

3. THE COMMISSION'S APPROACH TO THE PART TWO REPORT

- 3.1 The sequence of events which has occurred because of litigation means that the Commission is in the unusual position that, having published its evidence, conclusions and recommendations in respect of certain matters, it has the benefit of being aware of the reactions of government, or the continued handling by government of Mount Murray irregularities, and the reactions of others to that published evidence and to the Commission's conclusions and recommendations, while the Commission is still charged with its overall terms of reference. It has a like advantage in being aware of other material events since publication of the Part One Report. The Commission does therefore, in its presentation of this Report, so far as material, take into account events related to its remit which have occurred since 30th June 2003, and which did not come within the Part One Report.
- 3.2 We have already explained how tax matters came to the attention of the Commission, identified the Commission's reasons as to why it is considered that tax matters are relevant to the task of the Commission and how the courts upheld that view. The documents which were the subject matter of the litigation, that is documents provided by the Assessor, have now been carefully considered by the Commission. They have been extremely valuable for the full understanding of events which have occurred and with which we have been concerned, and as such we have taken them fully into account. However, we have throughout been conscious of the privacy or confidentiality of many of these documents, and have constantly stated that there would be no need to make the details of the tax affairs of the developer public unless the Commission were to be satisfied that the public interest required it.¹ The Commission is now fully apprised of that detail and does follow that principle carefully in this Report. We have concluded that there is not any requirement to publish any of the tax return documents. The great advantage of consideration of these documents is that they allow the Commission to draw broad conclusions, but sufficient for its purpose, in the knowledge that it has an accurate detailed basis for these broader statements.

¹ E.g. Chairman's 1st Affidavit to Court para 75

- 3.3 What have been described as the lobbying documents² are quite different. In some instances they are directly relevant in their content to prime issues before the Commission, and their use has been approved by the Privy Council³ who added the important point that “There is much to be said for transparency in any attempt by private interests to obtain special tax reliefs for their own financial advantage.”⁴ This high judicial opinion is entirely consistent with the Commission’s concern about the lack of transparency in Isle of Man governance and which we regarded as so important as to make it the subject matter of our first Recommendation in our Part One Report⁵ and which is a consistent factor in our other Recommendations.⁶
- 3.4 The objective of this Part Two Report is to finalise the task which the Commission has been set by the Lieutenant Governor and Tynwald with regard to irregularities referred to in Tynwald and the allegations of corruption as they were made in Tynwald. As noted⁷ the Commission has been granted extraordinary powers, and it has not hesitated to use them in furtherance of its duties.
- 3.5 Given these powers, and its remit, and an earlier investigation which did not allay concerns, the Commission is determined that its Reports cannot in any way be criticised as a cover up,⁸ and that this Part Two Report will provide the remaining part of the picture which displays fully the events which occurred, the faults which occurred, the gravity of those faults, the parties to blame, the parties who sought to prevent or resist the faults, the cost to the taxpayer, to the environment and to the quality of built development, and the lessons to be learned. The significance of these matters remain highly relevant today and, because of the pattern of events which are common to both planning and taxation matters, the Part Two Report will re-emphasise these overall present day significances.

² Privy Council Reasons para 20 and paragraph 2.21 above

³ Privy Council Reasons para 35

⁴ Privy Council Reasons para 35

⁵ Part One Report page 253

⁶ Part One Report Section 19

⁷ Privy Council Reasons para 36

⁸ Privy Council Reasons para 27

- 3.6 In the above context the Commission will give particular consideration in this Report to (i) the development, the developer and the objectives; (ii) the Income Tax (Capital Relief) Order 1991; (iii) the Income Tax (Capital Relief) (Tourist Business Incentive Allowance) Order 1991; (iv) the Income Tax (Capital Relief) (Tourist Business Incentive Allowance) (Amendment) Order 1992; (v) tax certificates; (vi) the handling by government of the above matters; (vii) the consequences of the above matters; (viii) the conclusions drawn on the above matters; (ix) recommendations; and (x) overall comment on Parts One and Two.
- 3.7 The procedures followed have been the same as for the investigations leading to the Part One Report, although there has been much greater representation of witnesses by Advocates. The Commission has welcomed this representation which has resulted in a general high quality in the written evidence and its presentation to the Inquiry; the Commission is grateful for this assistance. The written evidence is itself available as a public record of that evidence.
- 3.8 Given the full account of procedures which we set out in the Part One Report it is unnecessary to repeat that in full but appropriate to repeat some matters.
- 3.9 The hearing of evidence was almost entirely in public. We heard evidence in private on some occasions. We have not directly used the information received on such occasions in our report, but it has helped us in acquiring information and understanding which we have used in our report.
- 3.10 All hearings were recorded and the transcriptions of those hearings is of good quality. The transcripts of the public hearings are available in the Inquiry Library for public perusal. The transcripts of the private hearings remain confidential.
- 3.11 All oral evidence was given on oath, written statements were taken as read and the proceedings were inquisitorial. This type of proceedings has a significance which has not perhaps been appreciated by all providing evidence or submissions to the Inquiry. Given that this is clearly the appropriate type of proceeding the Commission has taken it as its duty to examine carefully

evidence of facts and arguments which have the potential⁹ for being material to its remit. Sometimes we have concluded that such evidence has been material, sometimes we have concluded that it was not. If it has not been material we have not taken it further.

