

PART F

15. GOVERNMENT ACTIONS FOLLOWING CROW REPORT

i) Introduction

- 15.1 The steps taken by government since Professor Crow reported can be conveniently divided into four heads although there is an element of inter-relationship between some of these heads. (1) a Development Control Handbook has been drafted; (2) an Order (Government Circular No. 57/01), concerning the delegation of functions to the Director of Planning and Building Control, has been made; (3) a review of the planning process has been put under way; and (4) a committee was set up in January 2001 constituting representatives of government departments and under the chairmanship of the Chief Secretary to consider the recommendations in the Crow Report and co-ordinate implementation.
- 15.2 We consider that the actions which have been taken by government in this way, against the background of legislation and procedure which existed when Professor Crow reported, is a demonstration of government's concern that steps should be taken as far as practicable to seek to prevent the recurrence of the events of the 1990s. It has our commendation. That we make such commendation does not mean that we are fully satisfied with all that has been done, or has been attempted to be done.
- 15.3 We will comment further on these various matters, but it is appropriate to mention here that nothing has been done, so far as we have been able to ascertain, to ensure compliance with the various procedures which have been, and are being, put in place. In particular Mr Hamilton, Chief Executive of the Department of Local Government and the Environment, was asked a number of questions on this issue¹ but he was of the view that this was not necessary. He said in terms that he didn't feel that a compliance officer was needed; he thought it was the responsibility of the manager in a particular area to ensure compliance and, within the Department of Local Government and the Environment, that is the job of the Director of Planning and, to a lesser degree, the Secretary of the Planning Committee. In any event he thought that there were anyway quite a few checks and balances in the process.² We disagree with Mr Hamilton and others on this point. It seems to us that the absence of such a procedure played a significant part in the events which did occur at Mount Murray in the early 1990's, and in the later circumstances whereby those events were not really considered or thought of very much until the end of the decade. We will later return to deal with this issue, but it is worth noting at this point that with matters concerning Mount Murray it was the managers who were found wanting.

ii) Development Control Handbook

- 15.4 In paragraphs 5.2 and 5.3 of his report, Professor Crow recommended that an administrative manual be prepared to guide the planning service of the department. He said that administrative failings and other problems which he had identified would not have occurred if there had been an administrative manual to which reference could have been made at appropriate times. It should not be overlong or attempt to cover every conceivable subject. He said that it should give instructions as to procedures for handling all applications, but he specifically particularised four matters

¹ Evidence of Mr Hamilton P10 Transcript Day 5 pages 30 - 34

² Evidence of Mr Hamilton P10 Transcript Day 5 page 34

and these were: the issue of planning approvals; the making of decisions through officer delegations; the handling of applications in principle and of subsequent approval of reserved matters; and the handling of applications for the renewal of planning approvals.

- 15.5 The Department of Local Government and the Environment has produced such a booklet entitled Development Control Handbook. We have a copy of the latest draft version dated 30th May 2002.³ This draft is in fact the current working version, and Mr McCauley, the Director of Planning and Building Control, does not envisage changing this draft until we have reported and debate has followed in Tynwald.⁴ We consider this to be another important document which again meets many of the problems which have arisen in the history of the consideration of the applications at Mount Murray. Although it is quite a brief document, it does go further than Professor Crow recommended in a way which we find to be entirely beneficial. However, Mr McCauley did, in his oral evidence to us, state that it may well be that not every point mentioned by Professor Crow is reflected in the current version of the Handbook.⁵ He gave the reason for that as being the administrative procedures needing to relate to the computer systems which they have and that a considerable amount of work was still required there. However, he indicated that the other recommendations are, one way or another, incorporated into current working procedures.
- 15.6 The document needs to be read as a whole for full appreciation to be gained, but we consider it appropriate to identify and make brief comment upon a number of the matters in respect of which advice is given.
- 15.7 The purpose is stated in the introduction as being to give general guidance as to how a planning application should be processed, and is directed at officers responsible for administering planning procedures and related matters. The intended result is to achieve fairness, accountability and timeliness. It is said that these are principles which should apply equally to all participants in the planning process including those who make written representations. The aim in processing a planning application is said to be to ensure that the decision notice has the fullest information gathered in the shortest reasonable time, and, importantly, in achieving this the process should be fully documented to produce an audit trail of advice and decisions, thus ensuring that all decisions can be properly explained. This is important because the absence of such features in the Mount Murray development history has caused serious complications and concerns to many people.
- 15.8 What follows in the remainder of this subsection is a selective and small part of the advice given in the Handbook, but it is selected because it has much relevance and direct bearing upon problems which were sustained in the Mount Murray applications.
- 15.9 The Handbook requires that all plans received directly have to be immediately date stamped. Any doubts as to the adequacy of the plans or description of the proposed development requires discussion within the department to consider whether further details are required. Plans and drawings must never be reproduced for distribution to third parties.
- 15.10 A written report has to be compiled by the Planning Officer before the application is considered for initial decision. A planning decision must not be made without at least

