

PART G

17. CONCLUSIONS ON PARTS C AND D

i) The Irregularities and their Development Consequences

- 17.1 A comprehensively documented in principle planning application was submitted correctly to the appropriate office of the appropriate government department.
- 17.2 Approval was given by this department's Planning Committee subject to a condition which was contrary to an important aspect of the development proposal and limited its scope.
- 17.3 Approval to a draft Agreement for Sale, which did accord with this same important aspect of the development proposal, was given a few months later by this same Committee.
- 17.4 Another few months later a full application in respect of the development proposal was approved by this same Committee, but still with the condition which was contrary to an important aspect of the development proposal.
- 17.5 Two days after the issue of the notice of approval of the full application referred to in the last preceding paragraph the same Committee issued another approval in respect of this application, but in this case the relevant approval did not contain the limiting condition referred to above.
- 17.6 The proceedings of the Committee making these decisions were not held in public; the decision referred to in the last preceding paragraph was not on the published agenda for that meeting; there were no public minutes or other written records of these meetings; and such written records as were made were so obscurely phrased that it was not possible for any reasonably intelligent person to understand from those records how such decisions were reached nor, in some cases, what decisions were actually being reached.
- 17.7 None of the several witnesses appearing before us who were party to these events gave to us a helpful, direct or full explanation of how these decisions were made. However their evidence, in conjunction with all the circumstances surrounding these meetings, has helped us to reach our conclusion on these events as set out below.
- 17.8 Consequential upon the above decisions a development of up to 175 houses was authorised for permanent residential use which was not in accordance with the Development Plan, had an inappropriate road system, had inadequate access for emergency and other service vehicles, had inadequate parking provision, had houses which were too close together and otherwise unneighbourly, had inadequate provision for public transport, and permanent homes were built at a location away from employment centres, schools, shops, hospitals and the like.
- 17.9 That these events had occurred remained obscured from the general public for many years; nor did the government address the situation, as such, for many years. Although occasional queries were from time to time raised within government, these appeared to have been satisfied by departmental responses which gave no indication of the serious irregularities which had occurred and, in many senses, continued.
- 17.10 The above simply sets out in stark form the framework of what occurred at Mount Murray. There are many other matters of concern which have been identified in

preceding sections of this report, and these have been taken into account in making our conclusions which follow.

ii) **The Developer**

- 17.11 As the events upon which we are reporting started with discussions between senior members of government and the developer, subsequent to which the developer/applicant submitted the first¹ of a long series of applications, it is logical to start with our conclusions in respect of the developer.
- 17.12 We are satisfied that the developer, whatever its company name at any particular time, was, and is, a very experienced developer. The significance of this, we find, is that all the steps which it took in the matters with which we are concerned were carefully thought through and incorporated the foresight born of experience. We find it unlikely that any of its actions or courses of conduct were the result of inadvertence or unconsidered omission. This experience assisted it in dominating the fragile system of planning in the Isle of Man, and its personnel of the time.
- 17.13 To identify the experience of the developer it is relevant to look at both the companies concerned and the persons concerned.
- 17.14 The applicant on the first application submitted on 16th January 1991 was Radcon Village Resorts Limited.² This company has changed its name to Mount Murray Country Club Limited.³ Mr Willers is currently the Managing Director of the company.⁴ He is a director of many companies.⁵ He has or has had involvement as director or secretary of many property companies.⁶ He told us that he is experienced in property development – some thirty years.⁷ He is or has been a director of several companies which are connected or grouped with Mount Murray Country Club.⁸ Mr Willers refused to tell us whether he was involved with Mount Murray in 1991⁹ but we are of the view that it is more likely than not that he was involved from a quite early stage, given his involvement with related companies, and his presence on site during construction,¹⁰ and his present involvement.
- 17.15 Mr Spence is an experienced property developer.¹¹ He is the person who wrote the letter accompanying the initial planning application describing himself as Vice President, European Operations, Heritage Realty Consultants of America whose notepaper extolled its own breadth of experience. Whether or not there was substance in these claims is not relevant. Mr Spence did not give any evidence to us as, despite best proportionate efforts, we were not able to contact him. Nevertheless it is obvious from the vigour with which he pursued the promotion of the planning approvals and allied matters as exemplified through File A with regard to Mount Murray that he was experienced in the property development field. On this basis,

¹ File A page 13

² File A page 11

³ Evidence of Mr Willers Q2 Transcript Day 7 page 10

⁴ Mr Willers Document Q2 page 1

⁵ Evidence of Mr Willers Q2 Transcript Day 7 page 9

⁶ General Registry Company Inquiry System

⁷ Evidence of Mr Willers Q2 Transcript Day 7 page 27

⁸ General Registry Company Inquiry System

⁹ Evidence of Mr Willers Q2 Transcript Day 7 page 11

¹⁰ Evidence of: Mrs Gough Q53 Transcript Day 28 pages 49 & 54 and Mrs Palmer Q45 Transcript Day 21 page 69

¹¹ Evidence of Mr Willers Q2 Transcript Day 7 page 68

and the evidence of Mr Willers,¹² we are satisfied that he was an experienced property developer and he was the person at the forefront of promoting the applications and the Mount Murray development in the early 1990s. He was also a director of Mount Murray Country Club and predecessors from 1990 to 1997.¹³

17.16 Mr Gubay is, and was at all relevant times, an experienced property developer.¹⁴ He accepted that he was involved with the construction of Mount Murray¹⁵ but really only as contractor. He denied that he was involved in the development other than as contractor.¹⁶ We do not accept this denial. First, we find it unlikely that someone of Mr Gubay's experience and self evident developer skills would not know or ever get involved without knowing who his company, Fairport Limited, was contracting with, as he claimed in defence of his denials.¹⁷ More importantly and persuasively, when Mr Gubay was asked whether the Mount Murray land was assembled through companies he controlled, Mr Willers, who was appearing for Mr Gubay, intervened. On being asked a point of clarification by the Commission he explained how land was generally assembled by the companies with which he was involved. He said, and he was not referring here in any specific way to Mount Murray, that land assembly was done through nominee companies for logical reasons, and that the group which did this was Anglo International, that being the main operating company for operating property development.¹⁸ But Mr Gubay was a shareholder and director in Anglo International Group Limited and was one or the other or both of other similarly named companies.¹⁹

17.17 Now we have no understanding why Anglo International Group companies should not similarly have been involved in the Mount Murray site's development, but neither Mr Gubay nor Mr Willers would discuss that with us.²⁰ On the other hand there appears to be close connections between Mount Murray Country Club Limited and companies with which Mr Gubay and Mr Willers are or were involved. Mr Gubay was a director of Fairport Limited²¹ (later called Construction Support Services Limited) from October 1986 to November 1996 and Mr Willers was a Director of Fairport Limited²² from September 1987 to November 1996. Both Mr Gubay and Mr Willers have been directors of Anglo International Group Holdings Limited²³ since 6th March 1991. Mr Gubay has been a shareholder in Anglo International Group Holdings Limited,²⁴ both in his own right and with AG Securities Limited²⁵ of Anglo International House in Douglas, Isle of Man. Mr Gubay is a director of AG Securities Limited²⁶ together with Mr Willers and Mr Herring who are also the directors of Mount Murray Country Club.²⁷ In the course of Mr Gubay's evidence, Mr Willers stated "We' was the company that I worked for. We were the group. We were, I think at the time it was Anglo International, it still is. [Professor Crow] came to our offices which is known as

¹² Evidence of Mr Willers Q2 Transcript Day 7 page 68

¹³ General Registry Company Inquiry System

¹⁴ Evidence of Mr Gubay Q1 Transcript Day 27 page 3

¹⁵ Evidence of Mr Gubay Q1 Transcript Day 27 pages 3 & 6

¹⁶ Evidence of Mr Gubay Q1 Transcript Day 27 pages 8, 14 & 24

¹⁷ Evidence of Mr Gubay Q1 Transcript Day 27 pages 9 to 10

¹⁸ Evidence of Mr Gubay Q1 Transcript Day 27 page 15

¹⁹ General Registry Company Inquiry System and, as Director only, Transcript Day 27 page 16

²⁰ Evidence of Mr Gubay Q1 Transcript Day 27 pages 7 & 15

²¹ Financial Supervision Commission: Companies Registry Company No 025529C

²² Financial Supervision Commission: Companies Registry Company No 025529C

²³ Financial Supervision Commission: Companies Registry Company No 053215C

²⁴ Financial Supervision Commission: Companies Registry Company No 053215C

²⁵ Financial Supervision Commission: Companies Registry Company No 05/993C

²⁶ Financial Supervision Commission: Companies Registry Company No 057993C

²⁷ Financial Supervision Commission: Companies Registry Company No050730C

Anglo International House because that's the main operating company that we were operating for property development."²⁸

17.18 The evidence satisfies us that companies with which Mr Gubay was involved, as director or shareholder, were involved in the development of Mount Murray (in the full sense of the term) as opposed to being merely involved in its construction. In his written statement of evidence,²⁹ Mr Gubay helpfully set out a number of instances of evidence where it had been claimed or indicated that he might or might not be involved with the development. Many of these instances were put to Mr Gubay and for the most part he declined to answer but occasionally disputed aspects of them.³⁰ Insofar as there were disputes, we found the evidence given by others to be convincing because it had a sense of realism and was given by impressive witnesses: Mrs Palmer, Mr and Mrs Reeves, and Mr Jackson. We accept that much of this evidence is, at best, circumstantial, but it is consistent with what we have concluded, and, taken as a whole, is supportive of our conclusion. It is also indication that Mr Gubay was taking an active interest in the project. Given that we find that the companies with which Mr Gubay was connected were involved in the project we would expect this to be the case. We say this not only from our general judgement of Mr Gubay from his appearance before us, but we accept fully his evidence to us that he takes a pride in everything he does and that he has been as successful as he has been because he likes to think he is a perfectionist.³¹ We do not believe that a person of Mr Gubay's qualities would allow a project with which he was admittedly physically involved, and, as we find, connected through company positions, to proceed without the benefit of his development skills and experience. We are not aware why Mr Gubay personally should not wish to speak about his involvement, except that he told us that he was so advised,³² and this apparently on the basis that such matters were outside our remit.

17.19 The relevance of the identity of these three persons in the development of Mount Murray is that they were each highly experienced property developers, able to act with the qualities set out in paragraph 17.12 above, and as a team they presented a formidable combination of skill, experience and past successes. There is nothing in the least bit unlawful or wrong in this, but in the realities of 1991 and succeeding years there was an "inequality of arms" between them and the relevant aspects of Isle of Man Government and those who operated it.

iii) The Developer's Objectives in Terms of Planning Permission

17.20 We conclude that the developer's objective from the start was to acquire consent for permanent residential use as additional to or as an alternative to tourism use.

17.21 This is what the documents lodged as and with the planning application set out, as we have identified in paragraphs 3.30 and 3.32 above.

