

PART I

19. RECOMMENDATIONS

i) Introduction

- 19.1 In this section we deal with recommendations under several sub-section headings. The first two substantive sub-sections deal directly with planning procedures and systems. In this regard we first look at steps which are already in hand for the improvement of planning procedures and the planning systems (as identified and explained in section 15 of this report). We indicate where we support steps proposed by government and where we find that the steps proposed by government should be strengthened or otherwise supplemented. Then, we set out recommendations for additional steps for improvement which we do not consider that the government has implemented or put forward for implementation, or has not sufficiently done either of these things. We follow this by sub-sections dealing with other discrete matters, and conclude by revisiting Professor Crow's recommendations.
- 19.2 Common to all these sub-sections however is our overriding concern with the need for transparency by which we mean openness at all levels of the planning decision making process. In paragraph 10.15 of our report we state that such process should be in the public interest and that that requires a necessary degree of transparency which is not achievable if, as is presently the case and despite the experience of Mount Murray, decision making is not open to public scrutiny. The process should ensure public awareness of development proposals at an early stage, and of the analysis and recommendations which officers make concerning their determination.
- 19.3 The Planning Committee in turn needs to be seen to be open and consistent in the reasons it gives for allowing or denying planning permission. In particular, and in addition to being publicly available, minutes should be clear and as full as is necessary to explain how a decision was arrived at. Had the obscurity of the minutes relating to the key Committee decisions at Mount Murray been avoided, and had appropriately drafted minutes been available for general scrutiny, it is likely that the irregularities would have been identified at an early stage. In sub-section 17 (vii) we have explained the importance of informative minute drafting and the findings of the Court of Appeal for England and Wales to this effect. Certain of the recommendations which follow make explicit reference to these matters and to the need for transparency, whilst others are seen as contributing to that objective. However, we find the issue to be of sufficient importance to justify some emphasis in its own right. Accordingly, we **recommend that:**
- *Government, in future, explicitly endorse the principle of transparency in the decision making process, and ensure that such a principle is carried forward by the Department of Local Government and the Environment into all procedures and systems for the determination of planning applications, and the documentation which underpins them.*

Recommendation 1

ii) **Matters Identified by Government for Improvement or Already Implemented**

19.4 The Commission fully supports the procedural measures introduced under Standing Orders (Government Circular No. 18/97) and within the Development Control Handbook of May 2002 which have been discussed respectively at sub-sections 9 (ii) and 15 (ii). Under the former, we particularly endorse the requirements that:

- Business not specified on the agenda should, with limited exceptions, not be transacted at a meeting of the Planning Committee (Standing Order 5 (2))
- No application shall be considered for planning approval unless the Committee has before it an analysis of the proposed development prepared by a Planning Officer (Standing Order 8 (1) (c))
- The Committee shall have before it a list of all persons who have made objections and representations together with a summary of such objections and representations. (Standing Order 8 (1) (d))

We do however consider that in a number of respects the efficiency of Committee proceedings and their openness would benefit from the further extension of Standing Orders in certain key respects. Accordingly, we **recommend that**:

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

Recommendation 2

19.5 With regard to the Development Control Handbook, the Commission regard this as an important governmental contribution to formalising systems and preventing irregularities. It helps to ensure, amongst other things, that the planning decision process is fully documented, thereby producing an audit trail of advice and decisions. The Commission particularly endorses the requirements for a written report, as we have just indicated, and for the immediate date stamping of all plans on receipt.

19.6 The Development Control Handbook is likely to be in regular use and should therefore reflect key procedural features of Standing Orders to ensure consistency of approach. In its current form it is a draft document which the Department of Local Government and the Environment itself recognises as having some way to go. Nevertheless there are, in the Commission's view, a number of further matters appropriate for inclusion in the handbook and we therefore **recommend that**:

- *The requirement for written reports to be circulated with the agenda to members of the Planning Committee (as referred to above as an extension to Standing Order 8 (1) (c)) be incorporated into the Development Control Handbook, to include a direction as to how long in advance of meetings members should receive an agenda and its supporting written reports and what information and analysis a report should contain as a minimum.*

- *To ensure a proper record of decisions, all plans forming part of a planning application be stamped as approved or refused together with date of such approval or refusal and the application number. All decision notices where planning permission is given to refer to the plan numbers forming part of that permission.*
- *To secure proper Committee control, the Department, in those cases where the conditions attached to a notice of permission are not standard, introduce arrangements to ensure that the Committee sees and approves such a notice before its issue.*

