

**5.2. Town and Country Planning (Amendment) Bill 2019 –
Clauses considered**

Mr Thomas to move.

The Speaker: We move on then, Hon. Members, to the Town and Country Planning (Amendment) Bill 2019 and I call on Mr Thomas to move.

1085 **Mr Thomas:** Thank you, Mr Speaker.
Before moving on –

The Speaker: Sorry, my apologies.
Whilst it is your Bill, Mr Thomas, because the Long Title is an issue with regard to amendment 10, it seems most sensible to take that first. Is that okay with you?

1090 **Mr Thomas:** Thank you for writing to me to that effect yesterday evening. I am quite happy; if you want to do it now you can do it now or you can do it later and we can come back to the Long Title later. It is your choice, Mr Speaker. You are in charge of the proceedings.

1095 **The Speaker:** I think because the Long Title change is linked to amendments 10 and 11, it makes sense to do it at the start. So if I could actually start with Mr Baker to move his proposed amendment to the Long Title.

1100 **Mr Baker:** Thank you, Mr Speaker.
I rise to move my proposed amendment to the Long Title, as requested.
Just to explain the rationale for this proposed amendment, as Mr Speaker has said, this does relate to amendments 10 and 11, which we will come on to in due course.

1105 Amendments 10 and 11 bring increased transparency around the planning decisions that are made by the Council of Ministers. There are various provisions to enable the Council of Ministers to make planning decisions and when we turn to amendment 10 and 11 you will see that I will explain that there is no requirement currently for Council of Ministers to do anything other than lay their decision before Tynwald.

1110 Amendments 10 and 11 address that and enhance the requirements on Council of Ministers, specifically with regard to any independent inspector's report which has been made in connection with that particular planning application. So those amendments will require such independent inspector's reports to be laid before Tynwald, which clearly enhances the transparency around that decision-making. In order for those amendments to carry, the drafter, who is present here today, advised that it would be necessary to make an amendment to the Long Title and hence the rationale for the amendment that is set out at amendment 1.

1115 Mr Speaker, I beg to move:

Amendment to Long Title

1. On line 5 of page 9, after 'Ministers;', insert «to require that any independent inspector's report relevant to such a referral be laid before Tynwald;».

The Speaker: Mr Hooper.

1120 **Mr Hooper:** Thank you, Mr Speaker.
I beg to second and reserve my remarks.

The Speaker: Does any Member wish to speak? In which case we will go straight to the vote that Mr Baker's amendment number 1 to the Long Title be approved. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

With apologies, Mr Thomas, clauses 1 and 2.

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Mr Thomas: There will be no need now to draw your attention to this. *(Laughter)* Although I was going to suggest that we looked at it with 10, then we could talk about the substance.

Clauses 1 and 2 are, together, the short title, the commencement provisions and the provision for any necessary transition measures should they be required, in addition to those already explicitly provided for in the text of the Bill.

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Clause 1 gives the Bill its short title.

Clause 2(1) enables the Council of Ministers, by order, to introduce different parts of the Bill on different dates and for different purposes. Clause 2(2) also provides for an order made under subsection (1) to make such consequential, incidental, supplemental, transitional and saving provisions as the Council of Ministers considers necessary or expedient.

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Mr Speaker, I beg to move that clauses 1 and 2 do stand as part of the Bill.

The Speaker: Mr Boot.

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Mr Boot: I beg to second and reserve my remarks.

The Speaker: I put the question that clauses 1 and 2 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 3, Mr Thomas.

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Mr Thomas: Thank you, Mr Speaker.

Clause 3 sets out that the Bill amends the Town and Country Planning Act 1999 only, by means of the clauses which follow.

Clause 3 gives the scope of the Bill, which is to amend the Town and Country Planning Act 1999 only. No other statute is amended by the Bill as it stands.

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Mr Speaker, I beg to move that clause 3 stand as part of the Bill.

The Speaker: Mr Boot.

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Mr Boot: I beg to second and reserve my remarks.

The Speaker: I put the question that clause 3 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Mr Thomas, I understand clause 5.

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Mr Thomas: I would like to move clause 5, Mr Speaker. Clauses 4, 6, 7 and 8 are consequent on the success of clause 5 and so I would like to move clause 5 first, as you mentioned.

Clause 5 of the Bill creates the power for the Council of Ministers, by order, to issue a national policy directive. In so doing, this clause also sets out: a need for consultation before such national policy directive is issued; and the ability to specify a validity period, or sunset as some might call it, for a national policy directive; and the power for the Council of Ministers to make regulations pertaining to the making of national policy directives; and that national policy directives must give reasons for the policy; and a duty for the Council of Ministers to have a newly-made national policy directive published in an appropriate manner, ensuring that any who might be affected by it are informed; and clearly states that, in the event of any inconsistency between a national policy directive and the matters already contained in section

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10(4) of the Town and Country Planning Act 1999 that in such instance, the national policy directive shall prevail.

1175 As will be noted later in the Bill, clause 44 is amended to state that a national policy directive would require Tynwald approval.

Mr Speaker, I beg to move that clause 5 stand part of the Bill.

The Speaker: Mr Boot.

1180 **Mr Boot:** I beg to second and reserve my remarks.

The Speaker: I call on Mr Baker to move amendments 3, 4, 5, 7 and 8, please.

Mr Baker: Thank you very much, Mr Speaker.

1185 I will start with amendment 3, but before I dive into the detail on these various amendments I just want to set the context for Hon. Members.

1190 At Second Reading I expressed concerns about the potential impact and the risk of unintended consequences arising from the proposed Bill, primarily around the new concept of national policy directives. I did not have an issue with the principle of using national policy directives which are designed in this Bill to make the planning system more flexible and responsive as the Island's needs change. However, as the Bill was drafted I was concerned about the potential risks that introduction of such national policy directives would bring and the potentially adverse consequences they could have for the Island's future.

1195 I have no reason to suggest there were any ulterior motives around them being brought in, but I did feel that as drafted the risks were quite significant. Accordingly, I brought a series of amendments to refine the Bill and these are the first tranche that I am going to run through and these are primarily around the national policy directive provisions. These have been brought after detailed discussions with the hon. mover, the Minister for Policy and Reform, and the drafter, for which I thank both of them for their assistance.

1200 Hon. Members, these amendments provide a package of changes. In that sense it is useful bringing these amendments together. This package of changes improve, amongst other things, the transparency and robustness of the national policy directives. They enhance the consultation that is required and clarify the Tynwald approval processes around national policy directives.

1205 Turning to the amendments in turn, amendment 3 replaces the provision whereby Council of Ministers was required to consult such persons as it thinks fit with the requirement to conduct a public consultation and have regard to the responses to the consultation. Clearly, Hon. Members, that is a much stronger consultation process and requires notice to be taken of the results that come from the consultation. I did feel that the consultation process, whilst it existed, was very limited and potentially open to abuse. So that is the rationale for amendment 3:

Amendment to clause 5

3. On line 24 of page 10, for "consult such persons as it thinks fit", substitute «conduct a public consultation and have regard to the responses to the consultation».

In terms of amendment 4, this replaces the text set out on lines 25 to 27 of page 10 in which the national policy directives essentially had no explicit defined life. So they could have a period specified in the order under which they are issued, or if there was no period specified then the national policy directive would remain in place until revoked.

1215 I was concerned about the risk of national policy directives accumulating and essentially being forgotten and left on the statute book and the potential implications in future years that that may lead to some unintended consequences that had not been envisaged by the initiators of the national policy directive. So what amendment 4 does is it defines that the maximum

1220 length of time for a national policy directive is five years but it retains that flexibility to have a shorter period should that be wished when introducing a national policy directive.

So essentially it time-limits the policy directive and avoids the risk of this accumulation and then falling into, effectively, redundancy but potentially being utilised at a later date to justify a planning decision which may be inappropriate.

Amendment to clause 5

4. On lines 25 to 27 of page 10, for “the period specified in the order under which it is issued or, if no period is specified, until revoked”, substitute —
«a period of 5 years or for such shorter period as may be specified in the order under which it is issued».

1225 Amendment 5, Hon. Members, significantly enhances the requirements around the national policy directive. In effect, the national policy directive could be introduced as drafted simply with reasons being stated for the national policy directive and I felt that that was not sufficiently strong or clear enough and under my amendments a much clearer rationale is required. So the national policy directive has to be for a strategic and defined purpose. It also must have reasons, as the hon. mover had drafted in the Bill; the reasons for the policy need to be set out in the
1230 directive.

In addition, my amendment introduces the requirement for the anticipated impact and consequences of the national policy directive to be assessed and to be clarified and laid out in the national policy directive. So again bringing greater transparency and clarity to the reasons it has been introduced.