17.22 It is also what is expressly stated in the evidence of Mr Willers, Managing Director of Mount Murray County Club. He said in his written evidence that the "Planning Permissions at Mount Murray have achieved exactly what they were intended to".³³ In his oral evidence to us he confirmed that, as he saw it, the developer's intention

²⁸ Evidence of Mr Gubay Q1 Transcript Day 27 page 15

²⁹ Mr Gubay Document Q1 page 3 seq

³⁰ Evidence of Mr Gubay Q1 Transcript Day 27 pages 18 to 25

³¹ Evidence of Mr Gubay Q1 Transcript Day 27 page 3

³² Evidence of Mr Gubay Q1 Transcript Day 27 page 9

³³ Mr Willers Document Q2 page 34

was to negotiate and obtain a planning permission, or permissions, which, in relation to the houses, would enable those houses to be used either for tourist purposes or as permanent homes.³⁴

- 17.23 Mr Moore was a director of Radcon from its incorporation in 1990 through its name change to Mount Murray Country Club in June 1993 until early in 2002.³⁵ He told us that, as director, he would be aware of the activities of the company which were taking place.³⁶ He also told us that he believed it to be fair to draw the conclusion that, at the outset, the objective of the company was to get a development similar to that which has occurred.³⁷ This was said in the context of the making of the planning application in respect of Mount Murray.
- 17.24 On the 19th October 1994 Mr Spence wrote to Sir Miles Walker, Chief Minister then, and at earlier relevant times. He said that at a meeting on 14th November 1990 he had read out the Notes of Presentation to the Chief Minister and had left a copy with him. Although there is a slight, but unimportant discrepancy about the date, we accept this statement which is not inconsistent with the evidence of Sir Miles Walker and to a great extent corroborated by it.³⁸ It is not in dispute that the Notes of Presentation explain the true nature of the proposed development.
- 17.25 Finally there is consistency with our conclusion in the recorded telephone message from Mr Bell to Mr Spence on 13th May 1991 when Mr Bell said “There’s no need for you to apply for change of use for permanent accommodation, residential accommodation out there, the present conditions will allow you to do exactly what you want.”³⁹

iv) Government Departments’ Early Awareness of the Developer’s Intent in respect of Permanent Residential Housing

- 17.26 While the planning office and the Department of Local Government and the Environment should have been aware from the application itself that the initial application of 16th January 1991 was for development including permanent residential use, we are satisfied that the department was in fact aware of this before the application was even submitted. We are also satisfied that the position was the same in the Department of Tourism. Our reasons follow.
- 17.27 We refer back to the letter from Mr Spence discussed in paragraph 17.24 above. This letter from Mr Spence to the then Chief Minister, after relating the Chief Minister’s knowledge of matters, goes on to say that not only was the Chief Minister aware of the importance of the residential phase but so also were other relevant government departments. The Department of Tourism is specifically mentioned in the letter as being fully conversant with the intention of the project as described in the Notes of Presentation. While there might in this sentence be some ambiguity as to the timing of this knowledge by the departments, the context of the letter and other circumstances satisfy us that Mr Spence is referring to the time at or before the lodging of the initial application.

³⁴ Evidence of Mr Willers Q2 Transcript Day 7 page 9

³⁵ Evidence of Mr Moore Q6 Transcript Day 8 pages 44 & 45

³⁶ Evidence of Mr Moore Q6 Transcript Day 8 page 45

³⁷ Evidence of Mr Moore Q6 Transcript Day 8 page 48

³⁸ Evidence of Sir Miles Walker Q16 Transcript Day 30 pages 10-13

³⁹ File A page 189

- 17.28 Earlier in the letter, in the context of government dealings with the developer, Mr Spence says that from the outset the developer made it plain that it was a central and necessary part of the development concept that a significant number of bedrooms would be provided by investors in residential housing. Then after referring to the Chief Minister being well aware of this from the earliest design stage, and to the reading out of the Notes of Presentation, the knowledge of departments is equated to the knowledge of Chief Minister.
- 17.29 We also know that there had been pre-initial application discussions with the Chief Minister, Mr Mitchell representing the Department of Tourism, and Mr Watson, Chief Architect and Planning Officer. This is noted on the initial planning application.⁴⁰ It would have been foolhardy to have written this on the application if this were not true; any such falsity would most likely be identified at a very early stage. Sir Miles Walker agreed that he had had meetings with Mr Spence before the application, and Mr Watson did not deny it.⁴¹ We were not able to take any evidence from Mr Mitchell.
- 17.30 On the 14th November 1990 Mr Spence wrote to Mr Vannan.⁴² He stated that he had seen the Chief Minister and Mr Mitchell that day, and had wanted to see Mr Vannan. He said he was leaving Mr Vannan some information on the proposal, which he stated to be an investment in the region of £20 million with funding available. He said that he would phone Mr Vannan some three days later, on the 16th November 1990, and that he trusted that, after speaking to Mr Mitchell, Mr Vannan would take his call. Mr Vannan could not recall whether he had had a pre-application meeting with the developer or not, because there were several meetings with the developer.⁴³
- 17.31 Mr Vannan did not otherwise say whether he had or had not responded to Mr Spence's call. We find that it would be quite remarkable had he not responded to the call given the reference to the Chief Minister and the large claimed investment sum. We also find it highly likely, for the same reasons, that he would have spoken to Mr Mitchell. It is also a reasonable conclusion that he looked at the project information left for him by Mr Spence. What we do know is that Mr Spence had a meeting with Mr Vannan's superior officer, Mr Watson, on the 20th November 1990, a few days after the date of the proposed call.⁴⁴ Whether this was a result of the proposed call or not would be a matter of speculation.
- 17.32 At this stage of the proceedings Mr Spence was plainly seeking support for the project and, in doing so, was explaining what the proposal was. This is not only a matter of reasonable inference, but is what Mr Spence explained in his letter of 19th October 1994. We accept what Mr Spence wrote. Not only is it consistent with the evidence of Sir Miles Walker, but again we consider it highly unlikely that he would have written to the Chief Minister in terms which were untrue, and could easily have been recognised as such. Moreover, we find what he wrote as being consistent with, rather than inconsistent with, the undisputed evidence of meetings at that time.
- 17.33 We are satisfied as to what Mr Spence told the Chief Minister in meetings with him in late 1990. In his written and oral evidence to the Commission⁴⁵ Sir Miles Walker has said that he told him that permanent residential housing was unlikely to get planning permission. We have accepted that Mr Spence read out the Notes of Presentation,

⁴⁰ File A page 13

⁴¹ Evidence of Mr Watson Q3 Transcript Day 7 page 88

⁴² File B page 1

⁴³ Evidence of Mr Vannan Q32 Transcript Day 20 pages 12-13

⁴⁴ Paragraph 17.34 below

⁴⁵ Sir Miles Walker Document Q16 and Transcript Day 30 page 11

which is not in dispute as identifying permanent residential housing, to the Chief Minister.

- 17.34 We find that he gave similar information to the other parties with whom he had pre-application discussions. We have accepted what he said about this in his letter of 19th October 1994. It would be naive in the extreme not to have given similar information to each of the parties about the project he was trying to sell to them. It was a necessary part of the project. It was explained in the documents which later became part of the application. He could not presume that there would be such dereliction of duty that these documents would not be read. He could not presume that the Chief Minister and the officers or representatives from the Department of Tourism to whom he had spoken would not speak with each other. He was specifically invited by the Chief Minister to discuss the project with the Department of Tourism and the planning office.⁴⁶ He specifically told Mr Vannan that he had discussed it with the Chief Minister and Mr Mitchell. Having so freely referred to other parties with whom he discussed the project, he would be unlikely to give them different information on what he described as a necessary element. We have considered whether the Chief Minister's comment on the problems of obtaining planning permission for permanent residential housing may have induced Mr Spence to omit this element from his discussion with the other parties. For the reasons which we have given we consider this to be unlikely; it may however have had a part to play in the cautious incremental approach once the first consent had been given. We note also that on the letter accompanying the application of 16th January 1991 Mr Spence referred to a discussion which he had had with Mr Watson about the project on 20th November 1990. The Notes of Presentation which had informed the Chief Minister fully about the project remained part of the submitted application.
- 17.35 So, for all the above reasons, we find that the Chief Minister, Mr Watson, and Mr Mitchell were fully informed about the scheme directly by Mr Spence from the beginning. While Mr Vannan may or may not have had a pre-application meeting with the developer we are, for the reasons above, and also, because of the knowledge and understanding which his immediate superior officer had received in circumstances which involved him quite closely, satisfied that Mr Vannan also had full knowledge prior to the application.
- 17.36 a) Mr Bell is not identified on the evidence as having personally had pre-application meetings with the developer. However Mr Spence, in the letter of 19th October 1994 which we have accepted, states that the Department of Tourism was fully conversant with the evolution of the project as described in the Notes of Presentation. We have found that Mr Mitchell was fully informed prior to the initial application. The totality of the papers which we have seen make it clear beyond doubt that Mr Mitchell was Mr Bell's right hand man on this project and that Mr Bell was personally closely involved in not merely supporting, but in promoting, the project. We find it outside the realms of reasonable belief that Mr Mitchell did not inform Mr Bell at a very early stage of the true position with regard to housing. It is plain beyond doubt that Mr Bell knew of the position by 13th May 1991,⁴⁷ the date of his recorded telephone conversation to Mr Spence, and this is consistent rather than inconsistent with knowledge earlier than that. A letter from Mr Spence to Mr Bell dated 21st March 1991 identifies this personal involvement by Mr Bell in the form of meetings with Mr Spence prior to the date of this letter.⁴⁸ We also note that Mr Bell's department was involved in the change of the wording of the schedule of the draft

⁴⁶ Sir Miles Walker Document Q16

⁴⁷ File A page 189

⁴⁸ File A page 50

Agreement for Sale from crystal clear wording that the units were to be permitted for permanent residential use to the less obvious words of the approved draft Agreement (see paragraph 3.58 and ante, above). This is seen from Mr Spence's letter to Mr Mitchell dated 23rd May 1991 in which there is a reference to their meeting on 22nd May 1991 at which some form of dissatisfaction with the wording must have been discussed, as indicated by the words "2. Mark Moroney will contact Mr Savage to see if any alternative wording can be formalised". Aware that this letter was threatening to withdraw the whole project unless the Agreement for Sale was approved, it seems more likely than not that this would be brought to Mr Bell's attention by Mr Mitchell. Mr Bell denied any knowledge of permanent residential use in 1990/1991.⁴⁹ For reasons given above we do not accept this denial.

b) We have already referred in paragraph 11.132 to Mr Bell's written representation to the Commission which he made having had sight of material parts of the draft report. This representation, apart from a self explanatory exclusion is set out in Annex 4. Having studied these representations carefully we consider it appropriate to explain why we have not changed our findings in respect of which we are satisfied that there is no reasonable doubt. The report, and its references, sets out full justification for this and there is not therefore need for a detailed response to each point made. Mr Bell has appeared at the Commission on two occasions, giving his responses to matters which are in the report.

c) His personal written representation is broadly similar to his oral evidence and has not brought to our attention material matters of which we were not aware. We do however draw attention to one point in Mr Bell's representation, at page 5, concerning what is set out in 11.135 relating to his answer in the House of Keys on 7th April 1992 about government financial assistance and the Mount Murray development. In his representation he says that he gave no consideration to this issue until several weeks after 7th April 1992. This representation by Mr Bell conflicts with the matters set out in paragraph 13.42 above which indicates that he was involved in the matter approximately one month earlier than his parliamentary response.

d) So far as Appendix 1 of his representation, drafted by Mr Bell's lawyers, is concerned, this does not cause us to doubt our findings and conclusions. For the most part the analysis consists of looking at a single draft paragraph, and criticising its validity on the basis of that paragraph without consideration of its context in the report and the evidence which is identified in that context. In other cases there are factual inaccuracies or avoidance of what is in the paragraph commented upon. We do not propose to go through each point because the report itself, read in appropriate context, answers all the points, but we will refer to some examples. First we refer to paragraphs 2 and 3 where it is stated that it is doubted that it would be possible for the Commission to have taken any proper account of evidence given by Mr Bell on the same day, before finalising the draft report. What the representation has failed to mention is that the Commission, in sending the draft report to Mr Bell, included the following passage: "The draft report has taken account of the evidence which you gave to the Commission, 12th May 2003, but has not accepted that evidence insofar as it is contrary to the conclusions and findings which are set out in the following paragraphs". This was written within hours of hearing Mr Bell's evidence during which many of the points in the draft report were put to him.

e) Examples of the representations not taking account of the context are seen in its paragraphs 7, 8 and 12. With regard to the first of these concerning difficulties relating to timeshare definitions, the representation places weight on the report's statement that it had not been able to obtain evidence on this. The representation does not refer to the fact that the Commission had asked the Planning Committee Secretary and the case planning officer whether they had been aware of such a

⁴⁹ Evidence of Mr Bell Q9 Transcript Day 9 page 3

difficulty and that they had not been so aware, and that this was put to Mr Bell by the Commission as clear evidence that there was not such a difficulty (Transcript Day 31 pages 17-19). It is also the fact that Mr Bell (page 3 of his representation) has now modified his evidence on this issue. The Commission's rejection of Mr Bell's evidence is adequately explained and justified. As to the second point, in paragraph 8, a claim is made of inadequate reasoning but fails to draw attention to preceding paragraphs and references, and sub-section 3 (vii) of the report where ample reasoning is given. Paragraph 12 refers to the Commission having a particular impression of Mr Bell which is unsupported and unfair, but appears to ignore the fact that this is a summary concluding paragraph based on the immediately preceding paragraphs 11.120 to 11.130 with cross references which set out the reasons for justification of that impression in some detail.