Recommendation 3

19.7 Further recommendations relating to Planning Committee procedures follow in a slightly different context, but before leaving the Development Control Handbook we refer to another aspect of procedure which it requires to be followed. The insistence in the Development Control Handbook that plans and drawings must never be reproduced for distribution to third parties we find to be at odds with the achievement of transparency and accountability. It is acknowledged that the reproduction of a plan which has no apparent relationship to an application (approved or otherwise) can be confusing. However, if plans are properly marked in terms of date received, relevant planning application number and status there seems to be no reasons why third parties should not have copies made available. Accordingly we **recommend that:**

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

Recommendation 4

19.8 Steps towards the improvement of procedures and the need for change have also been recognised by the consultation document “Modernising the Planning System” (referred to in sub-section 15(v) above). This does not go as far as the very valuable contribution from the Director of Planning & Building Control in his earlier Committee report “Review of the Planning Process” of late March 2002 which underpins it, but it is an important step forward. The consultation document identifies options in respect of a number of matters for public comment. With regard to these options, we have formed quite clear views in the course of preparing this report and we recommend below accordingly.

19.9 The need for improved openness and transparency is recognised in the consultation document but, in our view, it does not go far enough. The greatest barrier in this respect is the private nature of the Planning Committee meetings and their agendas. The Commission is not convinced that changing this would create a considerable administrative burden as the document maintains, but even if it did, this would be fully justified by the benefits. We **recommend that:**

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

Recommendation 5

19.10 On a related matter, the consultation document identifies the size of the Planning Committee as a matter for discussion but scarcely goes beyond this. As we have explained in paragraph 10.16 above, it is difficult for such an unusually small body, as is the currently constituted Planning Committee, to reflect reasonably the full range of Island interests. Complex proposals in particular cannot, in our view, be properly and thoroughly considered. We therefore **recommend that:**

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

Recommendation 6

In making this recommendation, we recognise that issues of practicality may arise according to which option is followed as part of recommendation 13 below concerning the position of the minister. We nevertheless regard the size of the Committee as a matter of considerable significance and consider that recommendation 6 would address the problem.

19.11 The consultation document opens up discussion on the system of initial decision, review and appeal and includes the option of dispensing altogether with the review stage. The Commission strongly favours such a change for reasons set out in paragraph 10.13 on the basis that a review stage is not conducive to a thorough initial analysis and is not an efficient use of resources. We accordingly **recommend that:**

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

Recommendation 7

19.12 The practicality of the above is, in the Commission's view, at least partly related to the consultation document's other suggested measures in respect of extended Permitted Development Rights and Use Classes Orders. Our reasons for supporting these are given in paragraph 15.32 above and we **recommend that:**

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

Recommendation 8

We consider that the implementation of such proposals should precede introduction of recommendation 7 in paragraph 19.11 above. This is to help ensure that any increase in appeal workload as a result of omitting the review stage as referred to by the Director of Planning and Building Control in his report "Review of the Planning Process" is offset by a reduction in the number of applications.

19.13 Particular reference is made in the consultation document to applications by the Department of Local Government and the Environment and sub-section 11 (3) of the Town and Country Planning Act 1999 which will, when in force, give the Council of Ministers enabling powers to have such applications referred to itself. Section 11 as a whole will also give enabling powers to the Council of Ministers to direct that applications of general importance to the Island or which for some other reason ought not to be determined by the Department of Local Government and the Environment, and whether made by that department or otherwise, including by the private sector, shall be referred to and determined by it. In the case of applications by the department we agree with the suggestion of the Director of Planning and Building Control set out in his review document (paragraph 3.26) to the effect that every application (including applications by the department) should be determined by the Planning Committee on initial decision, subject to that Committee itself initiating call-in, which, as we see it, will ensure the primacy of planning policy. Any appeal would be referred to an independent Inspector for determination or to the Council of Ministers for determination following an Inspector's recommendation. With regard to the Planning Committee's own initiation of call-in, see paragraph 19.22 below. We therefore **recommend that:**