1235 Then part (d) requires the justification for the policy within the national policy directive having greater weight than the other elements which it impacts within the planning framework. So the national policy directive will be at the top level of the hierarchy within the planning system, but in order to justify that, it has to be very clear as to why it is being given that status, because that will impact future planning decisions.

1240 So that concludes amendment 5:

Amendment to clause 5

5. For lines 31 and 32 of page 10, substitute —
«(5) A national policy directive shall —
(a) be for a strategic and defined purpose;
(b) include reasons for the policy set out in the directive;
(c) include a statement of the anticipated impact and consequences of the policy set out in the directive; and
(d) for the purposes of section 10(4) (determination of planning applications), include justification for the policy set out in the directive having greater weight than the matters referred to in paragraphs (a), (b) or (c) of that subsection.».

I think, Mr Speaker, you said amendment 7 as well?

The Speaker: Amendments 7 and 8.

1245 **Mr Baker:** Amendments 7 and 8 —

The Speaker: While you are on your feet, Mr Baker.

Mr Baker: — at this stage? Thank you very much.

1250 **The Speaker:** Let’s get our money’s worth!

1255 **Mr Baker:** Okay. Well, helpfully, amendment 7 links to amendment 5 in the sense that I have talked about the justification for the national policy directive having greater weight than the other matters referred to, and amendment 7 makes it explicit that ‘the Department shall give greater weight to the relevant provisions of the national policy directives’.

1260 The previous wording, as drafted by the hon. mover, was that ‘the relevant provisions of the national policy directive shall prevail’. And what that meant, Hon. Members, and you may recall me highlighting this in the Second Reading, was that the national policy directive would completely override all of the considerations within the planning framework. As I explained, the development plan which consists of the strategic plan and the area plan and the various local plans, is a sophisticated mechanism whereby planning decisions are evaluated and the various different considerations are properly evaluated and balanced. What that gives is a balanced decision and it should lead to the right planning outcome if the process is followed diligently.

1265 As drafted, the national policy directive would have completely overridden every other consideration no matter how adverse those considerations were. So that was of great concern to me and I raised this amendment to make it clear that, whilst the national policy directive will have greater weight in a planning consideration, it does not completely override every other consideration. That is far more appropriate in my view and will lead to the balanced decisions which the planning system is striving to achieve, but equally will weight the national policy directive most significantly which obviously is what the introduction of the concept of the national policy directive is designed to do.

1270 So I felt that the wording, as amended, made the concept far more acceptable and put it into a more balanced planning framework.

1275 So that is amendment number 7.

Amendment to clause 5

7. On lines 5, 6 and 7 of page 11, for ‘the relevant provisions of the national policy directive shall prevail’, substitute —

« for the purposes of that subsection, the Department shall give greater weight to the relevant provisions of the national policy directive».

1280 Finally at this stage, amendment 8, Mr Speaker. This is an additional requirement, and what amendment 8 does is require the Cabinet Office to prepare a report on the whole topic of national policy directives. It is a periodic report and it will essentially review during that period that the national policy directives have been introduced and/or have expired, and will also look at the impact and the consequences of the national policy directive, and will also make an explicit link to any changes to the development plan that have occurred in that period.

1285 So, Hon. Members, what that does is put a review process around the use of national policy directives. It significantly improves the transparency around them, it ensures that there is an accountability process which brings back to Tynwald the national policy directives that have been implemented and it makes it clear what effect those have had.

Now, I understand that there is an amendment to my amendment 8, which Mr Cregeen is going to move –

1290 **The Speaker:** But he has not yet.

Mr Baker: But he has not yet, okay, so I will not talk about it and I will not indicate that I am content (*Laughter*) with the amendment at this stage. (**The Speaker:** Neatly done.)

1295 The final part of my amendment 8 allows the Council of Ministers to enhance the requirements around national policy directives but not to undermine the requirements that are set out in paragraphs (a) to (d) of subsection (5). So, essentially, it allows the national policy

directive framework to be flexible but not to be dismantled by any Council of Ministers in the future which may wish to deviate from the principles that we are bringing forward here.

So with that, Mr Speaker, I beg to move.

Amendment to clause 5

8. After line 7 of page 11, insert —

«(8) The Cabinet Office shall prepare a report to be laid before Tynwald on the second anniversary of this section coming into operation and every second anniversary thereafter.

(9) The report referred to in subsection (8) shall include —

(a) a copy of every national policy directive which has been issued or has expired —

(i) in the case of the first report, since the coming into operation of this section;

(ii) in the case of every subsequent report, since the date of the last report;

(b) where a development plan has been prepared or revised subsequent to a national policy directive, the recommendation of the Cabinet Office under section 2(2B);

(c) an assessment by the Minister of Policy and Reform setting out whether the Minister considers the impact and consequences of the policy were correctly anticipated.

(10) The Council of Ministers may, by order, amend subsection (5) but may not omit any of paragraphs (a) to (d) of that subsection as originally enacted.».

The Speaker: Mr Hooper.

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Mr Hooper: Thank you, Mr Speaker.

I beg to second amendments 3, 4, 5, 7 and 8 and reserve my remarks.

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The Speaker: You cannot reserve your remarks in respect of seconding an amendment, so if you wish to say anything, now is the time.

Mr Hooper: I will briefly, then, Mr Speaker.

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I think these amendments are very sensible: widening the scope of any consultation that is required seems quite a sensible way forward. Imposing time limits on the national policy directives again seems very straightforward; so does bringing in more detail and specificity around what the national policy directives are required to do.

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The three-yearly/two-yearly half-term report about the whole process I think is quite a sensible suggestion as well. And lastly, moving away from an automatic overriding of the whole strategic plan process towards simply making sure that national directives give greater weight to things being considered – again, all of this seems to be very a sensible amendment to the Bill.

Thank you, Mr Speaker.

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The Speaker: Standing Order 4.7(4A) permits a Member to move without notice an amendment to an amendment with the leave of the House. Is the House content to give leave to Mr Cregeen to move the amendment that has been circulated? (**Members:** Agreed.) Thank you.

Mr Cregeen to move.

Mr Cregeen: Thank you, Mr Speaker.

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The amendment I wish to move has been circulated: ‘in the inserted subsection (8), for ‘second’, in both places, substitute ‘third’; and in inserted subsection (9)(c) ‘the Minister for Policy and Reform setting out whether the Minister considers’ substitute ‘Cabinet Office as to whether’.

I beg to move:

Amendment to amendment 8 to clause 5

(a) in the inserted subsection (8), for ‘second’, in both places, substitute «third»; and

(b) in the inserted subsection (9)(c), for 'Minister of Policy and Reform setting out whether the Minister considers', substitute «Cabinet Office as to whether, ».

Mr Harmer: I beg to second.

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The Speaker: Thank you, Mr Harmer, for seconding that.

I then call on Mr Shimmins to move amendments number 6 and 9 standing in his name.

Mr Shimmins: Thank you, Mr Speaker.

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I rise to move amendments number 6 and 9 together as they are mutually dependent, adding more rigour to section 2A(6).

Effective communication is important for any policy to be successful. Specifically, this amendment ensures that any national policy directive is widely publicised. It is in everyone's interest that this is the case. The provision is similar to that contained in other Acts of Tynwald.

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There should not be that many national policy directives so any costs will be minimal.

I beg to move the amendments standing in my name:

Amendments to clause 5

6. On lines 2 and 3 of page 11, omit 'in a manner the Council considers will bring it to the attention of those likely to be affected by it'.

9. After line 7 of page 11, (and after the amendment moved by Mr Baker at that point, if successful) insert —

«(x) For the purposes of subsection (6), 'publication' means —

(a) publication —

(i) in one or more newspapers published and circulating within the Island; and

(ii) on a website maintained or approved for the purpose by the Cabinet Office and in respect of which reasonable steps have been taken to inform the public of how it may be accessed; and

(b) if appropriate, taking other reasonable steps to bring the purport of the national policy directive to the attention of the public or of persons likely to be affected by it.».

The precise numbering of the subsection is dependent on the success or failure of Mr Baker's amendment.

The Speaker: Mrs Caine.

Mrs Caine: Thank you, Mr Speaker.

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I beg to second Mr Shimmins' amendments.

The Speaker: Now, the floor is open for debate.

Mr Robertshaw.

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Mr Robertshaw: Thank you, Mr Speaker.

I refer to the amendment in Mr Baker's name, number 8, and effectively the amendment to that in the name of Mr Cregeen, the Member for Arbory, Castletown and Malew.

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I am just a bit anxious about this second anniversary and then referring to the third anniversary. I just need clarity on this one, that if a planning application is approved under the heading of a national policy directive that then lasts for four years, is it possible for the process captured in amendment 8 to, as it were, lasso that down to the ground and in some way interfere with it, and thus undermine the confidence in that original planning decision that was agreed under the national policy directive?

