

**4.2. Town and Country Planning (Amendment) Bill 2019 –  
Second Reading approved**

Mr Thomas to move:

*That the Town and Country Planning (Amendment) Bill 2019 be read a second time.*

**The Speaker:** Item 4.2, Town and Country Planning (Amendment) Bill 2019, Mr Thomas.

535 **Mr Thomas:** Thank you, Mr Speaker.

The intention of this Bill, which would amend the Town and Country Planning Act 1999, was laid down in the action plan for reform of the planning system which is laid before Tynwald in May 2018, specifically: new powers for the subsequent introduction of national policy directives, which with Tynwald approval could override the development plan to better meet our needs; a new community infrastructure levy taking effect in early 2020; the powers to introduce a method for faster minor amendments to existing planning approvals by the end of 2019; to introduce the definition of general importance to the Island as set out in section 11(1A) of the Act; discretionary powers for the Cabinet Office to appoint a planning advisory body under section 40 of the Act; and explicitly define the statutory basis for the Planning Committee and its decisions.

545 A consultation on the draft Amendment Bill was carried out in September and October 2018 and I thank the many participants who made helpful submissions.

Mr Speaker, national policy directives will enable the Council of Ministers, with the approval of Tynwald, to respond in the national interest to particular planning issues. Reasons for the policy shall be given and the Council of Ministers shall consult such persons as it thinks fit before making a national policy directive. The Council of Ministers shall, by regulations, make further provision about the making of national policy directives. These regulations will be the subject of consultation.

555 In summary, the development plan deals with the whole; national policy directives will deal with the particular. It is intended that they are responsive, possibly even relatively short-lived, so that the identified issue or need is addressed. As described in the action plan, national policy directives are aimed to enable changes in policy to be brought about more quickly when necessary to continue to meet the Island's needs – effectively, to make the planning system more responsive to changing circumstances and expectations.

560 Mr Speaker, the Bill also creates the power for Council of Ministers, with the concurrence of Treasury, to impose a charge – a 'Community Infrastructure Levy'. This would require several regulations to be made following consultation and engagement to get the balance right to ensure new developments help fund the accompanying wider changes which bring economic, environmental and social benefits. At present there is no ability to make minor changes to planning approvals, either before or during construction; for example, as a result of the assessment of the plans for Building Control. Currently, if the need for minor change arises those carrying out development are left with a choice to either submit a full new planning application for the entire development or to make minor variations to the plans in building the development without specific approval.

570 The aim of this amendment is to ensure a proportionate approach to minor changes. 'Minor' means that the change does not transform what has been approved into something else or give rise to new impacts or concerns. An approval might be given for a new house but there might be a slight amendment to the shape or position of a window. This provision in the Bill will require the making of a procedure order with Tynwald approval.

575 By defining general importance, the Bill sets out clear parameters for the referral of applications to Council of Ministers, who would then consider whether to call such applications

in. 'General importance' has not been defined before. The aim is to ensure applications which are key to Government priorities are better identified.

580 At present, section 40 of the Town and Country Planning Act 1999 requires Council of Ministers to establish a consultative body for the purpose of obtaining the views of organisations in the Island appearing to the Council of Ministers to be concerned with any of the following matters: (a) the environment, (b) the economy of the Island, or (c) the planning of development.

585 Then the Cabinet Office must consult the consultative body on all matters on which it appears to the Cabinet Office that its advice would be desirable and, in exercising its functions under this Act, shall have regard to any advice given by the said body, whether pursuant to such consultations or otherwise to advise on policy issues, where desirable.

590 This body has never been established. This Bill removes the obligation to establish it but preserves the power to do so. The action plan states that more flexibility in how Government involves stakeholders in policy matters is created without extra, what can be seen as, bureaucracy.

595 The Planning Committee is not created in the Town and Country Planning Act 1999, even though all the Committee's work is the exercise of powers under that same Act. In this Amendment Bill, the Council of Ministers is required to constitute by order a planning committee to carry out any functions specified in such an order and currently performed by the old planning committee, for which it is authorised under section 3 of the Government Departments Act 1987 or which are transferred to it by order under Schedule 2 to that Act. Proper transition, grandfathering and for avoidance of doubt provisions are included.

600 Mr Speaker, I beg to move that this Bill has its Second Reading.

**The Speaker:** Hon. Member for Ayre and Michael, Mr Baker.

**Mr Baker:** Thank you very much, Mr Speaker.

605 I rise to speak on this really very important Bill which has been promoted by the Cabinet Office and brings some major changes to the planning framework.

610 I believe that this is very important because planning is integral to the Island's built and natural environment; and I think the response to this Bill needs some very careful thought to ensure that we do not have any unanticipated consequences from it. I understand that the drive for this Bill came from frustration about the planning system at the start of this administration in 2016. It is an integral part of the Programme for Government to improve the planning system.

615 We have already seen a number of initiatives come forward and many of the elements of this new Bill are eminently sensible. The one area where I would caution is in the area of national policy directives, which in principle sound extremely sensible – to give increased flexibility and to provide a more responsive planning system; however, already have a very comprehensive development plan framework consisting of a strategic plan and area plans, which gives us a framework to assess the planning applications that come forward.

620 The Strategic Plan provides a very comprehensive strategic and general policy framework, within which provision will be made for development and conservation needs. For those who are not so familiar with the strategic plan, which is this document that was approved in March 2016 in Tynwald, it is a complex document. It consists of a very clear strategic aim; sets of strategic objectives across five broad headings; a series of strategic policies, of which there are 12 which relate to the five sets of strategic objectives of resources, environment, economy, transport and communications and social considerations; and seven policies related to the Island's spatial policy; and nine general policies; plus a series of detailed policies across seven categories, such as environment which consist of 43 policies specifically to the environment, housing which is 18, business, 15 etc.