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

Recommendation 9

19.14 We consider that recommendation 9 has equal validity where applications are made by other departments. In relation to this we have also noted that a procedure was put forward and accepted in May 1997 under the title of "A Corporate Government Approach to Planning Proposals" aimed at resolving differences between government departments so far as practicable when one department wishes to submit a development proposal not necessarily according with the views of another. The procedures involve bringing differences to the attention of the Council of Ministers. The Commission finds this to be beneficial albeit limited but sees no need for any further specific recommendation. The last preceding paragraph has noted the enabling powers under section 11 of the 1999 Act in respect of such applications. The consultation document is silent with regard to procedure in circumstances where a large private application is made affecting other departments than planning although the last preceding paragraph also notes the enabling powers of section 11 extending to such applications. We regard this as of at least equal importance and we recommend below in sub-section (iii) on the means by which the Council of Ministers should be alerted to such proposals.

19.15 Both the consultation document and Mr McCauley's report (sections 9 and H respectively) identify a concern over the poor quality of many planning submissions and in particular the lack of clarity and information on submitted plans. We entirely share this concern and have commented in sections 11 and 12 on the inadequacy of the main plans submitted as part of PA 91/0953 and PA 92/0212. Those plans should have been rejected as a basis for the implementation of the Mount Murray development because they provided no proper means of control over the location of dwellings or the protection of trees. If they had been, it is probable, at least in terms of estate standards, that the outcome would have been different. However, the Commission has noted that from April 2003 the Department of Local Government and the Environment has operated a policy of refusing applications it considers to be

incomplete, which is commendable and which we support. The guidance provided by the department as to what constitutes an understandable application is now much more extensive than in the Development Control Handbook. The Commission considers the handbook should be updated to reflect that new guidance and we **recommend that:**

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

Recommendation 10

19.16 A substantial part of the consultation document refers to the enforcement of planning controls. This is a matter to which we refer to at paragraph 15.33 and in sections 12 (iii) and 17 (viii). We strongly support the new planning enforcement provisions in part 4 of the 1999 Act and the powers envisaged in the subordinate legislation to follow. We do not therefore see the need for any recommendations on this point. We are however concerned that the Enforcement Officer, through no fault of his own, operates with negligible knowledge of the planning process. We regard this as unhealthy and **recommend that:**

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

Recommendation 11

19.17 With regard to other matters relevant to this sub-section of our recommendations, we have referred in section 13 above to infrastructure concerns. We are of the view that, through the Mount Murray Residual Issues Committee, the government has addressed and made a commendable and positive start to implementing the recommendations put forward by Professor Crow which should be given due recognition. However, we have also identified the ongoing practical difficulties which need to be recognised and which also require further action. These involve first, the need to remove trees and widen the estate roads to secure improved access particularly for the fire service, and second, to resolve difficulties over pedestrian access to, and safety on, the A5 (referred to in sub-section 13 (iv) above). The former cannot be achieved without acquiring land which is now in private ownership. This is a difficult step but the Commission feel that as it is government's mishandling of the Mount Murray development which has largely created poor estate standards, powers should be exercised to that end. When the improved fire service access is achieved, this should also result in satisfactory access for service, delivery and other heavy type vehicles. The latter can only be done in our view by simultaneously addressing highway safety issues. In that respect we consider the point of access of the newly constructed access footpath onto the A5 to be a lot less than ideal in that bus lay-bys cannot be provided in the vicinity. Further it does not appear to be in the location which Professor Crow had in mind in his recommendation in his report paragraph 5.19. Paragraph 15.43 above refers to highway and surface water drainage systems. The concern here is also noted at 13.64 above. This needs to be addressed. We therefore **recommend that:**

- *The Mount Murray Residual Issues Committee be reconvened for the purpose of preparing and implementing proposals to:*
 - a) *acquire land, by agreement or by compulsory purchase, to facilitate the proper passage of emergency fire service vehicles, to provide footpaths within the estate, improved vehicle turning access, and additional off road parking;*
 - b) *provide improved highway and pedestrian safety on the A5 by means of a safe pedestrian crossing, central island(s), parking and speed restrictions, visibility improvements and bus lay-bys and any other appropriate and effective measures. Consideration be given to associating these measures with a new pedestrian access footpath to the A5 from the estate at a point close to its junction with the C21, as well as with the newly constructed footpath;*
 - c) *inspect and test highways and surface water drainage systems and insofar as they do not achieve suitable standards from safety, highway integrity, and reasonable affect upon domestic curtilage aspects, the appropriate work be done to achieve such standards.*

Recommendation 12

19.18 Lastly, for this sub-section, we note that delegation procedures have been improved and extended by Government Circular No 57/01. This sensible measure should effectively reduce the workload of the Planning committee and is already implemented. The need for further change should be kept under review but we do not see any need for a recommendation.

iii) Matters Not Identified by Government

19.19 We turn now to consider recommendations which derive from our report and which, to date, are either not dealt with at all as part of the various government initiatives and actions identified in sub-section (ii) above, or are not sufficiently dealt with there.