1360 I hope that is clear. So, in other words there might be the argument that it should actually be
a four-year review rather than three years, unless I have misunderstood the implications in
amendment 8 and the subsequent amendment to the amendment.

Thank you, Mr Speaker.

1365 **The Speaker:** Mr Hooper, to speak to Mr Shimmins' amendments or Mr Cregeen's
amendment?

Mr Hooper: Yes, simply to Mr Shimmins' amendments, actually.

1370 I completely understand where the Hon. Member is coming from. The question I have for him
is in respect of amendment number 9: it mandates that the publication must be in an Isle of Man
newspaper, circulated. I would just like to have an understanding of how this will interact with
the requirements. I think there are proposed changes to the Legislation Act that mentions an
'electronic gazette'.

1375 Basically, I just want to understand if he has future-proofed this amendment. So if
newspapers were to cease being circulated in paper form for whatever reason, actually does this
still work? That is my question.

Thank you.

The Speaker: Mr Baker.

1380 **Mr Baker:** Yes, speaking to Mr Cregeen's amendment, which I am very comfortable with –
the three-year timeline and the drafted amendment around the Cabinet Office rather than the
Minister for Policy and Reform. And hopefully the principle that the amended amendment
speaks to is very much a review of the principle of national policy directives, it is not anything to
do with individual applications.

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A Member: Right, that is fine.

Mr Baker: Thank you, Mr Speaker.

1390 **The Speaker:** Okay, we will move to winding up and first I call on Mr Shimmins.

Mr Shimmins: Thank you, Mr Speaker.

1395 Just to respond to Mr Hooper's question. The amendment has been drafted with the
intention that, should newspapers cease to exist, it will be replaced by the electronic form of
communication. The intention is to ensure that any national policy directive is widely
promulgated across the Island.

The Speaker: Mr Cregeen to respond to your amendment? (**Mr Cregeen:** No.)
Mr Baker.

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Mr Baker: Thank you, Mr Speaker.

1405 Just to summarise to say that I think the package of measures that these amendments bring
significantly strengthen the framework around national policy directives. I think they reduce the
risk that they may bring but yet still preserve the intended benefits that a more flexible and
responsive planning system can deliver.

The Speaker: Mr Thomas, to respond to the debate on the clause.

Mr Thomas: Thank you very much, Mr Speaker.

1410 I want to thank both movers of the non-Government amendments for their intense, extensive and helpful engagement with officers and politicians as they were drafting all these amendments. I think they are all helpful and I am pleased to support them as amended by Minister Cregeen on behalf of Government.

1415 The Legislation Act 2015 which might bring in an electronic gazette is completely integrated into the publication regime. Subsection (8) is simply a periodic review of directives, as Mr Baker says, it does not impact in any way on permissions made under the law and planning policy inside law. So it is just a review of the impact, the consequences, whether the intentions basically of the national policy directive are being fulfilled and making early suggestions about whether the national policy directive needs to be incorporated into the law or perhaps extended
1420 or whatever. It is just that sort of periodic review.

So we now come to the main point of national policy directives. The main point of national policy directives is that we need a transparent and robust but flexible and responsive process – to borrow four words from the Chair of the Planning Committee, the Hon. Member for Ayre and Michael. I think each of these amendments helps to make each of those things achievable.

1425 National policy directives are absolutely crucial. It is the right of any Government to take to Tynwald national policy directives in the area of planning to achieve in planning terms legally, lawfully what it wants to do. And we have got a mechanism now. These amendments actually strengthen the robustness in legal terms, I understand, and are very helpful amendments.

1430 With that, Mr Speaker, I beg to move clause 5 as amended and hope everybody will support this unanimously to show everyone the intent that we are now in control of the planning system. The strategic plan is excellent and now we are in control of it through having national policy directives.

The Speaker: Now, Hon. Members, given the nature of the debate I intend to take these ‘by package’ if you like. So I put to you first amendments number 6 and 9 in the name of
1435 Mr Shimmins. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Taking next the amendment to amendment 8 in the name of Mr Cregeen. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

1440 Then taking amendments 3, 4, 5, 7 and 8 together, unless anyone objects? Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Putting to you that clause 5, as amended, stand part of the Bill: those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clauses 4, 6, 7 and 8, Mr Thomas.

1445 **Mr Thomas:** Thank you, Mr Speaker.

With your permission I will move them all together.

1450 Clause 4 makes amendments to section 2 of the Town and Country Planning Act 1999. Clause 4 inserts reference to a national policy directive into section 2(2A) of the Town and Country Planning Act 1999, which is the section dealing with times where a development plan is prepared or revised, and giving direction for the Cabinet Office, as the preparer or reviser of a development plan, to have regard to a national policy directive and also at that time to recommend to the Council of Ministers whether the directive should remain or is revoked.

1455 Clause 6 has several components to it. I shall list these in the order in which they appear in the Bill. This clause inserts a mention of national policy directives into section 5 of the Town and Country Planning Act 1999 – the same section of the Act which deals with validity of plans; and it substitutes and updates the existing sub-section (2) with new subsections (2) to (4) and in so doing, extends the protection already given to the public in relation to, for example, a development plan, by allowing persons aggrieved by a newly made national policy directive, to apply to the High Court for a review of the validity of the process by which the directive was
1460 made. This is to recognise the importance a national policy directive is intended to have, and to

ensure that our community is afforded an opportunity to appeal a directive should they be aggrieved.

1465 Clauses 7 and 8 both insert references to national policy directives into appropriate parts of the Town and Country Planning Act 1999. Clause 7 inserts a reference to national policy directives into section 10(4) of the Act, which section deals with the matters to which regard must be had when determining of applications for planning permission. Clause 8 inserts a definition of national policy directive into section 45(1) of the Act, which deals with matters of interpretation.

1470 Mr Speaker, I beg to move that clauses 4, 6, 7 and 8 stand as part of the Bill.

The Speaker: Mr Boot.

Mr Boot: I beg to second and reserve my remarks.

1475 **The Speaker:** Amendment 2 to clause 4 in the name of Mr Baker.

Mr Baker: Thank you, Mr Speaker.

1480 The amendment to clause 4 puts a requirement for the Council of Ministers to explain why the recommendation for the national policy directives either remaining or being revoked is included within the requirements. So previously, within clause 4 there was a requirement simply to make a recommendation. This requires Council of Ministers to also justify that recommendation. So for either the national policy directive to remain or for it to be revoked, clearly it is bringing greater transparency and accountability.

1485 For those reasons, I feel that it is an enhancement to the provisions of the Bill and, with that, I beg to move:

Amendment to clause 4

2. On line 13 of page 10, after 'shall', insert «provide reasons and».

The Speaker: Mr Hooper.

Mr Hooper: Thank you, Mr Speaker.

1490 I beg to second.

The Speaker: No Member wishes to speak? Mr Thomas, do you wish to speak to the amendment in summing up?

Mr Thomas: To sum up, yes.

1495 Just a very small point. I think it is that, 'The Cabinet Office shall provide reasons to the Council of Ministers,' it is not actually Council of Ministers itself providing reasons – unless I am wrong. But we will fully support this amendment and I beg to move.

1500 **The Speaker:** I put to you first amendment 2 to clause 4 in the name of Mr Baker. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Then putting it as a package, clauses 4, 6, 7 and 8 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 9, Mr Thomas.

1505 **Mr Thomas:** Thank you, Mr Speaker.

Clause 9 creates the power for a development procedure order to make provision for the amendment, upon application to do so, of a valid planning approval. This amendment must be for minor alterations only, not ones which are transformative.

1510 In addition, where a development procedure order makes such provision this clause specifies that it may also make provision for the procedures for applying for and determining an application for a minor amendment, and also the matter of fees.

The clause does not prevent other things being included in such development procedure orders, such as definitions for terms and related matters.

1515 Mr Speaker, I beg to move that clause 9 stand part of the Bill.

The Speaker: Mr Boot.

Mr Boot: I beg to second and reserve my remarks.

1520 **The Speaker:** I put the question that clause 9 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 10, Mr Thomas.

Mr Thomas: Thank you very much, Mr Speaker.

1525 Clause 10 deals with referrals of applications for planning approval to the Council of Ministers for determination.

It amends section 11 of the Town and Country Planning Act 1999 and substitutes existing section 11(1) to clarify that, as is currently the position, the Council of Ministers may direct that certain applications are referred to it but also that the Department must refer certain applications to the Council and the Council may direct that it will determine such an application.

1530 This clause also makes reference to the term 'general importance to the Island', which is further dealt with in clause 17 which obviously follows.

Mr Speaker, I beg to move that clause 10 stand part of the Bill.

The Speaker: Mr Boot.

