

<sup>81</sup> Evidence of Mr Hannay Q40 Transcript Day 19 page 41

being permanent residents. In such permanent accommodation there would be school children; there would be more pedestrians; there would be more deliveries; there would be more varied types of occupant; there would be increased use in the winter period, with implications for snow clearing and gritting and the like; and there would even be a totally different approach in relation to sign posting. A permanent settlement of some 170 houses would have sign posting appropriate to that level. There would be provision for a bus service. The school children who would be present in such a large development would have to cross the A5 to reach the bus stop to go to Castle Rushen High School in Castletown.

13.55 What they, the department, would have wished to see at that stage is now, in 2003, proceeding, at least in part, and Mr Hannay told us that there was going to be the provision of a facility on the A5 which incorporates as safe a pedestrian crossing as possible, central islands, improvement of the visibility, ensuring that the buses have, at that location, a bus bay as opposed to just stopping on the roadway.<sup>82</sup> These requirements are only now going into place instead of being a requirement when the development was being approved, had the reality of the situation been known to this particular department. Even now site inspection shows that what has been provided so far falls a long way short of the required safety provision which Mr Hannay identified. We have referred to this in paragraph 13.26 above.

13.56 Mr Wilson provided further detail. He referred to matters which were not looked at because of the understanding as to who the user of the development would be. He referred to the usage of facilities in the Island such as schools, going to shops and Post Offices.<sup>83</sup> In addition to the matters explained by Mr Hannay he referred to the question of bus shelters; he referred to the generation of a school bus in the morning, possibly even two buses depending on which schools were attended by children living on the estate. He would have looked more closely at the A5/C21 junction, primarily on the grounds that there is a 50 mph speed limit on the A5 and some form of artificial speed control to reduce the speed of traffic in conflict with pedestrians would have been examined. Contributions from the developer for such improvements would have been sought.<sup>84</sup> Mr Wilson also said that he suspected that his department may have looked at the point of main access and debated whether it should come from the C21 or whether it should come directly off the A5.<sup>85</sup> They would have suggested on site shopping, and a few more footpaths within the estate.<sup>86</sup> He also drew attention for the requirements of all types of service vehicles such as oil tanker deliveries, coal deliveries and even shopping deliveries.<sup>87</sup> Mr Wilson went so far as to say that had the department known that the houses on the estate were to be permanent homes (and if his appropriate requirements had not been met) he would have recommended a refusal of the planning application.<sup>88</sup> Mr Willers has taken issue with or criticised<sup>89</sup> some of the evidence summarised in these last paragraphs. Notwithstanding this criticism we remain satisfied that we should accept the evidence of these two witnesses which indicates what was required and was not provided. We also draw attention to the serious present day safety and access problems related to the Mount Murray estate as acknowledged by the consultants representing Mount Murray Country Club at the Braddan Parish Plan

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<sup>82</sup> Evidence of Mr Hannay Q40 Transcript Day 19 pages 41 & 42

<sup>83</sup> Evidence of Mr Wilson Q26 Transcript Day 16 page 14

<sup>84</sup> Evidence of Mr Wilson Q26 Transcript Day 16 pages 15 & 16

<sup>85</sup> Evidence of Mr Wilson Q26 Transcript Day 16 page 16

<sup>86</sup> Evidence of Mr Wilson Q26 Transcript Day 16 pages 34

<sup>87</sup> Evidence of Mr Wilson Q26 Transcript Day 16 page 35

<sup>88</sup> Evidence of Mr Wilson Q26 Transcript Day 16 page 39

<sup>89</sup> Annex 4

Inquiry as referred to in paragraphs 13.26 and 20.9 of this report, which we find supports evidence that there are important current infrastructure requirements at the Mount Murray location.

- 13.57 The development is a considerable distance from shopping and allied facilities.<sup>90</sup>
- 13.58 We find the matters set out in this sub-section, which are still of important current interest, to be significant adverse consequences of the irregularities identified by Professor Crow.