³ Mr McCauley Document P12 A2

⁴ Mr McCauley P12 letter 1.10.2002

⁵ Evidence of Mr McCauley P12 Notes Day 6 page 25

two officers having been party to the initial decision and signing the decision report in confirmation. Once the Planning Committee has made a decision, it cannot be altered after the meeting has closed. Any variation under delegation has to be subject to a clear record. Should concern arise as to whether a decision may have been incorrectly recorded or as to whether all correct procedures have been followed, then the steps to be taken are identified. The chairman or the acting chairman of the Committee has to endorse the authenticity of the record provided by a minute of the Committee. We note however that there is no advice given as to the sufficiency of the minutes, a prominent weakness in the handling of the Mount Murray applications.

- 15.11 More guidance is given as to meetings with applicants or applicants' agents. This includes ensuring that an appropriate record is provided as to what has occurred during such meetings.
- 15.12 In overall terms we find this document an important governmental contribution in meeting the irregularities identified by Professor Crow, notwithstanding the comments we make on it. The introduction of the Handbook and of Standing Orders have provided a much improved system and reference can now be made, particularly where officers or administrative staff are uncertain, to coherent guidance and instructions.
- 15.13 However, the effectiveness of the Handbook will still depend on the degree to which its contents are observed and complied with. On this point, when Mr McCauley gave evidence to us, he did agree that procedures are not laid down which in some way are a check from time to time on whether the staff are following the Handbook.⁶ Nevertheless, he has a similar point of view to that of Mr Hamilton in that he believes that the process has a number of checks and balances in it so as to enable mistakes, or failures to follow procedures, to be picked up.⁷ As stated earlier⁸ and discussed further below,⁹ we do not agree.
- 15.14 With regard to other matters not covered by the Handbook, a point of particular concern to the Commission is that, although a written report has to be compiled by the Planning Officer, there is still no requirement for such a report to be sent out with the Committee agenda, even for selected, more complicated matters. The Commission considers that, in the case of larger applications, the absence of a written report for pre-reading by members and undue reliance on an oral presentation makes understanding by the Committee of what it is being asked to determine that much more difficult. This is a matter which the department should reconsider.
- 15.15 The Commission has also noted that, whilst under paragraph 8 of Standing Orders the Committee shall have conditions of approval or reasons for refusal before it, where those conditions or reasons are altered by the Committee there is no requirement for members to see the final notice before it is issued. We acknowledge that, in most cases, this would not be critical and that it might extend the time taken to determine applications. However, at least in the case where conditions are not standard, we believe the department should consider adjusting the Handbook to ensure that where the notice is prepared outside a meeting, the Committee approves it before issue.

⁶ Evidence Mr McCauley P12 Notes Day 6 page 23

⁷ Evidence Mr McCauley P12 Notes Day 6 page 24

⁸ Paragraph 15.3

⁹ Subsection (vii)

15.16 The date-stamping of incoming correspondence and application plans is an obvious but nonetheless important feature of the Handbook. In the light of this, the Commission finds it surprising that there is no requirement for the application number to be stamped on all plans forming part of the application or, in the case of a permission, for all relevant plans to be date stamped as approved. The evident confusion over plans in the Planning Office (which continues to cause uncertainty in the department with regard to Mount Murray) identified in the report by Professor Crow¹⁰ stemmed very largely from the difficulty found by staff in many cases in relating plans to approvals and vice versa. The Commission regards this as a matter to be reviewed at the first opportunity.