f) As to inaccuracies, paragraph 10 of the Appendix representation spends some time seeking to cast doubt on the draft report's findings of undue influence and pressure being placed upon officers of the Planning Office. Amongst other matters it is said (10.3.1 & 10.3.2) that nowhere in his evidence did Mr Vannan suggest that Mr Bell personally put any pressure on him and attention is drawn to Mr Vannan's evidence when he says it would be wrong to say he was instructed, but rather that he was pressured to write the letter of 13th May 1991. This ignores the evidence of Mr Vannan (Transcript Day 20 page 56) when he states expressly that he wrote the incorrect first paragraph of the letter of 13th May 1991 under pressure from Mr Bell and Mr Savage at a personal meeting with them, and when he states his agreement that there was little difference between pressure from Mr Bell and Mr Savage to write the letter and an instruction to do so. Nor is reference made to paragraph 11.150 of the draft report where this is reported. The second example is paragraph 18 where it is contended that Mr Bell was not aware of the original draft Agreement for Sale. No reference is made here to paragraph 3.51 of the draft report where the referenced letter of 23rd May 1991 from Mr Spence to Mr Mitchell shows the Department of Tourism to be fully involved in the original draft Agreement for Sale and the proposal to change its wording. Given that this letter contained a threat by Mr Spence to withdraw the scheme, and Mr Bell's acceptance (Transcript Day 31 pages 4 and 5) that Mr Mitchell would report to Mr Bell if he had said or done something about Mount Murray though not every little detail, and that this is a long way from a little detail, we are satisfied that our conclusion as to Mr Bell's knowledge about the draft Agreement for Sale is correct, as indicated in paragraphs 11.133 to 11.139 of the draft report.

g) We appreciate fully the seriousness of our findings with regard to Mr Bell, and we understand that he should be anxious to identify reasons for his disagreement with them; but having looked with the utmost care at what he has said and what has been said on his behalf, we remain satisfied beyond any reasonable doubt that our findings and conclusions with regard to Mr Bell as set out in this report are correct.

17.37 For the reasons set out above we find that the Chief Minister, the Department of Tourism and the Department of Local Government and the Environment had full knowledge of the permanent residential element in the application of 16th January 1991 by the time that it was submitted. Also for the above reasons we find that Mr Bell, Mr Mitchell, Mr Watson and Mr Vannan had such full knowledge.

17.38 We were not able to interview or have a written statement from Mr Savage because of his unfortunate premature death. Mr Savage was generally spoken of in high regard with respect to his professionalism. However, we have sufficient oral and documentary evidence to be quite satisfied that Mr Savage was fully involved in events in May 1991. We have no satisfactory evidence to indicate whether or not Mr Savage was involved in events before May 1991. That he was involved in May 1991 is shown first by the important and incorrect letter which he signed on 16th May 1991 (see paragraph 3.49 above). He was also directly concerned on 23rd May 1991 with

the amending of the second schedule of the Agreement for Sale from the stark statement of proposed permanent residential use before that document went to the Planning Committee for approval the following day (see paragraph 3.52 above). We also heard oral evidence from Mr Vannan that Mr Savage was directly involved at that time.⁵⁰ Mr Vannan's evidence explained that following persuasion, or effectively pressure, from the Department of Tourism and from Mr Savage he wrote the letter of 13th May 1991.⁵¹ He also said that he was asked to take the Agreement for Sale to Committee by Mr Savage.⁵² While we have not accepted all that Mr Vannan has told us we have accepted this part of his evidence as it is fully consistent with the documentary evidence and with our view that Mr Vannan was a comparatively weak character who would have succumbed to pressure to do things which he knew to be wrong and should not be done. Why Mr Savage did depart from his generally high standards is not directly revealed from the evidence. He was a Senior Executive Officer in the Department of Tourism before becoming Chief Executive in the Department of Local Government and the Environment in the late 1980s. Whether or not that influenced his conduct would be speculation. We are of course conscious that Mr Savage has been unable to defend himself, to challenge or clarify issues or to make any case on his own behalf. We have taken this fully into account, but we are quite satisfied that the conclusions which we have reached as to his involvement are correct.

17.39 Mr Brown was minister responsible for planning from 1989 to 1994.⁵³ Mr Brown told us that he was aware of the Mount Murray application and that it was a very large development, but that he was not aware of the details.⁵⁴ We accept that this was the situation. It was consistent with the practice of ministers responsible for planning not becoming involved with planning applications. That Mr Brown was aware of pressures being applied to his department from the Department of Tourism⁵⁵ in favour of approval is not necessarily inconsistent with Mr Brown distancing himself from the detail of the application, rather it is evidential support that there was such pressure and also a positive indicator of the curiosity of the practice of the minister avoiding involvement with an important aspect of the business of his or her department.

17.40 Mr Toohey was Chief Executive of the Department of Tourism at all relevant times. There is no evidence that he was involved in any material way with the irregularities which occurred at Mount Murray, and we accept fully that he was not. As noted at paragraph 11.137 above, Mr Downie referred to the line of communication being from Mr Mitchell direct to Mr Bell and not necessarily to Mr Toohey. However, this in itself is rather odd and a curious indicator of the general weakness in government that the Chief Executive could be sidestepped by the minister and his favoured consultant on such an important tourism development which this was seen to be. Mr Toohey did not approve of this situation,⁵⁶ which continued until Mr Mitchell became a more permanent employee, with a better reporting structure which Mr Toohey had been keen to see in place.⁵⁷

⁵⁰ Evidence of Mr Vannan Q32 Transcript Day 20 pages 42-74

⁵¹ Evidence of Mr Vannan Q32 Transcript Day 20 page 55-57

⁵² Evidence of Mr Vannan Q32 Transcript Day 20 page 70

⁵³ Evidence of Mr Brown P14 Notes Day 4 page 50

⁵⁴ Evidence of Mr Brown P14 Notes Day 4 pages 51-52

⁵⁵ Evidence of Mr Brown Q49 Transcript Day 25 pages 36-38

⁵⁶ Evidence of Mr Toohey Q10 Transcript Day 30 page 28

⁵⁷ Evidence of Mr Toohey Q10 Transcript Day 30 page 29

v) **Junior Planning Officers**

- 17.41 The officers concerned here were Mr Sinden and Miss Corlett.
- 17.42 The latter was only peripherally involved in the early Mount Murray planning applications, and was then very inexperienced, being at the start of her professional career. We are quite satisfied that she had no involvement or knowledge of the wrongdoings which occurred in relation to the early Mount Murray applications.
- 17.43 Mr Sinden was an experienced officer and was directly involved in the early 1991 Mount Murray planning applications. However, we are satisfied that he was not actively involved in the pursuit of the deceptions which took place in the planning office in 1991. We believe this to be well illustrated by his queries and reasoned protests⁵⁸ about the extension of the development area outside the 1982 Development Order designations and his advice to the Planning Committee that he thought the proposed use to be tourist accommodation and associated facilities and that conditions restricting it to tourism should be attached to the various consents.⁵⁹ We also accept his oral evidence to us to this effect.⁶⁰
- 17.44 However, Mr Sinden informed us that he did not read the Buyer's Guide in any thorough sort of way and went so far as to say that he did not wish to pretend that he had read the Buyer's Guide.⁶¹ This was negligent conduct given that the document was said to form part of the application, and Mr Sinden's conjecture that, had he reported such documents in a full and proper fashion the shape of the approval emerging from the Committee would have been the same, misses a major point. Had he reported properly the Planning Committee would have been clearly aware that a permanent residential use was being intended, and then any of its future decisions would have been made in the full knowledge of that fact. Nevertheless we consider that such negligence stands quite apart from the primary irregularities in which we have particular interest and in respect of which we find that Mr Sinden played no part.

vi) **Planning Committee Members**

- 17.45 We confine our findings to the Planning Committee meetings of the 24th May 1991 and the 4th October 1991. These were the meetings at which two crucial decisions were made. The former meeting approved the draft Agreement for Sale and the latter changed the limitation of use condition.
- 17.46 Mr Cretney was the chairman at both these meetings, and Mr Faragher was a member of Committee at both meetings. The third member at the earlier meeting was Dr Moore, and at the later meeting the third member was Mr Guard. They all gave written and oral evidence to us.
- 17.47 We are quite satisfied that there was a clear division between any knowledge of these members and the knowledge and actions of officers. We are quite satisfied that the Committee members were quite unaware of the conduct, intentions and objectives of officers as we have found them in sub-section (iv) above. We have seen no credible evidence that the members did have such knowledge. We are quite satisfied that such true understanding which members did have about the proposals

⁵⁸ File A pages 26 and 52

⁵⁹ Mr Sinden Document Q12 Appendix I

⁶⁰ Evidence of Mr Sinden Q12 Transcript Day 10 pages 1-96

⁶¹ Evidence of Mr Sinden Q12 Transcript Day 10 page 95

arises from their own consideration of these matters and not from officers. From this it follows that officers misled or attempted to mislead the Committee members in respect of the proposals which were in front of them and in respect of the effects of the decisions which they were being asked to make.

- 17.48 The conclusion set out in the last preceding paragraph does not mean that we find that the members did not have some relevant understanding on these matters, nor that they were faultless in respect of their decision making duties. We have not found it easy to come to a clear conclusion as to the extent of the knowledge which members did have on the proposals and the significance of their decisions. In the event we do not find this difficulty to be of any over-riding importance in terms of the remit which we have. More important and material is the illustration of the highly unsatisfactory handling by government of the irregularities which is provided by the actions of the Committee members within the Committee setting in carrying out their duties and making their decisions. That Committee setting was provided by government and, in our judgement, deserves severe criticism.
- 17.49 Nevertheless it is material to look at the conduct of the members in order to see the results which can flow from decisions being made in such inappropriate circumstances and setting. While all four members, including Mr Cretney in written representation,⁶² disputed that they had knowledge of proposals for permanent housing we are satisfied that there was some element of understanding at least among some Committee members that their decisions would result in an element of permanent housing. We are also quite satisfied, on the other hand, that no member had any understanding that their decisions would result in the reality of today that virtually 100 per cent of the housing is used for permanent residential occupation.
- 17.50 We reach this conclusion principally on the basis of three points. First the evidence of Mr Faragher⁶³ who said that he thought that the fact that there might have been long term residents as a small proportion of the concept was something that “we perhaps knew of and accepted”. Mr Faragher did go on to say that such a position was a million miles away from the concept of a residential development, but it is nevertheless a significant piece of evidence as it was not dissimilar from the way in which the project was being presented by the developer. Second, Dr Moore told us⁶⁴ that either the significance of the events of the time escaped him or he did not want to realise that there was a change relating to the provision of permanent homes. Third, there is the evidence of Mr Magee which we noted at paragraph 3.57 above. This relates to the minute of the meeting of the 24th May 1991, in respect of which Mr Magee said that he could not argue with the Commission’s statement that that minute appeared to indicate a clear recognition that approval of the agreement would lead to permanent residential accommodation. Mr Magee’s qualification that the condition limiting occupation of the houses to tourist use was the governing factor does not bear on the issue with which we are here concerned, i.e. that of knowledge. In any event, any such “governing factor” disappeared with the removal of the tourist use condition on the 4th October 1991.
- 17.51 It can be inferred from the evidence that the reasons the Committee took their actions, notwithstanding this knowledge, were that (a) they did not consider that permanent residential use would be significant (see paragraph 17.49 above) and that (b) the proposal could be seen as important from the point of view of tourism

⁶² Annex 4

⁶³ Evidence of Mr Faragher Q8 Transcript Day 8 page 114

⁶⁴ Evidence of Dr Moore Q35 Transcript Day 22 page 16

benefits.⁶⁵ Nonetheless we do accept the evidence of Mr Cretney⁶⁶ that the Planning Committee was deliberately misled (or there was an attempt to mislead) by Mr Vannan because he, and others, knew that if they told the Planning Committee the truth, the Planning Committee would refuse the development. We say “attempt to mislead” because we find that the Committee did know something of the truth, but it did not know the whole truth.