**viii) Design Standards within Mount Murray**

- 13.59 Again we refer to the evidence of Mr Wilson and Mr Hannay as the prime source of our findings. Matters to which we refer in this sub-section are additional to the points which we have made in relation to Fire Service access in subs-section (iii) above.
- 13.60 One of the significant consequences of it being understood that the use was to be for tourism purposes only was that the Department of Highways, Ports and Properties (now the Department of Transport) did not oversee the construction and designs of the road network within the development. This was because, as Mr Wilson said, there was to be no offering to the department for adoption of roads, parking areas or footways when constructed, and the developers would not be required to enter into a road bond or have inspections on site for compliance carried out by the Department of Transport.<sup>91</sup> And so, because the roads were not to be adopted, the department did not inspect the construction of the roads nor, at the end of the construction process, was any drawing provided which indicated the 'as built' situation.
- 13.61 At this point there appears to be a difference of opinion and judgement between Mr Wilson and Mr Hannay. Mr Wilson indicated that the housing layout as submitted complied with the design standard known as the Cheshire Design Aid which provided for "shared surface ways" where pedestrians and motorists have equal priority.<sup>92</sup> However, for the reasons set out in the last preceding paragraph, Mr Wilson could not help categorically as to whether the roads 'as built' complied with the Cheshire Design Aid<sup>93</sup> but he did think that as built they do comply with that Design Aid.<sup>94</sup> He sought to explain to us in detail why he thought this to be the case.<sup>95</sup> He went on to say<sup>96</sup> that had he known that the houses were to be used as permanent homes he would have approved the same layout but subject to adaptation which he explained; had there not been such adaptations he would have recommended a refusal.<sup>97</sup> We have doubts about compliance with the Cheshire Design Aid.
- 13.62 Mr Hannay took a different view from Mr Wilson. He did however say that he had little direct knowledge of the construction of the roads themselves but he had heard by repute that they are not to adoptable standards in terms of width, visibility and construction. This very heavy qualification is important at looking at the weight of

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<sup>90</sup> Evidence of Mr Vakil Q28 Transcript Day 14 pages 57 & 58

<sup>91</sup> Evidence of Mr Wilson Q26 Transcript Day 16 page 21

<sup>92</sup> Evidence of Mr Wilson Q26 Transcript Day 16 page 17

<sup>93</sup> Evidence of Mr Wilson Q26 Transcript Day 16 page 23

<sup>94</sup> Evidence of Mr Wilson Q26 Transcript Day 16 pages 25 & 26

<sup>95</sup> Evidence of Mr Wilson Q26 Transcript Day 16 page 26 seq

<sup>96</sup> Evidence of Mr Wilson Q26 Transcript Day 16 pages 33-35

<sup>97</sup> Evidence of Mr Wilson Q26 Transcript Day 16 page 34; Mr Cooil Document Q38 paragraph 1.2; letter Mr Cooil to Mr Kissack 26.2.2001 File F28

what Mr Hannay has to say here, but it accords entirely with our own observations on site inspection.

