

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

Mr Cretney to move:

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

The President: We turn now to Item 3, Town and Country Planning (Amendment) Bill for Second Reading and clauses. I call on the mover, Mr Cretney.

Mr Cretney: Thank you, Mr President.

2445 The Town and Country Planning (Amendment) Bill 2019 makes amendments to the Town and
Country Planning Act 1999. In so doing, the Bill has come to the Legislative Council with
amendments from the House of Keys, amendments which have improved the function and form of
the Bill overall. The Bill makes provision for, or amends existing provisions for: national policy
directives; development procedure orders, for the minor amendment to existing planning approvals;
2450 a mechanism for the referral of applications for planning approval to the Council of Ministers, which
includes a definition of the term ‘general importance’; power for a community infrastructure levy;
bringing the basis for the Planning Committee into the Town and Country Planning Act 1999; and the
involvement of outside organisations.

2455 I would like to again thank the Hon. Members of the House of Keys who provided amendments
and in my opinion constructively improved the Bill as it comes to us in this place. Also, I thank the
Hon. Members here, in the Legislative Council assembled, who provided valuable contributions at
the First Reading and I do hope the facility of meeting with the legislative drafters and those from
the Planning office both in DEFA and the Cabinet Office was of assistance to Hon. Members and their
understanding of the Bill.

2460 We have this afternoon in the Public Gallery Mr Dean Balkin, the senior planning officer from the
Cabinet Office, and Helen Helfrich from the Attorney General’s office, both of whom I may, if
permission is granted, call upon for any technical responses that may be required for Hon. Members.

I beg to move that the Town and Country Planning (Amendment) Bill 2019 be read for a second
time.

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The President: Mrs Lord-Brennan.

Mrs Lord-Brennan: Thank you. I beg to second and reserve my remarks.

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The President: Mr Henderson.

Mr Henderson: Gura mie eu, Eaghtyrane.

Just some technical queries to the Hon. Member.

2475 First off – and I stand to be corrected, Eaghtyrane, I might not have the right part to insert my
comments, but however I will progress – have we got a connection with this piece of legislation with
regard to what deems to be eligible to have a planning application applied for it and in special
reference to demolition?

2480 I know that certain demolition requires a planning application and indeed health and safety
orders. However, I am particularly interested in demolition and I am further interested, as we go on
to this subject, in the demolition of what is classed as agricultural buildings/barns or other out-
offices. Are they required to have planning information with regard to what is going on with this
legislation; and at what point – and I realise the Hon. Member may have to come back – is it deemed
where such structures are not deemed to require planning permission? And in special reference to
such offices and outbuildings that could be providing habitat, for instance, to roosting bats and so
2485 on, where it is best practice and known through the planning process that an environmental

assessment should be undertaken first before any such demolitions should take place to ensure that if there are protected animals in those buildings they can be rehomed, if I can put it like that?

2490 I ask that question in particular seriousness because I have been approached by several conservation groups who have particular concerns with the demolition of barns and so on before planning applications have been made or indeed it has been deemed that a planning application is not warranted to drop a barn and thereby those premises have not been able to be surveyed for their wildlife habitat importance – and special reference to the Isle of Man Wildlife Act and Biosphere status. So that is the query, Eaghtyrane.

2495 My second query is what wildlife groups are allowed to make comment or allowed third party status with regard to the new legislation.

The President: Does any other Member wish to speak?
Mr Cretney.

2500 **Mr Cretney:** Okay.

My understanding is that certain things are not included in this legislation and that includes enforcement and it includes matters to do with protected buildings. In relation to wildlife groups being allowed to make representation then they are noted down. I do not have a copy of that here. I am not sure if the officer is able to assist further?

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The President: You wish to ask the –? Yes. We need a microphone.
If you could identify your position and your name and then I will pass over to Mr Cretney.

2510 **Mr Balkin:** Thank you, Mr President.
I am Dean Balkin, the senior planning officer for the Cabinet Office.

The President: Thank you.
Mr Cretney.

2515 **Mr Cretney:** Thank you, Mr President.

Just if I could ask Mr Balkin – it is not something that has been raised with me during our consideration to date and so in order to give Legislative Council a factual response could I refer to him to see if there is anything that he can add to what I have already said? I may be incorrect in what I have said already.

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Mr Balkin: Not that I have noticed, no.

If I may, Mr President, Mr Henderson's first point about demolition and what may or may not require planning permission is not affected by this amendment.