625 So this is a complex framework against which funding applications are evaluated and the Strategic Plan makes very clear in section 1.7.2 on page 7:

The Aim ... must be looked at as a whole. [The strategic planning is] intended to inter-relate and should not be read in isolation.

630 So we have got a system here for evaluating planning applications to lead us to what should be the right outcome.

What is proposed here is the ability to override, as the Minister for Policy and Reform said, that system. Section 2A(7) makes this clear – that in the event of any conflict between a national policy directive and any other elements of the development plan the national policy directive will take precedence, it will ‘prevail’, as the Bill says.

635 What that means, Hon. Members, is that any national policy directives which come through and are approved by Tynwald will be unchallengeable, irrespective of the implications that they have in terms of the environment, business, community, housing, society etc. The national policy directive will prevail.

640 I have got no problem with the need, potentially, to bring forward national policy directives to speak to major issues that affect the Isle of Man if there is a genuine need. We can all envisage scenarios around Brexit or Moneyval, for instance, where the Island’s economy may need to change very rapidly. We may need to move more quickly than the current planning framework allows. In that context, I think national policy directives are eminently sensible. We may need to do some structural adjustments to the Island’s economy very quickly in the national interest. I fully support that concept. My concern is not with the concept or the principle, it is about the implementation and the detail.

645 So I do support the objectives of increasing flexibility. I understand the desire to move quickly and flexibly; however, it is all about the implementation. It is not clear, Hon. Members, from the drafting of the Bill in what circumstances national policy directives will be deployed. It talks about when Council of Ministers believe that it is in the national interest. There is no definition anywhere in legislation of what the national interest actually is, so if Council of Ministers believe something is a national interest they have the ability then to bring forward a national policy directive. They may consult, as the Minister for Policy and Reform said, with whoever they feel appropriate. That does not feel very inclusive and comprehensive to me, but that is what it says at the moment: such persons as it deems fit or sees fit.

650 There is strong Tynwald scrutiny around the process. The Minister will have to bring forward some regulations for national policy directives and once those have been approved will then have to bring any national policy directives through Tynwald as well. So there is good protection there. However, it is clear when one looks at the draft Bill there is a lot of detail around the regulations that are going to be required for the Community Infrastructure Levy. A lot of thought has gone in there, clearly. For whatever reason – and I would be interested in the hon. mover’s comments on this – there is very little detail about what those regulations around national policy directives are going to have to comply with.

665 My concern with this is to make sure that we have adequate scrutiny and safeguards around this whole process. The Minister, in his opening remarks, said that it may well be that these national policy directives are relatively short lived. Yet, I cannot, unless I have missed something, see anything in the drafting that gives us that assurance. He indicated that they will be specific. Again, I do not see anything in the drafting which says they are going to be specific.

670 My concern is not actually so much about what this administration may do with national policy directives, it is potentially what may happen in future administrations with that power which is extremely strong, Hon. Members. We all know that planning has been the Achilles’ heel of many administrations in many jurisdictions. I think we could have a debate about whether it is right that national policy directives will prevail over every other consideration. I am not sure that is right, but I am open to suggestion. I believe that it would be right that if we did have a national policy directive it would be of higher weight in that planning process, in that consideration process, but are we really saying that something which has the approval of a national policy directive is so important that it overrides every single consideration, irrespective of

environmental impact, traffic impact, impact on local residents? (**Mr Shimmins:** Hear, hear.) I do not think that is right. I think we need a more sophisticated approach. I think we are in danger of falling for a simplistic approach which could be damaging to the Island.

Equally, the reason for needing these national policy directives is the speed at which the development plan can be updated. I understand that frustration. We have all shared the journey of the Area Plan for the East which is somewhere in process still and still has some way to go. That is an awfully long time to change, and that, I think, is one of the reasons for the national policy directives being conceived. So we do need to be able to ensure that the administration has the levers to pull to make the Island into what it wants to be and what it sees as its future.

So I am supportive of this Bill. The stated intentions are positive. I would like to thank the Minister for Policy and Reform and the drafter for his positive engagement to date where he has listened to my concerns. Some of his responses have satisfied some of those concerns and my concerns now are very much just around the national policy directives. The remainder of the Bill, I think, consists of a number of different elements which generally are sensible and appropriate.

But I do think there is further refinement needed around the national policy directive. So it is my intention to bring forward some amendments at the clauses stage, which I hope the mover will feel able to support, and certainly the intention is to share those proposed amendments with the Minister.

In summary, at present I think as drafted the Bill carries significant risk which could come back to have an adverse impact on the Island in the future. We need to ensure we properly protect the Island's future interests for this generation and for those to come.

In closing, it would be really helpful if the Minister could clarify exactly the problem that this Bill is trying to solve in terms of national policy directives and give some specific examples of the types of national policy directives he anticipates to be coming forward within the following months.

Thank you, Mr Speaker.

**The Speaker:** Hon. Member for Ramsey, Dr Allinson.

**Dr Allinson:** Thank you, Mr Speaker.

I apologise to the mover for not getting up to my feet quicker to second this, the Hon. Member for Ayre and Michael got to his feet first.

