

**2. Town and Country Planning (Amendment) Bill 2019 –
First Reading approved**

Mr Cretney to move:

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

The President: Item 2, Town and Country Planning (Amendment) Bill, First Reading.
Hon. Member, Mr Cretney.

Mr Cretney: Thank you, Mr President.

The Town and Country Planning (Amendment) Bill 2019 comes to us from the House of Keys with several purposes. They arise out of extensive consultation and are part of continuing work to ensure that planning for our Island is transparent, fair and gives the public confidence. This work must continue, and I thank the efforts of the Hon. Members of the House of Keys in improving the Bill as it comes to us from them. The amendments and contributions made in the House of Keys have significantly improved the Bill from its introductory form; indeed, I would not have taken the Bill in its previous form.

I would like to speak on one particular element: the establishment of a consultative body to provide the involvement of outside organisations in planning, contained in section 40(1) of the current Town and Country Planning Act 1999. The Bill before us today seeks to amend that section to remedy a problem by replacing the word 'shall' with the word 'may'. The ability to have a consultative body remains, but is made discretionary.

The purpose of this change, as set out in the Reform of the Planning System which was laid before Tynwald in May 2018, is to:

Allow more flexibility in how Government involves stakeholders in policy matters, to ensure we are able to fully understand their views, without extra bureaucracy.

Indeed, it should be recognised that since this body was first conceived of there have been other improvements in the way that stakeholders are engaged, not least the publication in 2017 of the Council of Ministers' Public engagement and consultation principles.

Nevertheless, the changes set out in the Bill would not diminish the potential value of such a consultative body, nor the power to establish one. Indeed, the good sense in having such a consultative body remains and I strongly encourage the Council of Ministers to go ahead and set one up.

Let us consider what such a consultative body would do. It would be involved in strategic planning – the future direction of the place where we live, work and thrive. Consistent advice and engagement with stakeholders in our environment, economy and society is most valuable and such a body could be helpful to the Cabinet Office in this regard.

What would the consultative body *not* do? Well, it would not be involved in the functions of the Department of the Environment, Food and Agriculture, in particular its day-to-day assessment of planning applications. That is not the intention and is not the function provided for in section 40 of the Town and Country Planning Act 1999. In the daily matters of applications there are already requirements to consult and the ability for individuals and organisations to comment should they wish to. That is not changed in any way by this Bill.

This Bill, in the form we see it today, retains the ability to establish a consultative body to provide input into strategic policy matters. That process has not yet been fully implemented and I encourage the Council of Ministers to remedy this. In doing so, I do suggest that the regulations made under section 40(1) in 2006 should be updated and replaced with input from Members being sought in that process.

There are other elements of the Bill which are important to a well-functioning planning system. These include the ability to make minor amendments to existing planning approvals which will save

complexity and effort where it is not warranted, enabling resources to be better directed to other matters. The definitions and functions for that will be subject to development procedure orders, which will come before Tynwald.

I thank the Hon. Member for Ayre and Michael, Mr Baker, for his contribution in debate and for the amendments to the Bill he put forward. Those have made significant improvements to the national policy directives component of this Bill. I also thank the other Hon. Members who put forward amendments designed to improve the functioning and establish proper reporting routine back to Tynwald on the function of national policy directives.

Mr President, this legislation is technical in substance and in our Public Gallery today we are joined by Mr Dean Balkin, Senior Planner for the Cabinet Office and Mr Steve Butler, Head of Development Management at DEFA who may be able to assist with some enquiries if I struggle.

I thank the Hon. Members in the House of Keys for their amendments which are now incorporated in the Bill now before us.

Mr President, I beg to move the Town and Country Planning (Amendment) Bill 2019 be read for the first time.

The President: Mrs Lord-Brennan.

Mrs Lord-Brennan: Thank you, Mr President. I second this Bill.

Mr Cretney has been clear in providing us with his view of some of the elements arising from the debate and the amendments in the House of Keys, and I do not disagree with nor need to repeat what he has said on this.

Mr President, I would like to outline the other elements of this Bill and to remind Council Members of the purposes behind it.

There are six elements to this Bill and they are: (1) national policy directives; (2) development procedure orders for minor amendments to existing planning approvals; (3) an amendment of the procedure for referring applications for planning approval to the Council of Ministers in certain circumstances, and a definition of the term 'general importance'; (4) power for a community infrastructure levy; (5) bringing the basis for the Planning Committee into the Town and Country Planning Act 1999; (6) the involvement of outside organisations, to which Mr Cretney has referred.