2525 Secondly, in terms of what wildlife bodies or associated environmental bodies may be able to be consulted or been involved, that similarly is not changed. The amendment provided simply deals with a mechanism so if they were to be making a comment about an application for planning permission, for instance, that would not be affected before or after what is contained in this amendment.

2530 **The President:** Thank you.
Mrs Lord-Brennan.

Mrs Lord-Brennan: Thank you, Mr President.

2535 I think Mr Henderson is interested to know who can and who cannot put their views forward when it comes to an application coming to Planning Committee. The Planning Committee should have regard to all views, rather than having a preference for one organisation over another. So I hope that answers the question.

2540 **The President:** Thank you.

Mr Henderson: I have got a further question, Eaghtyrane.

The President: Mr Henderson.

2545 **Mr Henderson:** Could I ask the officer?

The President: Yes, please address directly.

2550 **Mr Henderson:** What my question ... it was kind of a part two with regard to demolition of buildings, it was not that they were protected, it was the fact that there could be animals using them as a habitat that are protected and usually ... or Planning requires that there is an environmental assessment to be undertaken before demolition. Is it still covered within this legislation and the one it is adjoining to so as where such buildings are going to be pulled down really they should be subject to planning permission and if it is found out that something has been dropped without permission a prosecution can go ahead, if that is my understanding?

Mr Balkin: I have nothing to contradict your understanding there. This amendment would not affect those existing provisions.

2560 **Mr Henderson:** Thank you.

The President: Just for my own clarity, is or is not demolition a matter for planning control?

2565 **Mr Balkin:** It is.

The President: In all circumstances of demolishing? I thought only demolishing, if it was intended to carry out development on this site demolition on its own did not require planning control.

2570 **Mr Balkin:** Indeed. We have a lot of situations where demolition is the beginning of an action. So it will have a consequence of development so that there is a reason for the demolition hence going into planning control. Every single time we have any query about demolition we will refer it to our colleagues in the Department of Environment for clarification as to exactly what they may or may not run into any triggers for.

2575 **The President:** Thank you.
Mrs Poole-Wilson.

2580 **Mrs Poole-Wilson:** Yes, Mr President, I happen to have the underlying Act – the Town and Country Planning Act 1999 – which does include in it when demolition is deemed to be development for the purposes of seeking planning approval and it does appear that not every example of demolition requires planning approval. It is quite specific. But my understanding is that the amendment Bill does not affect the existing Act as far as that is concerned.

2585 **The President:** Thank you very much.
Any other Member wish to speak?
Thank you very much, sir. Mr Cretney.

Mr Cretney: Yes, thank you, Mr President, and I thank Mr Henderson for his questions and Mr Balkin for his response.

2590 If I could move clauses 1 and 2? Or am I too soon?

Mrs Maska: We are still on the Second Reading.

The President: The Second Reading vote, yes, we have not taken that yet.
2595 The motion is that the Town and Country Planning Bill be read for the second time. Those in favour, say aye; against, no. The ayes have it. The ayes have it.
Clause 1 –

Mrs Lord-Brennan: Mr President, I do not think I was quick enough to second it before it went to the vote, so just for the record –
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The President: I thought you did.

Mrs Lord-Brennan: Just then? No, I did not.
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Mrs Sharpe: No, she did not.

The Deputy Clerk: That was supposed to –

Mr Cretney: I did it previously.
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Mrs Lord-Brennan: Sorry, I am confusing myself now. It has felt like a long day. I do apologise. I am so sorry. *(Laughter)*

The President: You did second – (**Mrs Lord-Brennan:** I did originally.) the Second Reading motion. You did indeed.
2615 Mr Cretney.

Mr Cretney: I am sorry if I have, by trying to get on with the clauses, destructed proceedings at all. Thank you, Hon. Members, for supporting the Second Reading.
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Town and Country Planning (Amendment) Bill 2019 – Clauses considered

Mr Cretney to move.

Mr Cretney: Clauses 1 and 2. Mr President, with your permission and that of Council, I intend to move clauses 1 and 2 together.

The President: Agreed?
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Members: Agreed.

Mr Cretney: Thank you.
2630 Clauses 1 and 2 are, together, the short title, the commencement provisions and also proper allowance for any necessary transition measures, in addition to those already explicitly provided for in the text of the Bill.
Clause 1 gives the Bill its short title.

2635 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.

