

## **Flood Risk Management Bill 2013**

### **Clauses considered**

3.1. Mr Houghton to move.

**The Speaker:** We turn now to Item 3 on our Order Paper, Bill for consideration of clauses, Flood Risk Management Bill, and I call on the mover, Mr Houghton.

**Mr Houghton:** I thank you, Mr Speaker.

As outlined in the Second Reading, the Bill replaces the existing land drainage legislation on the Island. The Bill has 96 clauses and 11 parts, as well as a schedule.

It would be helpful, Mr Speaker, if I sought leave of your good self to consider the clauses in 50 groups.

**The Speaker:** Yes, that is in order.

**Mr Houghton:** For which I am most grateful, sir.

Mr Speaker, clause 1 gives the Act its short title.

Clause 2 provides for the Act to be brought into force by Appointed Day Orders.

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

**The Speaker:** Mr Henderson.

**Mr Henderson:** Gura mie eu, Vainstyr Loayreyder.

I beg to second, sir, 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.

**Mr Houghton:** Mr Speaker, clauses 3 to 8 contain definitions of the various terms that are used in the Bill. I will draw the attention of Hon. Members to the definitions of, firstly, 'flood', which is intended to cover all forms of flooding, irrespective of its cause or source.

Secondly, 'flood risk management', abbreviated in the Bill as 'FRM' describes a range of measures that can be taken to reduce the likelihood and impact of flooding. These include, very importantly, land drainage as well as the provisions of flood defences and flood warning systems.

Finally, 'FRM works': this is a wide term and encompasses, for example, the provision of new and improved flood protection works, such as sea walls and flood storage areas.

Mr Speaker, I therefore beg to move that clauses 3, 4, 5, 6, 7 and 8 stand part of the Bill, sir.

**The Speaker:** Mr Henderson.

**Mr Henderson:** Gura mie eu, Vainstyr Loayreyder.

I beg to second, sir, and reserve my remarks.

**The Speaker:** I put the question that clauses 3 to 8 inclusive stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Mr Houghton.

**Mr Houghton:** Mr Speaker, clauses 9 and 10 include the schedule to the Bill. They contain various general definitions of the terms used in the Bill, together with a provision dealing with interpretation matters.

Therefore, Mr Speaker, I beg to move that clauses 9, 10 and the schedule stand part of this Bill, sir.

**The Speaker:** Mr Henderson.

**Mr Henderson:** Gura mie eu, Vainstyr Loayreyder.

I beg to second, sir, and reserve my remarks.

**The Speaker:** I put the question that clauses 9 and 10 and the schedule stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Mr Houghton.

**Mr Houghton:** Mr Speaker, clause 11 imposes a duty on the Authority to exercise a general supervision of all aspects of flood risk management on the Island. Basically, the Authority will exercise that function via a combination of measures, including surveys to identify those areas that are of a potential or particular risk of flooding; strategies for carrying out of appropriate flood protection works; and the provision of flood warning and monitoring arrangements.

Clause 12, Mr Speaker, imposes on the Authority an obligation to take into account the likely costs and benefits involved in carrying out any major flood protection works.

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

**The Speaker:** Mr Henderson.

**Mr Henderson:** Gura mie eu, Vainstyr Loayreyder.

I beg to second, sir, and reserve my remarks.

**The Speaker:** I put the question that clauses 11 and 12 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 13.

**Mr Houghton:** Mr Speaker, under clause 13, the Authority will importantly be under an obligation to consider conservation implications when exercising its functions under the Bill. This will extend to, for example, important archaeological sites and wildlife, flora and fauna.

Mr Speaker, I beg to move that clause 13 stand part of this Bill, sir.

**The Speaker:** Mr Henderson.

**Mr Henderson:** Gura mie eu, Vainstyr Loayreyder.

I beg to second, sir, and reserve my remarks.

**The Speaker:** Mr Karran.

**Mr Karran:** Vainstyr Loayreyder, my amendment is a simple one. The amendment, Hon. Members, is simply to add the addition to the clause to serve the reinforcement of the decision by the House to uphold the compliance at all times of the Island's Development Plan. I think it is very important that we actually make sure that we do not have a woolly, confused position and whilst this Bill has come back and has had some substantial changes from the original Bill, where the Hon. Member for East Douglas, Mr Robertshaw led the charge in the previous House, the situation is that I do feel that it is important that we need to make sure that the Island's development plan has to be at the forefront of any consideration as far as this legislation is concerned.