Turning to the first element, national policy directives. Mr President, I wish to thank the Members of the House of Keys, and in particular Mr Baker, for the consideration and amendments brought to this provision. As Mr Cretney has already stated, what comes before us today is an improvement on the Bill as it was introduced in the House of Keys.

Moving to the second element, at the present time there is not the legal ability to make minor amendments to a planning approval after it has been granted. The purpose of the proposed process is to facilitate the sorts of changes which happen in real life, where building projects uncover design errors, problems with the supply of materials and other practical issues that arise, so they would be intended to be of a practical nature. These types of minor amendments could include a change to the dimensions of a window to match a product available on the market, for example, thus avoiding an unreasonable cost imposition; or another example would be swapping the location of a door and a window to correct an oversight in design and drafting.

It is important to state what this provision does not do: it does not provide for a transformation. What I mean by that is that a minor amendment does not and shall not transform a shed, for example, into a house. The term is not over-defined in the Bill before us, and I remind Council Members that the development order which would provide for a minor amendments procedure would come before Tynwald, subject to negative resolution. Therefore, Tynwald Members will see that order and have the opportunity to provide proper scrutiny to it.

Turning to the next element, clarifying the referral of applications for planning approval to the Council of Ministers, and a definition of the term 'general importance', there are some things to point out. What is proposed would place an obligation on the Department of Environment, Food and

Agriculture to refer certain applications, including applications of general importance, to the Council of Ministers, and provides a definition of 'general importance'.

It is perhaps helpful to outline how things work now. Currently, the Council of Ministers has the power to instruct DEFA to refer applications to them – sometimes referred to as 'calling in' – for determination, where they feel they are of general importance or where for some other reason the application should not be determined by the Department. However, there is no requirement for DEFA to bring any applications to the attention of the Council of Ministers, nor is there a clear definition of general importance. The new definition will provide clear procedural triggers to enable a predictable and a consistent way for DEFA staff and members of the public to understand what circumstances an application for planning approval is to be referred to the Council of Ministers. In this way, it would seek to bring some credibility through establishing a proper process for this.

The subjectivity of 'general importance' is replaced by a proportionate consideration of demonstrable facts. Each of the conditions in the definition must be satisfied so it is not anticipated that there would be a large number of applications referred.

It is important to note that once an application has been referred to the Council of Ministers, it will first make a decision as to whether to either accept that referral or to decline it and send the application back to the Department of the Environment, Food and Agriculture for determination in the usual way.

The next element is the power to set a community infrastructure levy – something I am very supportive of – and I note that amendments were proposed and accepted in the House of Keys to replace the word 'may' to 'shall' in terms of the Council of Ministers introducing a levy. The introduction of a community infrastructure levy should be used to set out transparent and consistent mechanisms to ensure that new development facilitates wider social, green or grey infrastructure improvements. The levy will be imposed by way of regulations which would need to be approved by Tynwald. The regulations will need input from the development industry as well as from Government Departments, those who provide and maintain the infrastructure and those who would use the infrastructure – in other words, local communities.

The Bill also puts the Planning Committee on a statutory basis within the Town and Country Planning Act 1999. This shows a commitment to continue using the mechanism of the Planning Committee as an important and integral part of transparent and accountable decision-making. Although the existing Planning Committee currently operates under an authorisation from the DEFA Minister, the explicit referencing of the Planning Committee within the Bill is considered to be preferable in the interests of clarity and the avoidance of doubt.

Mr Cretney has spoken ably about the involvement of outside organisations and I share his view. The Bill does not *remove* the ability to create and involve such a body. We are seeing a proposed change from an obligation, which was only partly fulfilled in the past, to an ability, a choice. Mr Cretney is right to anticipate and encourage the establishment of such a consultative body. I agree with him on that and remind Council Members that the views of the consultative body would be sought only in strategic policy matters for planning.

Thank you, fellow Council Members and Mr President.

The President: Miss August-Hanson.

Miss August-Hanson: Thank you, Mr President.

I have just one question for the record that has already been referred to by my colleagues on Council, Mr Cretney and also Mrs Lord-Brennan, in relation to section 40 which is amended – the involvement of outside organisations in planning.