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

2640 **The President:** Mrs Lord-Brennan.

Mrs Lord-Brennan: Thank you. I beg to second and reserve my remarks.

The President: The motion is that clauses 1 and 2 do stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

2645 Clause 3.

Mr Cretney: Thank you, Mr President.

2650 Clause 3 gives the scope of the Bill, namely to amend the Town and Country Planning Act 1999 only. No other statute is amended by the Bill as it stands.

I beg to move that clause 3 stands as part of the Bill.

The President: Mrs Lord-Brennan.

2655 **Mrs Lord-Brennan:** I beg to second.

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

Mr Cretney.

2660 **Mr Cretney:** Thank you, Mr President.

Clauses 4, 6, 7 and 8 are dependent on the success of clause 5 and so, with the permission of Legislative Council, I would like to ask if I can move clause 5 first.

2665 **The President:** Is that agreed?

Members: Agreed.

Mr Cretney: Thank you.

2670 Mr President, clause 5 of the Bill establishes power for the Council of Ministers, to make a national policy directive, by means of an order.

2675 In so doing, this clause also sets out: a requirement for consultation, and a validity period, or sunset clause, as it is often called, 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 be for a stated reason or reasons; and a duty for the Council of Ministers to have national policy directives published in an appropriate manner, ensuring that any who might be affected are informed; and provides that, in the event of any inconsistency between a national policy directive and the matters already contained in section 10(4) of the Town and Country Planning Act 1999, which section lays out the matters which must be considered when determining applications for planning permission, that in such instance, the national policy directive shall be given the greater weight.

2680 Reporting obligations for the Cabinet Office are established, ensuring that Tynwald is properly informed, and through Tynwald, the public are informed.

Mr President, I beg to move that clause 5 stands part of the Bill.

2685 **The President:** Mrs Lord-Brennan.

Mrs Lord-Brennan: I beg to second and reserve my remarks.

Mrs Poole-Wilson: Mr President.

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The President: Mrs Poole-Wilson.

Mrs Poole-Wilson: Yes, thank you, Mr President.

2695 Just a question as to what it is envisaged the regulations will cover. There is obviously now quite a lot of detail in this clause following amendment in another place, so I just wondered whether the mover can give any further information about what the regulations might cover on this issue?

The President: Mr Cretney to reply.

2700 **Mr Cretney:** I think I am not sure that I can give a great deal more information. It is a general power to make regulations and it is something which will be considered by Tynwald.

The President: In that case, I put clause 5. Those in favour say aye; against, no. The ayes have it. The ayes have it.

2705 Mr Cretney.

Mr Cretney: Thank you. Clauses 4, 6, 7 and 8.

Mr President, with your permission I intend to move clauses 4, 6, 7 and 8 together so that they may be considered in a relevant and logical way.

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The President: Is that agreed?

Members: Agreed.

2715 **Mr Cretney:** Clause 4 inserts reference to a national policy directive into section 2(2A) of the Town and Country Planning Act 1999, so that national policy directives, should any exist at the relevant time, be given regard to at the time a development plan is prepared or revised. Additionally, to also at that time recommend to the Council of Ministers whether the national policy directive should remain or be revoked in that same context. For example, Mr President, a matter dealt with by a national policy directive may become better managed in the development plan as time passes, and so it is sensible to provide an ability to do so.

2720 Clause 6 has several components to it. I shall list these in the order in which they appear in the Bill. It 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 substitutes and updates the existing subsection (2) with new subsections (2) to (4); and in so doing in this way the Bill extends the same protection given to the public in relation to the 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 made.

2725 Clause 7 inserts a reference to national policy directives into section 10(4) of the Act. This section sets out 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.

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

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The President: Mrs Lord-Brennan.

Mrs Lord-Brennan: I beg to second.

2740 **The President:** I put the motion that clauses 4, 6, 7 and 8 stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.
Clause 9.

Mr Cretney: Thank you, Mr President.

2745 Clause 9 deals with making minor amendments to existing and valid planning approvals. The clause would create the power for a development procedure order to be made: such an order would provide the ability to apply to amend a valid planning approval. This is to be a minor amendment to what has been approved, not something which transforms the nature or form of what has been approved.

2750 Also, as with applications for planning approval today, it is necessary that a development procedure order for minor amendments also makes provision for the procedures for applying for and determining an application for a minor amendment, and related matters such as applicable fees.