- 13.63 Mr Hannay also went on to talk, as Mr Wilson had done to similar effect, about the failure to have conditions in the various approvals relating to parking requirements. Mr Wilson had explained<sup>98</sup> that had it been known that these houses were to be permanent homes there would have been parking requirements imposed. He would have looked for a minimum of 1.5 parking spaces per property. Added to this minimum provision there would have been provision for visitors and also perhaps provision for service vehicles depending on whether they would be able to access the development and whether they needed special provision. On individual properties three parking spaces or more would have been sought. Had they not been forthcoming a refusal would have been recommended. Even in his initial consultation Mr Wilson had recommended two parking spaces per house.<sup>99</sup> Mr Hannay explained that the reason for this, which was a standard condition, was to avoid any occupant's cars parking out on the public highway. He said that had the roads been proposed as roads which would be adopted then most certainly a requirement for appropriate parking provision would have been pursued by his department. Mr Hannay went on to say that at least as things stand at the moment the Department of Transport is not prepared to adopt the highways on the Mount Murray estate.<sup>100</sup> Amongst the factors which he took into account<sup>101</sup> were the narrow width of the roads in conjunction with the apparent lack of off street parking.
- 13.64 He also drew attention to highways drainage which was, he said, significant from both the safety aspects and the potential damage to the construction of the highway. In this regard there has also been evidence critical of the highways drainage<sup>102</sup> and see paragraph 13.36 above.
- 13.65 We prefer the view of Mr Hannay as to the standard of the roads being suitable for adoption, notwithstanding his lack of direct knowledge of the roads. This is because his reasoning is consistent with what we saw on site inspection, with the evidence of Mr Cooil, and with our understanding of the Cheshire Design Aid. In this regard we differ from Professor Crow's apparent conclusion<sup>103</sup> that if the roads were to be adopted not a lot would be found wrong, and his apparent implicit acceptance that the design was in line with approved estate road practice. It is relevant to note that we had the benefit of hearing and questioning Mr Hannay as well as Mr Wilson. Professor Crow did not have this advantage.<sup>104</sup> Mr Willers, in written representation,<sup>105</sup> states that this sub-section is irrelevant because Mount Murray will not be offered up for adoption. We disagree with the claim of irrelevancy because we consider it important that, whether or not the estate is adopted, its residents should not have estate standards which are significantly below what would be regarded as necessary before the highway authority would adopt them, such situation having arisen because of the way in which government had handled the approval of development in the ways explained in this report.

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<sup>98</sup> Evidence of Mr Wilson Q26 Transcript Day 16 pages 35 & 50

<sup>99</sup> Evidence of Mr Wilson Q26 Transcript Day 16 page 41

<sup>100</sup> Evidence of Mr Hannay Q40 Transcript Day 19 page 31

<sup>101</sup> Evidence of Mr Hannay Q40 Transcript Day 19 page 32

<sup>102</sup> Evidence of Mr Hannay Q40 Transcript Day 19 page 32

<sup>103</sup> Document C6 Crow Report paragraph 3.3

<sup>104</sup> Document C6 Crow Report Annex 1

<sup>105</sup> Annex 4



13.66 In conclusion, we find that the infrastructure concerns are very serious, and are substantially indicated as such by the evidence which we have seen and read, as well as by our own site inspection. Notwithstanding Mr Willers' claim in written representation<sup>106</sup> to the contrary, the evidence on infrastructure matters which we have read, and heard and seen on site is detailed, reasoned, comprehensive, in many cases very obvious, and fully persuasive that we should reach the conclusions, as we do, that this is one of the more significant fall outs from the irregularities which occurred. We do not believe that blame can really be attached to the Department of Highways, Ports and Properties (now the Department of Transport). They did make efforts to ensure that facilities for infrastructure were of a higher standard than ultimately prevailed, but even those representations were made under the misunderstanding as to the ultimate purpose of the development. Had that ultimate purpose been understood then the approach of that department would have been quite different. As things stand the relevant departments are making realistic efforts to rectify the position but progress is slow and achievement of appropriate improvements is not easy.

**ix) General Comment on Infrastructure Concerns**

13.67 The current infrastructure deficiencies require rectification and we make important recommendation on this in section 19 below.

13.68 We also consider it appropriate to note that an experienced developer (as was Mount Murray Country Club) would know that the infrastructure in place would be inadequate and unacceptable at the point when the decision was made to emphasise sales for permanent residence rather than lettings for tourism. 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. 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.

13.69 The real criticism must fall upon the government handling of the irregularities in permitting development which they authorised without properly understanding what they were authorising. This is not simply a question of looking at an historical event some twelve years past, but at the current consequences of these failures. Those consequences are current adverse safety and amenity conditions for the residents of the estate. They need to be rectified by government, speedily, and until they are rectified government should remain subject to serious criticism on these matters. We later set out recommendations which we hope will help the government towards achieving feasible resolution of these issues.

End of Section 13

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<sup>106</sup> Annex 4

