

# PART G

## **OVERALL COMMENT ON REPORT**



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### **OVERALL COMMENT ON REPORT (PARTS ONE AND TWO READ AS A WHOLE)**

- 10.1 The Part One Report identified and explained that a highly unsatisfactory residential development at Mount Murray had been permitted for a purpose which the decision makers were unable or unwilling to recognise publicly. It also identified and explained that the government took many years to become generally aware of the significance of the situation, mainly because of the lack of transparency and the ineffective workings of the machinery of government, but that at the time of the presentation of the Part One Report the government was making strenuous efforts to rectify the defects and deficiencies in the estate, which as the Report then stated, was a difficult and uphill task. The Report also stated that government was making vigorous efforts to seek to improve the government system generally, and we hoped that our findings and recommendations would provide significant assistance in that task.
- 10.2 The Commission was not however then able to address that part of the planning and development history of the Mount Murray site relating to taxation matters nor in that regard the extent to which government systems provided or failed to provide sufficient resistance to the manipulations and pressures of the developer, its agents and associates, and the extent to which there were such manipulations and pressures. These matters have now been investigated and reported upon in the Part Two Report.
- 10.3 It has not been our intention, nor is it appropriate, to revisit further in this Part Two Report those matters which were reported and concluded upon in the Part One Report. But, for reasons which are explained in paragraph 3.1 above, the Commission does consider it to be appropriate, and it hopes helpful, to comment, albeit briefly, upon matters which have occurred since the presentation of our Part One Report. The comments follow.

- 10.4 We are very conscious that it is a matter for government as to how the Commission's recommendations are responded to or acted upon, and in these comments we aim to respect that principle carefully, but it remains the fact that such responses are part of the government handling of irregularities which occurred at Mount Murray and which have been amply identified.
- 10.5 We do recognise that government has given serious consideration to our recommendations. As reported by the Council of Ministers in October 2003 it has accepted the great majority of those which we made. A very small number have not been accepted by government. The Sub-Committee of the Council of Ministers to examine various aspects of the Planning System has also reported on recommendations, in May 2004. This Sub-Committee addressed Recommendations 9, 13, 14 and 20 and the Commission welcomes the thoughtful consideration which has been applied to these recommendations. The Sub-Committee has accepted the basic objectives of the recommendations in all except one instance, although occasionally arriving at the objective by a slightly different route and, in the case of Recommendation 9, has reversed the somewhat negative view expressed by the Council of Ministers in its October 2003 report. It is noted that Recommendation 13 has been accepted and, as recommended, due examination has been made of the role of the Minister for Local Government and the Environment. The result of this examination is that the role remains as currently prescribed. That is a matter for the Sub-Committee and the Council of Ministers, but the Commission is pleased to note that procedural guidance notes to help ministers, members and civil servants have been agreed and drafted. At the time of presentation of this Part Two Report the report of the Sub-Committee has been approved by the Council of Ministers for submission to Tynwald.
- 10.6 One important recommendation (number 22) concerning the proposals to establish a Statutory Board, to be named the Audit Commission, has not been finally responded to fully and conclusively.
- 10.7 The Commission is nevertheless concerned that government's reaction to the Report recommendations should properly reflect the evidence reported and the

findings of the Part One Report. That is of course also expected with regard to the Part Two Report.

- 10.8 The Commission do not consider this to have been the case with respect to the Council of Ministers' report of July 2003. Recommendations in a number of cases were regarded as having already been implemented which, on the basis of the evidence available to the Commission, appeared either exaggerated or simply incorrect. Recommendation 2 (second part), for example, which proposed that reasons must be made clear in Committee minutes recording a decision, was claimed as being already undertaken but there was no evidence before the Commission in June 2003 to support this even in the limited circumstances referred to in the Council of Ministers' report. Indeed a quite contrary philosophy, was circulated in December 2002<sup>1</sup> by central government to local authorities in a memo advising against including reasons in their minutes and advising that these should be limited to decisions taken.<sup>2</sup> Similarly, for Recommendation 11, which proposed training and defined terms of reference for the enforcement officer, the claim that this had been done was not reflected in the actual evidence of the postholder. Indeed it was contrary to it. (See Part One Report paragraphs 17.84 to 17.86 and Transcript Day 23 pages 22 & 23).
- 10.9 Other recommendations were stated by the Council of Ministers as already being progressed as part of the Department of Local Government and the Environment document - Modernising the Planning System. This implies that the Commission were in some cases simply repeating what government through the Department of Local Government and the Environment was already saying. However, the consultation document, which the Commission regarded as of considerable merit, consisted very largely of a series of options for public comment. The Commission by contrast was quite specific in what it recommended and which option, if any, it supported. See for example sub-section 15 (v) and paragraph 19.11 of the Part One Report. Its recommendations stand in their own right and remain independent of the Department of Local Government and the