19.20 In planning terms, two important general issues emerging from our report are the detached position of the minister relative to the handling of planning applications, and the linked matter of the means by which proposals of Island-wide significance are brought to the attention of the Council of Ministers. We consider first the role of the minister.

19.21 For the reasons set out in paragraphs 10.8 to 10.11 above, we find the detached position of the minister to be anachronistic and not in the interests of the department. The minister needs to be in a position to understand and act if things are going wrong, that is, he or she needs to be enabled to exercise competent political control and to be in a position to defend decisions against petitions of doleance, where such defence is appropriate. Our view is that this is greatly hampered by the present system. Any change must be a matter for the Council of Ministers but we consider there to be two main options. The first would be a system whereby Inspectors themselves determine appeal decisions except those which are held to be complex and sensitive (probably a very small number) decided by an appellate tribunal of the Council of Ministers to which the Inspector's recommendation would be referred following public inquiry. At the moment such inquiry should be the Special Inquiry, but when the 1999 Act comes into force to repeal the Town and Country Planning Act 1981, it appears that the Special Inquiry would be superseded, but we would expect to see an equivalent type Inquiry procedure. The second would leave the Inspector's role as one of recommendation but would require the appointment of a second, or junior, minister who would become the decision maker thereby allowing the minister to have such earlier input or involvement as he or she deemed necessary. The

Commission favours the first of these. However, we do not regard it as appropriate to recommend such a step in detail and accordingly, we **recommend that**:

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

Recommendation 13

19.22 On the second and related matter, the Special Inquiry procedure provided for under the 1981 Act theoretically enables applications which are of more than minor significance, perhaps of Island wide significance and which involve differences of view between departments, or are significant to several, to be referred to the Council of Ministers. We have just indicated the effect of section 11 of the 1999 Act when it comes into force. However we believe that there will be circumstances where the Planning Committee, quite properly, might wish itself to initiate a call-in procedure. The absence of guidance on this and the vagueness concerning appraisal of matters for call-in we consider to be a weakness of the present system which section 11 of the 1999 Act does not address. Accordingly we **recommend that**:

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

Recommendation 14

19.23 There are other matters of planning importance which concern points of principle as opposed to detail. They are set out in paragraphs 19.24 to 19.33 next following

19.24 The first point concerns the practice identified in paragraphs 11.32 to 11.34 whereby the Planning Committee preferred on occasions to give decisions which effectively modified a proposal (usually by means of conditions) to such an extent that what was approved was no longer in accord with what was sought in the planning application. This approach was said to be still a fairly common practice,¹ and is evident from the continued use by the Department of Local Government and the Environment of the phrase “modifications or conditions” within its decision notices.

19.25 We find this practice to be potentially confusing particularly within procedures which are already secretive and which we consider inappropriate for the reasons given in paragraph 11.77 It is also one which is not in accord with the guidance on the use of conditions in Circular 11/95 of the Department of the Environment in the UK, which refers not to modifications but to conditions as enabling and enhancing. We consider that if the Planning Committee is contemplating a modification to a planning application that is other than very minor, a fresh application should be required which should be advertised as such.

¹ Evidence of Mr Sinden Q12 Transcript Day 10 page 77

19.26 The practice of modification is not the same as, although it is given some credence by, the “variation” powers provided by paragraph 12 of the 1982 Order. We find this statutory provision for variation within the Order to be potentially prejudicial to third parties and to the public in circumstances where agendas and minutes are not made public and the Planning Committee sits in private. We are advised that the use of this power is now limited to small variations but it is our view that, if a previous approval is to be changed, it should be the subject of a fresh application, and we do not consider that any power for variation should be retained in the 1999 Act. Accordingly the Commission **recommend that:**

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

Recommendation 15

19.27 The second point concerns the extent of guidance and/or training for both members of the Planning Committee and the Committee Secretaries. With regard to the former, we have made reference in paragraphs 8.8 and 10.4 to the responsibility of members to understand properly the basis for the decisions being made, and in that respect have indicated our concern at the previous absence of any induction or training given to the Committee as a factor which is not conducive to good decision making nor to the establishment of proper working relations with officers. We are advised that present practice is to provide new members with a day-long briefing on policies and procedures with a detailed supporting note, and for them to “shadow” the committee for a number of meetings. We find this to be an important progressive step and consider that no person should be asked to serve as a member of the Planning Committee without first undergoing such a programme.