17.52 The real significance of these matters is that the system in place allowed these events to happen. It was a completely new membership of the Planning Committee,⁶⁷ having been formed only in 1990, and there was no continuity; a quite foreseeable effect of having such small Committees. There was no training for the Committee. They were given a briefing by officers on their first appearance and they were given a folder or pack⁶⁸ which contained some legislation. Advance information was not provided with the result that it was “very much a matter of rolling your sleeves up and taking each one as it arrived in front of us”.⁶⁹ A culture prevailed whereby a member could be told by an officer that conditions were “too complicated for [the member] to understand”.⁷⁰ A feeling was allowed to come to a member that the professionals had a slight irritation about members in the sense that they had to be kept up to speed on a whole range of things and very often they were run-of-the-mill and could be done without members.⁷¹

17.53 Mr Guard gave us a graphic description of Planning Committee meetings: “In fact the reality of the meetings were very different in that officers would be in and out all morning, coffee and biscuits were being served, the secretary would be coming in and out. There was quite a lot of activity, at some point someone would have said excuse me Chairman, Mr Vannan wants to have a quick word with you about the Mount Murray application as it was in this case and Barry would have come in and run past us whatever matter it was he wanted us to be appraised of. He might not even have sat down. It might have been just a couple of minutes and that’s the crucial moment at which we were trying to ascertain the information he was giving us and what in fact we were being led forward to approve.”⁷² We consider this evidence worth quoting in full because it is a vivid indicator of the ethos and the culture which prevailed in the planning office, not just for Mount Murray applications but as a general procedure.

17.54 This was a general procedure from which the responsible minister cut himself off and considered that things were running satisfactorily. Members were not shown minutes⁷³ nor were conditions brought back to them for approval after they had been drafted by officers.⁷⁴ There was a lack of transparency, so that it was extremely difficult for any third party to understand what was happening within the planning office. There appeared to be no terms of reference for the Committee.⁷⁵ Members did not ask for information.⁷⁶ This is self evident in that members did not know what

⁶⁵ Evidence of Mr Faragher Q8 Transcript Day 8 pages 106-108

⁶⁶ Evidence of Mr Cretney Q22 Transcript Day 17 pages 52-53

⁶⁷ Evidence of Mr Faragher Q8 Transcript Day 8 page 126

⁶⁸ Evidence of: Mr Guard Q4 Transcript Day 8 page 33 and Mr Sinden Q12 Transcript Day 10 page 94

⁶⁹ Evidence of Mr Guard Q4 Transcript Day 8 page 5

⁷⁰ Evidence of Mr Guard Q4 Transcript Day 8 page 23

⁷¹ Evidence of Mr Guard Q4 Transcript Day 8 page 23

⁷² Evidence of Mr Guard Q4 Transcript Day 8 page 11

⁷³ Evidence of Mr Guard Q4 Transcript Day 8 page 31

⁷⁴ Evidence of Mr Guard Q4 Transcript Day 8 page 32

⁷⁵ Evidence of Mr Guard Q4 Transcript Day 8 page 33

⁷⁶ Evidence of Mr Guard Q4 Transcript Day 8 pages 37-39

decisions they were making nor did they ask for information⁷⁷ which would enable them to understand what decisions they were making in this prevailing atmosphere. The belief that members could not have a better understanding of documents because such documents were not revealed or withheld from them is not correct. These were basic documents such as referred to in the planning application or the Buyer's Guide. They could not have been withheld from members properly exercising their duties. While such dereliction of duty is reprehensible, and it must be said that the members did not shirk, in their appearance before us, from admitting their faults in this respect, much more reprehensible and of grave concern is the administrative ethos and culture which resulted in a system of development control which was extremely poor.

- 17.55 The system of development control in the early 1990s was inefficient and uncontrolled to an extent that officers could take applications through Committee so that decisions were made, the effect of which were not known to the decision making members, they being untrained and unquestioning and therefore uninformed. This state of being uninformed was only partly attributable to being untrained. This was a situation which was apparently not known to the minister in charge of this department so that when the question of a widespread and unsatisfactory state of affairs was postulated to him in evidence he simply did not recognise that such a state of affairs existed.⁷⁸
- 17.56 In this regard the handling by government, in the form of the Department of Local Government and the Environment, of its business was so poor that a potential for identification and rectification of irregularities was virtually non-existent and changes need to be made, additional to those which are being made, which would ensure that government handling of this aspect of planning office business should not again descend to such a low level.
- 17.57 In this sub-section we have given our conclusions in respect of all members of the Planning Committee and have not made any specific reference to chairmen. However we are of the view that, notwithstanding the points made in his written representation to us⁷⁹ on matters in this sub-section, the chairman should have taken steps to ensure that all members were in a position to give due consideration, with relevant documentation, to all applications and to understand appropriately the decisions which they were being asked to make. We have little or no evidence that this was done for the Committee considering the Mount Murray application which we have examined, but we do find that this responsibility lies also, and more directly, upon the Secretaries of the Committee. We refer to this in the next sub-section.

vii) Secretaries of Planning Committee

- 17.58 The two Secretaries of the Planning Committee at relevant times were Mr Magee and Mr Killip. Mr Killip succeeded Mr Magee on 18th July 1991. Both gave written and oral evidence to us.
- 17.59 Mr Magee was Secretary of the Committee from 1986 until 1991, and was present as Secretary at the meeting of 24th May 1991 when the draft Agreement for Sale was approved. His evidence was helpful both in our factual understanding of some relevant events and in revealing to us that he really did have a misunderstanding of what should have been expected from him in his position as Secretary; we attribute

⁷⁷ Evidence of Mr Faragher Q8 Transcript Day 8 page 130-132

⁷⁸ Evidence of Mr Brown Q49 Transcript Day 25 page 11

⁷⁹ Annex 4

this misunderstanding in large degree to the government's handling of this important post in failing to provide any, let alone sufficient and appropriate, induction or training for the post.

- 17.60 Mr Magee explained to us that the duties of the Committee Secretary included preparation of meeting agendas, attendance at meetings to give advice as required, to record decisions, to produce minutes and to ensure that decisions of the meeting were accurately reflected in notices, and office management of clerical staff within the planning office.⁸⁰ He did not regard it as his responsibility to ensure that supporting documents with planning applications were before the Committee.⁸¹ But he did say, and he repeated this in a second written representation,⁸² that he circulated draft minutes to Committee members and to officers.⁸³ This latter point is not consistent with other evidence we heard e.g. Mr Guard said that members were never sent minutes.⁸⁴ We will return to our conclusions on the Committee Secretaries' responsibilities, but first we draw attention to other aspects of their evidence.
- 17.61 We find from Mr Magee's evidence that he was aware of the developer's intent that there should be consent to build permanent housing and that his evidence is corroboration of the findings we have made in the last preceding sub-section with regard to the knowledge of Committee members. The evidence which he gave was somewhat ambivalent, but nevertheless enabled us to reach these conclusions without difficulty, notwithstanding the doubt he raises in his second written representation to us.⁸⁵
- 17.62 Mr Magee had attended the meeting on 20th March 1991 which had been sought by Mr Spence. Others attending this meeting included Messrs Watson, Vannan and Sinden. Mr Magee had attended at fairly short notice to explain review or appeal procedures, he told us. He also told us that the intended use of the housing was explained at that meeting. The description he gave to us of that use was not inconsistent with the use explained in the Buyer's Guide.⁸⁶ He told us that on a personal level he had thought, as we understand it, that it was unlikely that the tourism aspect would happen on the scale proposed, but he took comfort from the condition limiting to tourist use. He added with regard to Committee members that he had no reason to doubt that the Committee members had taken some comfort from that, and felt, as he did, that they would have the ability to constrain the use of the dwellings to that purpose.⁸⁷ He further added the surprising comment that he supposed that he had thought that it was for the developer and subsequent owners to make sense out of the conflict in the terminology being adopted. He later explained this 'conflict' as between the Buyer's Guide phraseology and the planning condition just mentioned.⁸⁸ We conclude that his supposition showed a misunderstanding of his duties. We find that at least a minimum duty of the Planning Committee Secretary must be to bring such identified conflicts to the attention of the chairman, members and planning officers at the meeting.

⁸⁰ Evidence of Mr Magee Q14 Transcript Day 11 page 18

⁸¹ Evidence of Mr Magee Q14 Transcript Day 11 page 87

⁸² Annex 4

⁸³ Evidence of Mr Magee Q14 Transcript Day 11 page 26

⁸⁴ Evidence of Mr Guard Q4 Transcript Day 8 page 8

⁸⁵ Annex 4

⁸⁶ Evidence of Mr Magee Q14 Transcript Day 11 page 36

⁸⁷ Evidence of Mr Magee Q14 Transcript Day 11 page 37

⁸⁸ Evidence of Mr Magee Q14 Transcript Day 11 pages 39 & 40

- 17.63 Mr Magee also told us⁸⁹ that he had, at the time in question, seen Mr Vannan's letter to Mr Bell dated 13th May 1991⁹⁰ which maintained that there was no conflict between the Buyer's Guide and the limiting occupancy condition, and that he did not agree with this view.⁹¹ He had dismissed this letter as a trifle not worth bothering about.⁹²
- 17.64 As to the Agreement for Sale approved by the Planning Committee on 24th May 1991 Mr Magee believed that it did not have any effect at all, and he did not attach any weight to the process, but he did agree that it would create a terrible mess without accepting this as a reason to advise against its consideration by the Committee.⁹³ He went on to say that he understood what the Committee were doing, and also that the minutes of that meeting⁹⁴ indicated that members were concerned that the houses might not remain as purely tourist accommodation.⁹⁵ He later agreed that he had informed Professor Crow that it would not have surprised him if, in the longer term, some or all of the houses had become permanent accommodation. This was because experience in the planning office showed that if a developer was patient and persistent he would get what he wanted.⁹⁶ Nevertheless, he told us that he did not consider it difficult for the Planning Committee to go back on what they had decided on 24th May 1991 because they could rely on the use restriction condition⁹⁷ attached to the existing planning consent.
- 17.65 Mr Magee having accepted that these circumstances made for there being a terrible mess then effectively accepted that it was his duty to avoid such a thing.⁹⁸ We are unaware of any steps which he did take to avoid this. What he did go on to explain in detail however was that it was not unusual for the Committee to be asked to do things outside the normal structure (of procedure) and for there to be a number of procedural improprieties so that the Committee did not have to refuse applications.⁹⁹ We have reservations about accepting the totality of what he said on this but the anxiety of the Committee and officers to produce decisions which were not refusals, and to determine a different proposal to that which was being put to them by the applicant, is not in dispute as we have discussed at paragraph 11.32 above. The lack of procedural concern is also consistent with what we have concluded in this regard in the last preceding sub-section. Our limited reservations are because Mr Magee said that he felt that similar draft agreements had come before the Planning Committee on other occasions.¹⁰⁰ He was unable to substantiate this evidence.¹⁰¹
- 17.66 Further evidence of the serious disorganisation within the planning office in the early 1990s was provided by Mr Magee when he emphatically confirmed¹⁰² the evidence of Ms P S Newton, a Planning Officer working there at the time. She gave written evidence that, after weekly planning lists had been distributed to officers and the press "If anyone knew an application was in they might, with a great deal of persuasion, get hold of it from the clerk but this was usually treated in very bad

⁸⁹ Evidence of Mr Magee Q14 Transcript Day 11 page 54

⁹⁰ File A page 59

⁹¹ Evidence of Mr Magee Q14 Transcript Day 11 page 51

⁹² Evidence of Mr Magee Q14 Transcript Day 11 page 55

⁹³ Evidence of Mr Magee Q14 Transcript Day 11 pages 70 & 71

⁹⁴ File A pages 65 & 66

⁹⁵ Evidence of Mr Magee Q14 Transcript Day 11 page 73

⁹⁶ Evidence of Mr Magee Q14 Transcript Day 11 pages 75 & 76

⁹⁷ Evidence of Mr Magee Q14 Transcript Day 11 pages 76 & 77

⁹⁸ Evidence of Mr Magee Q14 Transcript Day 11 pages 77 & 78

⁹⁹ Evidence of Mr Magee Q14 Transcript Day 11 pages 77 & 78

¹⁰⁰ Evidence of Mr Magee Q14 Transcript Day 11 page 79

¹⁰¹ Mr Magee Q14 letter 15.7.2002

¹⁰² Evidence of Mr Magee Q14 Transcript Day 11 page 91

humour by the clerk as it could interfere with his or her system of booking in files. The Area Officers would have not bothered to try and locate an application at this stage: they were simply too overloaded with applications to have the time or need to do so.”¹⁰³ The clerk is an administrative officer who assisted the Secretary.¹⁰⁴ An Area Officer was a planning officer responsible for a particular area of the Island.¹⁰⁵ In his second written representation¹⁰⁶ Mr Magee appears to indicate a present doubt that there was serious disorganisation in the planning office. Our conclusion is that the evidence of disorganisation, as indicated throughout this report, is overwhelming.