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<sup>1</sup> Circular letter to Local Authorities from C Sutherland, Local Government Unit Manager, DOLGE, 10.12.2002

<sup>2</sup> L66 Guide for Local Authorities, DOLGE, Local Government Unit

Environment's consultation process. If, as a result of the Department of Local Government and the Environment's consultation exercise, there is a wish to go in a direction other than that recommended by the Commission, it is a matter for government to take that decision. However, having made these observations, the Council of Ministers' report of October 2003 is welcomed by the Commission, as is the measured and well considered May 2004 report of the Council of Ministers Sub-Committee. We make further specific observations on only two of our Part One Report recommendations so far as events following 30<sup>th</sup> June 2003 are concerned. These are Recommendations 12 and 22.

- 10.10 The Commission has specific reservations concerning the handling of recommendation 12. It is noted that the Residual Issues Committee has been reconvened as proposed and reported to Tynwald in February 2004. It is appropriate that it should have done so and its conclusions and the manner and extent to which they are followed up, as with all the Commission's recommendations, are a matter for government. Nevertheless the Commission has continued to have its attention drawn, both by residents and local Members, to ongoing estate concerns including road standards and parking, and the provision of footpaths and pavements and similar continuing dissatisfactions. These are defects which the Commission concluded in Part One of its Report were due to the irregularities associated with the government's handling of the planning applications. The Residual Issues Committee propose no action to improve the estate mainly on the grounds of its private nature, but that is precisely why the Commission recommended the use of compulsory purchase powers if needed.
- 10.11 The Committee does not seem to have grasped the point that whether the road system remains private (unadopted) or not, does not in any way alter the need to address fire access and safety matters throughout what is a large housing estate, and it is hoped that government will take the view that this might be a matter for reconsideration in the light of ongoing resident concern and continuing fire risk to health and safety of lives. Furthermore, the Committee in dealing with highway and pedestrian safety has said that it was important to emphasise that the Mount Murray estate was always intended to be a private development; but this avoids

the indisputable finding that when it was permitted there was no general understanding that this could, or would, turn out to be a completely permanent residential housing development. This lack of general understanding was a result of failure by government. Had there been proper understanding different infrastructure facilities would have been required (see Part One Report paragraph 17.120). This failure of government affects very much the legitimate limits regarding the extent of responsibility in respect of the estate. Compulsory purchase powers by public bodies are inevitably and generally concerned with the acquisition of private interests. It is the Commission's understanding that current legislation enables such compulsory acquisition as might be required in current circumstances if agreement with landowners is not reached. If this is not correct then such legislation as is necessary should be put in place to enable the present shortcomings to be remedied. Action should not be shirked by relying upon circumstances which give the semblance of action but simply avoid recognising the reality of what happened in 1991.

10.12 The proposal by the Committee to improve pedestrian access and safety on the A5 is clearly welcome although the provision of a footpath connection within the estate should not be left to the developer. The A5 improvement however was only part of Recommendation 12, and particular concern must attach to the Committee's conclusion that no land need be acquired to improve emergency vehicle access within the estate. The Chief Fire Officer in his evidence to the Commission emphasised the fact that the first few minutes after an outbreak of fire are critical, yet the Committee now seems content to rely on the removal of indiscriminately parked vehicles to ensure appliance access whilst acknowledging that this can cause serious delays. Put shortly the Committee proposes that no steps be taken to improve the present quite unsatisfactory position.