If I could just say, in seconding this Second Reading, that I think the Hon. Member for Ayre and Michael makes a very good point why this legislation is needed – the complexities of the current system. He went into great detail about area plans, different strategies, and to be a developer on this Island, or even to be an individual trying to modernise your own home, can be a complete minefield, so we urgently need reform of our planning procedures on this Island.

I think, whilst I recognise his worries about national policy directives, this is going to be led by CoMin itself, rather than one individual Minister, and will be accountable. And I think he needs to recognise that there is sometimes a subtle difference between what one person may see as protecting and what another person may see as stifling; what one person may see as encouraging development and another person see as smothering that same development.

So I rise in support of this important and progressive legislation, which I hope will make planning easier and quicker but still remain retain that accountability that we need as a House.

Thank you.

**The Speaker:** The Hon. Member for Ramsey, Mr Hooper.

**Mr Hooper:** Thank you very much, Mr Speaker.

Firstly I would like to start, I suppose, by echoing a number of the concerns that the Hon. Member for Ayre and Michael, Mr Baker, has raised surrounding the national policy directives and the need for some more specifics and a bit more transparency, I think, around the whole

730 process. As Chair of the Planning Committee he clearly has a great deal of insight into the process and I think his remarks today have been quite well made.

In respect of the process itself, I would also like to ask the mover about the matter of 'general importance' that is referred to in the Bill; it is quite well-defined, I think. My understanding is a matter will be called in by the Council of Ministers and this would short circuit the process  
735 around the planning committees, the Planning Committee itself would not be involved when the Council of Ministers calls in a decision.

So my question to the Minister really is: when matters do not go before the Planning Committee will they still appear on the published lists? Will they still be open to comment by the public? And will the public still get the ability to have that three minutes of oral engagement as  
740 they would if the matter was being determined by the Planning Committee? I would like the Minister to provide a bit more detail around how that part of the process, in respect of calling in matters of general importance by the Council of Ministers, will continue to be open and transparent along the lines of the existing planning process.

Another area of real concern for me is in respect of the changes to section 40 in the Act. So  
745 on the one hand the national policy directives are proposing to give the Council of Ministers much greater power and control in respect of planning strategy – which I agree there may be cause for that in certain circumstances, I do not oppose that in the slightest, provided we can firm it up a little bit. But at the same time as saying we are going to give the Council of Ministers some more ability to set these national policy directives to override the strategic plan, at the  
750 same time the proposal is to remove the requirement then to engage with a consultative body of people with expertise in areas of the economy, of the environment and of the planning of development, which seem to be very key when you are making a national policy directive. I would expect that to be some engagement and consultation with people in these three spheres.

I think that response was actually mentioned in the consultation response document as well,  
755 there were a number of people commenting that this body does have value, should have value, and should be in existence so why isn't it? And that is under the current system, before we even get into this issue of national policy directives.

I am aware the Minister has previously stated that it would be his intention to bring some form of a consultative body into being. I would just like him to be able to confirm that and if that  
760 is his intention why is he changing the law away from making this a requirement, if he thinks it is needed anyway.

I cannot see myself supporting a huge increase in the powers of the Council of Ministers in respect of planning, which is a system that we have to get right, at the same time that we are reducing the requirement to consult and engage with people who are knowledgeable in some  
765 very key areas, especially in respect of these national policy directives.

In fact, the section on national policy directives requires the Council of Ministers to consult such persons as it thinks fit. We are imposing a requirement to consult and then we are removing this body that they can consult with. It does not seem really to fit, so I do not really see the purpose for removing this particular requirement.

The Act is very clear, the Cabinet Office would still control the consultation process itself. They are only required to consult this body when the Cabinet Office considers it would be desirable to do so. So the risk of unnecessary bureaucracy, that the Minister mentioned, will only happen if the Cabinet Office is not capable of using a consultative process which it controls entirely sensibly and proportionately so the Cabinet Office controls the process. I really do not  
775 understand why we are looking to remove this requirement for the body. The fact the Cabinet Office is not currently complying with the law does not seem to be a good enough reason to change the law.

I am quite glad though, to see the Planning Committee be placed on a statutory footing in this Bill. I would appreciate some clarity from the Minister in respect specifically of transitional  
780 provisions. So the process under the new committee I am assuming will be the same as the process under the existing committee, if not what changes is he proposing to make to the

existing process? Does he plan to consult on those proposed changes and if there are no proposed changes why do we need transitional provisions at all?

785 And, as a last question, I would just like to ask the Minister what consultation and engagement has he undertaken in respect of the proposed Community Infrastructure Levy? And is this levy intended to replace the current processes for raising funds from developers by way of say section 13 agreements or is it intended to supplement that process.

I look forward to the Minister's comments.

Thank you, Mr Speaker.

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**The Speaker:** Hon. Member for Middle, Mr Shimmins.

**Mr Shimmins:** Thank you, Mr Speaker.

795 It is right that we review our planning legislation to ensure that it continues to be fit for purpose and this Bill contains a number of proposed changes.

There is a general growing concern across the Island that the Council of Ministers wishes to circumvent normal planning practice and remove any barriers to economic progress, regardless of any negative consequences. There is also concern that the Council of Ministers is consistently ignoring the results of multiple public consultations on planning.

800 Hon. Members may have read the published responses to the consultation on this Bill. There are many interesting responses urging caution and a rethink on aspects of this Bill. You may have noticed one contribution from a high profile business person who has made a number of significant investments into the Island. Their remarks were succinct and I would like just to read them to you. This is from the consultation which has been published by the Cabinet Office:

The focus on development to secure economic sustainability is too narrow and the scope should be expanded to secure economic and environmental sustainability since we cannot allow economic decisions that could have a serious detrimental impact on our natural environment and heritage. The risk is real and significant where short term economic decisions are taken that will eventually turn out that long term prosperity has been compromised. Objectors should be given the power/opportunity to challenge decisions taken by the CoMin in either the court of law or otherwise.