17.67 Surprisingly in the light of the earlier evidence he had given, and to which we have drawn attention above, Mr Magee, later in his evidence, said that he did not believe that in May 1991 the Committee was being asked to sanction permanent residential accommodation on the site.¹⁰⁷ A conflict appears here. Nevertheless, Mr Magee did finally agree that he had been naive in his approach¹⁰⁸ and that the Committee had not been advised that what they did on 24th May 1991 contravened explicitly the nature of the permission which they had given in April.¹⁰⁹ The Commission notes that this contrasts quite fundamentally with a later representation¹¹⁰ from Mr Magee in which, as indicated in paragraph 11.103 above, he argues that on his understanding that housing tenure is not a planning matter, his failure properly to read the Buyer’s Guide and the Agreement for Sale was completely understandable. We find nothing in Mr Magee’s evidence to us to suggest that he held such a misconceived view and do not accept it as a justifiable reason for not reading key documents as he should have done.

17.68 We conclude from Mr Magee’s evidence that he was aware of the developer’s intention in respect of permanent housing from at least March 1991 and we do not find his denial of this in a later representation¹¹¹ to be credible. We also conclude that, notwithstanding his experience, Mr Magee was naive about the significance of the decision being sought on 24th May 1991 and consequently failed to give appropriate advice to the Committee in respect of the significance of the decision they were being asked to make.

17.69 We also find that Mr Magee’s evidence further supports our findings in the last preceding sub-section that Committee members had an awareness of the developer’s intentions in respect of permanent housing, and that there was a state of unacceptable disorder and disorganisation in the planning office, and particularly in the Planning Committee, in the early 1990s which was not confined to consideration of the Mount Murray planning applications.

17.70 We turn to our conclusions with respect to Mr Killip’s period as Secretary of the Planning Committee. His particular involvement so far as our interest is concerned was with the Committee decision of 4th October 1991, but he did give evidence on other matters of relevance.

¹⁰³ Ms Newton Document Q36 page 2

¹⁰⁴ Evidence of Mr Magee Q14 Transcript Day 11 page 24

¹⁰⁵ Ms Newton Document Q36 page 1

¹⁰⁶ Annex 4

¹⁰⁷ Evidence of Mr Magee Q14 Transcript Day 11 page 84

¹⁰⁸ Evidence of Mr Magee Q14 Transcript Day 11 page 86

¹⁰⁹ Evidence of Mr Magee Q14 Transcript Day 11 page 85

¹¹⁰ Annex 4

¹¹¹ Annex 4

- 17.71 In contrast to the experience of the planning system which Mr Magee had accumulated by the time of the Mount Murray applications, Mr Killip had no such experience when he took office in July 1991.¹¹² We have taken this fully into account in reaching our conclusions on his evidence. Nevertheless, we find that it is a further unfortunate aspect of the governmental system that an appointment should be made to an important post such as this where the appointee has a complete lack of relevant knowledge of the business of the post and, as with Mr Magee, he is not given any or any sufficient training for the position. We are not aware of any such training. We consider that a number of the failures which followed the Planning Committee decisions from July 1991 with regard to Mount Murray were in part attributable to the appointment of such an inexperienced, untrained person, whatever his personal qualities or capabilities may have been.
- 17.72 On general matters Mr Killip corroborated Mr Magee's critical evidence of the affairs of the planning office in that he confirmed that standard planning conditions in use in the office did have question marks as to their enforceability.¹¹³ Further he informed us that Mr Watson, Chief Architect and Planning Officer, as well as Mr Vannan, had suggested to the 4th October 1991 Planning Committee that the decision issued on 2nd October 1991 had been erroneous and could properly be corrected by issue of a replacement notice with the revised wording of the condition relating to occupancy, and that he, Mr Watson, was aware of the revised notices of permission,¹¹⁴ although Mr Watson told us that he had no recollection of the meeting of 4th October 1991,¹¹⁵ and that he was unaware that the development was going to be a residential development until his meetings with Professor Crow.¹¹⁶ He also told us that Mr Vannan in addressing the 4th October 1991 Committee had supported his views by reference to Mr Savage's communication to the developer with regard to appropriate occupancy.¹¹⁷ All these three points are corroboration of conclusions we have explained earlier in this section.
- 17.73 Mr Killip was also very clear as to the way in which Mr Vannan addressed the 4th October 1991 Committee in respect of the change to the occupancy condition, and we accept his evidence on this, as it is quite unequivocal. We need only refer to the first occasion when Mr Killip explained this in his oral evidence to us, but he confirmed this more than once. He said that Mr Vannan had brought Mr Spence's faxed letter of 2nd October 1991 to the Committee, and, in respect of the occupancy condition, made reference to an earlier agreement or earlier application, by which the Buyer's Guide had established the nature of the occupancy of the buildings or properties, and that the notice of permission issued on 2nd October 1991 was consequently erroneous and should have been worded in the manner described by Mr Spence in his letter. It should not have been issued because it was incorrect. There was, Mr Vannan had said, a previously agreed position in relation to occupancy and the Buyer's Guide.¹¹⁸ Mr Killip stated on a number of occasions that he had no recollection of the Committee challenging or querying such earlier agreement.¹¹⁹ He had the impression that the Committee thought it was simply correcting an administrative error,¹²⁰ and that the Committee did not read the Buyer's

¹¹² Evidence of Mr Killip Q15 Transcript Day 11 page 123

¹¹³ Evidence of Mr Killip Q15 Transcript Day 11 pages 125 & 126

¹¹⁴ Mr Killip Document Q15 page 2

¹¹⁵ Evidence of Mr Watson Q3 Transcript Day 7 page 118

¹¹⁶ Evidence of Mr Watson Q3 Transcript Day 7 page 105

¹¹⁷ Evidence of Mr Killip Q15 Transcript Day 18 page 61

¹¹⁸ Evidence of Mr Killip Q15 Transcript Day 18 pages 60 & 61

¹¹⁹ Evidence of Mr Killip Q15 Transcript Day 18 pages 61, 65 & 99

¹²⁰ Evidence of Mr Killip Q15 Transcript Day 18 page 66

Guide on that occasion.¹²¹ We accept all these points which are further corroboration of our conclusion that the Committee were unquestioning when they should have been questioning. We also note that Mr Killip himself failed to enquire on 4th October 1991 what the prior agreement consisted of as, notwithstanding his lack of comparative seniority, he should have done. He was to claim in a later representation¹²² that he had sought clarification on this point, but this is contrary to his evidence to the Commission, when in response to a direct question on the point he replied “I didn’t on the 4th October, no.”¹²³ His qualification here is irrelevant because it was at the 4th October Committee meeting when he should have queried it.

17.74 We find that Mr Killip for his part did not understand very much of the effect of what was happening at the 4th October 1991 Committee meeting. While much of this can be attributable to his appointment, without experience or training, which was a weakness in the government handling of the system through which the irregularities occurred, there are steps he should have taken. He himself did not ask for clarification of the earlier agreement on occupancy,¹²⁴ and he approved the issued permission notice without reading the Buyer’s Guide.¹²⁵ He also drafted a minute of that meeting unaware of the fundamental change which the decision had brought about. The minute was only as clear as the circumstances of his lack of understanding allowed, and the result was a minute which was quite unclear as to the decision which had actually been made at the meeting.

17.75 Mr Killip was also quite unaware of the significance of the change to the drainage condition on 4th October 1991. The significance was not “remotely apparent” to him at the time.¹²⁶ We have explained the material significance at paragraph 11.66 above.

17.76 Mr Killip gave further evidence corroborative of the failure of administration in the planning office. The initial decision for permission for 150 houses (PA 91/0953) was first given on 13th September 1991. But this major proposal did not appear on the printed agenda for that meeting – so it was again a late addition of business for the Committee which they would not know about until the meeting itself.¹²⁷ Mr Killip sought to explain this but his explanation was not easy to understand.¹²⁸ During the course of this explanation Mr Killip implied that the printed agenda was of little or no significance anyway.¹²⁹ This is a statement to the clear effect that members were not provided with material which would allow them to make any useful pre-meeting preparation or considered appraisal of the applications which they had to determine.

17.77 Mr Killip also told us that because of either unfamiliarity or lack of application he was not able to advise the Committee that they were procedurally wrong in issuing the decision of 4th October 1991 because the subtlety of that was lost on him.¹³⁰

¹²¹ Evidence of Mr Killip Q15 Transcript Day 18 page 67

¹²² Annex 4

¹²³ Evidence of Mr Killip Q15 Transcript Day 18 page 100

¹²⁴ Evidence of Mr Killip Q15 Transcript Day 18 page 100

¹²⁵ Evidence of Mr Killip Q15 Transcript Day 18 page 71 & 72

¹²⁶ Evidence of Mr Killip Q15 Transcript Day 18 page 79

¹²⁷ Evidence of Mr Killip Q15 Transcript Day 18 page 85

¹²⁸ Evidence of Mr Killip Q15 Transcript Day 18 pages 86 – 89

¹²⁹ Evidence of Mr Killip Q15 Transcript Day 18 page 89

¹³⁰ Evidence of Mr Killip Q15 Transcript Day 18 page 97

- 17.78 He also agreed, correctly, that (amongst others) the duties of the Secretary were to understand the business which is before the Committee, to understand the decisions which are made by that Committee, and to understand the documents which are issued in consequence of the decisions of that Committee.¹³¹ Mr Killip claimed he did understand these matters,¹³² but having heard his evidence, in part summarised above, we find that he did not understand them, and was thereby unable to give essential support to the Committee. He does not appear to have accepted that he was handicapped by his lack of knowledge or training in carrying out Secretary duties as the government's representative. This finding is not intended to blame Mr Killip in any significant way as we find the blame should lie on the governmental system which allowed him to be in the position he was without experience or training.
- 17.79 It is self evident that the proper writing of minutes is a basic requirement of a Committee Secretary. The obscurity of the minutes of the Planning Committee with regard to items concerning Mount Murray was remarkable. We have mentioned these minutes on many occasions in this report but it is sufficient to refer to our conclusion at 17.6 above in relation to written records of meetings which did not convey how decisions were reached nor indeed what decisions had been made.
- 17.80 This poor level of administration is unacceptable. This is an issue which is not simply limited to quality but to the objectives of the minutes in question. The objectives of the minutes should be to give understanding of the material happenings at the meeting to which the minutes refer. It is inadequate and unhelpful to limit the minutes to a minimally bare record of the decisions made. We are aware of the approach advised by government to local authorities that minutes should be confined to the decisions taken. This is contrary to our view and we disagree with it. It is advice which is contained in the otherwise extremely valuable handbook of General Information for Members and Officers of Local Authorities.
- 17.81 We have seen the difficulties which have arisen from such uninformative minute writing in respect of Mount Murray decisions, and of particular importance in this regard is the fact that the Court of Appeal for England and Wales has in recent years stressed the need for full and proper records of decisions taken by local planning authorities on planning applications whether in Committee or by Officers using delegated powers.¹³³ In R (on the application of Young) v Oxford City Council¹³⁴ the Court of Appeal allowed an appeal in circumstances where a planning decision was clear but the basis of that planning decision was unclear, and the Court heard statements from six members of the Planning Committee explaining the basis on which the decision had been made. In the course of the judgement of Pill LJ an indicative statement of approach was made: "It is therefore important that the decision making process is made clear in the recorded decisions of the Committee, together with the officers' report to Committee and any record of the Committee's decisions. Decisions recorded in the minutes should speak for themselves."¹³⁵ (our emphasis)
- 17.82 What has emerged from the evidence is that the Planning Committee did not have support from the Secretaries which they should have had in terms of ensuring that they were properly prepared for all items of business, and protected from making decisions which they did not or might not fully understand or were inappropriate for

¹³¹ Evidence of Mr Killip Q15 Transcript Day 18 page 97

¹³² Evidence of Mr Killip Q15 Transcript Day 18 page 97

¹³³ See editorial comment at 1003 JPL 243 on R v Oxford City Council 2003 JPL 232 Annex 5