10.13 Attention is drawn to paragraph 13.13 of the Part One Report in its entirety and including the evidence from the Divisional Officer in the Isle of Man Fire and Rescue Service that the first few minutes of any fire are very, very important to anyone who is in the house (affected by fire). Sub-section 13 (iii) referred to further difficulties relating to fire access. These include problems caused by

parked cars. It is acknowledged in the Residual Issues Committee report that even one car left indiscriminately in some places could seriously delay the attendance of fire appliances (and other emergency service access). Serious delay must surely be unacceptable in circumstances of fire. Whatever the covenants in conveyances may say about prohibiting parking on roads, the reality is that parking on these private roads is commonplace and frequent. It is really quite irrelevant to note that no resident could complain if their car was removed for emergency requirements. While removal was being implemented the serious delay will have occurred with possible loss of life and/or serious injury. Nor does the ability to drive across the golf course have any alleviating or relevant effect for close access to many of the places where there will be difficulties. The above does not seem to be an adequate response to its recommendations and it is hoped that government and the Committee will revisit this matter.

- 10.14 This position is further emphasised in that since the Commission presented its Part One Report a public inquiry into the Braddan Parish Plan Draft Written Statement was re-opened, on 8<sup>th</sup> December 2003, to consider the Commission's findings and recommendations as they affected the Mount Murray area in the Braddan Parish Plan.
- 10.15 At paragraphs 13.27 to 13.29 of the Part One Report we have already referred to representations made by consultants acting on behalf of the Mount Murray Country Club Limited to the initial part of the public inquiry into the Braddan Parish Plan, and how that evidence wholly reinforced the Commission's concerns and the type of actions we considered necessary to address them.
- 10.16 The Independent Inspector into that Inquiry has now reported,<sup>3</sup> and he also supports our concerns. At paragraph 36 of the Mount Murray Addendum to his report he said that the proposed (additional) residential development would be out of place in the relatively isolated area away from the main centre of population and that it would consolidate an area of development which was



originally identified for tourism into a residential enclave. At paragraph 37 he reported that he had not had the benefit of the Commission's Report when he reached his conclusion on highway aspects of the proposed scheme but that many of his views were similar to those of the Commission. In the same paragraph of his conclusions he also said that it was clear that steps need to be taken urgently to remedy many of the matters found by the Commission to require attention on highway and safety aspects of the existing development.

10.17 These findings from a quite separate independent source are consistent with, and lend even further weight to, our suggestion that government should reconsider the situation or require the Residual Issues Committee to reconsider its findings in its February 2004 Report on the matters we have raised above.

10.18 Turning to Recommendation 22 this concerned proposals to establish a Statutory Board to be named the Audit Commission and this has not been finally responded to fully and conclusively. However since we presented our Part One Report, an Assessment of the Supervision and Regulation of the Financial Sector in the Isle of Man has been produced in October 2003 by the International Monetary Fund.<sup>4</sup> We consider this has relevance to Recommendation 22.

10.19 In paragraph 19.38 of the Part One Report, in leading up to the Audit Commission recommendation, we said that the Chief Minister and the Council of Ministers 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 the complaint or report. The last two bullet points of Recommendation 22 say "The Chairman of the proposed Audit Commission be not a member of Tynwald...", "The proposed statutory board shall be required to make a report... (annually)". The above two points are indicating the requirements of independence and accountability.

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<sup>3</sup> Document L128 Report of Inquiry held into the Braddan Parish Plan April 2001 including the Mount Murray Addendum.

<sup>4</sup> Document L129 Assessment of the Supervision & Regulation of the Financial Sector of the IOM: International Monetary Fund

- 10.20 The International Monetary Fund Report also emphasises these aspects and, while finding that the financial regulatory and supervision system of the Isle of Man complies well with the assessed international standards, states there are shortcomings in the independence and accountability of the Financial Supervision Commission and of the Insurance and Pensions Authority. In fact there is failure to meet international standards in these two regards. The reasons for the shortcomings are summarised and exemplified at page 9 paragraph 6 of Volume 1 of the International Monetary Fund report. Reference is made to the Chairman being a member of Tynwald and to the Council of Minister's powers of removal of members and of direction of the body, and other similar points. It is said that these provisions effectively make the Financial Supervision Commission and the Insurance and Pension Authority departments of government. (See also paragraphs 84 and 128 and pages 35 and 40 of Volume 1.) It is recommended that legislation is adopted to provide appropriate independence and accountability of the regulators. Passages in the report indicate that accountability is referring to appropriate reporting of its activities.
- 10.21 The Commission considers that the above finding from the International Monetary Fund provides extremely authoritative support for the principles in our Recommendation 22, and it is to be hoped that government will give appropriate weight to that. It also supports our primary recommendation of transparency, which of course government has accepted.
- 10.22 Furthermore, with regard to matters specific to our Part Two Report, the existence of such a body would, we find, have made it less likely that there would have been failures in the Department of Tourism in its incorrect involvement in detailed tax matters.
- 10.23 There are a number of other concluding comments the Commission considers it appropriate to make. We feel most importantly that our findings in this Part Two Report complement those in Part One and demonstrate the relationship between planning and tax matters at Mount Murray. We have endeavoured to provide as complete a picture of events as practicable and to show fully, but fairly, how irregularities in the handling of both planning and tax issues by the government

came about, and where criticism if justifiable might properly be made and of whom.