19.28 However, the process of induction should go beyond policies and Committee procedures and explain the role itself and its associated responsibilities, including relationships with officers and the need to be well informed about decisions being made, and, as a minimum, to have an understanding of the nature and significance of decisions they take. Such training would hopefully make clear that there is a judgement to be made by members which involves them asking for more information if they do indeed require more information in order to enable them properly to understand the decisions which they make in Committee. In many cases there will not be any need to ask for further information, but in some cases it will be essential to do so to enable the member to understand what he or she is doing. This is not a resource or time problem, as some members appear to believe, e.g. Mr Cretney as explained in paragraph 8.8 above, but rather a matter of members being trained to understand that there are occasions when members must ask for more information if they are otherwise in the position of not understanding the decisions which they are being asked to make. We therefore **recommend that:**

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

Recommendation 16

19.29 Committee Secretaries are required to provide a wide range of Committee services including the preparation of agendas, procedural advice and the drafting and circulation of minutes. It should, in the Commission's view, be the role of the Secretary to organise and manage the business of the Committee in consultation with the chairman and the Director of Planning and Building Control. It should be his or her responsibility not just to advise on matters of procedure but to ensure that the Committee is not acting improperly and not taking decisions outside or in conflict with its statutory remit. At Mount Murray, as we have seen at paragraphs 11.103, 11.106 and 11.110, neither of the Secretaries at the time, Mr Magee or Mr Killip, were given any training, formal or otherwise, before taking up what we see as a very important role. What went wrong at Mount Murray was in part due to the lack of knowledge of both Committee Secretaries for which we believe the Civil Service was at fault. It is our understanding that as the post is within the Civil Service establishment, it is now the case that an appointee has a general induction to the workings of the department together with a programme specific to the post, which is tailored to the personal previous post experience and new responsibilities. Again, this is in considerable contrast to the position in 1991/92 and is a positive step. We do not however consider that the programme of induction should be a matter solely for the Civil Service Commission and we **recommend that:**

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

Recommendation 17

19.30 With further regard to the Planning Committee we consider that, in the interests of continuity and consistency in decision making, any rotation of membership should ensure as far as possible that there are no more than two new members brought in at any one time. We accordingly **recommend that:**

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

Recommendation 18

19.31 A further point of planning principle under paragraph 19.24 above relates to the present process of consultation. We have drawn attention in our report to the way in which weaknesses in this process contributed to irregularities at Mount Murray (sections 13 (iii) and 13 (viii)). These were not caused by a simple failure to consult but rather by an apparent disregard, or at least non acceptance, of the results of such consultation in most cases without explanation nor any apparent reason for not accepting relevant responses. Any process of consultation must strike a reasonable

balance between the need for external views and the time taken to process an application although the need for speedy decision making should not be at the expense of the quality and correctness of the decision itself. For this and other reasons, we believe the process of consultation should be reviewed and we **recommend that:**

- *The Director of Planning & Building Control jointly with the local authorities and with the appropriate officers, including those in the Departments of Transport, Agriculture Fisheries and Forestry, Tourism, Isle of Man Fire and Rescue Services conduct a review of the effectiveness of current consultation procedures with a view to revised requirements and guidelines being incorporated into the Development Control Handbook. Consideration to be given to defined time limits for consultee response which should be in writing and to a requirement for Planning Officers to give reasons where recommendations by consultees are not supported.*