¹³⁴ 2003 JPL 232

¹³⁵ 2003 JPL 237

them to make. In order to do this it is incumbent on Secretaries themselves to understand the business which was being undertaken, the decisions that are then made, and the documents and notices issued as a consequence. To a significant extent that understanding was lacking. Of course, the chairman should have some responsibility on these matters but we see the primary responsibility as being with the Secretaries. This is part of the overall picture of the government's failure in the handling of irregularities relating to the Mount Murray development insofar as the Department of Local Government and the Environment was in a very poor state of effectiveness and management and this situation was not recognised by a minister who had distanced himself from this.

viii) Enforcement

- 17.83 Enforcement issues did not play an overall significant part in events at Mount Murray, but such issues did arise and we have reported on them, especially at sub-section 12 (iii). Nevertheless an important matter did emerge and is referred to at sub-section 8 (iv) above and it deserves a specific conclusion and we have recommendations about it.
- 17.84 It is clear to us from the totality of the evidence which was given to us by the Island's Enforcement Officer that the system in place on the Isle of Man for enforcement of planning development control was exceedingly weak and operated by a person who was uninformed in the basic understandings required for the task. This was particularly so in the early nineties although in the nature of things the control will have improved somewhat over the years as the Enforcement Officer has learnt by the practical carrying out of his employment.
- 17.85 These conclusions are not in any way intended to be critical of the present incumbent of the position of Enforcement Officer who we find is, and has been, doing the best he could in the office to which he was appointed. Indeed he has since his appointment achieved further qualifications, albeit not apparently directed towards the understanding of enforcement control.¹³⁶
- 17.86 Our criticism and conclusion is directed towards the government handling of this aspect of planning and development control. We conclude that it was an inexcusable error to appoint as Enforcement Officer someone who had no understanding at all of planning matters. The task does after all have a primary requirement for there to be understanding whether a development, or part of it, is permitted under planning law and existing planning permissions. The decision to make such an appointment does, we conclude, show an improper lack of regard as to whether development is controlled or not controlled. To compound matters the appointment was not, so far as we have ascertained, been supported by induction training or any other relevant in post training.
- 17.87 It is of course quite possible that a properly experienced, trained, or otherwise appropriately knowledgeable person may not have identified such breaches of planning control at Mount Murray as we have identified, but that is not the point of our concern and conclusion here. The most serious irregularities at Mount Murray were really the manner in which permissions were granted in the first place, albeit breaches are of much importance in most circumstances. Our point in drawing attention to this appointment as we have done is to illustrate further the government's handling of matters concerning planning in a way which is unacceptable to any reasonable right thinking person, and is a further indicator of the ineffectiveness of

¹³⁶ Transcript Day 23 page 23

the planning office in the early 1990s in terms of control and direction. Apart from the experience gained in post by the present incumbent we are unaware that the government's administration of enforcement is any different to the position twelve years ago, although this position has at least been recognised in the consultation document on planning as we have identified at paragraph 15.33 above.

ix) The Planning System and Its Administration

- 17.88 In sections 8 and 9 of this report we have looked carefully at the Isle of Man planning system respectively as it was at the time when many of the relevant Mount Murray planning applications were considered and approved and at the time when Professor Crow reported in December 2000. In section 10 we set out our conclusions as to the effects of the systems and procedures on planning decision making in 1991-2 and in 2000. It can there be seen that we have concluded that administrative procedures within the planning office in 1991 were defective to the extent that they made it difficult for planning applications to be considered professionally and to any acceptable standard.
- 17.89 In earlier sub-sections 17 (vi) and 17 (vii) and 17 (viii) we have detailed our findings in respect of the Planning Committee members, Secretaries and enforcement and have set out our conclusions that there was, in the early 1990s, a system of development control which was extremely poor, but that this state of affairs was unknown to the minister in charge of the government department.
- 17.90 It can be seen from section 10 above that we further concluded that changes introduced by 2000 have been of some considerable materiality but that weaknesses remained.
- 17.91 In section 15 above, we have examined the further improvements which have been made in response to recommendations of Professor Crow, and to improvements which are being taken forward in their own right in the form of an important consultation document and the formulation of secondary legislation under the Town and Country Planning Act 1999.
- 17.92 It is unnecessary to set out again in this sub-section the detail of the many weaknesses of the Isle of Man planning system and its administration as these are sufficiently reported and explained elsewhere in this report within their relevant context. Likewise we do not need to detail all the steps for improvement which have been taken sufficiently or which still require to be taken forward. The steps which we have concluded do still require to be taken to achieve a satisfactory planning development control system are identified and explained in our recommendations section. Although much has been done much remains which is of importance.
- 17.93 Notwithstanding what we have concluded in general terms, there are three matters of particular concern to us which we consider require especial emphasis because we regard them as fundamental in seeking to avoid a recurrence of the irregularities which we have been invited to report upon. Two of these are being, or have in part, been addressed. The third is not recognised as necessary by those from whom we have taken evidence. We disagree with this view and conclude that it would be a serious mistake and omission if that view prevailed.
- 17.94 The first of these requirements is that there should be major improvement in transparency and major improvement in opportunity for proper consideration in development control decision making. The second is that the minister responsible for the department which has responsibility for development control should not be

divorced from the operations of the planning office, but should be aware of happenings in that office, and in particular be in a position to note applications for development of particular importance so that they may be treated in a way which is appropriate to their importance and significance. The third requirement is that there should be appropriate procedures to ensure that compliance is observed at all levels of management. It is of limited value if good administrative procedures and practices are introduced but there is no procedure in place which ensures that all levels of management do observe the procedures which have been put in place. In Mount Murray matters there were failures of compliance at the highest levels of management.

17.95 That we have specifically mentioned these three matters does not mean that the other matters upon which we make recommendations are not important. They are, but these three which we mention here have a fundamental importance.

x) Planning Permissions

17.96 By reason of the inefficiencies and ineffectiveness of the planning office and Planning Committee it has been difficult to identify the true effects of the permissions which have been granted in respect of the Mount Murray development. This ineffectiveness and inefficiency and the consequences with regard to planning permissions are fully explained in earlier parts of this report, particularly in section 12.

17.97 We appreciate the particular importance of our conclusions on this issue in that they may have a direct consequence, certainly for one person or body in respect of their land or properties. Nevertheless, we feel that we cannot avoid setting out our conclusions on a matter which is so directly consequential upon the government's handling of the material issues. Notwithstanding the difficulties referred to in the preceding paragraph above, our conclusions, set out below, are clear.

17.98 By 4th October 1991, the applicant had achieved, in terms of permissions, what the first application in principle of 16th January 1991 and its supporting documents had envisaged. The 150 houses permitted by October 1991 increased to 175 in 1992.

17.99 However, the approval for the 150 houses, initially applied for in August 1991 (PA 91/0953), was imprecise in its directions in relation to individual house plots, estate layout, and other aspects of the estate, especially trees.

17.100 What exactly was approved, and when, in the early 1990s remains unclear, but a plan, identified as 16F, was received in the planning office in September 1992. As noted in paragraph 12.12 above we conclude that the actual estate layout shown on plan 16F should be held to have planning permission, with the exception of four plots in the south east corner of the site. These four plots are identified in figure 2a of this report and are sites numbered 131, 132, 133 and 136. Figure 2a is extracted from the plan identified as plan 16c, which in this regard has the same information as plan 16F. Other reasons for reaching our conclusions on this issue are identified in paragraph 12.12 and 12.13 above, are further explained in sub-section 12 (iv) and are summarised at paragraph 12.33. Read short, these four plots were expressly excluded from permissions granted and have not been reinstated by any subsequent plan until individual applications were made as we describe in paragraph 12.33, beginning with plot 136 in July 2000.

17.101 We have also concluded that plot 135, also in the south east corner of the site, does not have planning permission. The reasons for this conclusion are referred to in

Fig 2a
Extract from Plan 16c
May 1992
 Plots referred to in Condition 4
 of PA 92/0212 now numbered
 on the estate as 131, 132, 133 &
 136

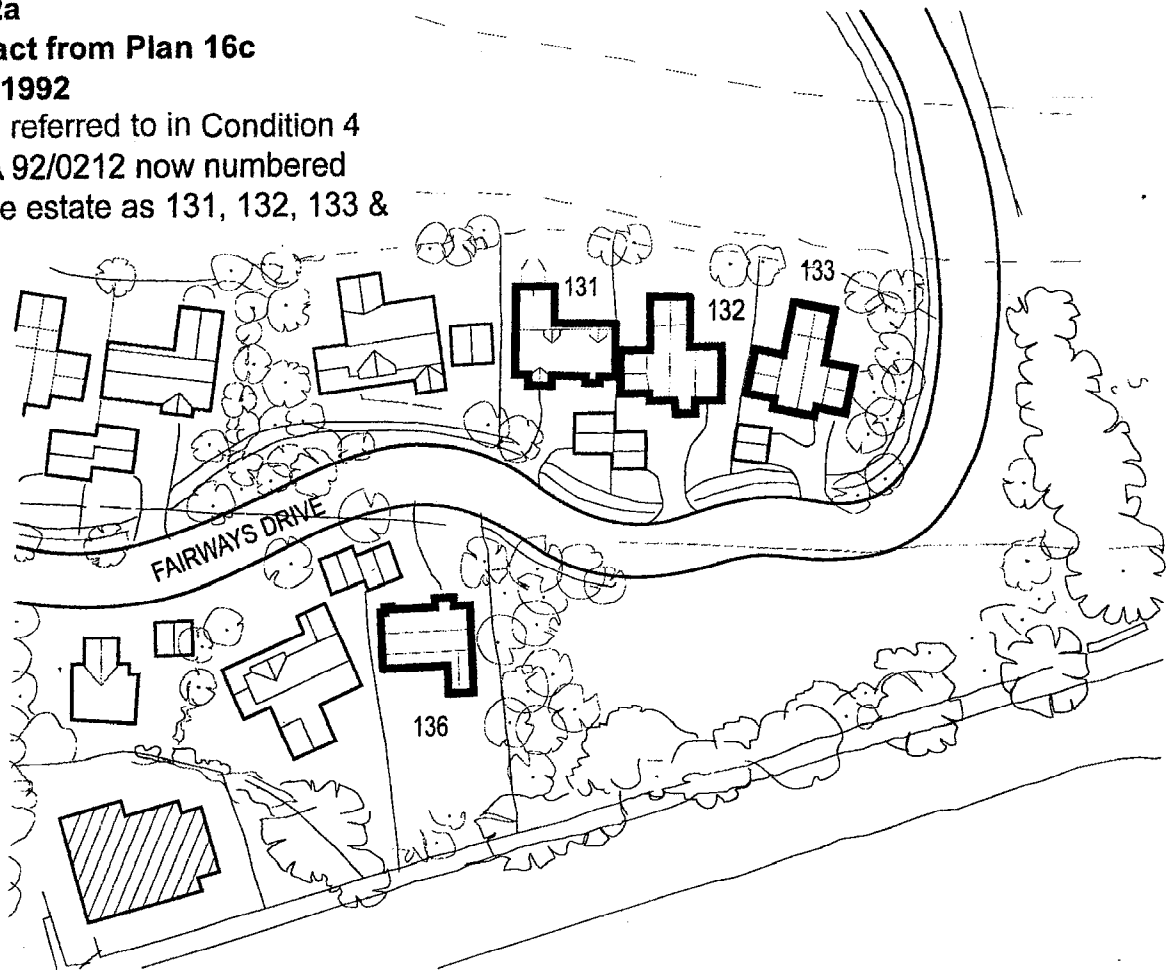


Fig 2b
Extract from Plan D549(32)-04J
 Location of plots 135 & 135 as
 referred to in paragraphs 12.32 and 12.33