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Mr Boot: I beg to second and reserve my remarks.

The Speaker: I call on Mr Baker to move amendments number 10 and 11.

1540 **Mr Baker:** Thank you, Mr Speaker.

These are the two amendments to which I referred when moving amendment 1 to the Long Title.

1545 Amendment 10 is a simple minor stylistic change reflecting the change in drafting practice since the original Bill was drafted and introduced in 1999. Amendment 11 is the more substantive amendment and what it requires is for the Council of Ministers to also inform Tynwald of not only their decision in any planning matter which they are determining, but also to provide any relevant independent inspector's report.

1550 Clearly, that provides greater transparency around decision making and I think it is an enhancement of the process. At present and as drafted, the Council of Ministers would simply have to make the decision and inform Tynwald of that, so I believe that this amendment significantly enhances the provision of the Bill.

With that, I beg to move:

Amendments to clause 10

10. On line 31 of page 12, make the first line subsection (1).

11. After line 17 of page 13, insert —

«(2) In section 11(2)(a), after 'the decision of the Council of Ministers', insert «and any relevant independent inspector's report».».

The Speaker: Mr Hooper.

1555 **Mr Hooper:** Thank you, Mr Speaker.
I beg to second.

The Speaker: Mr Shimmins, amendment 12.

1560 **Mr Shimmins:** Thank you, Mr Speaker.

I rise to move amendment 12 which relates to the introduction of a community infrastructure levy or a CIL, as it is known. CILs were consulted on in the action plan consultation which ran between October 2017 and January 2018, and positive responses were seen in response to questions 45 to 48 on that consultation. This reflects that there is now consensus inside and outside Government that introducing a community infrastructure levy is the sensible course of action. It has worked well elsewhere, ensuring that developers contribute towards infrastructure provision. In the United Kingdom, CILs have been in place for many years and have been tried and tested. The amounts can vary depending on development site circumstances and this more flexible approach can also enable more marginal developments to proceed. Hon. Members may recall that the Department of Infrastructure consultation response requested that 'may' be replaced with a 'shall'. This is what the tabled amendment does.

1570 So I hope that you will concur that this is the way to go and we can proceed to progress the details of a community infrastructure levy.

I beg to move the amendment standing in my name:

Amendment to clause 11

12. On line 24 of page 13, for 'may', substitute «shall».

1575 **The Speaker:** Hon. Members, I am sure that others of you, like me, have been duped into thinking that Mr Shimmins' amendment is actually an amendment to clause 10, because that is what it says on the Order Paper; it is in fact an amendment to clause 11.

1580 Once realised – and I am grateful to my colleague, Mr Thomas for giving me the nod that that was the case – I wanted to let the Hon. Member finish so he did not have to repeat his whole remarks again when he came to move it in clause 11; but just hold that thought, I suppose is what I need to say to Hon. Members at this point.

At the moment I have clause 10 on the table along with amendments 10 and 11 in the name of Mr Baker and I call on any Member who wishes to speak to any of those.

Mr Robertshaw.

1585 **Mr Robertshaw:** Thank you, Mr Speaker.
Speaking to clause 11, Mr Shimmins' amendment – (**Several Members:** Ten!) (**The**

Speaker: Amendment 10.) I am completely confused now. (*Interjections*) We are not dealing with Mr Shimmins' now?

1590 **The Speaker:** No, because it relates to the next clause.

Mr Robertshaw: I beg your pardon.

1595 **The Speaker:** We are closing the book on clause 10 then.
Mr Thomas.

Mr Thomas: Thank you, Mr Speaker.

1600 I think a corrected version was circulated, but obviously a limited circulation so apologies to that. Okay. Thank you very much for rescuing the situation. We are talking, limiting it to clause 10 here.

1605 Basically both Mr Baker's amendments are very sensible. Why wouldn't Council of Ministers want to publish to Tynwald, and thereby the general public, the independent inspector's report on the very rare occasions when issues of general importance are considered by the Council of Ministers?

1610 Obviously the Council of Ministers considers other types of planning applications in different ways and the nuances here need to be considered and read very carefully by future readers of *Hansard*, but there is no reason why both amendments 10 and 11 should not be approved. I hope the Hon. House will approve them and therefore the independent inspector's reports for issues of genuine importance will be published to Tynwald.

The Speaker: I put to the House first amendments 10 and 11 in the name of Mr Baker. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

1615 Clause 10 as amended. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clauses 11 and 12, Mr Thomas.

Mr Thomas: Thank you.

1620 Clause 11 is a lengthy one, which inserts a new section 13A into the Town and Country Planning Act 1999.

This new section creates the power for the Council of Ministers, by regulations, to raise a levy, termed the community infrastructure levy, subject to the concurrence of the Treasury.

The clause provides for the Council of Ministers to delegate its functions pertinent to this levy, and set conditions around such delegation.

1625 The new section specifies a non-exhaustive list of matters for which those regulations may provide. For example, the regulations may make provision for the procedures to be followed by the Council of Ministers in proposing to begin charging CIL, such as consultation. Under section 44 of the Town and Country Planning Act any such regulations require approval from Tynwald.

1630 Clause 12 amends section 45 of the Town and Country Planning Act 1999 by inserting a definition for the community infrastructure levy. The amendment to clause 12 would omit the full phrase 'community infrastructure levy'.

Mr Speaker, I beg to move that clauses 11 and 12 stand part of the Bill.

The Speaker: Mr Boot.

1635

Mr Boot: I beg to second and reserve my remarks.

1640 **The Speaker:** For the purposes of the record and *Hansard*, Mr Shimmins, having given his reasons for moving amendment 12 to clause 11, I would just like you to formally move it and future readers of *Hansard* will be referred upwards in their reading for your comments.

Mr Shimmins: Thank you, Mr Speaker.

1645 I will not repeat what I said earlier. I beg to move the amendment standing in my name. [See line 1433]

The Speaker: Thank you very much.

I call on Mrs Caine to second.

Mrs Caine: Thank you, Mr Speaker.

1650 Sometimes there is a feeling that the planning process is not as open and transparent as it could be and that economic factors are given greater prominence, but this amendment will go some way to counter that negativity. It requires that a consultative body is set up. A consultative body will be able – *(Interjections)*

Are we on CIL? **(The Speaker:** CIL.) Sorry, I beg to second!

1655

The Speaker: Thank you very much!

I am just trying to understand some semaphore from another part of the room there. Can I call on Mr Baker to move amendment 13 to clause 12, please?

1660

Mr Baker: Thank you, Mr Speaker.

Hopefully a bit more straightforward, this! This is a simple stylistic change reflecting the change in drafting practice exactly as amendment 10.

Amendment to clause 12

13. On lines 24 and 25 of page 15, omit “(Community Infrastructure Levy)”.

The Speaker: Thank you.

Mr Hooper.

1665

Mr Hooper: Thank you, Mr Speaker. I beg to second amendment 13.

While I am on my feet, I am not really sure why the necessity is to move the ‘may have an infrastructure levy’ to a ‘shall’. I do not quite picture why that is so important. I think putting it down now that we shall have one without actually seeing what the regulations might look like and what things are going to happen and whether we have actually had a proper conversation about whether or not we do want to have a community infrastructure levy at a policy level, I think is a bit too far. I would much rather have that conversation about whether we actually think it is a good idea and then bring one in.

1670

Personally, I think it could be quite beneficial for the Isle of Man, but I would be hesitant just to putting that down in law as a definite, ‘Yes, this is 100% happening,’ at this quite early stage.

1675

The Speaker: Mr Cregeen, Hon. Member for Arbory, Castletown and Malew.

Mr Cregeen: Thank you, Mr Speaker.

I think this is a positive move, bringing the community infrastructure levy in. It is something that I have been looking for for many years. I think over the years when you have had large housing developments everybody else has had to pick up the tab and I think it should be a great improvement for communities to have this levy put in place.

1680

1685

The Speaker: Mr Boot.

Mr Boot: Thank you, Mr Speaker.

I am speaking to Mr Shimmins’ amendment.

Like Mr Hooper, I am somewhat perturbed that we are moving from ‘may’ to ‘shall’ without exploring in more detail how we are going to prosecute the CIL. We still have section 13 and we have not exploited that to its fullest amount. I fully support the CIL in concept but I think tying our hands in this way is perhaps a step too far.

1690

The Speaker: Mr Robertshaw.

1695

Mr Robertshaw: Thank you.

I am on my feet for a few moments, Mr Speaker, because both the Member for Ramsey and the Member for Peel and Glenfaba have stolen my thunder.

1700 Like them, I am comfortable with the concept of a community infrastructure levy, but to make it an absolute is not correct. Also we would not want it crashing into section 13 in ways that perhaps we cannot at this stage predict.