10.24 During this process, the government has responded fully and comprehensively to the Commission's enquiries and to its seeking of both written and oral evidence. However there have been two aspects of the government's explanations and in some cases defence of its actions which are noted with concern. We have already referred to the first of these in paragraph 8.66 above. Arguments were put to the Commission in support of Treasury actions on taxation matters at Mount Murray which included the scale of collateral benefits as offsetting tax revenue foregone, and the view that development would never have happened without the incentive allowance Orders. The Commission find these to be arguments in mitigation rather than justification which effectively imply that the end justifies the means. A similar stance was taken by Mr Bell in evidence to Part One of the Inquiry where he took the position that at least some permanent housing at Mount Murray was justifiable in the interests of the Island's tourism economy even though, as we noted, government never actually had the opportunity to consider such a choice. Decision making in government should be more open and robust than this, and if there has been misconduct in the handling of government matters, the fact that there has been a beneficial consequence should not be used to justify that improper conduct or improper handling of government affairs.

10.25 The Commission's second point of concern became evident during Mr Corlett's final submissions to the Inquiry on behalf of the various officials and ministers of government he represented. Mr Corlett drew attention to what he defined as the Island's "well deserved reputation for being in the premier league of well regulated offshore financial centres." He said that the Island's prosperity crucially depends on this reputation, went on to submit that there are great dangers to this international reputation in the use of the word 'corruption' and maintained that damage could be caused to the Island and its people by the unjustified labelling of its government, its officials and its politicians as 'corrupt' even in the wider sense used by the Commission. This is an inappropriate and unjustified view which the Commission must reject. It implies that where evidence is found that

the systems of government in the Isle of Man have failed in accordance with the Commission's defined view of corruption as used in its Part One Report, then the irregularities associated with such failures should be suppressed in the interests of the Island's reputation as a well regulated financial centre.

- 10.26 It is acknowledged that Mr Corlett was making his remarks in the context of the Treasury, which department we have found generally in this Part Two Report, to have performed very capably. However, exactly the same view was expressed by the Attorney General during the debate on the Commission's Part One Report in July 2003. To suggest that the Commission might in some way temper the tone of its Report for reasons not associated with the matters being investigated is misconceived. The Commission defined its position in relation to "corruption" with great care in its Part One Report and, far from being confused by its use, we consider the Island's reputation would be enhanced if government acknowledged that its planning system became "corrupted" in the early 1990s in relation to Mount Murray as we have concluded in our Part One Report, but that it has sought in the light of that experience to review its systems with thoroughness and to operate them in a scrupulous manner.
- 10.27 For completeness we consider it relevant here to make brief comment about Mr Vannan, the former Director of Planning, with regard to the Commission's certificate to the High Court concerning Mr Vannan and the question of his compliance with summonses issued to him by the Commission. This matter is referred to in paragraph 18.11 and 18.12 of the Part One Report. The decision on such matters on a certification is for the High Court. However Mr Vannan did, albeit at a late stage, produce medical evidence which persuaded the Commission that it should indicate to the court that, in the light of that medical evidence, the Commission for its part did not wish to press the matter further, and the action was dismissed.
- 10.28 Returning to the wider picture, the Commission has at various stages in the questioning of witnesses posed the question whether those interviewed felt that sufficient steps had been taken to ensure that the irregularities identified at Mount Murray could not be repeated. Unsurprisingly ministers and officials have

taken a positive view of the way the systems of government now operate. The Commission is not wholly convinced that this is justified but as we stated at the start of this section, government has given serious consideration to our recommendations. We hope that the findings and recommendations of both Reports, Part One and Part Two, will assist in that task.

10.29 Finally, as indicated, this Report is complex. We have noted in Tynwald debate a wish that Members should have adequate time to give full consideration to this Part Two Report before it is debated. This appears to us to be eminently sensible and we hope that this will be the case.

END OF SECTION 10