Also, Vainstyr Loayreyder, what I am concerned about is the fact that we need to make sure that we have no woolly decisions, when it comes to planning. Most criticisms we have of the previous administration and ourselves is the fact that planning seems to be vague and made up as it goes along. That was the whole idea of getting a strategic plan.

I beg to move:

*Amendment to clause 13*

*Page 16 after line 13 insert –*

*'(4) In performing its general duty the Authority must do everything in its power to comply with the Island Development Plan for the time being adopted by the Department of Infrastructure and approved by Tynwald under section 2(5) of the Town and Country Planning Act 1999.'*

**The Speaker:** Mrs Beecroft.

**Mrs Beecroft:** I beg to second the amendment, Mr Speaker.

**The Speaker:** I call on the mover, Mr Houghton to reply.

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

Mr Speaker in relation to the Hon. Member's amendment, the intent is to ensure that the Authority takes

into consideration the Island Development Plan. It is adequately covered in clause 68. This amendment duplicates provisions within existing legislation and is unnecessary.

I would therefore ask Hon. Members not to support this amendment.

I beg to move.

**The Speaker:** Hon. Members, in relation to clause 13, I put the amendment first. Those in favour of the amendment in the name of Mr Karran, please say aye; against, no. The ayes have it.

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

**FOR**

Mr Karran  
Mrs Beecroft

**AGAINST**

Mr Quirk  
Mr Hall  
Mr Crookall  
Mr Anderson  
Mr Singer  
Mr Quayle  
Mr Cannan  
Mr Cregeen  
Mr Houghton  
Mr Henderson  
Mrs Cannell  
Mr Robertshaw  
Mr Corkish  
Mr Cretney  
Mr Watterson  
Mr Skelly  
Mr Gawne  
The Speaker

**The Speaker:** Two votes for, 18 against. The amendment therefore fails to carry.

I put clause 13: those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Mr Houghton.

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

Under clause 14, the Authority will be able by order to designate those flood risk management works or watercourses that it considers to be of major importance in the context of flood risk management. These will, of course, be comprised of the larger watercourses and seawalls that will provide protection against inundation by the sea.

However, before making such an order, which will in any event be subject to the annulment by Tynwald in the appropriate cases, the Authority will be required to consult with those affected, including relevant landowners.

At this juncture, I will explain that designated works or watercourses will be the sole responsibility of the Authority for flood risk management purposes. Normally, the land will remain in the ownership of the landowners concerned who will continue to be able to use it in the usual way, for example, for the grazing of animals. However, certain restrictions will apply following designation, and I will allude to these to the House shortly, Mr Speaker.

Therefore, Mr Speaker, I beg to move that clause 14 stand part of the Bill, sir.

**The Speaker:** Mr Henderson.

**Mr Henderson:** Gura mie eu, Vainstyr Loayreyder.

I beg to second, sir, and reserve my remarks.

**The Speaker:** Hon. Member, Mrs Cannell.

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

I wonder if the hon. mover could explain to us... I fully support the clause and fully support the Authority being given the power to bring forward a designation and for them to have a designation order. I think it is essential in areas that are prone to significant flood risk.

But can he advise the House, if they consult and they are going to move for a designation order, and everything is prepared and nobody objects, however, it is discovered that there is an outstanding planning consent for a development on the site, who has the greatest authority then? Is it the Authority or will it be the live planning consent?

**The Speaker:** Mr Karran.

**Mr Karran:** Vainstyr Loayreyder, we asked for assurances over this. The situation is that as far as we are aware, supporting this piece of legislation, is the fact that the planning consent has the priority as far as development is concerned.

One of the things that we have been concerned about with this piece of legislation is whilst this piece of legislation has had significant changes from what was originally proposed, when we were just about to give all sorts of powers to my former Water Authority, the situation is that we are assured by the legal draftsman, and some of us have been there, that they will not be able to supersede over planning law, as far as flooding is concerned. The situation is that flooding should be part of the planning procedures, so that if they do not get their act together that will be the case.

One of the concerns that we have been very concerned about for the last 30 years of being involved in the political structure as far as the Isle of Man is concerned, one was it is not what you know, it is who you know; and the other thing was about the ways and means act, which basically meant that people in authority could make it up as they go along. One of the things that we got assurances – and I hope the Hon. Member will make sure that that is the case – is the fact that they cannot blight land, unless they have got... as far as if the planning is sorted out.