iii) Government Circular No 57/01

15.17 We have already referred to Government Circular No 24/97 concerning the delegation position prior to Professor Crow's report.¹¹ Mr McCauley also told us about delegation which he considered to have considerable importance. He told us that in December 2001 he was, by Circular No 57/01, given delegated powers which were clearly important to the volume of work which the Planning Committee had to get through. He explained¹² that, before this delegation, all applications were going to Committee with the agenda consequently taking up a whole day each week and sometimes going into a subsequent week. The volume of applications going to Committee has now, as a result of this delegation, been considerably reduced so that no more than half a day is the norm for the Planning Committee's sitting time. We find this to be an important benefit, as the volume of work clearly played some part in the susceptibility of the system to failure as happened in 1991. Mr McCauley would like further relief to the pressure of work upon the Committee by an extension to permitted development.¹³ We consider this to be a sensible requirement and it is referred to in documents which we will come to as we deal with further steps which have been taken by government since the Crow Report.

iv) Review of the Planning Process

15.18 One of the most important steps which have been taken by government, its review of the planning system, is not directly related to the process which emanates from Professor Crow's recommendations.¹⁴ It might be said to have been initiated, in content and writing at any rate, by a document entitled "Review of the Planning Process", dated 26th March 2002, which was drawn up by Mr McCauley and submitted to the departmental minister and members. Mr McCauley told us that this document was, in a way, a scoping exercise. It was the foundation for the consultation document entitled "Modernising the Planning System"¹⁵ issued by the department in August 2002 which, Mr McCauley explained, has principles of changes within it to ensure a more open and transparent process.¹⁶ We find that such changes would be of very considerable beneficial importance, although the consultation paper has not taken aboard all the points made in Mr McCauley's earlier review.

¹⁰ Document C6 Crow Report paragraphs 4.6 & 4.7

¹¹ Paragraph 9.9

¹² Evidence of Mr McCauley Notes Day 6 page 22

¹³ Evidence of Mr McCauley Notes Day 6 page 23

¹⁴ Mr McCauley P12 letter 1.10.2002

¹⁵ Modernising the Planning System Document L29

¹⁶ Letter Mr McCauley P12 1.10.2002

- 15.19 The review is an important area for discussion and for steps to be taken by government after the Crow Report because, although not directly related to the Crow recommendations, many of the steps proposed are highly relevant to the failings which took place in the 1990s. We discuss the consultation document in the next sub-section but first comment further, but briefly, on Mr McCauley's review.
- 15.20 The purpose of the review is explained in its introduction. That is, to set out the key issues raised by the proposed coming into force under secondary legislation of parts 2 to 5 of the Town and Country Planning Act 1999 and to link those to a review of development control procedures. Some work had been done on the secondary legislation before the present minister took office. Principal issues which had been identified in that previous work included the nature and composition of the Planning Committee; the retention of some review process; and whether appeals should be determined by the minister or by Planning Inspectors. In our view these remain important issues. It is also noted that some local authorities have suggested that initial decisions should, in some instances at least, be made at local authority level. This is possible under the new 1999 Act.¹⁷ While we express no view on this we do query whether this might add in an unnecessary complication and whether any benefits it might be seen to provide would be of very much weight if our recommended course of removal of the review stage is in place. A further question arises as to whether the local authorities would have the planning staff necessary to carry this suggestion through.
- 15.21 Section 3 of the review speaks of the key issues. It informs that the assessment in the paper is based on experience of the current Isle of Man system and of best practice elsewhere. Points brought to mind include the idea of recognising the wide range of people involved in planning¹⁸ and the need to provide information and advice to objectors, interested parties and the general public.¹⁹ The key issues include, in respect of determining applications, the role and structure of the Planning Committee and the scope of delegated decisions, the review process, the appeal process including the role of the minister, and the referral of applications to the Council of Ministers.²⁰
- 15.22 An informative comparison is made between the current practice in determining applications as followed in the Isle of Man and as followed in the United Kingdom. It demonstrates much less transparency in the Isle of Man. Notwithstanding this contrast in transparency there is, in the United Kingdom, said to be an increasing concern about the way in which planning decisions are made. These concerns are often based on concerns about transparency, accountability, consistency, and speed of decision. If such concerns have credibility, then reason suggests that at least transparency and accountability must be given much weight in the Isle of Man, where transparency is absent.
- 15.23 We do not find it necessary to set out here a full account of Mr McCauley's review paper. It suffices to say that it identifies merits and demerits in existing aspects of the planning system and of possible changes. It is a very valuable document which shows that the government is looking very carefully at a number of issues which have concerned us. We have taken the paper fully into account in our consideration of changes and proposals for change, and in formulating our recommendations.