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

2755 Mr President, I beg to move that clause 9 stands part of the Bill.

The President: Mrs Lord-Brennan.

Mrs Lord-Brennan: Thank you. I beg to second and reserve my remarks.

2760 **The President:** Mrs Poole-Wilson.

Mrs Poole-Wilson: Thank you, Mr President.

2765 Just picking up on that last point, the mover has said that the clause does not preclude definitions being included in any development procedure order. Would that therefore include the ability to define whether something is a minor change or not?

The President: Mr Cretney.

Mr Cretney: Yes, that is the case.

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The President: I put clause 9. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 10.

2775 **Mr Cretney:** Thank you, Mr President.

Clause 10 deals with referrals of applications for planning approval to the Council of Ministers for determination. This clause also makes reference to the term 'general importance to the Island', which is further dealt with in clause 17 to follow.

2780 Clause 10 amends section 11 of the Town and Country Planning Act 1999 and substitutes existing section 11(1) to clarify that the Council of Ministers may direct that certain applications are referred to it but now also requires that the Department must refer certain applications to the Council, and then the Council may direct that it will determine such an application. It is important to recall that this is about referral of an application to the Council of Ministers, not handing over determination. A referral may still be sent back to the Department where that is the more efficient approach.

2785 Mr President, I beg to move that clause 10 stands part of the Bill.

The President: Mrs Lord-Brennan.

2790 **Mrs Lord-Brennan:** I beg to second and reserve my remarks.

The President: I put clause 10 to stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.
Clause 11.

2795 **Mr Cretney:** Mr President, with the permission of Legislative Council again, I intend to move clauses 11 and 12 together.

The President: Is that agreed?

2800 **Members:** Agreed.

Mr Cretney: Thank you.

Clause 11 inserts a new section 13A into the Town and Country Planning Act 1999.

2805 The new section 13A establishes power for the Council of Ministers, by regulations, to raise a levy, subject to the concurrence of the Treasury. This is called the Community Infrastructure Levy.

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

2810 Regulations would be required to be made, and the new section 13A specifies a minimum list of matters for which those regulations may provide; this is not an exhaustive list, and may be added to. It is a minimum. Under section 44 of the Town and Country Planning Act any such regulations require approval from Tynwald.

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, i.e. community infrastructure levy, and use an abbreviation in its stead.

2815 Mr President, I beg to move that clauses 11 and 12 stand part of the Bill.

The President: Mrs Lord-Brennan.

2820 **Mrs Lord-Brennan:** Thank you, Mr President. I beg to second.

The President: I put clauses 11 and 12. Those in favour, say aye; against, no. The ayes have it. The ayes have it.
Clause 13.

2825 **Mr Cretney:** Again, if I could seek permission to move clauses 13 and 14 together.

The President: Is that agreed?

2830 **Members:** Agreed.

Mr Cretney: That is because both clauses relate to the Planning Committee.

Clause 13 inserts a new Part 4A into the Town and Country Planning Act 1999. This new Part brings the constitution of the Planning Committee into the Act.

2835 There are necessary definitions that are created for the Planning Committee, and also for the old planning committee, and in so doing the cause of avoiding any doubt as to the meanings of what is being stated is served.

Clause 13 creates power for the Council of Ministers to make a constitution order for the Planning Committee, and states what such order may provide for. This is to include procedure, membership and the like.

2840 Further in the cause of avoiding any possible doubt, this clause 13 also makes provision that existing powers to delegate under the Interpretation Act 2015 and the Government Departments Act 1987 are not affected – section 39D – and also that the old planning committee is taken to be the new one. This is to ensure good administrative function. Also for good administration, transitional arrangements are provided for in this clause.

2845 Clause 14 amends section 45 of the Town and Country Planning Act 1999 by inserting a definition of planning authority and planning committee.

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

The President: Mrs Lord-Brennan.

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Mrs Lord-Brennan: Thank you, Mr President. I beg to second and reserve my remarks.

The President: Miss August-Hanson.

2855 **Miss August-Hanson:** Thank you, Mr President.

I would just like to ask the mover if he would mind taking some advice from the Minister for Policy and Reform in the audience, if it is okay with Mr President, just in relation to section 40 as amended, regarding the involvement of outside organisations in planning?

2860 **The President:** No.

Miss August-Hanson: That is not possible, is it not?

The President: The Member is of the other Branch. You are not entitled to –

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Miss August-Hanson: They are not entitled to speak presently, okay. Then just from those that are –

The President: You have the guest through Mr Cretney.