So I very much will be staying with the word 'may' and not supporting Mr Shimmins' amendment.

Thank you, Mr Speaker.

1705

The Speaker: Mr Peake.

1710 **Mr Peake:** Mr Speaker, I will be supporting Mr Shimmins' amendment because I do think that does offer leadership around the word 'shall'. We would then actually have to get something done. It would be a great opportunity to actually do something, take some action and actually get something done. So I will be supporting the amendment.

Thank you.

1715 **The Speaker:** Before we start summing up, obviously Mr Thomas and Mr Shimmins will have the right to speak when summing up.

In which case, I will call on Mr Baker first. Do you wish to say anything in summing up? Then I will call on Mr Shimmins to sum up to your amendment.

1720 **Mr Shimmins:** Thank you very much, Mr Speaker and I am grateful for the comments made by Mr Hooper, Mr Cregeen and Mr Robertshaw.

All of those comments said they are fully supportive, they are comfortable, they really think it is a great principle and that is actually what we have been told by the general public who answered these questions in some detail – questions 45, 46, 47 and 48. They gave support for the introduction of the community infrastructure levy.

1725 We have heard that Government Departments are very supportive – so the Department of Infrastructure's consultation response said, 'Actually, let's get on with this. Let's change it to "shall".' If you look at the wording, the drafting of this Bill, there are two pages about community infrastructure levies. I think that indicates the general consensus within Government that this is the right way to go.

1730 Why should we do this? Why should we not prevaricate further and say 'may'? Because actually it is important that we send a message to developers that this will be a more flexible approach. Hon. Members, this will help us develop the Island. This will enable some more marginal sites in our towns with a flexible community infrastructure levy to get built out. It will also ensure that on all developments, appropriate contribution is made by developers to the infrastructure.

1735 I have heard talk about section 13. Section 13 is actually contained in this clause as well; provision is made for that. Section 13 has some merits but actually it is a very restrictive approach and this is a much better, more progressive way to go on community structural areas. So I would urge you, let's make a decision, let's make a commitment, let's get on with it, let's develop this Island. Community infrastructure levies are the way to go.

Thank you.

The Speaker: Mr Thomas to respond to the debate on the clause.

1745 **Mr Thomas:** Thank you very much, Mr Speaker.

The proposal in this Bill was for 'may' for two reasons. The first one was we did not in any way want to pre-empt Treasury's decision, because a community infrastructure levy has to have Treasury concurrence and it seems wrong to pre-empt Treasury's decision with Treasury

1750 concurrence. And secondly, it seemed wrong at the time, in principle, to not have the
consultation and not have the decision about exactly what it looks like – a community
infrastructure levy – who pays it, what it is used for; which is an important debate and
consideration we have got to have during 2019.

1755 But, as Mr Shimmins has noticed, the consultation in principle supported this very much and
also, although he did not mention it, the action plan for the reform of the planning system in
May 2018, which Government brought upstairs for information in May 2018, actually talked
about introducing a community infrastructure levy in 2020; in fact by the end of 2020.

So what I am going to say is I am happy myself to vote 'shall' introduce a community
infrastructure levy, but now I do not want to be accused in the future of having taken Treasury's
concurrence for granted, because it still has to have Treasury concurrence.

1760 Everybody listening out there, we have still got a lot of discussion about community
infrastructure levies, we have got lots of regulations, or at least one regulation covering many
issues, that needs to be made. We will be launching shortly a consideration of what it will be
used for, how it compliments section 13 agreements: one is probably more specific; one is more
general. It is potentially very valuable for brownfield sites, which is why I know Mr Shimmins is
1765 so passionate about it. (**Mr Shimmins:** Hear, hear.)

So with that, Hon. Members, I beg to move the clause and personally I will be voting for the
clause as amended by Mr Shimmins.

1770 **The Speaker:** So putting to you first, Hon. Members, the amendment 13 in the name of
Mr Baker. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Putting to you next amendment 12 in the name of Mr Shimmins. Those in favour, please say
aye; against, no. The ayes have it.

A division was called for and electronic voting resulted as follows:

FOR

Dr Allinson
Mr Ashford
Mr Baker
Miss Bettison
Mr Boot
Mrs Caine
Mr Cannan
Mrs Corlett
Mr Cregeen
Mr Harmer
Mr Moorhouse
Mr Peake
Mr Perkins
Mr Quayle
Mr Shimmins
Mr Skelly
Mr Speaker
Mr Thomas

AGAINST

Mr Callister
Mr Hooper
Mr Malarkey
Mr Robertshaw

The Speaker: With 18 for, and 4 against. The ayes have it. The ayes have it.

1775 Putting to you clause 11, as amended. Those in favour, please say aye; against, no. The ayes
have it. The ayes have it.

Putting to you clause 12, as amended. Those in favour, please say aye; against, no. The ayes
have it. The ayes have it.

Clauses 13 and 14, Mr Thomas.

1780 **Mr Thomas:** Thank you, Mr Speaker.

Clause 13 is consequent on the success of clause 14.

Clause 13 inserts a new Part 4A into the Town and Country Planning Act 1999. This new Part puts the constitution of the Planning Committee on a statutory footing within the Act for the first time.

1785 Definitions are created for the Planning Committee, and also for the old Planning Committee, so that there is no doubt as to the meanings of what is being stated.

Clause 13 sets out powers for the Council of Ministers to make a constitution order for the Planning Committee, including things like terms of office, procedure and the like.

1790 In order to avoid any possible doubt, provision is made in this clause to state that existing powers to delegate under the Interpretation Act 2015 and the Government Departments Act 1987 are not affected and that the old Planning Committee is taken to be the new one, for smooth administrative function.

Transitional arrangements are also provided for in this clause.

1795 Clause 14 amends section 45 of the Town and Country Planning Act 1999 by inserting a definition of 'planning authority' and 'planning committee'.

Mr Speaker I beg to move that clauses 13 and 14 stand part of the Bill.

The Speaker: Mr Boot.

1800 **Mr Boot:** I beg to second and reserve my remarks.

The Speaker: I put the question that clauses 13 and 14 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 15. Mr Thomas.

1805

Mr Thomas: Thank you, Mr Speaker.

Clause 15 amends section 40 of the Town and Country Planning Act 1999. This clause replaces the existing duty to form an advisory body and replaces it with an ability to do so.

Mr Speaker, I beg to move that clause 15 stands part of the Bill.

1810

The Speaker: Mr Boot.

Mr Boot: I beg to second and reserve my remarks.

1815

The Speaker: We turn to amendment 14 in the name of Mr Shimmins.

Mr Shimmins: Thank you, Mr Speaker.

1820 This amendment covers the involvement of outside organisations in planning, and section 40 has been the subject of debate recently and over the last 20 years or so. Why is this? Well, let me just remind you what the original Act says. It says:

The Council of Ministers shall in accordance with regulations establish a body ("the 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.

The second section says:

(2) 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.

It goes on a bit after that, but you get the gist.

1825 Successive administrations have unfortunately not set up this consultative body and this is why it keeps getting debated. You may recall I mentioned earlier the public consultation on the planning system between October 2017 and January 2018. This was a wide-ranging consultation with 55 questions for the public to answer, but there was no mention of section 40 and the planning consultative body. It kind of begs the question why was this this change not covered in the consultation which had 55 questions? And, in the absence of any consultation, why has this change been brought forward by the Cabinet Office? We did not really hear an explanation from the Minister for Policy and Reform when he moved this clause.

1830 Moving this change seems contrary to accepted practice where we consult on legislative changes and I query whether there is any public mandate for this change in the absence of any consultation and responses and, as such, how can it be proposed in this way today?

1835 I have heard Ministers say they feel that the consultative body would be a waste of time and money and it would be unnecessary bureaucracy. That is their view. My view is that it is important that environmental factors are considered alongside the economic and planning considerations which were contained in the original 1999 Bill. Many people agree with me and they do not feel that the additional cost is material and, actually, a planning consultative body could well resolve issues ahead of them arising, which would in reality save a lot of time and money for everyone and a clearer direction and consensus will speed things up reducing bureaucracy, which sometimes is levied at our planning system.

1840 The Minister's proposed wording of the new section 40 changes 'shall' establish the consultative body to 'may'. So after 20 years of not complying with this legislation the Bill proposes to water down the commitment to 'may ... establish a body'. Does anyone think that this will happen, given the context which we are all aware of? I respectfully submit that it is highly unlikely that a planning consultative body will be set up given the lack of action over the last 20 years when it was a requirement of the Town and Country Planning Act. (A Member: Good point.)

1850 Arguably, it would be more transparent for the Minister just to remove this section altogether. If there is no intention to set up the body, then just take it out. But of course there is no mandate for this. There has been no public consultation on this change.