Recommendation 19

19.32 On a similar point we have given some consideration to the status of Island-wide amenity bodies in respect of consultation. The present arrangements which gives such bodies a voice only through a joint council we find to be unduly restrictive and unreasonable and we believe that that any bona fide body i.e. genuinely representing Island-wide interests should have the right to be consulted and make representations on its own behalf. Although the Town and Country Planning Act 1981 under which the Advisory Council on Planning and the Environment was brought into being will be repealed, we do not find that s40 of the 1999 Act would meet our concerns. It would appear to operate under similar principles to the 1981 legislation, although embracing a much wider spread of qualifying interests and organisations. We also agree with the practical difficulties as to the operation of the section which have been identified by the Director of Planning and Building Control in his review document at paragraph 3.28. We have noted the reasoning for the introduction of section 40 as explained in paragraph 3.27 of that document which, read short, is that there was a concern that environment/heritage considerations were being afforded more weight than economic or social ones. Given that Tynwald has supported this concern there are ways other than the section 40 route by which the concerns can be met, for instance by taking action for interest groups other than amenity groups in a similar way to that set out in our recommendation. However, we do feel it proper that we should limit our substantive recommendation to amenity interests. This should not be taken as expressing any view against similar steps being taken for other interests. We therefore **recommend that:**

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

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

Recommendation 20

19.33 We have given some consideration to the level of resources available in the planning office, a point which we note was referred to by the Chief Minister in Hansard of the 19th March 2002 (T583). We are aware that the scale of resources and consequent pressure on staff was regarded by the minister at the time, Mr Brown, and others, as a factor which had some bearing on the irregularities which occurred at Mount Murray. However, so far as the present position is concerned, we have not considered it to be appropriate or necessary to our terms of reference to seek evidence at the level of detail necessary to give definitive guidance. We have made a number of specific recommendations, in particular numbers 7 and 8, which should reduce any existing pressure on staff resources rather than the reverse. In those circumstances, we are of the opinion that staffing levels could be the subject of some later and separate consideration in the light of the extent to which government takes forward our recommendations, and in the light of what impact, in staff terms, other changes may produce. We do not therefore consider it appropriate to make any specific recommendation on this matter in our report.

iv) Plot without Planning Permission

19.34 At paragraph 12.33 we set out the circumstances under which the four sites referred to in condition number 4 of PA 92/0212 ultimately received planning permission. These sites were not numbered on plan 16c but were identified on plan F as numbers 140 to 143 and renumbered on the later (unapproved) plan number D549(32)-04J as 131, 132, 133 and 136 Fairways Drive.

19.35 However, we have indicated at paragraph 12.32 the basis for our conclusion that the dwelling built on plot 135 does not have the benefit of planning permission. It is not appropriate for the Commission to recommend specific action in this case but it is incumbent upon government to examine the position with some expediency not least to reassure the public that it regards planning enforcement as a matter of priority. We therefore **recommend that:**

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

Recommendation 21

v) Corporate Governance, Complaints and Shortcomings, and Compliance Procedures

19.36 In section 16 of our report we have set out our views on the issues of corporate governance, complaints and shortcomings and compliance procedures.

19.37 We consider that principles of good corporate governance should be reflected in the systems and procedures which are operated by government departments (paragraph

16.10) and statutory boards and that the application of such principles in each case warrants oversight by a competent body which is independent of the government departments and statutory boards.

19.38 We consider that the Chief Minister and Council of Ministers must adopt a more robust approach to the resolution of complaints and reports of departmental shortcomings (paragraph 16.21) and that, in order that they may do so, they must be able to seek and obtain the relevant facts from a competent body which is independent of the government department or statutory board which is the subject of a complaint or report.

19.39 We consider that it is no longer sufficient to presume that officers, including senior officers, will always follow procedures without a measure of oversight to ensure such compliance (paragraph 16.39) and that the government departments and statutory boards are of sufficient magnitude in terms both of role and expenditure to warrant independent oversight by a competent body. As indicated in 16.41 above we have concluded that there is no valid reason why government should not operate proper compliance functions in the way it expects of various financial institutions which it licences and authorises to carry on business in the Isle of Man. Accordingly **we recommend that:**