805 Many others feel that these concerns are valid. We do need checks and balances in our planning system.

This Bill asks Hon. Members: do you feel that providing more power to the Council of Ministers to directly intervene in planning matters, which will be considered without transparency, in near private meetings, is the right thing to do?

810 The Minister may say that we must have these new powers to meet the Island's needs. Other Ministers have talked in general terms about the need to speed up the process or ensuring property developers have certainty and that we are not stifling economic development. Indeed we have just heard from the Hon. Member from Ramsey who talked about stifling and smothering.

815 I challenge the Minister for Policy and Reform to provide specific examples of why this is needed. He gave a helpful specific example on minor amendments, on windows on houses. It is important that he also provides specific examples of matters of national importance so that the need is clearly articulated and does not talk purely in general terms.

820 I would remind Hon. Members that we have not had a debate on planning reform. A statement was issued after the Council of Ministers decided on an action plan. This plan was laid before Tynwald, there was no debate. This *modus operandi* is unfortunate. It minimises the opportunity for wider feedback and it heightens the concerns of the general public that these important changes are being brought forward to meet the agenda of the influential few rather than the many.

825 We are here to represent the needs of the majority, not the small number of wealthy landowners and property developers. We also have an obligation to our Biosphere, our natural

environment and future generations. When the Manx countryside is concreted over, it is lost forever. We will not get it back.

830 Unfortunately these concerns have been heightened by the recent *modus operandi* employed by the Minister for the Environment, whilst making regulations removing third-party interested party status. This was justified, again, to stop objectors standing in the way of economic progress. This was after another public consultation, which clearly indicated that the majority of the public wished these rights to be retained – the direct opposite of the action subsequently taken by the Minister for the Environment. There is a pattern emerging: to make it  
835 easier for developers to build and harder for people to object and appeal.

If the consultation feedback differs from the desired outcome, the rules were changed anyway – in this case, without reference to Tynwald. Then these questionable changes were not announced. They were not announced to the wider public, but only selected people were advised.

840 Thereafter, when word spreads and people understand what has happened in DEFA, they contact the media, which breaks the news. Eventually a formal press release is issued, but this ministerially approved statement is factually incorrect and deeply misleading. When queried, two correcting press releases were needed to cover this unfortunate series of events, which many people have described as ‘skulduggery’.

845 Hon. Members should ponder this recent track record when considering the proposals which are contained in this Bill. I am interested to hear more about national policy directives.

Mr Baker, the Hon. Member for Ayre and Michael, urged caution. He is a respected Chair of the Planning Committee, so I listened intently to his concerns on the override provisions and the implementation. What debate will take place on national policy directives? Will these debates  
850 take place in our national parliament? The Council of Ministers’ debates are private; would it not be better to have transparency on matters which, by definition, are of national importance?

The Bill also states that:

The Council of Ministers shall arrange for the publication of a national policy directive in a manner the Council considers will bring it to the attention of those likely to be affected by it.

This sounds a bit like a clandestine approach, which was utilised to miscommunicate the private decision made to withdraw third-party interested party status. Surely a national policy  
855 directive, which is for a matter of national importance, should be communicated to the nation, not just those whom the Council considers are worthy.

I am supportive of the Community Infrastructure Levies. These have been successfully used elsewhere to ensure developers contribute more to community infrastructure. Unfortunately, there are many examples on the Island where this has not happened in the past. This has meant  
860 that the taxpayer has had to bear the burden for infrastructure which also, in some cases, has simply not been provided. This is much more than estate access roads, so I very much welcome the commitment to introduce Community Infrastructure Levies here.

Hon. Members will see from the consultation submission from the Department of Infrastructure that they also concur with Community Infrastructure Levies. The Department of  
865 Infrastructure goes further, asking for the Bill to be strengthened: asking for, amongst other things, ‘may make regulations’ to be changed to ‘should make regulations’ to impose a Community Infrastructure Levy. This does not appear to have been taken on board by the Minister for Policy and Reform; please can he explain why he has not listened to the Department for Infrastructure, or potentially will members from that Department be lodging amendments to  
870 support this view at the clauses stage? Perhaps he could also explain and articulate their views on Community Infrastructure Levies.

A higher cost Community Infrastructure Levy for large countryside developments and a lower or minimal Levy for those on brownfield, in-town, urban regeneration projects would help reverse the unfortunate trend that we have seen on this Island over the last few decades. Until

875 the Government takes action to make it more financially attractive to build on brownfield sites and less of a bonanza for landowners and developers to concrete over the countryside, then the same trends will continue. Will the Minister confirm that the Community Infrastructure Levies will be used to prioritise brownfield developments ahead of building over the Manx green fields?

880 Turning to section 40, which my hon. friend from Ramsey highlighted is an area of particular curiosity in this Bill. This is a part of the 1999 Act which requires the Council of Ministers to establish a consultative body:

... obtaining the views of organisations in the Island appearing to the Council of Ministers to be concerned with any of the following matters –

- (a) the environment,
- (b) the economy of the Island, or
- (c) the planning of development.

885 Of course this body has never been set up, despite the clear requirement in the existing Act to do so. This raises a number of questions. Why was this body never set up? Is it because the Council of Ministers does not wish environmental views interfering with planning matters?