- 3.12 In the public hearings 23 witnesses have given evidence making up 73 in the whole Inquiry. Additionally two other people have given evidence in private, one in each part of the Inquiry.
- 3.13 We were not able to take evidence from two key witnesses; Mr Gary Spence because, despite best proportionate effort, he could not be contacted, although the Commission has evidence available to indicate that he appeared to reside in New York; Mr Stuart Mitchell for reasons of ill health and being outside the jurisdiction. However the documentary evidence and the oral evidence of other witnesses which we have seen and heard relating to these two people enables us to be satisfied that we have a clear and accurate picture of their activities, as we did for the Part One Report.
- 3.14 We heard some witnesses on more than one occasion. This would usually be to provide assistance when further events or circumstances had come to light, or had become significant or required more clarification after the witness had first given evidence. In other matters of this sort we were able to pursue our queries satisfactorily through correspondence.
- 3.15 We have also had written statements provided to us by interested parties who did not give oral evidence.
- 3.16 In addition to hearing oral evidence and reading written statements or correspondence from witnesses we have also perused a multitude of files from government departments, many of which we had examined in the investigations for the Part One Report. The width of this examination of files (and other matters) can be seen in the annexes. We have considered in the order of 7,000

⁹ Privy Council Reasons para 35

pages of documents and 16 diagrams and maps. This means that over the whole Inquiry we have considered some 26,500 pages of documents and 466 plans, diagrams, maps and drawings. These figures do not include some 4,000 pages of documents in the two separate High Court proceedings in which the Commission has been involved. These were the proceedings finally determined by the Privy Council as referred to above and quite separate proceedings taken against a witness for consideration of contempt of court.

- 3.17 We have sought to reference directly to evidence which has come before us statements of fact, events, opinion or circumstances, in the report unless the source is otherwise self evident. This enables the objective reader to understand and examine fully the evidential and factual basis of our report and all the findings and conclusions which we reach. This is the same as our approach in the Part One Report.
- 3.18 We have taken into account all we have read, heard and seen, but apart from identification of documents and witnesses in the annexes, we have not referred specifically in the body of the report to every item of evidence which was presented to us, as this would not be practicable.
- 3.19 Bearing in mind our remit to investigate government's handling of irregularities we have sought to focus upon government itself, or the system of government, in the comments or criticisms which we have made, rather than upon individuals who were operating that system of government, whether as politician, civil servant, or otherwise. Nevertheless there are some occasions when we consider that it is appropriate and necessary to focus on individuals or third party bodies.
- 3.20 Where, consequent upon our investigations following the above approach, we have subjected persons to significant criticism, we have given each of these persons, and indeed all parties criticised, the opportunity to consider the gist of the criticisms at the draft report stage and to comment to us upon them. This has allowed all the persons concerned to provide a full written response to the points of criticism should they have wished to do so. We have included in this facility persons who are not being criticised individually, but who might feel, or be seen

to be, criticised because of their connection with a body or group which is the subject of criticism. The response to the offering of this facility has been extremely good and we are grateful to those who responded in the manner offered to them. Where requests, direct or implicit, have been made for more information we have provided this as appropriate. We have taken the comments fully into account and have either modified the final report accordingly and/or have referred to the response in the report, or we have set out the representations and comments upon the criticisms in an annex to the report (Annex 9) when the persons or parties in question took up our offer to do this. Where we have accepted or partly accepted the response we have indicated this in the annex or have modified the response to reflect the removal from or adjustment to the draft report.

- 3.21 The matters in the Part One Report were quite complex, and the matters in the Part Two Report even more complex. While it is understandable that people should wish to see our Report within a short period of time, we have considered it more important to give careful consideration to all the issues in order to conclude, as we believe we have done, correctly on these matters, even if the time taken is longer than would be the case if our examination of issues had been less rigorous.
- 3.22 The remainder of this report provides an overall summary of findings and conclusions, a detailed explanation of relevant statutory provisions, a detailed account of the factual events behind relevant legislation, followed by more detailed conclusions and recommendations.

END OF SECTION 3