¹⁷ Mr McCauley P12 Section 2, Review of the Planning Process

¹⁸ Mr McCauley P12 Review of the Planning Process, paragraph 3.4

¹⁹ Mr McCauley P12 Review of the Planning Process, paragraph 3.5

²⁰ Mr McCauley P12 Review of the Planning Process, paragraph 3.6

v) **“Modernising the Planning System”**

- 15.24 “Modernising the Planning System”²¹ was issued in August 2002. It opens the way for improvements to planning procedures. It seeks views on the manner in which the current system operates and the changes which could be introduced to improve it. The document is described as a framework for change and identifies a number of ways in which it is felt that the system could be improved. This consultation document is not of the same depth, width or discussion as the earlier Review of the Planning Process paper prepared by Mr McCauley. However, it is understandable that government might perceive that a simple consideration of broad principles may achieve a better and more effective response from the public and relevant bodies, and it certainly identifies options which would make significant improvements to the planning procedures.
- 15.25 The introduction to the consultation document indicates that the main Orders which local authorities and other planning services use and are likely to be concerned with are the development procedure and Permitted Development Orders, and therefore the document concentrates upon these.
- 15.26 The consultation document points out that the planning service recognises the need for change and the need to improve the overall quality and effectiveness of the planning system and, in particular, the processes for dealing with planning applications. Therefore the emphasis of the paper, it says, is on identifying and seeking views on areas of possible changes which can be undertaken quickly within the present legislative framework. Seven key challenges are identified. Those of particular interest to us are those which concern the need for better information and advice to applicants and those who wish to comment on planning applications; how applications are dealt with; the overall level of control; and the enforcement of planning controls.
- 15.27 In section 6 of the document it is indicated that the department proposes to update the information which it supplies and to provide impartial advice to those who use or are affected by the planning system, by telephone, in writing, or by arranging a meeting. It is intended to develop specific service standards for these purposes. We welcome this as it is quite clear from our investigations that there have been significant difficulties to the public and interested parties who have wished to ascertain information or details about development proposals.
- 15.28 Section 7, so far as our remit is concerned, is the most significant part of this document. It deals with planning applications. A number of problems are identified. First, there is concern about the time taken for decision making. Views are sought in response to this upon the merits of setting targets for decisions in respect of various classes of development. This appears to us to be a sensible reaction although delay is not a matter with which we have been concerned in our investigations. Next, and importantly, the openness and transparency of the decision making process for planning applications is raised. The Planning Committee meets in private and its agendas and minutes are not publicly available. This is contrasted with other planning systems, e.g. in the United Kingdom, where these circumstances do not apply. It is pointed out that there would be a considerable administrative burden in moving to a system of public Planning Committee meetings but that it would make the initial decision process more open and transparent and, if incorporated with other changes which are set out later, it could, it is said, also speed up the overall decision

²¹ Modernising the Planning System Document L29

making process which in itself could reduce the overall administrative burden. We endorse such a proposal fully below.