15. Section 40 amended

In section 40 (involvement of outside organisations in planning) —

(a) in subsection (1), for 'Council of Ministers shall', substitute 'Council of Ministers may'; and

(b) in subsection (2), for 'Cabinet Office must', substitute 'Cabinet Office may'.

So for the record, would the mover of the Bill please outline in detail what the political history of that particular amendment is?

Thank you.

The President: Does any other Member wish to speak?

Mrs Maska.

Mrs Maska: Yes, thank you, Mr President.

Thank you to the Hon. Member Cretney for bringing this and I agree that the form of the Bill as we see it today is a very much improved format. It was well debated in another place and raised some very interesting matters.

I agree that it is very sensible to have a matter such as national policy directives that can aid and speed up the process in circumstances which are deemed to be exceptional. I would not want to see this used as a device, especially by larger development applicants, that they might see it as an opportunity to come in almost by the back door really and used habitually for that kind of purpose. Although if I am understanding the Hon. Member, this is not the intention of this inclusion. So I welcome that but it would have to be used prudently.

I also welcome the ability to amend an application in a minor way. This has proved to be a bit of an obstacle in the past where an applicant would have to start all over again and delay a development to the hardship of an applicant or a development.

I am also concerned that we still have the wording that gives mandatory powers to form an advisory committee, and it is changing the wording from 'must' to 'may'. The perception I think still would remain with those outside who have a special interest in in our Island environment that this is really letting a certain sector of our public down in that this power has existed since the 1999 Town and Country Planning Act.

I also refer to the meeting we had for which, again, I thank the Minister for Policy and Reform who came and briefed us and that was very helpful. But it was inferred that there had been no interest by what I would call 'amenity societies' in the past to take part in such a body. However, my early investigations have led me to believe that there was interest and there had been exchanges of letters in the past expressing an interest, but unfortunately this was never acted upon. So I feel that it is so unfortunate – although I do accept that the ability to form such an advisory body still exists – that it has sat inactive for so long, and all I can interpret is that there has been no political will to do that. And again I see that as being very unfortunate.

Other than that I think the Bill is, as I said, a much better Bill as it has come to us today. But I will continue to do research into some of the more controversial small, but important, changes that this makes. And I would reserve the right to maybe talk to this at clauses stage.

Thank you.

Miss August-Hanson: Hear, hear.

The President: Are there any further contributions before I call the mover?

In that case, Mr Cretney.

Mr Cretney: Yes, thank you, Mr President.

I thank Hon. Members, in particular Mrs Lord-Brennan for seconding and her valuable input on the other elements to the Bill. In relation to Miss August-Hanson, the 1999 legislation as has been picked up obviously never enacted the consultative body. Mr Rimmington in 2006 placed this matter before Tynwald. Sadly, it was just before the general election and he lost the seat in the general election and sadly whoever replaced him – and I am not sure who it was who replaced him as Minister for Local Government and the Environment after that – clearly did not have the same interest and nothing ever happened. And to respond to Mrs Maska, it does appear that there has been little, if any, political will.

I do not share that and as I said in my remarks I do hope that the opportunity is taken by the Council of Ministers because I think planning is about all of us. It is not just about one Minister or one political Member – planning is for all of society. And if at the early stage in the formation of the forward-planning policies interested groups can be at last involved, I think that would create a great deal of respect in the community for us taking such a move and I do hope that the Council of Ministers will be prepared to do that.

I agree also in relation to Mrs Maska, yes, it would be prudent use. And in terms of the planning amendments, yes, I think that this is a practical thing that would provide for the officers the opportunity for minor matters to be settled which do not cause any distress to anybody perhaps, other than the person who is doing the property and has been caught out by a particular thing.

I think those are the points that have been raised. I would like to thank Hon. Members for their interest and contribution. And again I would like to thank Mr Thomas for facilitating the meeting which we were able to have in advance. I think that was a useful exercise and hopefully something we can replicate in terms of other legislation coming before the Council so that we have a better feel, particularly when it is of a technical nature like this. I thought that was very helpful. **(Miss August-Hanson: Hear, hear.)**

I beg to move that this Bill be read for the first time.

The President: I put the question that the Town and Country Planning (Amendment) Bill be read the first time. Those in favour, say aye; against, no. The ayes have it. The ayes have it.