Hopefully, that should be the answer to the Hon. Member. It is a very valid point, and it is very good that the Hon. Member has raised the issue in here, that we must not allow other ways of blighting land outside the planning process. The whole idea of the Strategic Plan is to get planning on a more professional basis, which will mean that the Water and Sewerage Authority, with its responsibilities for flooding, will have to take its responsibility seriously, as far as this issue concerned.

Many will remember – mostly from outside this House – we had the major flood at Sulby, where we had the situation where the local authority was ignored, and the situation that under the old 1934 Act that most of this takes over from, there was nobody really that bothered as far as it was a rivers and bridges department of the Highway Board, it means that what will happen in the future, hopefully, is that they will not be able to. They will need to go through the planning process like any other authority, in order to make that this does not happen, and they have got to be proactive.

**The Speaker:** Mr Houghton to reply.

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

I thank the Hon. Member for Onchan with his supportive explanations to assist the Hon. Member for East Douglas with her query.

In relation to the Hon. Member's query, where she makes a point that if a designation order is put in place with no objections, of course, before such an order is put in place, therefore there would be the investigations, of course, and research that would be taken into account with what was actually in place before the designation order was put into place.

So all I can say is that whole matter would obviously have to be taken into account with planning applications or planning approvals that were in force – of course, bearing in mind, Mr Speaker, a planning approval would be in force for only a four-year period before it would have to be reapplied for, if works have not begun.

I beg to move.

**The Speaker:** I put the question that clause 14 do stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 15.

**Mr Houghton:** Mr Speaker, under clause 15, the authority will be obliged to keep proper records of all designated flood risk management works or watercourses which will be open for inspection by the public free of charge.

At this point, I will deal with a query that was raised on this clause some time ago, when it formed part of the 2011 Bill, with my officials, by the Hon. Member for Rushen, Mr Watterson, who had questioned whether the mapping arrangements might be better incorporated into, say, area planning plans. I would explain that the requirement to keep maps and records and have them registered with the Land Registry is specifically intended to ensure that prospective purchasers of land are made fully aware of any designated works.

Finally, whilst on this clause I would like to record the Authority's appreciation of the amendment that was tabled by the Hon. Member for Onchan at that time, which added the requirement for maps or records to

be available for inspection at the central Tynwald reference library. I can confirm that this requirement has now been incorporated into this clause, Mr Speaker.

Therefore, I beg to move that clause 15 stand part of the Bill, sir.

**The Speaker:** Mr Henderson.

**Mr Henderson:** Gura mie eu, Vainstyr Loayreyder.

I beg to second, sir, and reserve my remarks.

**The Speaker:** Mrs Cannell.

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

Can I ask the hon. mover of this particular clause whether or not the Authority has now a designation record that is in fact up to date, and whether or not they are still in the process of inspecting and considering further designations where flood risk has proven, at least over the last decade, to have been a problem and has reached areas perhaps that were outside what would be considered in the past a flood risk area; whether or not the maps complete, the records are complete, or whether or not they are still looking and searching for such a designation?

**The Speaker:** Mover to reply.

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

Very happy to confirm that such records are in place but obviously, in the case of where a planning application would be set for an area that perhaps had not been surveyed, then that survey work would be undertaken, sir.

I beg to move.

**The Speaker:** 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.

**Mr Houghton:** Mr Speaker, as Members will recall, following designation under clause 14, the Authority will take over responsibility of the works or watercourses involved for flood risk management purposes. This arrangement is comparable with the main river designation under the current land drainage legislation. In contrast, the responsibility for the more minor non-designated works or watercourses will remain with the landowners concerned; but the Authority will be empowered to intervene in cases where a serious flood risk arises.

Mr Speaker, I beg to move that clause 16 stand part of the Bill, sir.

**The Speaker:** Mr Henderson.

**Mr Henderson:** Gura mie eu, Vainstyr Loayreyder.

I beg to second, sir, and reserve my remarks.

**The Speaker:** Mr Karran.

**Mr Karran:** Vainstyr Loayreyder, I would just like to ask the Caairliagh about the issue about the Lhen Trench, the issue of these designated areas that need to... and the powers of watercourses. I take it that what we have had as far as Lhen Trench would stay in place as far as the flooding. That was a *major* innovation, back at the start of the last century, which was taken over by the Highway Board, and I take it that these are the sorts of areas that you will still be designating as far as for maintenance and improvement are concerned.