- 15.29 Next the size of the Planning Committee is referred to and comments are requested on the size and make up of the Planning Committee. Consideration of this issue is entirely appropriate and, as we say in paragraph 10.16, an increase in size, with more elected members participating in the Committee would be appropriate.
- 15.30 Then the system of the initial decision, review and appeal is discussed. Options are set out including dispensing with the review stage altogether and then going direct to appeal; limiting the right to request a review; or allowing an applicant to request an appeal hearing without the review stage. While the department points out that its view remains that it is still appropriate to retain the right of appeal by local authorities and other public bodies, whether interested parties should retain the right to review or appeal is one on which comments are requested. We welcome examination of this aspect of the planning system. We note however that the issue as to who should determine appeals is not raised. We think this is an important omission and we discuss it elsewhere.
- 15.31 Finally, in this section, the consultation document considers applications which are made by the department itself. At the present time a special procedure is used which is felt to be cumbersome for all but complicated or contentious applications. Options for change are raised and two are identified both of which require at least initial consideration by the Planning Committee itself. This is a matter which we cover in our recommendations.
- 15.32 Section 8 deals with the overall level of planning control and sets out the scope to extend residential permitted development in respect of minor developments. In respect of such minor developments planning applications for approval would not be required. As we have pointed out earlier, this would have the effect of relieving the burden upon the Planning Committee, in terms of volume of work, and therefore is to be welcomed provided that it is introduced with sufficient safeguards. There is also consideration of an extended Use Classes Order which would allow some changes of use to take place without the need to seek planning approval. These changes reflect the passing of time since the last Use Classes Order was reviewed and the need for updating. Again, this appears to us to be a sensible proposal.
- 15.33 The final substantive section of the consultation document concerns the enforcement of planning controls. We endorse strongly what is said in this section. In particular we agree with the statement²² that an effective planning system needs to ensure that planning permissions are carried out in accordance with the approved plans and that unauthorised development is identified and dealt with. Effective enforcement procedures were lacking in relation to the Mount Murray development. We have commented upon the enforcement aspects earlier.
- 15.34 The matters raised in Mr McCauley's 'scoping paper' which are not covered in the consultation document for the seeking of views, but which do deserve further consideration, include the making public of Planning Committee agendas, minutes and reports and delegation of appeal decision making to Inspectors and ministerial power of call in. As will be seen, we do find these to be matters of importance and make relevant recommendations. There are also matters which are covered generally but not with some of the detail raised by Mr McCauley.

²² Modernising the Planning System Document L29 paragraph 10.1

vi) **Mount Murray Residual Issues Committee**

- 15.35 When Mr Kissack, the then Chief Secretary, appeared before the Commission of Inquiry on the 24th May 2002 he was asked to provide the Commission with a memorandum on the follow up by the government to the recommendations made by Professor Crow. Mr Kissack complied with the Commission's request and produced what he described as a memorandum in the form of a file now referenced F28. It is a substantial file and sets out clearly enough the steps which were taken by government. It does show that the government has conscientiously addressed the recommendations which were made by Professor Crow. Some of the matters set out in the file are marked as confidential and in terms of referencing it therefore appears sufficient for us to make the source of our information on this particular topic to be from that file. Therefore, unless specifically stated otherwise, references in our discussions in this sub-section can be taken as from that file.
- 15.36 Having received Professor Crow's report on the 30th December 2000, the Council of Ministers considered that report and its recommendations as early as the 11th January 2001. The Council recognised that Professor Crow's recommendations were intended first to prevent similar situations arising in the future, and, second, to secure improvements in the practical problems which Professor Crow had identified. It was agreed that the various recommendations in the report be referred to the appropriate government departments and to the Isle of Man Law Society for response. As to the latter, we need say no more than that the issue concerning the Isle of Man Law Society was referred to the Law Society, which now has passed a resolution to adopt a new Practice Rule which meets the concerns of Professor Crow. As to the former, the matters were put before the relevant government departments.
- 15.37 The next step by the Council of Ministers to which we need to draw attention was their decision in March 2001 to bring together the officials of the relevant government departments, under the chairmanship of the Chief Secretary, to try to identify options for consideration by the Council of Ministers on whether, and if so, how, the residual problems at the Mount Murray site might be addressed. This Committee came to be known as the Mount Murray Residual Issues Committee.
- 15.38 Before turning to the first meeting of the Committee we should note that the government departments involved had made an initial response on the recommendations set out in chapter 5 of Professor Crow's report. The departments which had been identified as appropriate for response either as directly concerned or as lead department were the Department of Local Government and the Environment and the Department of Transport. These departments responded in February.
- 15.39 So far as the Department of Local Government and the Environment is concerned, in broad terms, the response was that they had now implemented the recommendations or that they were giving further thought to them, or that they were already covered in existing procedures. It is apparent that the recommendation under paragraph 5.20 of Crow was of some complexity, that is his recommendation that the department should consider its position and be willing to offer an apology to those who might submit legitimate claims, and to make an offer of compensation in deserving cases of justified complaint.
- 15.40 With regard to the Department of Transport, it was noted that a number of the recommendations were fairly straightforward and could be addressed and the position was set out. However, it was explained that there were matters arising from the recommendations of Professor Crow which were far from straightforward and

required detailed research and investigation before the department could fully respond. In particular three matters were identified.