1855 The amendment I am proposing replaces 'shall' with 'is required to'. This wording is unambiguous. It recognises the advantages that a consultative body will provide, balancing all the key factors, and honours a long-standing obligation under the Town and Country Planning Act. This wording is slightly unusual but it is contained within a number of other Isle of Man Acts.

Thornton's Legislative Drafting guide, which I am advised is the Attorney General's Chambers' drafting bible states that:

In some contexts where an obligation is intended, is required to ... may be preferable to shall

1860 Hon. Members, this really boils down to whether you feel we have an obligation or not. I believe we have an obligation to the previous Act and to our environment to set up a consultative body to help us look at these issues in the round alongside, as the Act says, economic and planning considerations.

1865 Now, if you feel you do not have any obligation to our environment or to consult with the public on changes of this nature then you should not support my amendment. However, I hope that you will recognise the value this body will add and the strong feeling held about this by many people on the Island that we should consider environmental considerations alongside other factors, including economic issues, and that the lack of consultation is a serious failing with this Bill. If you concur with either of these points, or both of them, then please support the amendment standing in my name.

I beg to move.

Amendment to clause 12

14. On lines 25 and 27 of page 18, for 'may' in both places, substitute «is required to».

1870 **The Speaker:** Mrs Caine.

Mrs Caine: Thank you, Mr Speaker.

1875 There is a perception that the planning process is not as open and transparent as it could be and that economic factors are given greater prominence in some decision-making. That is a perception. This amendment will go some way to counter that negativity. It requires that a consultative body is set up.

A consultative body will be able to ensure environmental considerations are given due weight in planning decision-making. That seems an entirely positive step forward that is surely a welcome enhancement of the system.

1880 If it is a concern that this will be over overly bureaucratic and slow things down, then I do not agree. It surely should be able to be constituted in such a way by the Department. The Hon. Minister said it should be a smooth administrative function, an essential part to feed in on environmental concerns, and it would be a very sad day if the thought of extra bureaucracy prevented a consultative body being established to do the job that it was always envisaged would be an enhancement of our planning system.

1885 I would also urge Members to support the amendment today, which I am happy to second. Thank you.

The Speaker: Now, the floor is open.

1890 Mr Baker.

Mr Baker: Thank you Mr Speaker. A very interesting one, this.

1895 Listening to the impassioned words of the Hon. Member for Middle and support from Mrs Caine, I interpreted this as being an Environment Committee. So I read what actually section 40 says, park the 'may' or 'shall' because that is all that has been debated here, but the requirement is – or the opportunity, I am not prejudging – to establish a body:

the consultative body ...

– *the* being singular –

for the purpose of obtaining the views of organisations ...

– plural –

in the Island appearing to the Council of Ministers ...

– two interesting adjectives there –

to be concerned with any of the following matters –

(a) *the environment*

(b) *the economy ...*

(c) *the planning of development.*

1900 That is a mighty strange organisation to me that is going to get its arms around all those things. And this consultative body would either have to be, or could be, consulted on *all* matters which the Cabinet Office thinks its advice would be desirable. Lots of judgement in there. What are all those matters? Would its advice be desirable? Maybe it would be undesirable.

and in exercising its functions under this Act shall have regard to any advice given by the said body ...

– shall have regard to any advice given by the said body –

whether pursuant to such consultations or otherwise.

1905 Crikey, what a remit! Who would not want to be on that Committee? (*Interjection*) It is the recipe for mayhem – if you could even get the people in the room together to agree on anything because you have got people wanting to put their input in on the environment, those who want to put their input in on the economy, and those who just want to put their input in on the planning.

1910 I cannot see this working. Maybe that is why it has not been set up – who knows? It is certainly 19 or 20 years since the requirement to put this in which has, as the Hon. Member, Mr Shimmins says, been effectively ignored.

There is specific reference in (3)(a) that:

... the Cabinet Office must –

(a) designate voluntary organisations in the Island appearing to the Cabinet Office to be concerned with the environment;

1915 Well, I wish them luck with telling all those other environment organisations that they do not appear to be concerned with the environment, because they have to include all those who appear to be concerned with the environment. They are going to have a cast of thousands here!

And then:

... the Cabinet Office must –

(b) require the relevant Department, in exercising any functions under this Act which are specified in the order, to have regard to any representations which are made,

Not just valid ones, they could be invalid representations, they have still got to have regard to them –

in such circumstances as are so specified, by organisations so designated.

1920 Hon. Members, I cannot see this working; I really cannot. I do not know what is going to achieve; it does not exist currently. What we do have is a very complex, sophisticated planning framework which, when the planning framework and the planning process are followed properly, I believe it works well.

1925 The Minister, in the Bill, has not taken out this strange beast he has just reverted to more of an ‘optional’ wording. If we accept Mr Shimmins’ amendment then we are saying this *has* to be set up and it has to be set up in the way that the 1999 Act says.

For those who say there is no public consultation, I cannot accept that. We have all lived and breathed the consultation around the Area Plan for the East, which has been ongoing ever since those of us who were elected newly in 2016 it has been going on pretty much all that time.

1930 We have just agreed, Hon. Members, to include a requirement on our national policy directives for there to be proper public consultation. There is the ability for people to make representations on planning applications and potentially, subject to conditions, to have the right to appeal planning decisions. Within the strategic plan, as I talked about at Second Reading, there is a huge raft of policies and principles in there which do cover all of the aspects of environment, of the economy of housing, of transport, etc. And there are widespread inputs to the planning process from various Departments. So within the Department for Environment, Food and Agriculture there is lots of expertise which submits representations on planning applications, whether it be to do with biodiversity, fisheries, wildlife, trees, etc.

1940 The environment is an area which Hon. Members are highlighting is lacking input, but I stand by my opening remarks that this Committee would also include those advocating on the economy and generally on planning issues.

I cannot see this working, Hon. Members, and I do not think it is sensible for us to impose the requirement for something that is not likely to be effective to have to continue with it. And therefore I will not be supporting the amendment.

1945 Thank you, Mr Speaker.

The Speaker: Mr Hooper.

Mr Hooper: Thank you very much, Mr Speaker. This is quite an interesting one.

1950 Previous consultations that have been done around this did not indicate any level of support for changing the situation in legislation. The previous consultation actually just made reference to concerns people had raised about this particular change and did not mention at all that anyone was supportive, which is unusual seeing as the rest of the consultation document was quite explicit where there had even been a modicum of support for the proposals.

1955 So I am struggling to see the rationale for this, especially as when the Minister moved the clause he did not provide us with any real explanation as to where this was coming from, simply the effects of the clause rather than the policy rationale behind it.

1960 If you look back over the numerous consultations that have happened around planning over the years and improving and reforming the planning system, the key message that keeps coming through is that we need to improve engagement. We need to improve the way we consult with people, we need to make sure that we are meeting the Island's current and future needs and that has to be done through a process of consultation. And this part of the Act that is in place already is not something that will be imposed as a new requirement. This is the law as it stands; the Government just is not following it.

1965 There seems to be a view that this would be quite beneficial if Government actually followed the law for a change. It is a bit of an unusual situation where we have a Government saying, 'Well, we do not really want to follow the law so, instead, we are going to change the law because we think it is too difficult to engage properly with key stakeholders'.

1970 Mr Baker made a lot of comments in his speech about individual applications. Now, I might be wrong here but my understanding is that this organisation is for Cabinet Office to consult with. And Cabinet Office not being the body that deals with individual applications, this body would have nothing to do with individual applications. So park all of those comments to one side because they are totally irrelevant as to what we are discussing here: this is about planning policy not planning applications.

1975 Flicking back through some of the previous things that have been done on planning: there was a Select Committee a little while ago – 2016, I think it was, chaired by none other than the Hon. Member for Douglas East himself – looking into potential reforms to the planning system – (**Mr Thomas:** Central.) sorry, Douglas Central – things that could be made to make the system better. One of their recommendations in that report was to introduce:

... a mechanism to allow for the adaptation or re-interpretation of policies, ... which may include consultation with a body established under Section 40 of the *[Town and Country Planning] 1999 Act*

1980 So it is clear that in the Committee that Mr Thomas himself chaired he saw value in having a Committee of this nature.

1985 The previous Minister for the Environment, Mr Gawne, also made clear statements to Tynwald that such a body would be established to assist in any ongoing planning reviews. It has just never happened. But it seems to be a consistent message that not only do the wider public feel that a consultative body of this nature is going to be of benefit, but actually a succession of Government Ministers and Select Committees have all come up with the same conclusion that actually this kind of body seems to make sense, it seems to be the right thing to do and actually would be workable and would provide benefit, otherwise at some point somebody in the past throughout all these previous reviews and reiterations would have recommended we get rid of it.