**The Speaker:** Mr Houghton.

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

Very happy to confirm that position, Mr Speaker. In fact, there could do with being some more trenches like that up in the north of the Island, which are being investigated, as I understand, sir.

I beg to move.

**The Speaker:** I put the question that clause 16 do stand part of the Bill. Those in favour, say aye; against,

no. The ayes have it. The ayes have it.  
Clause 17.

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

Clause 17 makes it a criminal offence to wilfully damage works or watercourses that have previously been designated.

Clauses 18 and 19 impose appropriate restrictions that are primarily aimed at controlling certain activities that may otherwise cause or contribute to an additional risk of flooding. At the outset, I would like to reassure the House that these restrictions are necessary if we are to be in a position to properly manage flood risk in the future wherever that arises, whether that be inland or on the coast.

Having said that, may I please draw the attention of Hon. Members to the important safeguards that are included in the Bill. Firstly, the activities that are controlled under these clauses can of course go ahead with the Authority's consent. Secondly, the Authority's consent will not be required in cases of emergency. Thirdly, there is a right of appeal to the independent tribunal, where the Authority refuses its consent. Fourthly, these restrictions will not apply to works that are required to maintain the condition of watercourses, whether designated or not. This provision was incorporated into this Bill at the specific request of the Manx National Farmers' Union and I am grateful for their input.

Finally, I will deal with a query that was raised with my officials by the Hon. Member for Rushen at the time, Mr Watterson, in relation to the equivalent provisions in that 2011 Bill, namely how the 9.1 metres' distance specified in clause 18 be measured. In reply, I would explain that this distance will be measured horizontally from the edge of the designated works or watercourse involved. Such designated works or watercourses will of course be clearly delineated on the various maps that the Authority will be required to maintain under clause 15 of the Bill.

Mr Speaker, therefore I beg to move that clauses 17, 18 and 19 stand part of the Bill, sir.

**The Speaker:** Mr Henderson.

**Mr Henderson:** Gura mie eu, Vainstyr Loayreyder.  
I beg to second, sir, and reserve my remarks.

**The Speaker:** I put the question that clauses 17, 18 and 19 do stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.  
Clause 20.

**Mr Houghton:** Mr Speaker, firstly, clause 20 deals with applications of the Authority's consent under clauses 18 and 19 which the House has just approved. When granting its consent, the Authority will be able to impose appropriate conditions in respect of which the applicant will have a right of appeal to under an independent tribunal. The Authority will not be permitted to unreasonably withhold its consent.

Secondly, clause 21 makes it a criminal offence to breach the conditions of a works consent that has been granted by the authority the penalties imposed by the Bill in respect of such offences have been limited to the imposition of appropriate fines. Again, this is an alteration to the Bill that has been introduced at the specific request of the Manx National Farmers' Union who have expressed concerns in relation to the 2011 Bill, which had specified imprisonment as a possible option. We have now reviewed and revised the Bill, to provide that fines will be the appropriate sanction, other than in the more serious cases involving, for example, wilfully damaging flood risk management works. I believe that this strikes the right balance in terms of proportionality, and I would like to pay tribute to the National Farmers' Union for their most helpful input into this aspect of the Bill.

Mr Speaker, therefore, I beg to move clauses 20 and 21 stand part of the Bill, sir.

**The Speaker:** Mr Henderson.

**Mr Henderson:** Gura mie eu, Vainstyr Loayreyder.  
I beg to second, sir, and reserve my remarks.

**The Speaker:** Mr Karran.

**Mr Karran:** Vainstyr Loayreyder, could the Caairliagh just explain the definition of 'unreasonable refusal of consent'? What do the Authority or the legal draftspeople understand as being unreasonable, as far as the refusal of consent? I do not think it is in this Bill as much as the previous Bill, but it would be interesting if there was a definition as far as what it classed as unreasonable.

**The Speaker:** Mr Houghton.

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

Mr Speaker, the word 'unreasonable' is exactly the same, it is universal for all Bills and it is quite clear in law as to what is actually meant. In this case, where it states the Authority will not be permitted to unreasonably withhold its consent, therefore, Mr Speaker, only a court or a chairman of a tribunal would be able to define such unreasonableness or otherwise within a point of law, sir.