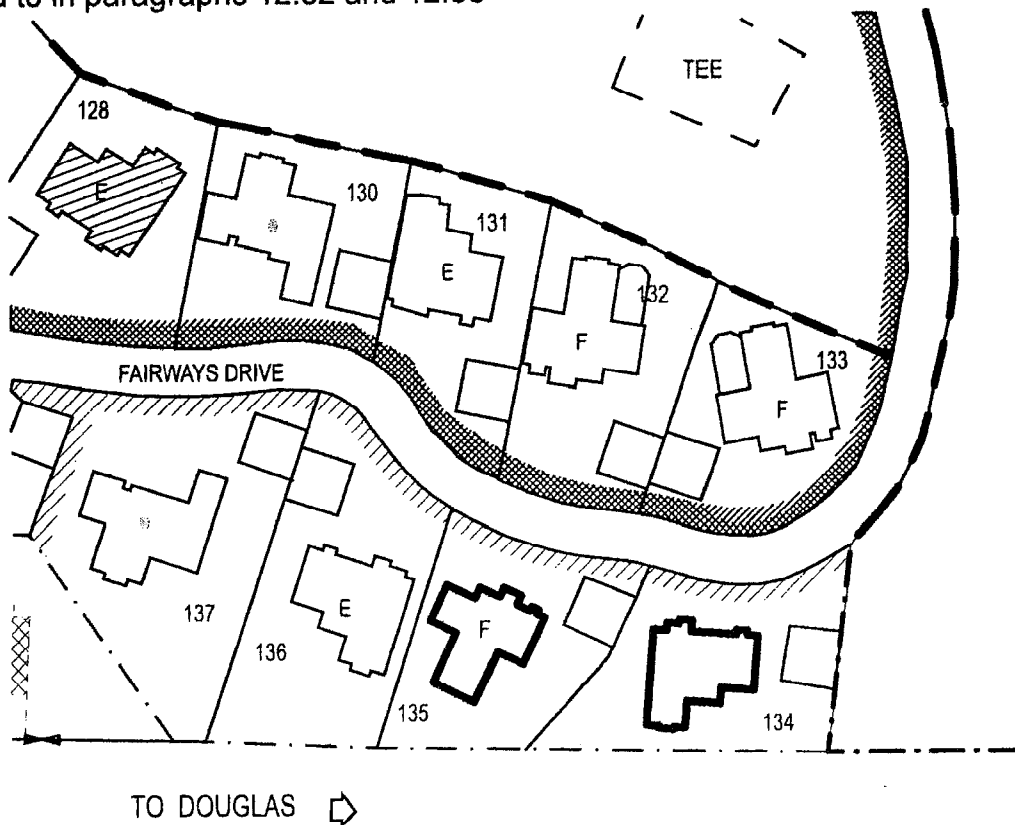


Fig 1a
Extract from Plan 16c
May 1992

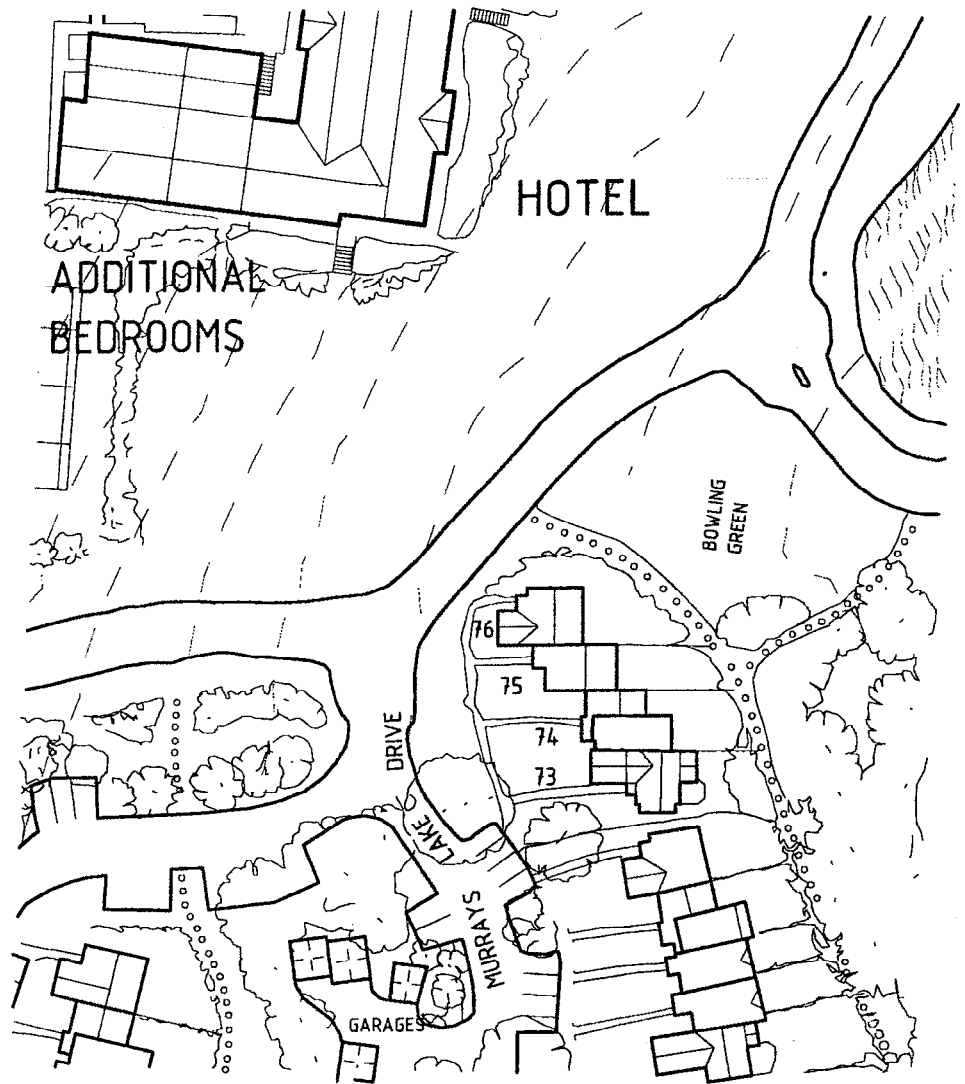


Fig 1b
Extract from Plan
D549(32)-04J

Original plots 73-76
Murrays Lake Drive
(Plan 1a) relocated as
plots 73,74,75A and
75B on Murrays Lake
Grove (Plan 1b)

paragraph 12.32 above, but put briefly, there is no reasonable evidence identifying approval.

- 17.102 The sites referred to in the last two preceding paragraphs were not identified by Professor Crow as being without planning approvals although three of the four had no such approval at the time his report was published. This may be because some or all of these sites were not developed at the time of Professor Crow's inquiries and therefore did not alert him to the then position, or because he was limited in his investigations by the time available to him (see paragraph 4.7 of his report). In any event Professor Crow relied on the planning office to help him in his conclusions. We also have sought detailed evidence from the planning office, and the up to date evidence from that source is consistent with the conclusions which we have reached with regard to the absence of planning permissions.
- 17.103 Our conclusion concerning the absence of planning permission for the dwelling on plot 135 therefore is very much a current and relevant consideration which arises from government mishandling which we have been asked to investigate. We would expect that now the planning office is aware of the position as we have found it, it will consider what steps, if any, it should take to regularise the position.
- 17.104 Professor Crow of course concluded that the four houses in Murrays Lake Grove did not have planning permission (his report paragraph 4.10). We agree that conclusion. The construction of Murrays Lake Grove had consequential effects for other residents and we looked at the matter afresh. Relevant reasoning for our conclusions is set out in sub-section 12 (iv) above, effectively summarised in paragraph 12.30. Figures 1a and 1b of this report show in easily comprehensible form respectively the location of the dwellings as permitted and how they were actually constructed in a way quite different to that permission.
- 17.105 We find it appropriate to reach an overall conclusion on the planning permissions granted in respect of the housing development at Mount Murray. Even had there been a proper referencing of plans and permissions, the terms of many of the conditions imposed were of significantly poor quality or unlawful. They were inadequate, imprecise and unclear, making it difficult for the planning office to have control over the proper implementation of the permissions. They were also unusual, in some instances unique, and these unusual aspects invariably favoured the developer. We instance the Buyer's Guide, the multiple house types and the multiple on site placings permitted on each plot, and the advanced stage of construction at which the relevant authority's approval for services was required. Appropriate safety conditions for the Fire Service were not imposed.
- 17.106 We consider it appropriate to draw specific attention to the conditions relating to trees. We refer to this in detail in sub-section 12 (vi). In this current section we simply emphasise attention to the fact that a perfectly good standard condition for the protection of trees was imposed, but that that condition was totally undermined by the condition which allowed development of a variety of house types anywhere on the relevant plot. The irregularities with regard to this issue which have been explained in this report are, yet again, not just of historic interest. We agree with the view taken by Miss Corlett and Mr Williamson that the only reasonable stance arising from the circumstances in which they are placed means that, given the freedom for location on sites of dwellings, they are only able to minimise tree loss around that freedom (paragraph 12.60). So the problems caused in 1991 are still active and we support and endorse the efforts to continue to seek to minimise the damage in the way expressed in these views with the added emphasis that the views of the Forestry

Division should be sought in each application to seek to minimise the ongoing problems.

xi) Infrastructure Concerns

- 17.107 We conclude that there are, in respect of infrastructure, matters of serious concern which are outstanding in the handling by government of irregularities relating to the Mount Murray development. These concerns need to be addressed by government. They have been fully explained in section 13 of this report and our conclusions can here be stated briefly.
- 17.108 Many of these concerns have arisen because there was not understanding by the Department of Highways, Ports and Properties (now the Department of Transport), the department directly concerned with ensuring the appropriate provision of infrastructure, that the development would ultimately be used for permanent residential use. The Commission, for reasons set out in section 13, does not consider that this department should be blamed for that failure of understanding. However, this does not diminish the importance of the need to rectify the infrastructure inadequacies. We deal with the issues in the sequence set out in section 13.
- 17.109 The first substantial infrastructure concern is the poor Fire Service access. The consequence of this deficiency is that 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. The detail of the deficiencies is set out in section 13, but, read short, these deficiencies affect the speed at which fire appliances can attend the scene of a domestic fire and the closeness which the fire appliances can get to that domestic fire. Mr Cliffe, Fire and Rescue Service Division Officer, told us of the importance of speed of attendance. The first few minutes of attendance at a fire are exceedingly important. The sooner the Fire Service attends, the sooner people can be taken out of the building which is on fire, and the more likely this will be done before the very worst effects of the fire come into play.
- 17.110 We have explained in section 13 the circumstances which led up to this position. We heard that the Fire Service had asked for access for appliances to be taken into account in consideration of the nature of the permission granted, but this did not make sufficient impression to appear as conditions attached to permissions granted. We conclude that the failure to accept the request for fire appliance access was not reasonable. Following Professor Crow's report and recommendations concerning improvement to Fire Service access, there has been discussion within government and some consequential improvement. However, this does not go far enough. One of the problems relates to trees and the restriction which they place upon the passage of the fire appliances. The trees are on private land outside the ownership of the developer who has helpfully removed relevant trees on the land remaining within its ownership or authority. We conclude that it is not acceptable that the trees should remain as a hindrance to the proper passage of emergency Fire Service vehicles. They should be removed, and if this requires compulsory purchase of the relevant land, then this should be implemented. Our recommendations on these matters are at paragraph 19.17 below.
- 17.111 Mr Cliffe explained the difficulty which fire appliances would have in achieving optimum proximity to the scene of the fire. He referred to the lack of availability of parking spaces and the very narrow nature of the road at Mount Murray. He

explained that it required only one vehicle to block a road completely with the consequence that the fire appliance would have to be left some distance from the fire. This would mean that control of the fire would be achieved with very much less efficiency than otherwise would be the case. Mr Cliffe's view was that this was a very important point.