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Miss August-Hanson: – available to us then, in that case.

The President: Anyone else wish to speak?

Mr Cretney.

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Mr Cretney: I can ask Mr Balkin again if you are able to respond to the point that has been mentioned?

The President: Mr Balkin, would you like to come forward again?

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Miss August-Hanson: Thank you.

The President: Yes, Mr Cretney.

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Mr Cretney: Would you like to repeat –?

Miss August-Hanson: Is that okay with yourself, Mr President?

The President: Okay, you may address the witness directly.

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Miss August-Hanson: Thank you very much.

Thank you – and for your help previously as well, I appreciate that.

2895 I wondered what the forward planning is for this, because obviously with us having the proposal in front of us to change from ‘Council of Ministers shall’ to ‘Council of Ministers may’ ‘the Cabinet Office must’ to ‘the Cabinet Office may’ – (*Interjections*) The amendment –
I thought we were further down. Are we not on 15?

The President: We are on clauses 13 and 14.

2900 **Miss August-Hanson:** Perhaps later on! I will defer that then until we are on 15. I apologise.

The President: Right. Mr Cretney, do you wish to make any closing remarks?

2905 **Mr Cretney:** No, I just moved. Clause 15 will address the comments that the Hon. Member has and I am sure Mr Balkin will be content to sit in the seat until then.

The President: As we are still on clauses 13 and 14 I will put those to the vote. Those in favour, say aye; against, no. The ayes have it. The ayes have it.
2910 Clause 15, Mr Cretney.

Mr Cretney: Thank you.

Mr President, clause 15 amends section 40 of the Town and Country Planning Act 1999. The amendment here replaces the existing duty to form an advisory body, replacing it with an ability to do so.

2915 It is important to point out that the scope of such an advisory body is not amended at all by this clause. An advisory body established under section 40 of the Town and Country Planning Act 1999, assuming this amendment before us today were to come into effect, would remain one of a strategic scope. It would not be, and cannot be at present, for the involvement in day-to-day aspects of individual applications for planning approval. Strategic and whole-Island matters would be the remit, as is provided for in section 40 as it stands at present.

2920 I would simply repeat what I said at an earlier stage in proceedings: I do hope the Council of Ministers take the opportunity to establish such a Committee.

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

2925 **The President:** Mrs Lord-Brennan.

Mrs Lord-Brennan: Thank you, Mr President. I beg to second.

2930 I think that there has been quite a lot of discussion on this already and it seems to me based on the potted history that we have had, that however it was intended to work before, the fact that it did or did not come about is something unfortunate but it is in the past; and I think it may be answered that if there was to be such a committee it might operate in a bit of a different way rather than being involved in the operational side of things and perhaps we might get a fuller answer on the intention of it.

2935 **The President:** Mrs Maska.

Mrs Maska: Thank you, Mr President.

2940 I would echo the words of the hon. mover and urge the Council of Ministers to have in mind the existing European Convention that the Isle of Man has signed up to, the Biosphere pledge that the Isle of Man has also become signatory to in that in those documents, in those pieces of external legislation and orders that we have already signed up to protect our environment, both in the natural environment and the built environment – it is unique natural landscape and it is built landscape heritage.

2945 I would hope that going forward this is taken in a positive way and as has been said, section 40 refers to strategic matters and matters of policy, and given that the public now have a much higher recognition of what is important in terms of environmental issues that the Council of Ministers do bear that in mind as we go forward and take the opportunity to obtain guidance from those in the public domain who have special interest and special knowledge of all such matters.

That is all I wish to say. Thank you, Mr President.

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The President: Miss August-Hanson.

Miss August-Hanson: Thank you, Mr President.

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I would like to agree that it is in the past. However, I think that there is a lesson to be learned from something being put into statute and it having taken such a long time for anything to come about and what has come about essentially is us changing that Council of Ministers 'shall' to Council of Ministers 'may' and Cabinet Office 'must' to Cabinet Office 'may'. I think that there is a lesson to be learned here, that perhaps others may look to down the line.

My question, if I may, from the mover and from you, Mr President –

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The President: Through the mover, yes.

Miss August-Hanson: I would like to ask what the future will look like in relation to the involvement of outside organisations in planning.

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Mr Balkin: Thank you.