The effects of the proposed clause 15 remove this requirement. It is suggested that the Council of Ministers *may* now set up the consultative body and it *may* consult with them on important matters. Previously it was 'shall' and 'must'.

890 Hon. Members, you do not have to be a conspiracy theorist to have alarm bells ringing on this. Why change the wording, unless you do not want to set up a body and you have no intention of consulting with this body? It appears that the Minister does not wish to obtain the views of other organisations.

895 Lastly, an attempt to define 'general importance' is made. This is very wide. Thirty small apartments or a small commercial development feels on the low side. Will the Minister please advise how these *de minimis* proposals compare with elsewhere in the British Isles?

900 The various other clauses whereby the Council of Ministers can revise guidance could mean that they can make up the rules in private as we go along. This feels too broad. These proposals could result in future generations asking, 'How did we let this Island be developed in such a botched way?'

I go back to my opening remarks: why are many of these changes needed? Please provide specific examples, rather than broad statements. Why remove the checks and balances in our planning system? We need to take a responsible approach for all, not pander to the influential few.

905 Hon. Members, aspects of this Bill will determine how the Island will be developed for the next two to three decades. Do you wish to provide a series of overrides for the Council of Ministers to assist developers? Or do you feel the current planning process which, like everything, may have some flaws, but it sits with independence, removed from direct ministerial control. I would ask you to think carefully about these questions and the various other points that have been raised today.

915 It may be that you have absolute faith in the Council of Ministers to make these decisions with the Wisdom of Solomon, and that they can be relied upon to make these important determinations in private. If this is the case, ask yourself what about the next Council of Ministers and the one that follows that? You do not know who these people are, never mind their motivations or qualifications.

This Bill puts in place future planning structures for years to come. Mistakes will negatively impact us all. As such, caution is required. A responsible approach should be taken, and I hope that the Minister will listen to my concerns, which echo those made by others inside and outside this House.

920 **The Speaker:** Hon. Member for Garff, Mrs Caine.

**Mrs Caine:** Thank you, Mr Speaker.

925 I also have some concerns about this Bill. Although it was consulted on last year, the summary of that consultation does not give any indication as to the level of support or objection to its clauses. It simply summarises some of the comments made, so it does not prove that any heed has been taken of comments made in the consultation.

930 Perhaps the Minister could indicate what public feedback has informed this proposed revision of our planning legislation. Feedback to me from constituents suggests they are far from happy with some of the proposed changes. Of particular concern, are pages 10 and 11 of the Bill, regarding amending section 11 and section 1A. Together these refer planning applications of general importance to the Island to the Council of Ministers. 'General importance' is defined in section 1A, and seems to cover anything from a garden shed in the countryside to major development. Therefore the Bill would seem to be giving the Council of Ministers powers to call in and decide a significant proportion of applications, of any scale, and is virtually taking away the role of the Planning Committee, which other sections of the Bill are attempting to secure, in deciding such applications. Moreover, the Council of Ministers is given powers to make national policy directives virtually on a whim so that it can control any development it wants.

940 The overall feeling is that this legislation is taking all democracy out of planning. Government Ministers should not be involved in day-to-day planning matters. You do not find this level of interference of government ministers in the planning system in the adjacent islands.

945 Page 18, referring to item 15 and section 40 amended, regarding voluntary organisations, in the original consultation on planning this was never consulted on, it is just included in the rubric as a *fait accompli*. It is clear to me that there is concern about this and absolutely no justification for the change. Together with the concerns over interested party status, this is taking away all rights from voluntary organisations in the planning process.

950 Mr Speaker, I am aware that our planning system is an area of Government in which there is increasing public dissatisfaction – I would even say some suspicion and distrust; certainly a lack of confidence. Although it is welcome to put the Planning Committee on a statutory footing, this Bill was an opportunity to fix what is broken in the planning system, but it does not make comprehensive improvements from a public perspective. Instead, it appears to aim to increase political power over the planning system, to the detriment of democracy and the principles of open government.

955 Thank you, Mr Speaker.

**The Speaker:** Hon. Member for Glenfaba and Peel, Mr Boot.

**Mr Boot:** Thank you, Mr Speaker.

960 My Department is responsible for everyday planning operation, rather than policy, but we have obviously been deeply involved in the preparation of this new Bill, working closely with the Cabinet Office, looking at it from an operational perspective.

965 There was a view, when this Government took over, that the planning system could be improved, it might be streamlined, it might be made better for the public generally as well as the economy and the environment. We went out with a very comprehensive consultation which attracted a lot of response, and they were quite diverse some of these responses, but they were all looked at.

970 It is very easy, when you look at a consultation document, to pluck bits out and say that high value individuals are working at destroying our natural environment and we are trying to change things as a general power grab by the Council of Ministers. That has definitely not been the case, the responses were carefully considered, and also what we wanted to achieve from the Act or the new Bill looked at in detail.

Now, I am going to raise some of the things that have been put forward. First of all, I have to refer to third party rights. They have *not* been removed and anyone that keeps promulgating that they have been removed is promulgating something that is not true. Third party rights still

975 exist. And, in fact, as part of this consultation and previous consultations, the public generally  
were asked whether third party rights should be removed and they have not been removed.  
They have been refined, and there is now a policy on how they are dealt with. So that is number  
one.