I beg to move.

**The Speaker:** I put clauses 20 and 21 separately. Clause 20: those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 21: those in favour, please say aye; against, no. The ayes have it. The ayes have it.  
Clause 22.

**Mr Houghton:** Mr Speaker, the House will recall that when considering clauses 18 and 19, I drew attention to the fact that a works consent will not be required from the Authority in cases of emergency. Clause 22 gives legal effect to that position and will equally apply in respect of any breaches of the conditions of such a consent.

Mr Speaker, I beg to move that clause 22 stand part of the Bill, sir.

**The Speaker:** Mr Henderson.

**Mr Henderson:** Gura mie eu, Vainstyr Loayreyder.

I beg to second, sir, and reserve my remarks.

**The Speaker:** I put the question that clause 22 stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 23.

**Mr Houghton:** Mr Speaker, clauses 23 to 25 provide the authority with the legal powers firstly, to carry out appropriate flood protection works. This could be either the construction of new works for the improvement of existing ones. However, this will normally only apply to designated flood risk management works or watercourses. In contrast, the Authority's works powers in relation to non-designated work to watercourses will, as I explained earlier, be limited to circumstances where a serious flood risk arises or in order to mitigate damage caused by flooding; and secondly, if necessary, to deposit any material that it removes when carrying out works on the banks of an adjacent watercourse, which is done at present under the current land drainage legislation.

At this point, I would confirm that if required the Authority will obtain any necessary waste management licence. This would, of course, be in addition to any licence that may be required under the Minerals Act. Naturally, the Authority will be required to pay compensation to the land owners involved in such circumstances.

Mr Speaker, I therefore beg to move that clauses 23, 24 and 25 stand part of the Bill, sir.

**The Speaker:** Mr Henderson.

**Mr Henderson:** Gura mie eu, Vainstyr Loayreyder.

I beg to second, sir, and reserve my remarks.

**The Speaker:** I put the question that clauses 23 to 25 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 26, sir.

**Mr Houghton:** Mr Speaker, clause 26 will empower the Authority to inspect and carry out surveys on land in order to decide, for example, whether or not to construct new flood risk management works on that land. Here again, the Authority will be required to pay compensation to the landowners concerned.

Mr Speaker, I beg to move that clause 26 stand part of the Bill, sir.

**The Speaker:** Mr Henderson.

**Mr Henderson:** Gura mie eu, Vainstyr Loayreyder.  
I beg to second, sir, and reserve my remarks.

**The Speaker:** I put the question that clause 26 do stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.  
Clause 27.

**Mr Houghton:** Mr Speaker, before I introduce clause 27 to the House, I should like to formally record the Authority's thanks to the former Chief Minister, for his invaluable assistance in finalising this particular provision which has been carried forward from the 2011 Bill.

The clause will enable the Authority to deal with any emergency flooding event that may arise from time to time. The Authority will be able to draw on the advice and assistance of other relevant Government agencies, including the emergency services.

I anticipate that the required agreements between the Authority and the other bodies involved will be in place by the time that the Bill is enforced, assuming, of course, that this is enacted.

Finally, I would point out that this is an entirely new provision and will ensure that, in future, our emergency services have the required legal protection when they attend to emergency flooding events.

Mr Speaker, I beg to move that clause 27 stand part of the Bill, sir.

**The Speaker:** Mr Henderson.

**Mr Henderson:** Gura mie eu, Vainstyr Loayreyder.  
I beg to second, sir, and reserve my remarks.

**The Speaker:** I put the question that clause 27 do stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.  
Clause 28.

**Mr Houghton:** Mr Speaker, clause 28 will mean that before the Authority can exercise its various works or entry powers, it will be required to give 21 days' prior notice to its intended entry to the relevant landowners. I would explain that this will not, however, apply where entry is needed in an emergency situation, or in cases of maintenance that does not involve the use of heavy equipment.

Mr Speaker, I beg to move that clause 28 stand part of the Bill, sir.

**The Speaker:** Mr Henderson.

**Mr Henderson:** Gura mie eu, Vainstyr Loayreyder.  
I beg to second, sir, and reserve my remarks.

**The Speaker:** I put the question that clause 28 do stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.  
Clause 29.