1990

This is the first time as far as I can see that anyone is recommending making this an optional body, and even then we are not talking about not doing it. My understanding is it is still the aim of the Cabinet Office to possibly bring this in at some point in the future.

1995 Everyone is still talking about, 'We are going to do this anyway', so it does not make any sense at all to say, 'Well, let's make it optional'. Actually, we have got an Act, we have got something that has been in law for quite some time and I really am struggling to wrap my head around why we have a series of recommendations over the years saying we should make use of the body like this and it has just never been done.

2000 So to my mind, the right thing to do is to say we have a law that generally everyone thinks is the right law. So instead of changing the law, because Government finds it difficult to deal with something as complex as this, just get on with it and just do it properly.

So to that end, Mr Speaker, I will be supporting Mr Shimmins' amendment to this clause and if it should fail I will be voting against the original clause to change the wording as it stands. Thank you.

2005

The Speaker: Mr Boot.

Mr Boot: Thank you, Mr Speaker.

2010 Mr Shimmins, Hon. Member for Middle, castigated me some time ago for not forming a section 40 body and in fact I was almost accused of a dereliction of duty. Then it transpired that it was not a DEFA function but actually a Cabinet Office function, when I looked into this more thoroughly. It has been there for 20 years and successive administrations have never brought it in and I think there is a rationale behind that.

2015 I think Mr Baker articulated that very well from a planning perspective. It is all very well talking about public consultation, and somehow the environment gets dragged into this when in fact it was a more collegiate approach in terms of the body that was going to be formed. But let's look at the planning process as it stands at the moment from an operational perspective.

2020 We have many tests, checks and balances and during the planning process prior to a decision being made we engage with many people and many bodies, individuals and organisations. That is how it should be and they are all taken into consideration when decisions are made. If I look at the number of organisations that we interact with, as a Department, let alone other Departments, who would sit on this body with the wide-ranging remit that is suggested?

2025 I know from our perspective just dealing with some of the environmental bodies, they come in with very differing opinions and very different approaches. I believe that would impose an unnecessary layer of consultative bureaucracy in a process that is well established. I am not sure of any other jurisdiction where they have another body other than the Planning Committee that considers matters in the round. I think that this would be a very difficult thing to administer.

I mean, okay, we have got an idea of what it might advise on: when would it advise? Would it be purely on policy? Would it be on operational matters? Would it be on individual applications?

2030 I am not convinced that there is a good rationale for such a body being formed. Consequently, I think the option that we have that has been consulted on, where we leave 'may' in – because never say no – there might be a situation in the future when such a body might be useful. But certainly at the moment from my perspective, operationally, I do not see it.

2035 We have just gone through a consultation process and there was no appetite to remove this, but at the same time I did not really see any appetite to change the emphasis not to make it a statutory requirement. So I am going to oppose the amendment by Mr Shimmins and I think we should keep some flexibility and leave the word as 'may' rather than 'required to'.

Thank you, Mr Speaker.

2040

The Speaker: Mr Harmer.

Mr Harmer: Thank you, Mr Speaker.

2045 I just rise to my feet because actually technically when you look at the clause it talks about, 'require the relevant Department in exercising functions under this Act,' so it impacts all functions under this Act. So it impacts, as I read it, not just the Cabinet Office but across the board.

The Speaker: Mr Peake.

2050 **Mr Peake:** Thank you, Mr Speaker.

I think it is quite interesting to see how we can try and change what we actually want to do now by what has not been done in the past. It is quite disappointing to hear that we are trying to make things easy because we have never actually done it. I think the principles were actually laid out a number of years ago and it is a great shame that there has not been any perhaps effort in understanding what it should be, what we should be actually delivering.

2055 So I do commend Mr Shimmins for bringing this forward now. I think it is just a small point but I think it is an important point and something actually, that if you have a clear vision, you could work together to achieve that. That is what we should be doing.

2060 So I will support this amendment.

The Speaker: I call Mr Shimmins to reply to the debate around his amendment.

Mr Shimmins: Thank you very much, Mr Speaker.

I am grateful for everyone who has engaged on this amendment.

2065 I am grateful for the remarks made by Mr Peake in terms of just because something is difficult does not mean that we should shy away from it, because it will bring benefits.

If I look at the main remarks which were made by Mr Baker, Mr Hooper and Mr Boot, there was some commonality, so rather than go through each one perhaps if I can look at the issues that were raised.

2070 I guess the first issue was, 'Is it a recipe for mayhem?' were the words that Mr Baker used. Absolutely not, in my view. Mr Hooper very helpfully clarified that this is about policy, it is not about individual planning applications and I would ask you really to disregard those comments made by Mr Baker.

2075 Mr Hooper also pointed out today that this is about engaging key stakeholders and it is really important, as we look to plan and develop our Island that that engagement actually happens. Yes, there will be a divergence of views; as Mr Baker said, they are never going to agree. 'You have got to cast the thousands,' I think was the phrase he used. I absolutely suggest that should not be the case.

2080 This was touched on again by Mr Boot who said, 'We have got so many organisations. How will you manage that kind of diversity of views across these different organisations?' I think that is a very doable thing. If we look, and I have just written down, how you could represent wide views; so Manx National Heritage could sit on this consultative body. They already look at our historic buildings and heritage; that is one of their statutory functions. So of course you would involve them. I would suggest that the Chamber of Commerce may have a role because they are the largest representative group for our economy. If we look at local authorities they have a clear view on various planning issues, so perhaps one of the larger local authorities which could rotate. You would have representatives from each sector. Of course you would not have hundreds or thousands of people. I mean that is a nonsense that someone would suggest that, Hon. Members.

2090 You would also look to involve the construction sector because they have got a key role in this as well, because development needs to be economically viable, so they can explain. But only by having engagement and having discussion do you get workable policy. Choosing to ignore these things is not a constructive way forward.

2095 So please, let's not obfuscate the issue. There are lots of organisations, even in the environmental sphere, which is not what this is all about. There was a suggestion from Mr Baker it was an environmental committee. I made it very clear, Hon. Members, that we would consider ... as the Act says, environment issues are point (a), but (b) the economy of the Island and (c) planning of development.

2100 In the environmental sector there is one umbrella organisation, the Manx Wildlife Trust. They would be an ideal candidate to sit on this consultative body, I would suggest. So please let's not confuse the issue. Let's see the value that this committee, this consultative body would provide. It would help the Cabinet Office formulate policy; it would not be mayhem! It would be supportive.

2105 Mr Boot highlighted that in section 40 the consultative body is not the responsibility of DEFA, it is the Cabinet Office. I thank him for clarifying that and I wish to apologise if he felt that I castigated him. It was more borne out of frustration following the removal of interested party status from the Island-wide environmental bodies; the recent change that DEFA did make, which has inflamed this issue as people look to see, 'Well, how can we engage? How will our views be taken on board?' This is part of a trend that people are seeing.

2110 So what I would suggest, Hon. Members, is this provides an opportunity to say this is not a trend, this is actually a constructive, sensible body that takes on board everybody's views. I do believe it will be a collegiate and a responsible organisation and I would remind Hon. Members the Act has said, 'Set up this consultative body,' since 1999; we have not done that. This is an opportunity to ensure that we now step up to our obligations and engage with other people in the planning process – important stakeholders who will add value to the planning of our Island.

2115 Thank you.

The Speaker: I call on Mr Thomas to reply to the debate on the clause.

2120 **Mr Thomas:** Thank you, Mr Speaker.

Just a few factual points. There was a consultation on this Bill. Bullet point 5 was about this section 40 committee and the responses, as reported, were that *some* respondents commented that at present the statutory obligation to have a consultative body under section 40 was not being observed. Caution was expressed by some, particularly organisations involved with heritage and conservation, about accepting this failure and changing the legal position by transforming the statutory obligation into an option.

2125 An alternative was proposed by one person to have Manx National Heritage, Manx Wildlife Trust, Director of Public Health etc. as a statutory consultee. So there is an alternative, but the main point is, though it was asserted, there was not any consultation about this point and there clearly was.

2130 The second point I wanted to bring to people's attention is the debates that happened in the 1990s at the Second Reading, at clauses stage, when this section 40 was going through. It was pretty uncontroversial and at the time there were two major issues.

2135 The first one was the body that existed at that time ADCO, as it was called, was felt not to be representative. Basically, there were lots of bodies like Manx National Heritage, Manx Wildlife Trust and lots of other bodies probably, who did not feel that the established section 40 committee in its previous guise, ADCO, was actually representative of them. So therefore this was a compromise to deal with a transition out of making it a statutory consultee, because anybody ends up having a life and a view of its own which is not necessarily of the organisations that represent it.