- *The Council of Ministers propose the establishment of a statutory board which shall be responsible for the audit of the annual financial accounts of the Isle of Man Government and whose report (in terms to be determined) on such accounts each year shall be appended to the accounts and laid before Tynwald.*
- *The proposed statutory board shall be responsible for:*
 - *examining and evaluating the application of the principles of good corporate governance in each of the government departments, statutory boards and Government Offices by means of periodic inspections; and*
 - *upon completion of such an inspection, making a report to the respective government department or statutory board with a copy to be sent to the Council of Ministers;*
 - *examining and evaluating the operation of the internal controls, financial or otherwise, in each of the government departments and statutory boards by means of periodic inspections; and*
 - *upon completion of such an inspection, making a report to the respective government department or statutory board with a copy to be sent to the Council of Ministers;*
 - *examining and evaluating compliance by officers and staff at all levels with the internal procedures in each of the government departments and statutory boards by means of periodic inspections; and*
 - *upon completion of such an inspection, making a report to the respective government department or statutory board with a copy to be sent to the Council of Ministers.*
- *The proposed statutory board be authorised to investigate and report in respect of any matter referred to it for investigation and report by the Chief Minister and Council of Ministers.*
- *The proposed statutory board be authorised to investigate and report in respect of any matter referred to it for investigation and report by a government department or statutory board.*
- *The proposed statutory board be authorised, after due consideration to investigate and report upon such complaints of members of the public as it shall think fit, such reports to be made to the Council of Ministers.*
- *The proposed statutory board be named “the Audit Commission”.*

- *The Chairman of the proposed Audit Commission be not a member of Tynwald and that he or she should be assisted by two or more Commissioners with competence in the fields of audit, systems and compliance.*
- *The proposed statutory board be required to make a report of its activities each year and each such report shall be laid before Tynwald.*

Recommendation 22

vi) Infrastructure

19.40 In sub-section 13 (vi) we discussed the issue of the funding of infrastructure improvements which arise consequent upon newly permitted developments and where these improvements required are outside the developer's site curtilage. With regard to the developer's contribution to such infrastructure provision, we have noted in paragraph 13.51 that we have seen nothing in law which prevents a 100% contribution being required. Actual practice, at least at Mount Murray, led to the government, on behalf of the Isle of Man taxpayers, contributing 50% of the costs.

19.41 So far as enabling legislation is concerned, the Commission has noted that powers to enter into agreements regulating the development of land were provided for in s18 of the 1991 Town and Country Planning Act (and prior to that, it would arguably seem, in s6 (1) (a) of the 1934 Act). It is also noted that similar powers are to be provided (re-enacted) in s13 of the 1999 Act. The problem as the Commission sees it is not therefore due to a flaw in the basic legislation but rather in its operation. It is normal practice in England, Wales and Scotland for the developer to pay up to the full cost of consequential infrastructure requirements and we do not see why it need be otherwise in the Isle of Man. Bearing that in mind, we **recommend that:**

- *The Department of Local Government and the Environment issue practice directions that*
 - i) the policies enabled under the 1991 Act and ultimately under the 1999 Act be implemented in all cases except where special circumstances indicate otherwise*
 - ii) contributions by developers to the cost of infrastructure provision consequential upon the approval of development proposals normally be to the full costs of such provision.*
- *In support of the above, there be confirmation of the practice under Grampian Regional Council v City of Aberdeen [1984] JPL590 that negative conditions which prevented development until certain events, including off site events such as infrastructure improvements, had taken place, may be lawfully imposed.*

Recommendation 23

vii) The Recommendations of Professor Crow

19.42 We conclude this section by returning to Professor Crow's recommendations which he had been informally invited to make. We referred to these earlier at sub-section 3(xi) above and have devoted section 15 to reporting actions by government following publication of the Crow Report. We consider it helpful now to look briefly at all of Professor Crow's recommendations in the context of our findings and recommendations, and of circumstances as they stand today.

19.43 On matters arising from the planning and development history his principal, and first formal, recommendation that an administrative manual be prepared has been put into effect by the planning office by production of the Development Control Handbook.

Professor Crow indicated that this manual should be a statement of guiding principle. The Development Control Handbook is indeed prescriptive on a number of points, as we believe it should be, and we have indicated above how and where it should be strengthened. Professor Crow considered that an over-prescriptive document might be ignored in practice, but we believe there must be no question of allowing this to happen, which is a reason why we recommend proper arrangements for compliance (recommendation 23). Under this first formal recommendation Professor Crow identified a number of appropriate matters for inclusion within his manual. Specific points such as the need for meticulous record keeping, and the guidance on procedures where the Director of Planning and Building Control meets applicants have been picked up in the Development Control Handbook. Our recommendations 2 and 3 give further direction on general procedural matters.