- 15.41 First, reference was made to the statement of Professor Crow “that although adoption of highways is not proposed it does seem to me a matter of public interest, as well as private interest, that the infrastructure on an estate of this size is of at least as good a standard as that of highways maintained at the public expense”. It was stated by the Department of Transport that, given that it was never proposed that the highways on the development were to be adopted, no inspections were carried out in respect of the standard of materials used nor in respect of the standard of workmanship which was carried out and, therefore, for the department to review that would require detailed investigation and research. This relates to Professor Crow’s recommendation in paragraph 5.16.
- 15.42 The second matter which was raised by the Department of Transport concerned the highway layout. Although the highway layout was generally based on the Cheshire system, it was stated there were significant variations due to the development being specifically for tourist accommodation. Most significant, it was stated, was the reduction in the provision of car parking spaces associated with individual properties and also on or adjacent to the highway. Further, it was stated that the provision of footpaths, turning areas and alignments were deficient. It was also pointed out that considerable work would need to be undertaken to determine whether it was possible to achieve the standard on the Mount Murray development comparable with that of an adopted estate development. Almost certainly, it was said, land would be required from site owners and from the management company to address deficiencies in the manoeuvring for emergency vehicles and heavy goods vehicles. The hump backed bridges were too severe for emergency vehicles, heavy goods vehicles, and refuse wagons and would not be acceptable for adoption purposes. Also, the structural details of the bridges were unknown and would have to be examined and possibly structural enhancement may be required.
- 15.43 The third point made was that highway and surface water drainage systems had not been tested or inspected; from context, by that department’s own inspectors. Investigations would have to be carried out in respect of the “as laid” pipe routes, gradients, structural integrity, materials and workmanship used in respect of the drains and their backfill. Any proposed changes to the highway layout would have to be undertaken having regard to the drainage systems then in operation.
- 15.44 It was also pointed out that, should the Council of Ministers wish to give active consideration to implementing these more complex recommendations, then the department would need to undertake further research and investigation before being in a position to give a definitive response. It was no doubt because of the complexities noted by these two departments in following the recommendations of Professor Crow, that the new committee under the chairmanship of the Chief Secretary was set up.
- 15.45 At the first meeting of the Mount Murray Residual Issues Committee on the 11th April 2001, it was considered by that time that the procedural aspects had, to a large extent, already been addressed and attention was directed primarily to considering how far overcoming practical difficulties and problems at Mount Murray was achievable. A further meeting of the Committee took place on the 1st June 2001. In respect of this meeting, we need only refer to Professor Crow’s recommendation under paragraph 5.19 concerning pedestrian access to the A5 Castletown Road. The Committee was apparently advised that pedestrian access could be achieved by

a footway through common land. A footway has been provided by the developer and we have referred to this ongoing issue elsewhere.²³

- 15.46 Investigations continued by the various departments as to how the recommendations could be progressed, if at all. By October 2001, the Chief Secretary was able to conclude that the actions which could be taken by government arising from consideration of the points identified by Professor Crow were: (1) that there could be completion of the remedial drainage works in relation to manhole covers and sewers; (2) that a joint Department of Agriculture, Fisheries and Forestry and Department of Local Government and the Environment public notice in relation to restrictions on the felling of trees should be re-issued at intervals; (3) that a letter of comfort to the owners of the four houses in Murrays Lake Grove (plots 73 to 76) should be issued indicating that the department would not take legal action on any alleged offence of construction of dwellings without planning permission; (4) that the developer should be invited to consider improving emergency services access in a way indicated and should improve the profiling of the various bridges to enable access by larger vehicles. The weight capability, by that time, following visual inspection, was regarded as satisfactory. Having taken legal advice, it was further considered that the government should reject the claims for compensation from neighbours to the plots 73 to 76 and that it should not issue a general letter of comfort in respect of the permanent residential use of the dwellings at Mount Murray. Insofar as the positive steps are concerned these were accepted by implementation and, in particular, the developer was co-operative in seeking to improve the emergency services access, so far as its ownership allowed, in identifying where other ownerships lay, and in promising to secure adequate profiling of the bridges on final application of road surfacing.
- 15.47 Having studied in detail the file provided to us by the Chief Secretary, we are satisfied that government has taken a careful approach to handling the recommendations put forward by Professor Crow. Insofar as some recommendations have not been followed, these are consequent upon a careful consideration of the issues and practicalities involved. In respect of specifically not following some recommendations, we do not consider that the decisions made can be regarded as being other than reasoned decisions. However some recommendations have been looked at but not followed up to the extent that is deserved and required. In this regard, we make recommendations which we consider to be of considerable importance.