That may require more speculation than I can answer, other than to assure you that where an instruction were to be issued the Cabinet Office is always ready to set things out in any appropriate manner. If any of the existing regulations needed modification we would come back with something appropriate to ensure that it could work. There may be some need for some consultation perhaps, particularly as some of the stakeholder groups envisioned when this section was originally put into the statute as it stands may have changed, and we would stand ready to deal with that in the appropriate way to ensure that organisations are identified.

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Miss August-Hanson: Excellent. Thank you very much and thank you, Mr Cretney.

The President: Anyone else wish to speak?

Mrs Poole-Wilson.

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Mrs Poole-Wilson: Thank you, Mr President.

I just wanted to say that it was very helpful to have circulated details, the history of the background to section 40 and making the distinction between input to strategic planning and policy as opposed to each individual planning application. So that was a very helpful clarification.

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I think the other thing that enables me to feel more comfortable about this change to section 40 is that now the detail that sits around the process for national policy directives, including the requirement to have public consultation, opens another mechanism to make sure that bodies that have something worthwhile that ought to be considered in formulating such directives will clearly have an opportunity. So that gives me some comfort that there are mechanisms in place still to enable strategic input from national policy directives.

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Thank you.

The President: Mr Cretney to reply.

Mr Cretney: Yes, thank you, Mr President.

2995 I would like to thank everybody for their contribution. I share the passion of Mrs Maska in relation to involving outside bodies in the work to help us protect and make sure this Island remains important in terms of its UNESCO Biosphere status and the input of external bodies at an early stage I think could contribute substantially towards that.

3000 At lunchtime today, Mr President, we had a meeting about legislation and legislation for legislators. I have to admit that prior to being asked to take this legislation I had misunderstood; I had thought that the outside bodies were going to be more involved in the day to day. It is only as we have had the various meetings to discuss this as things have progressed that I have understood properly that it is at an early stage and that was what the law was intended and it was on strategic rather than individual items. I can understand now the logic about that and I just repeat I do hope
3005 that the Council of Ministers will take the opportunity for this to be something which happens, because I am sure that they share our love of the importance of the Island and the impact that external bodies can have in taking that forward.

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

3010 **The President:** I put the motion that clause 15 do stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.
Clause 16.

3015 **Mr Cretney:** Thank you.
Again with –

The President: With 17 together?

3020 **Mr Cretney:** Please.

The President: Agreed?

Members: Agreed.

3025 **Mr Cretney:** Clause 16 amends section 45 of the Town and Country Planning Act 1999 by inserting a definition of the term ‘general importance’.

3030 Clause 17 amends the Town and Country Planning Act 1999 by inserting a new section 45A: General importance. This new section 45A creates a test to determine if a matter in an application for planning approval is of general importance: this is a cumulative test, and a methodical one.

This clause also gives the power to the Council of Ministers to issue guidance about the meanings of terms pertinent to the new section 45A(1). Such guidance may be revised, and is required to be published in an appropriate and available manner.

3035 Additionally, clause 17 also allows for the Council of Ministers to make an order which amends section 45A(1) and also to make further provision, or amend or repeal existing, about considerations within that subsection (1).

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

3040 **The President:** Mrs Lord-Brennan.

Mrs Lord-Brennan: Thank you, Mr President. I beg to second and reserve my remarks.

The President: Mrs Poole-Wilson.

3045 **Mrs Poole-Wilson:** Thank you, Mr President.

3050 Yes, just a question on the application of the general importance test in practice. I understand it is an accumulative test but I wanted to suggest an example where an application for planning ticked the box of paragraphs 1(a) and 1(c) but perhaps did not tick the box of paragraph 1(b). So if we took the example of a residential development where a developer put forward an application to make a development of 25 houses which would fall beneath the threshold of 30 in the legislation, so it would not trigger the general importance procedure, but subsequently the developer came back and altered its application and requested 32 houses, so at that point it would hit the relevant threshold in paragraph (b).

3055 I just wanted to ask the question: once the planning application is in the system and it is subject to revisions such as the example I have given, does the revision then trigger the general importance test in practice? I understand it might not be something that the mover ... the mover might want to consult with the officers.

3060 **Mr Cretney:** Yes, again with your permission, Mr President, this is a technical matter and I would appreciate it if Mr Balkin could assist.

The President: Mr Balkin, please. Thank you.

3065 **Mr Balkin:** With the assistance of the Attorney General's staff who is passing me a note –

Mr Cretney: Good team effort.