2140 The second point was that some rather grand aspirations for this body have been alleged which were not in the legislators' minds according to *Hansard* when this body was proposed. So this body was never proposed as being anything to do with the planning application and decision-making process; it was never proposed as anything to do with the strategic plan,

2145 development plan process. It was proposed as a body that could be consulted on regulations and orders, bringing people together.

I remind this Hon. House that that is what we do, we do have stakeholder engagement and we do get in touch with all of the bodies about regulations and about national policy directives; and I remind this Hon. House that in 1999 when this Act was put together we did not actually
2150 have the Council of Ministers policy on consultations and we did not have the new refined policy on stakeholder engagement and early intervention with people about legislation and regulations. That all came after 1999. So there was a whole bunch of legislation in the 1990s that set up this type of body and I suggest to this Hon. House that in actual fact it has been replaced by the new Government policies and the new public servant policies of actively engaging early
2155 about regulations and orders and policies emerging from major policy shifts with stakeholders around the community.

The other piece of development in the last 20 years that I want to remind people about is the 2015 decision of the other place upstairs to make a bonfire of committees. It was actually me who took that motion to Tynwald and what we said was we needed to have an investigation of
2160 all of the public money that was being spent on these types of bodies, to review the purpose, to review the status of the law, to actually see what bodies we needed and what bodies we did not need, in the light of the fact that Tynwald processes developed substantially, with scrutiny committees, policy review committees, in the light of the fact that consultation and stakeholder engagement had developed substantially.

We are just about to conclude that work – Cabinet Office Members know that – and we have a whole bunch of bodies that currently do exist in statute that we are raising questions about whether they need to continue to exist, given everything that has gone on around them during the last 20 or so years. In that era we set up the Education Council, the Health Services Consultative Committee, the Police Consultative Forum. There are lots of bodies that were set
2170 up and in each of your Departments questions have been asked and raised about those various bodies. Those questions and points that have been made are relevant here.

In closing, absolutely, we need to engage everybody on national policy directives. Absolutely, we need to engage people at an early stage on community infrastructure levy. Absolutely, we need to use all of the means available to us to engage with the Chamber of Commerce, the
2175 Construction Forum, environmental groups, heritage groups, to make sure that we get the best policy and the best law to help us make the best policy decisions.

Absolutely, this body is not involved in planning applications. We have a separate process for that. Absolutely, it is not involved in the Area Plan for the East process and subsequent statutory bodies. It could have a role, I accept, in terms of these things but do we need it? Should we not
2180 learn from our predecessors in the 1990s and subsequently about how there are alternative ways of doing this?

With that, Mr Speaker, Hon. Members, I beg to move that Mr Shimmins' helpful amendment – because it has brought to light some of these issues – is rejected and that the motion unamended is supported. And ... that is that. *(Laughter)*

2185 **The Speaker:** Putting to Hon. Members first, amendment number 14 in the name of Mr Shimmins: those in favour, please say aye; those against, no. The ayes have it.

A division was called for and electronic voting resulted as follows:

FOR

Miss Bettison
Mrs Caine
Mr Hooper
Mr Peake
Mr Shimmins

AGAINST

Dr Allinson
Mr Ashford
Mr Baker
Mr Boot
Mr Callister
Mr Cannan

Mrs Corlett
Mr Cregeen
Mr Harmer
Mr Malarkey
Mr Moorhouse
Mr Perkins
Mr Quayle
Mr Robertshaw
Mr Skelly
Mr Speaker
Mr Thomas

The Speaker: With 5 for, and 17 against. The noes have it. The noes have it.

2190 That clause 15, as written, stand part of the Bill: those in favour, please say aye; against, no.
The ayes have it.

Voting on clause 15, as printed.

A division was called for and electronic voting resulted as follows:

FOR

Dr Allinson
Mr Ashford
Mr Baker
Mr Boot
Mr Callister
Mr Cannan
Mrs Corlett
Mr Cregeen
Mr Harmer
Mr Malarkey
Mr Moorhouse
Mr Perkins
Mr Quayle
Mr Robertshaw
Mr Skelly
Mr Speaker
Mr Thomas

AGAINST

Miss Bettison
Mrs Caine
Mr Hooper
Mr Peake
Mr Shimmins

The Speaker: With 17 for and 5 against. The ayes have it. The ayes have it.
Clauses 16 and 17, Mr Thomas.

2195 **Mr Thomas:** Thank you, Mr Speaker.

With your permission, I intend to move clauses 16 and 17 together.

Clause 16 amends section 45 of the Town and Country Planning Act 1999 by inserting a definition of the term 'general importance'. The amendment would remove the words 'general importance' which fits better with the format of the 1999 Act.

2200 Clause 17 amends the Town and Country Planning Act 1999 by inserting a new section 45A 'General importance'. The new section 45A sets out a test to determine if a matter in an application for planning approval *is* of general importance. It is a cumulative test – and it has lots of 'ands' in it.

2205 Additionally, the power is granted in this clause to the Council of Ministers to issue guidance about the meanings of terms pertinent to the new section 45A(1). These may be revised from time to time and any such guidance must be documented and published in an appropriate and available manner.

2210 Clause 17 also allows for the Council of Ministers to make an order to amend section 45A(1) and to make further provision, or amend or repeal existing, about considerations within that subsection (1).

Mr Speaker I beg to move that clauses 16 and 17 stand part of the Bill.

The Speaker: Mr Boot.

2215 **Mr Boot:** I beg to second and reserve my remarks.

The Speaker: Now, amendment 15 to clause 16 in the name of Mr Baker, please.

Mr Baker: Thank you, Mr Speaker.

2220 This again is another one of the minor stylistic changes as seen in the two previous amendments 10 and 13, reflecting changes in drafting since the original Bill was enacted

2225 Whilst I am on my feet if I may, Mr Speaker, I would just to clarify the point made by the hon. mover about the clauses being cumulative within section 17 because when I first saw the Bill I was quite concerned until I understood that those clauses were cumulative, and that if they were not it would potentially mean a huge raft of planning applications going to Council of Ministers. That is not the case because they are cumulative considerations.

So I am happy to support the clause on that basis.

Amendment to clause 16

15. On lines 31 and 32 of page 18, omit '(general importance)'.

The Speaker: Mr Hooper.

2230 **Mr Hooper:** Thank you, Mr Speaker.
I beg to second the amendment.

The Speaker: I call on Mr Thomas to reply.

2235 **Mr Thomas:** An eminently sensible amendment and I beg to move.

The Speaker: Thank you very much.

Putting, then, the sensible amendment in the name of Mr Baker first. *(Laughter)* Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

2240 Clauses 16 and 17 as amended. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Finally, Mr Thomas, clause 18.

Mr Thomas: Thank you, Mr Speaker.

2245 Clause 18 makes consequential amendments to section 44 of the Town and Country Planning Act 1999 which sets out the Tynwald procedure relevant to orders and regulations under the Act, so as to include references to the new Orders provided for in the Bill.

Mr Speaker, I beg to move that clause 18 stands part of the Bill.

2250 **The Speaker:** Mr Boot.

Mr Boot: I beg to second and reserve my remarks.

The Speaker: Amendments 16 and 17 in the name of Mr Baker.

2255

Mr Baker: Thank you, Mr Speaker.

Amendment 16, just the cross-reference to ensure that any changes to the national policy directive requirements need to be approved by Tynwald Court. The need for that amendment

2260 reflects the more comprehensive requirements around national policy directives which result from my earlier amendments.

Amendment 17 makes specific requirements for each national policy directive to be laid before Tynwald and then to be approved by Tynwald Court before they come into operation, which clearly ensures there is proper and appropriate scrutiny around this important matter. Thank you, Mr Speaker.

Amendments to clause 18

16. In line 15 of page 20, for '2A', substitute «2A(10)».

17. After line 19 of page 20, insert —

«(c) after subsection (3), insert —

(4) An order under section 2A(1) may not come into operation unless a draft of the proposed order has been laid before a sitting of Tynwald and that draft has been approved at a subsequent sitting of Tynwald.».

2265 **The Speaker:** Mr Hooper.

Mr Hooper: Thank you, Mr Speaker.

I beg to second both amendments 16 and 17.

2270 **The Speaker:** Thank you very much.

If no other Member wishes to speak, Mr Thomas to reply.

Mr Thomas: Thank you very much, Mr Speaker.

I support the amendments. This gives the *gravitas*, the seriousness to this whole issue. We are changing planning law and it is right that Tynwald considers it properly.

2275 I beg to move.

The Speaker: Putting first amendments number 16 and 17 in the name of Mr Baker. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

2280 Putting clause 18, as amended. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

That concludes consideration of the Town and Country Planning (Amendment) Bill 2019 clauses stage, and indeed the business on the Order Paper.

Hon. Members, we now stand adjourned until 2nd April, 10 o'clock in our own Chamber.

The House adjourned at 12.27 p.m.