vii) Compliance Procedures

- 15.48 Finally in this section, we look at the need for compliance procedures. This is not a matter which has been raised by Professor Crow but it is a matter which we regard as being of considerable importance. A simple illustration of the importance is that the irregularities which occurred in the early 1990s were not brought to the attention of the authorities in any formal way. They eventually emerged nearly a decade later due only to a series of incidental consequences rather than by proper ongoing inspections and examinations of the manner in which they were or had been operated. We are also concerned that however conscientious the government has been in looking at the recommendations of Professor Crow and in taking other steps to advance the quality of the planning system, there remains a confidence and complacency about the unlikely risk of a repeat failure which we find unjustified.

²³ Paragraph 13.26 above

- 15.49 In this regard we draw attention again to the oral evidence given to us by the two senior relevant officials in the Department of Local Government and the Environment. First, Mr McCauley said²⁴ that, from his point of view, he would consider it would be highly unlikely that the irregularities which Professor Crow referred to would resurface. This was because everyone took Professor Crow's report very seriously, read the report very carefully, read the history of events and the way in which it developed, and so a lot of lessons had been learnt by the department over those years. He went further and said "I think it is a role of management to ensure that there are procedures and that they are properly followed... And if they're not, then it is up to management to take action to make sure that they are."²⁵ We do not find this persuasive. While we accept what Mr McCauley has explained to us as to the steps which have been taken, and we have detailed and supported this above, the Crow Report did not refer to failures of senior management as such nor of senior governance as such, where the responsibilities for the irregularities can plainly be seen to lie.
- 15.50 Mr Hamilton was asked²⁶ whether there were, in his view, sufficient means within the system to bring to attention any move by an officer to go beyond his/her delegated powers and so have in place enough safeguards and checks to avoid the circumstances which occurred at Mount Murray. He told us that he believed that the procedures which were in place, provided one followed them, contained sufficient safeguards. He explained this by saying "I think that it is the responsibility of the manager in a particular area to ensure compliance and that is the job of the Director of Planning and, to a lesser degree, the Secretary of the Planning Committee. They are the ones that, day to day, must make sure that proper procedures are being followed and I think that there are sufficient checks and balances in the process to give several people involvement that will challenge – have you done this, have you done that, have you asked so-and-so. I think there are quite a few checks and balances in the process anyway."²⁷ He did accept that there was no such thing as a perfect system and there was always room for improvement. He added that if the Commission were to recommend various ways for improvements to be made then the department would learn from that; but he did go on to say that if people just followed the procedures then he thought they were perfectly adequate. With respect to Mr Hamilton, this is missing the point. The question is whether or not people do follow the procedures and that is where compliance ensurance becomes important. It is also significant to note that Mr Hamilton said that, even now, he could not understand how the department got into such a mess with this particular development.²⁸ A little later Mr Hamilton was questioned at length by the Commission.²⁹ He maintained his position, which can be simply and fairly summarised as being that a responsible manager will make sure that he will comply with procedures therefore there is no need for any additional compliance mechanism. As explained elsewhere in this report, we disagree. We find it to be a significant deficiency in procedures simply to presume that everyone will observe the procedures, no matter how long they have been in post nor how familiar they are with the procedures and failing to have regard to the frailties of human nature.

End of Section 15

²⁴ Evidence of Mr McCauley P12 Notes Day 6 page 30

²⁵ Evidence of Mr McCauley P12 Notes Day 6 page 37

²⁶ Evidence of Mr Hamilton P10 Notes Day 5 page 20

²⁷ Evidence of Mr Hamilton P10 Notes Day 5 page 34

²⁸ Evidence of Mr Hamilton P10 Notes Day 5 page 20

²⁹ Evidence of Mr Hamilton P10 Notes Day 5 pages 30 - 34