Mr Balkin: Team efforts are very important.

3070 If I may, addressing your question directly, there are provisions for guidance to be issued by the Council of Ministers. This is a circumstance which would be a very valid one to include in that guidance. Guidance provisions would provide in a commentary way where an application can be dealing with these types of circumstances, perhaps likely outcomes and in terms of number thresholds, how they would operate.

3075 If there would be a need then an order could be made. There is provision in the amendment for the Council of Ministers to act and make an alteration should such an instance become necessary. The one very important thing with this is clear communication between the Departments and responsible officers being aware of their duties and the effect of changes as they go through.

3080 **Mrs Poole-Wilson:** Thank you.

The President: Mrs Maska.

3085 **Mrs Maska:** Just a question. In terms of general importance, this is a new concept and I would just seek assurance that the introduction of such a concept is not going to actually weight applications in favour of high powered and larger developers against the individual applicant.

I would hate to think that this was skewing things and imbalancing what is perceived to be a very fair system.

3090 **Mr Cretney:** It all depends whose perception we are talking about. At the moment from time to time you hear that Planning is balanced in favour of developers. I think that there needs to be and there will be equal weight given to all the various interests whether they be natural or other various interests.

3095 I do not believe that this will lead to it being a reality that developers would have the key hand in things. I believe that, as the officer has already indicated, there is some flexibility in the proposed amendment if people were trying to – if I can put it no better – manipulate situations. So I think that this will not lead to any worse perception and hopefully will lead to a better perception than exists currently.

3100 **Mrs Maska:** Thank you. Thank you, Mr President.

The President: Mrs Lord-Brennan.

Mrs Lord-Brennan: Thank you, Mr President.

3105 When I was talking to one of the officers about this I actually found it quite interesting because it seems to me that this is addressing something that is really not that helpful at the moment in terms of process, and it was explained to me that sometimes there is the question that gets asked, 'Will this application get called in?' when actually what is needed for the officers is to have a bit more of a black and white idea as to how the application is ... just to see whether it would go to the Council of Ministers, whether it uses a black – sorry, I am reading from my notes here ... a black and white evaluation makes the process more administrative rather than subjective.

3110 The point was made to me that whether you think that an application is a good idea is not a reason to handle it differently. So I think that the aspects that will be put around this would be to bolster the process and give it more credibility so that it would not be something that could be opened so much to lobbying.

3115 So I think it is with that sort of thing in mind to make it better to have a clearer understanding of what should or should not be referred on, and because there is obviously a case where sometimes the public will be sceptical so it is to try and put some process around that with some criteria.

The President: Mrs Poole-Wilson.

3120 **Mrs Poole-Wilson:** Thank you, Mr President.

3125 I think that is a very helpful point made by Mrs Lord-Brennan, but I think it is interesting that when you do try and put clarity you also allow people then to move aside from the clarity in order to not trigger a process. So I think I would like to thank Mr Balkin for the explanation about how the guidance would interface with the wording of the legislation to allow for published flexibility where need be if there is any concern that somebody would act in a way to avoid a process that is specified in legislation.

The President: Thank you.

3130 Mr Cretney.

3135 **Mr Cretney:** Just to thank Mrs Lord-Brennan for the further clarification and just to make a point, if I can, in relation to lobbying. If anybody, any political person, is involved – and I am sure this applies to officers as well – if they are lobbied then the Seven Principles of Public Life come in and you then have to make sure you extricate yourself from the process. You cannot be involved and it may make people unhappy when you say that but it is something you have to say. Once you speak to somebody about a planning application that is you out of it, type of thing.

So with that, can I beg to move that clauses 16 and 17 stand part of the Bill.

3140 **The President:** I put clauses 16 and 17. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Finally, clause 18, Mr Cretney.

3145 **Mr Cretney:** Thank you, Mr President.

We now come to the matter of consequential amendments ensuring clarity.

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

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The President: Mrs Lord-Brennan.

Mrs Lord-Brennan: I beg to second. Thank you.

3155

The President: I put clause 18. Those in favour, say aye; against, no. The ayes have it. The ayes have it. That completes the clauses stage of the Town and Country Planning (Amendment) Bill and completes all the Items in the Order Paper.

So with that, Hon. Members, the Council will now stand adjourned to the next session to take place on Tuesday, 14th May at 10.30 a.m. in this Chamber.

3160

Thank you, Hon. Members.

The Council adjourned at 3.40 p.m.