Looking at the various aspects, the six proposals within the Bill, I think they are carefully  
980 thought out. Let's start with national policy directives: there was a feeling that there is or was no  
mechanism – and I know this from my experience as the Minister that considers planning  
appeals and quite a considerable number of them, that the hierarchy of documentation in the  
Isle of Man is difficult to interpret. We have many local plans, very local plans – I am talking  
about parish town plans that are well out of date. Even our regional plans are tending to be  
985 dated, and then we have the Strategic Plan 2016. They are all very good and the documentation  
is really good to refer to, but sometimes there are requirements to move quickly and swiftly and  
address issues that come out that you do not want to address with primary legislation. National  
policy directives come out of that as an issue. There may be some clarification required about  
how they will be operated, but there are within the Act provisions for time limiting them and  
990 they will be specified in the order when it comes forward.

But from my perspective, looking at appeals specifically, it would be nice to have a document  
that sits here, if there is something that is of national importance, that I can refer to. That does  
not mean that it overarches everything else in the planning process; it means it is to be taken  
into consideration and it has some priority. In the past we have had PPSs and they effectively did  
995 that function or carried out that function, but from Members' point of view and the public's  
point of view surely the real emphasis should be on the fact that these require Tynwald  
approval. These are not just the Council of Ministers deciding that they want a policy directive;  
they will be consulted on and they will have Tynwald approval.

Now, if you do not trust yourselves, that is your problem, but at the end of the day they are  
1000 coming before Tynwald where they will be openly debated and the public will have an  
opportunity to respond to consultation on these things. So I do not see where that power grab  
comes from. You will have the ultimate responsibility for the national policy directives. The  
Council of Ministers may instigate them, because they see a need or there is a need brought to  
their attention but, at the end of the day, you will have the responsibility as to whether they are  
1005 enacted.

Now, looking further down we have some sensible proposals in my opinion and I will just pick  
these off because they have been raised by various people. Minor amendments: well, I have sat  
on planning committees and I look at the planning process and I have been frustrated in the past  
by the planning system here where people are not allowed to make minor amendments.

1010 This is not a national problem, it has nothing to do with strategic planning. It is something  
that affects the general public when they put an application in for an extension and they want to  
change the design of a window, non-transformational changes, then it seems sensible – and I  
think the general public are very much on side – that they should be able to make minor  
amendments without having to go through the full planning process all over again. I am sure  
1015 that the Planning Committee and Planning Chairman would welcome that, not having to  
consider planning applications for minor amendments. So I think that is a sensible move in the  
right direction and something that will help the public generally.

Then we come to Community Infrastructure Levy charges. Now, this is something that has  
been going around for some time. At the moment we have section 13, and section 13 enables  
1020 some planning gain in terms of local issues around planning applications and it has been used in  
the past. I have recently tasked officers to look into whether we can extend the scope of section  
13, but it is fairly obvious that it is locally confined. The Community Infrastructure Levy – and  
there is a lot of work to go on behind the scenes in terms of the regulation – seems to be a  
sensible proposal for me in terms of larger developments, where we are able to extract some  
1025 community good that can be spread around the Island, not just specific to that site. It may be  
educational, it may be infrastructure, I do not know, we will have to look at the scope in due

course but that is not a move in the wrong direction; it is a move in the right direction, in my opinion. I echo my hon. friend, Mr Shimmins' view on that, it may be structured so that it affects greenfield sites more than brownfield sites, but that is to be brought out in the regulation. There will be some debate over that, I am absolutely certain.

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I think I was really shocked when I heard Hon. Mrs Caine's comments and Hon. Mr Shimmins' comments about we are trying to use these changes to wreck the planning system as it exists at the moment, wreak havoc on the environment and override public opinion. That is entirely incorrect, in the extreme. Environmental measures are very important and will remain important regardless of whether we have national policy directives, we have minor amendments or Community Infrastructure Levies, these are things that will go on. Under section 40 committees they were envisaged over 20 years ago and never brought in. I have yet to see, from an operational point of view, an overriding rationale behind them and I look forward to further debate on those in due course.

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But these proposals, this Planning Bill, as a system, using Mrs Caine's words, to sort of wreak havoc on the present system and override the public: that is definitely not the aim of this Bill at all. It is a sensible, amending Bill, which brings forward proposals which, in my perspective, will enable the planning system to operate more efficiently, both for the general public and developers and define some of the things that we needed defining for some time.

1040

Thank you, Mr Speaker.

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**The Speaker:** I call on the Hon. Member for Douglas East, Mr Robertshaw.

**Mr Robertshaw:** Thank you, Mr Speaker.

I did not intend to speak this morning but I am brought to my feet by a number of the comments made. But I specifically want to just focus my contribution – because most of the necessary things have already been said – on the national policy directive issue. I just want to pick on two words, a sense of balance and trust. There have been comments here today that suggest that we cannot trust the Council of Ministers, that we cannot trust ourselves, that we should not trust future Houses. Well, in that case, we do not trust the electorate, simple, and we have to do that.

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I want to go over to this issue of balance and there have been dark suggestions of inappropriate conduct in a variety of places about how future planning, and particularly the national policy directive will be interpreted and I have to reject that completely. The fact of the matter is that strategic plans and area plans are far too slow in their gestation. We have to keep up to date and we have to have within the hierarchy a mechanism to allow us to make important decisions with very careful deliberation and concern that benefit our society currently and in the future. And so if we do not do that we do not trust ourselves and that is utterly inappropriate.

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So I think I will limit my remarks to that, except to say that the jury is out a little bit for me on the balance between community levies and section 13. I need to look at that just a little bit more closely before I can make a sensible contribution, because I have certain concerns there. But, Mr Speaker, let's trust ourselves and let's keep the balance right here.

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**The Speaker:** I call on the mover to reply to the debate.