- 17.112 Mr Cliffe's observations upon the current proposals for improvement were that they would improve access greatly but that they amounted only to a half way house.¹³⁷
- 17.113 He also told us of a separate but also important point. He said that normally bye-laws would provide hammerhead or turning circles at the end of cul-de-sacs but that there had not been such provision at Mount Murray. He said that this could result in delays in going to some other call.
- 17.114 We find that the issues relating to fire access are of particular importance, affecting as they do the safety of citizens, and that steps to remedy these deficiencies should be implemented as soon as practicable.
- 17.115 We turn next to consider pedestrian access to the A5. Professor Crow reported upon this and recommended provision of such pedestrian access, complemented by appropriate bus facilities. Since then Mount Murray Country Club has provided an access. Unfortunately, as explained in paragraph 13.26, the Department of Transport does not agree with what has been done and the issue is now in dispute. We conclude that this is an unfortunate illustration of the failure of communication between departments of government and is a deficiency in the handling by government of the consequences of irregularities. Some bus facilities have been provided and we discuss this below.
- 17.116 We also conclude that in the events surrounding the arrangements between the Braddan Parish Commissioners and the Department of Highways, Ports and Properties concerning agency, which is detailed in section 3 of this report,¹³⁸ again an unusual, indeed unique, event, occurred which favoured the developer. The consequence of that informal agreement regarding the agency, related to pressure from the Department of Tourism, resulted in the withdrawal by the Commissioners of their objection to an application which the developer had put forward for provision of housing. We conclude that these are further items of evidence which support our view that the system of government control over development proposals was simply not able to cope with that with which it was faced.
- 17.117 With regard to sewerage and drainage matters, we explained in sections 3 and 13 how conditions controlling these matters changed in a way, indeed ways, which provided advantages to the developer in relation to his ability to apply pressure on the planning authority to accept proposals put forward by the developer. No explanation was provided to us as to how this had happened. As explained in section 13,¹³⁹ we conclude that these matters have significance. They were irregularities in the handling of planning applications by government which were unusual and unexplained. When considered with the other unique characteristics in the handling of the applications, all of which favoured the developer, and the majority of which had the effect of weakening public sector control, they go beyond coincidence. We conclude that the changes to the conditions controlling sewerage and drainage matters provide another, subtle, example of the incremental

¹³⁷ Paragraph 13.19

¹³⁸ Paragraph 3.68 seq and section 13

¹³⁹ Sub-section 13 (v)

improvement in permissions which the developer achieved insofar as the permissions granted allowed them to develop in a way which appeared to best favour their interests, but had quite the opposite effect for governmental control.

- 17.118 Finally, on the issue of drainage, we draw attention to the drainage failures in the vicinity of Murrays Lake Drive which resulted in a reduction in the rating list gross values of particular properties because of the adverse effects of flooding. This illustrates the inadequacies of the drainage infrastructure. Mr Hannay explained to us¹⁴⁰ that deficiencies in highways drainage were significant both from safety aspects and in relation to the potential damage to the construction of the highway. We accept that concern and conclude that this particular deficiency in relation to drainage should not be regarded as insignificant. We also draw attention to the fact that we disagree with Professor Crow who found there to be no problem with surface water drainage.
- 17.119 We next come to our conclusions on the road improvements finance issues. In doing so we give passing mention to the highways improvements conditions which have been indicated as being vague and possibly unenforceable, and our finding that such matters indicate further deficiencies in the decision on the 4th October 1991 and provide a further indicator of the failure of government to handle properly the matters at Mount Murray. The funding issues are explained in section 13, sub-section (vi) in some detail and we need only refer here to our conclusion that this provides further illustration of pressure which was applied by the Minister for Tourism in favour of the developer, and our finding that the outcome of the funding liability was unsatisfactory. It is our view that it should normally be expected that a developer would be responsible for the costs of infrastructure improvements which related to his/her proposed development. This was not the case here. Initially the developer disclaimed any responsibility for the highways infrastructure improvements costs, and in the end accepted liability and contributed only for fifty per cent of the costs of these improvements. This was the position, notwithstanding that Mr North, the responsible minister, informed us that the developer later said that it was prepared to pay the full costs.¹⁴¹ We appreciate that Mr North believed it to be law¹⁴² and practice¹⁴³ that the government should fund 100% of such costs and therefore we do not criticise Mr North personally on this matter. Nevertheless, for reasons explained in section 13, we do find that such a situation is inappropriate. We conclude that there was here a weakness in the handling of the circumstances arising from the perceived general practice of the time which resulted in a not inconsiderable cost to the Isle of Man tax payers. We should add with regard to Mr North that we are quite satisfied, in respect of evidence received¹⁴⁴ by the Commission suggesting a perceived conflict of interest, that we do not accept there to have been any such conflict and this was indicated by the Commission to Mr North when he gave evidence to us.¹⁴⁵
- 17.120 The next subject matter concerns access to facilities from the Mount Murray estate. We accept the evidence of Mr Hannay and of Mr Wilson that, had it been known to the Department of Highways, Ports and Properties that the development was to be for permanent residential use, then the requirements upon which they would have insisted would have been, as put by Mr Hannay, "a totally different approach." The infrastructure which would have been required would have been different, and would have stemmed from the scale and nature of the usage arising from those living there

¹⁴⁰ Paragraph 13.64

¹⁴¹ Mr North Document Q52 page 2

¹⁴² Mr North Document Q52 page 2

¹⁴³ Mr North Document Q52 page 2 and Hansard 31.5.1994 K561 left hand column, black file page 25

¹⁴⁴ Mr Karran Q50 Part IV (iii) (c)

¹⁴⁵ Evidence of Mr North Q52 Transcript Day 30 page 37

being permanent residents. The detail is set out in sub-section 13 (vii). We need here draw attention to only two of the matters which are set out in that sub-section. First, traffic safety and control measures would have been required for which a contribution would have been sought from the developer. Second, there would have been an initial requirement for the provision of facilities on the A5 incorporating as safe a pedestrian crossing as possible, central islands, improvement of visibility, and ensuring that there was a bus bay. These requirements, which we regard as essential, are said to be going into place at the moment, but from our site inspections it does not appear to us that they are in place. We have explained at paragraph 13.26 above the continuing highways safety concerns which must be remedied. We have accepted the evidence of Mr Hannay and Mr Wilson on these two factors, and our conclusion upon them is that there is a consequential deficiency in this way also.

17.121 Finally, we turn to our conclusions in respect of road design standards within Mount Murray. Professor Crow concluded that if the roads were to be adopted, not a lot would be found wrong. It would appear to follow from this that he accepted that the road layout design and standards were in line with approved estate road practice. We disagree with Professor Crow on this matter for reasons which are set out in some detail in sub-section 13 (viii) of this report. We accept the evidence which we heard that as things stand at the moment the Department of Transport would not be prepared to adopt the highways on the Mount Murray estate. We accept the justification for this approach, and accept the weight given to the narrow width of the roads and the apparent lack of off street parking as points against adoption. We conclude that the road design standards are of quite inadequate quality for a permanent residential estate. Our concerns are not limited to those which we have expressed in relation to the Fire Service access problems. We conclude that, difficult as it may be, it is appropriate that steps should be taken to improve the design standards to those which the Department of Transport would reasonably expect for adoption of the highways on the Mount Murray estate.

17.122 As we explained in sub-section 13 (vii) above, we do find infrastructure concerns to be very serious and substantial. It is one of the more significant consequences of the irregularities which occurred and we conclude that the deficiencies should be rectified. They arise from the failure of government in handling the irregularities. The Department of Highways, Ports and Properties did, unsuccessfully, seek to ensure that facilities for infrastructure were of a higher standard than ultimately were constructed but, had they known, and we emphasise that we do not put blame on them for not knowing, what the ultimate use of the site was to be, we have little doubt in our conclusion that there would have been an insistence by that department that the infrastructure quality would have been such as to sustain properly a residential estate of this size.

xii) Title of Those who have Purchased Residential Property

17.123 For reasons explained in section 14 of this report, we adopt Professor Crow's view that fundamentally there is no problem of title in the Mount Murray development. We therefore conclude that the position remains as reported by Professor Crow.

17.124 We have excluded from comment any reference to maintenance of the common parts of the estate and the capabilities of the management company. For reasons also set out in section 14 we do not consider this is part of the remit given to us.

xiii) Government's Approach to the Developer

- 17.125 In this sub-section we conclude that the government reacted, almost always favourably to the Mount Murray developer, in a number of unusual, or even unique, ways. We conclude that these matters are illustrative of the government's inability to handle appropriately an experienced and forceful developer which appears to have been able to manipulate government as it saw fit, to the detriment of the public interest.
- 17.126 We have referred to these matters in the earlier parts of this report, but we consider that grouping them together provides a helpful indicator of the extent of the government's weak approach to the developer which cannot be justified notwithstanding that this was a high cost development with the potential for generating economic growth.
- 17.127 The matters we have in mind are the substantial area of land permitted for development when it was not so allocated in the statutory Development Plan; the approval of a draft Agreement for Sale which was a unique decision outside the appropriate remit of the Planning Committee; the making of a major decision relating to user condition which was a decision not fully understood by Planning Committee members; the making of two major decisions by the Planning Committee relating to the use of the Mount Murray site which on neither occasion were items on the agenda for the decision making meeting; the highly unusual approval of a condition permitting a wide variety of house types in any position within a building plot to the detriment of amenity of neighbouring dwellings and the ability to operate effectively a tree protection condition; the approval of a condition of use which was unique in the knowledge of the Commission and expert witnesses appearing in the Inquiry and which is generally accepted on the evidence as being void for uncertainty and which permitted permanent residential use by a very obscure route; the obscurity of the minutes which prevented any reasonable understanding of crucial decisions taken by the Planning Committee; the imposition of a condition relating to the approval of services by the appropriate authority with such timing provision that the authority was effectively emasculated from refusing, or requiring significant change to the services proposal put to them by the developer; the unexplained absence of a timing of occupancy condition in the permission of 4th October 1991 notwithstanding that the minutes show that the relevant Committee had decided that there should be such a condition; the failure to ensure fire service requirements were provided; the apparently unique circumstance of a planning approval being issued on the same day (4th October 1991) as the decision was made; the failure to ensure that the road infrastructure was of a standard capable of adoption should that be required for the future; the provision of 50% of the funding for the public highways improvements which were consequential upon the development; the apparently unique situation of a government department becoming agent of Parish Commissioners in drainage matters, which event preceded withdrawal of the Commissioners' review request regarding the Mount Murray first phase development planning application and which was a situation which the Attorney General was later to advise could not be implemented because it was unlawful; and the failure to take appropriate action when the planning office was aware that development was taking place without the appropriate planning permissions.
- 17.128 This unusual collection of beneficial decisions, for the most part irregularities in reality, took place because the Planning Committee and its secretariat and the management of the planning office and its operating procedures failed. It is much less likely that a failure of comparable magnitude would occur in the present climate,

but there is still much to be done to seek to prevent it happening again and that, if it should do so, to ensure that it would be detected and remedied without undue delay.

xiv) The Handling by Government of the Irregularities and their Development Consequences

- 17.129 The handling by government of the irregularities as they occurred in the early 1990s was completely unsatisfactory and unacceptable. The planning system and administration of that time was quite inadequate, having little in place to provide anything approaching a minimum rigour so as to ensure competence in decision making. Decision makers and middle management were not trained or instructed or advised in their tasks so that they were making decisions which they did not fully comprehend. Senior managers or professionals in the Department of Local Government and the Environment deliberately manipulated procedures and sought to deceive the decision makers as to the true nature and significance of the decisions or in other instances were aware of such misconduct and allowed it to continue. Unreasonable pressure was applied to these officers from a high level in another department to suit the requirements of a favoured developer and a favoured development. The minister stepped back from the workings of his department and was unaware of the confusion and misdeeds which were happening. There were no requirements in place to ensure that senior managers and professionals observed such procedures as there were and acted with propriety, and the whole system of development control was hidden from public view, so that interested third parties, groups, or members of the public could not observe the events taking place and make consequential comment or seek to achieve remedial or preventive action.
- 17.130 The consequences of these mishandlings remain to the present day in the sense that material problems still exist at the Mount Murray development and still require resolution.
- 17.131 Following the events of the early nineties, little was done in terms of appropriate handling by government until towards the end of the decade, mainly because systems, procedures and ethos were such that it was not known, perceived or accepted that there had been material wrongdoings and disorder in the development control approach to Mount Murray.
- 17.132 Some steps for improvements of systems and administration were taken by government within the Department of Local Government and the Environment, prior to Professor Crow reporting, and, since his report, significant steps and proposals have respectively been taken or made.
- 17.133 Material actions over and beyond those already taken or proposed are nevertheless still required. Procedures for compliance, greater transparency than presently mooted, appropriate involvement by ministers and the Council of Ministers and appropriate job training for officers and other decision makers are among the steps which require progressing, as well as direct action to improve aspects of the Mount Murray development are amongst the matters included in our recommendations.
- 17.134 In this present stage of the Mount Murray history government handling of irregularities is an appreciable advance and requires proper acknowledgement. There are nevertheless significant steps still to be taken to ensure, as far as that is possible, avoidance of a repetition of the quite unacceptable events of the early 1990s.

End of Section 17