- 19.44 The second formal recommendation in Professor Crow's report related to seeking to identify and agree with the Attorney General's department a condition which would avoid invalidation through clashing with tree preservation legislation. He suggested what he considered to be appropriate wording. This matter has been considered by the Residual Issues Committee who concluded that action should be limited to the re-issue at regular intervals of the existing joint departmental public notice in relation to felling trees. This was because it was regarded as inappropriate to use a planning condition to control a matter which is the statutory responsibility of another government department. We do not feel we can helpfully take this matter further forward.
- 19.45 The third formal recommendation by Professor Crow was for a high level case conference. This has not to our knowledge been implemented. The Chief Officers' Group to which we have referred in sub-section 7 (xxi) above could, in our view, take on such a responsibility, but we are aware that this Group has not, to date, considered any planning matters and any extended role would be only one option which the sub-committee proposed in Recommendation 13 above might consider. Professor Crow did not in any case address the equally important issue of appropriate criteria for identifying proposals of especial significance which is why we have made a different recommendation (recommendation 14) which also has the benefit, as we see it, of leaving the initial call-in decision with the Planning Committee.
- 19.46 The fourth and last formal recommendation made by Professor Crow arising from the planning and development history concerns consultation procedures. We are not convinced, as Professor Crow maintains, that these generally work well, and certainly at the time of the Mount Murray applications they did not do so. We consider the best way of bringing applications to the attention of all departments where they are of wider significance is to involve each department in the establishment of new consultation guidelines.
- 19.47 Professor Crow made two formal recommendations with regard to matters arising from title. The first of these, his fifth formal recommendation, concerns the maintenance of common parts of the estate. This was a matter which, as we see it, did not arise from any irregularity and we have not sought to take this issue forward.
- 19.48 The second recommendation under this heading, Professor Crow's sixth formal recommendation, concerns the Isle of Man Law Society. With regard to this appropriate practices in line with those in England and Wales are now in force.
- 19.49 The Crow Report made four formal recommendations in relation to matters arising from infrastructure concerns. These related respectively to the need to keep final

road surfacing and street lighting under review (as neither had been provided at that time), the need to monitor the quality of outfall from the waste water treatment plant into the Crogga river, the need to rectify immediately the problem of access for the Fire Service, and the consideration by appropriate departments of the provision of pedestrian access to Castletown Road and associated bus laybys and shelters. We have noted at sub-section 15 (vi) that the government subsequently established the Residual Issues Committee which we regard as having made a commendable start to the implementation of these recommendations.

- 19.50 However, serious practical difficulties have yet to be faced, particularly with regard to Fire Service access (paragraph 19.17). The government must accept the need to secure the land necessary for this purpose which is why our recommendation 12 goes much further than that of Professor Crow. With regard to pedestrian access and associated comfort and safety, more needs to be done and we have also covered this at recommendation 12. Street lighting, as we have seen on site inspection has been provided in the Village, and we find no need to make recommendation in respect of further street lighting or final road surface improvement. We have seen no reason to suggest that further work required will not be provided on completion of construction. We have also noted evidence that the outfall from the sewage tank into the Crogga river is sampled and tested on a regular basis and found to be satisfactory.
- 19.51 Professor Crow's final formal recommendation concerns his view that the Department of Local Government and the Environment should consider its position on the matter of the development at Murrays Lake Grove which had proceeded in such a way as possibly to have deprived some householders (on Murrays Lake Drive) of the right to objection. He referred to the need for an offer of apology and of compensation in cases of justified complaint. Government have subsequently concluded on the basis of advice from the Attorney General that neither action is justified. We have examined this matter at some length in sub-section 12 (v) where we find that in practical terms, certain householders on Murrays Lake Drive were denied a right of objection. However, we do not believe, having regard to all the circumstances, that a recommendation by the Commission either way is justified and consider that it must be a matter for government as to what, if any, action it takes as a result of our report.
- 19.52 In terms of overall comparison, the Commission have gone well beyond Professor Crow's recommendations most particularly around the theme of transparency in the planning process. Professor Crow rightly identified administrative failings in the planning office but the resultant Development Control Handbook does not address (nor is it intended to) the fundamental problems of lack of openness in the proceedings of the Planning Committee and the effect that this can have. He did not refer to the issue of the detached position of the minister and the way in which the minister in 1990/91 was thereby deprived of any understanding of the irregularities that were taking place and therefore of any opportunity to have prevented them. It has been our concern that the circumstances which gave rise to the flawed decision making at Mount Murray should not be capable of recurring. In our view, that requires the more wide ranging recommendations we have made in this section, and we commend them to the government.

End of Section 19