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**Mr Thomas:** Thank you, Mr Speaker.

I appreciate all the comments from all the Members and I will refer to them generally, usually. From time to time I might mention specific Members.

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The first point is to remind people, or to tell people if they did not know this before, that all of the consultation responses were published on receipt with permission, just as they were for the action plan for planning reform consultation. So that system was used in this case. We

uploaded immediately on receipt planning consultation responses and also responses on this Bill to the [consult.gov.im](http://consult.gov.im) website.

1080 The consultation response document was prepared a month or so ago and published to take out themes from the consultation. I just wanted to remind Hon. Members that no consultation can ever be a referendum; some consultations, if they are in surveys, have some sort of opinion poll-type aspect to them, but they are not really intended like that, they are not even that good at that. If they are an opinion poll we have got to balance the respondents in some way and we  
1085 have got to have a large enough sample to be balancing the respondents.

So what consultations are – and particularly this type of consultation which is a stakeholder engagement – is a way to pick the brains of people around this Hon. House and Council upstairs to make sure that the legislation and policy develops taking into account all of that excellent input. That is what we have done.

1090 So the second point I want to go onto is there are a great number of changes made to the Bill subsequent to the consultation, and that is thanks to the people who submitted evidence and it also should be recognised in terms of the mover's attempt and other people around the team that are bringing this Bill forward to the fact that they have looked very much at the consultation responses and responded to it.

1095 So, for instance, after the consultation, in terms of national policy directives we have introduced the consultation framework; before the consultation there was no consultation about national policy directives. Also after the consultation we have introduced the concept of there being judicial review for six weeks after the NPDs are made by Tynwald, which was not there before the consultation. We have also introduced the idea that reasons have to be given  
1100 for national policy directives which go some way to addressing the serious concern raised so eloquently by, particularly, the Chair of the Planning Committee, Member of DEFA, Member for Ayre and Michael, so helpfully. So that is one point I wanted to make.

If we go on now to the third general theme I want to make, it is that in some senses some things some people said in the debate seem to be slightly time-warped or lacking a little bit of  
1105 knowledge of the detail of the existing legal framework, because some of the things said in the last three quarters of an hour or so were not actually strictly correct in terms of the existing law or the law as it will be in the future.

So, for instance, in terms of the general importance issues, I am not sure that Members realise that this Council of Ministers has never called in an application and, in fact, we have to go  
1110 back to 2010 and Tesco's development when a serious issue was actually called in. So that, in itself, to me seems evidence that it is not the intention of Council of Ministers to start calling in applications.

The second point is I do not think it is known by all Members that when an application is called in it triggers a public inquiry, into which of course Members can actually make their  
1115 submissions and there will be debate and the like. So that is an important point to note. I do not think all Members realised that subsequent to the consultation we changed the Bill such that all of the three paragraphs are needed to apply, so there is a clear 'and' for each of those three paragraphs. That is, I think, what made Mr Baker satisfied in that respect because those 'ands' were added subsequent to the consultation so it is now quite clear that each of them has got to  
1120 apply, it has got to be exceptional in terms of the Strategic Plan, it has got to meet all of the criteria. So I just wanted to make sure that everybody knew that.

I also want to clarify something about the Section 40 committee, particularly in the light of the Hon. Member for Garff's comments about the Section 40 committee. Members should know that the paragraph in the section that deals with a Cabinet Office making an order about  
1125 voluntary organisations' participation is completely unchanged by this Bill. Comments about that are irrelevant because we are not talking about any changes in this Bill; what we are talking about is the consultative body and Cabinet Office, as part of the development of this plan, has engaged substantially with interested parties.

1130 We have set up a building conservation forum under Culture Vannin which brings people together. I have met regularly with the Department for Enterprise-created merger of all of the bodies working with developers in the construction industry. What used to be the Construction Forum and the Chamber of Commerce Construction Committee now have a monthly meeting and we have gone along with officers to regularly liaise with that body.

1135 The Chamber of Commerce is another body which cares passionately about consultation and I have engaged with the Chamber of Commerce to find out their intentions for the future of planning. Manx Wildlife Trust has been in to see me a couple of times over the course of the preparation of this Bill to talk through national policy directives and what they might mean. So I just wanted to make sure that people understood that in terms of Section 40 committee.

1140 Moving on to national policy directives, I want to make sure that everybody understands that a national policy directive will include reasons for the policy, so it needs to be well developed by the Council of Ministers. We do have to consult about it and it is going to be about such an important issue that I can imagine that being quite a large scale consultation.

1145 Members should also realise that a national policy directive has effect for the period specified in the order under which it is issued or, if no period is specified, until revoked. So we can time limit national policy directives. There is another mechanism, which is that each time we remake part of the strategic plan – either an area plan or the overall strategic plan – we also in Cabinet Office have to consider whether the national policy directive is revoked because it has been included into the overall Strategic Plan, or it is not revoked. That all happened during and after the consultation.

1150 The final general point I want to make is that Tynwald is at the heart of this. National policy directives have to be approved in Tynwald. I do not think all Members here understand as well that if planning applications are decided by the Council of Ministers because they are called in Tynwald can override the decision of the Council of Ministers. That is what the existing law says in terms of called-in applications for general importance.

1155 Tynwald is at the heart of this. It is not people who are getting beyond themselves, people who are going too far; it is actually people who are saying, ‘We need to revisit the planning system and we need to make sure it works for stakeholder organisations, for interested groups but for the Manx public, the Manx society, the Manx economy, the Manx environment in general terms. So they are the general points I want to make.

1160 Specifically, I will address some questions that I was asked. I think I was asked along the way what specifically might national policy directives be made about? The first thing I would say is I hope next month to be launching a consultation about the regulations for national policy directives. That is the first step. So we will have a chance to look at the issues around the regulations for national policy directives.

1165 The second point is in the action plan for planning reform there was a statement about likely early national policy directives, and what the action plan says is that we will be looking to ensure sustainable economic development to meet the community needs in urban and rural areas. So there is a hint about something to do with how development takes place in greenfield sites and also to deal with the brownfield sites issue. I can absolutely assure people that the intention would be to consult on those national policy directives widely.

1170 I was asked a specific question about whether the Community Infrastructure Levy could be used for the brownfield case and that is covered in the action plan, because there is a specific commitment to use rates, compulsory purchase, planning permissions around car parks for brownfield site development, and community infrastructure levies seem to make a lot of sense to include in that list.

1175 Okay, in terms of Mr Baker’s very helpful comments and perhaps to juxtapose that with another former Chair of the Planning Committee, Mr Robertshaw, I do not think we can see the desire to reform the planning system as being just one for this administration. The last administration ended in July 2016 with two reports considered and approved at the last Tynwald

1180 of the last administration. I chaired a Select Committee and our recommendations were approved, and from memory we had 18-20 or so recommendations.

1185 Simultaneously, Government brought a report on reform of the planning system with recommendations and that was approved. In fact, ever since I have been on the Island – I arrived in the Island at the time of the Crow Report and all of the episodes around a particular development a bit down south – and planning, to my mind, and how politicians and how the general public can influence the strategic planning system, has been on the table for those 20 years, ever since the Crow Report.

1190 I think the national policy directives, if we can work to address Mr Baker's concerns and everybody else in this Hon. House's concerns we can actually be a massive way forward, (**Mr Robertshaw:** Hear, hear.) because you know the minimum amount of time for a development for an area plan, for strategic plan reform, is probably something like 18 months. We are working on finessing the Area Plan for the North and West timetable, which we hope to launch in April as well – call for sites; and we are working on improving that process, making it more responsive. But the national policy directives, if handled properly – and that is what we want to do – can be a helpful way for the next administration politicians to actually decide what needs to be done to continue to keep our Island special so that the development of society and the economy and the environment is sustainable. I look forward to liaising with Mr Baker and we have already had very helpful meetings, as has been described.

1200 Mr Hooper, Hon. Member for Ramsey, asked four very specific questions. I think I have addressed the one about general importance. I am pleased to discuss that more. Also I think he made a very good point about the potential use of the Section 40 committee. I have often thought to myself rather than me meeting and officers meeting each of these groups or organisations one by one, why don't we bring them all together?

1205 Back in 1998 at the Second Reading and the clauses stage and the Third Reading when this Bill that we are amending was going through, the purpose for paragraph 1 and paragraph 2 of the Town and Country Planning Section 40 committee was to engage the committee, not on actual planning applications, not on strategic plans, but on evolving policies that needed to be put into orders and regulations.

1210 It might well be that having changed the law so it reflects reality, we begin consultation on national policy directives, on the community infrastructure levy regulations, by constituting a small committee, genuinely a representative committee, to actually develop those regulations. I think through time the memory of why this law was written like it is has been lost because it is quite clear, if you go back to the original Second Reading and clauses debates about the Section 40 committee, the problem back at the end of the 1990s was that many of these individual groups did not think that their perspective was being passed through to Government and to Tynwald by ADCO, the representative body; because when you set up a representative body, one consultative body, it is quite easy for that consultative body and that representative body to develop a life of its own and an opinion of its own.

1220 I think at the time there was a feeling that the actual organisations who have members who cared about these things were not having their voice heard inside the representative body and therefore Government was getting a biased perspective through only talking to one consultative body. But anyhow, it is on the table that this Minister thinks that as we develop important regulations for Community Infrastructure Levy, for national policy directives and for all the other regulations and orders that are in this arrangement. If the group of people can work together to come up with a consensus through such a body it would be a good idea to do it. If they prefer to carry on meeting individually so be it.

1230 Mr Hooper also asked me to clarify the transitional provisions and I think I can do that in bold terms now, to say that they have all been carefully thought through. It is one of the areas that we have worked on most in terms of legal drafting, but I look forward to including the Hon. Member in the debate about those over the next couple of weeks before we get to the

clauses stage to discuss exactly what the various transitional provisions mean and what the impact will be for everybody who cares about the future of the Planning Committee.

Community Infrastructure Levy – I also had a question about that and I have answered that it will begin in terms of consultation.

1235 Just one last question on the DoI and their statement that Community Infrastructure Levy was such an important thing that regulation shall be made. The first meeting I had this New Year – I cannot remember whether it was 2nd January, 3rd January, whenever it was – was with the DoI to talk through that very important submission. DEFA made a very important submission about community infrastructure levies; Manx National Heritage did; and many people in the  
1240 private sector. Community Infrastructure Levy, and its connections with section 13 agreements, is a massive issue.

In my view – and the officers now know this – we have got to start the discussion now, or at least as soon as possible, about: how Community Infrastructure Levies might be used; who is going to pay them; how they are going to be paid; what the money raised would be for; what  
1245 the governance of the arrangements is. That needs to start so that we can implement the action plan target of 2020 for implementation of these things.

With that, Mr Speaker, Hon. Members, I beg to move.

**The Speaker:** I put the question that the Town and Country Planning (Amendment) Bill 2019  
1250 be read for a second time. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.