**Mr Houghton:** Mr Speaker, as I mentioned earlier, the Authority will be required under clause 29 to pay appropriate compensation to the landowners concerned who suffer damage as a consequence of the exercise of the Authority's various works and entry powers.

As Hon. Members will recognise, clause 29 is a fairly standard provision in legislation of this nature and as such the clause is specifically linked to the Acquisition of Land Act 1984.

Mr Speaker, I beg to move that clause 29 stand part of the Bill, sir.

**The Speaker:** Mr Henderson.

**Mr Henderson:** Gura mie eu, Vainstyr Loayreyder.  
I beg to second, sir, and reserve my remarks.

**The Speaker:** I put the question that clause 29 do stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.  
Clauses 30 and 31.

**Mr Houghton:** Thank you, Mr Speaker

Clauses 30 and 31 will enable the Authority to take appropriate enforcement action against, for example, someone who has constructed a culvert that affects the flow of a watercourse without the Authority's consent. These provisions have been extended so as to encompass the situation where the improvement of land drainage is being impeded due to the failure of another person to properly maintain the condition of a watercourse, whether designated or not.

This was a specific concern of the Manx National Farmers' Union with the 2011 Bill, which the Authority has now addressed in the Bill that is of course before this House.

Finally, I would draw the attention of the House to the right of appeal to an independent tribunal that is provided for against the issue of a remedial action notice.

Mr Speaker, I beg to move that clauses 30 and 31 stand part of the Bill, sir.

**The Speaker:** Mr Henderson.

**Mr Henderson:** Gura mie eu, Vainstyr Loayreyder.

I beg to second, sir, and reserve my remarks.

**The Speaker:** I put the question that clauses 30 and 31 do stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clauses 32 and 33.

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

Clauses 32 and 33 will importantly ensure that any remedial action notice that is served under the provisions that the House has just considered will bind both the current and subsequent land owners to those cases of non-compliance.

Mr Speaker, I beg to move that clauses 32 and 33 stand part of the Bill, sir.

**The Speaker:** Mr Henderson.

**Mr Henderson:** Gura mie eu, Vainstyr Loayreyder.

I beg to second, sir, and reserve my remarks.

**The Speaker:** I put the question that clauses 32 and 33 stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 34.

**Mr Houghton:** Mr Speaker, clause 34 is very much interlinked with the provisions that the House has just considered and will enable the Authority to take appropriate action, where there is an emergency flooding event, without the necessity to have to serve a remedial action notice. The Authority will be able to recover its reasonable costs in such circumstances from the person responsible.

Mr Speaker, I beg to move that clause 34 stand part of the Bill, sir.

**The Speaker:** Mr Henderson.

**Mr Henderson:** I beg to second, sir, and reserve my remarks.

**The Speaker:** I put the question that clause 34 do stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clauses 35 to 37.

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

Clauses 35 to 37 provide that if a person fails to comply with a remedial action notice, the Authority will have two further remedies under the Bill, namely to prosecute the person concerned for committing a criminal offence or, alternatively, in addition to undertake the required works itself and to recover the costs involved from the transgressor.

Mr Speaker, I beg to move that clauses 35, 36 and 37 stand part of the Bill, sir.

**The Speaker:** Mr Henderson.

**Mr Henderson:** Gura mie eu, Vainstyr Loayreyder.

I beg to second, sir, and reserve my remarks.

**The Speaker:** I put the question that clauses 35, 36 and 37 stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 38.

**Mr Houghton:** Mr Speaker, thank you.

Clause 38 will enable the Authority to seek a warrant in those rare cases where it finds that it is being refused entry onto land in order to carry out its very important functions under this Bill, for example, in order to maintain a riverbank.

Mr Speaker, I beg to move that clause 38 stand part of the Bill, sir.

**The Speaker:** Mr Henderson.

**Mr Henderson:** Gura mie eu, Vainstyr Loayreyder.

I beg to second, sir, and reserve my remarks.

**The Speaker:** I put the question that clause 38 stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 39.

**Mr Houghton:** Mr Speaker, clause 39 empowers the Authority to acquire land for the purposes of this legislation. However, I would point out that it is envisaged that this power will be very rarely exercised in practice. This is because, in the vast majority of instances, designated flood risk management works will be constructed on land that will remain in the ownership of the landowners concerned, and as such continue to be capable of being used by them for say normal agricultural practices, albeit that the land will of course be subject to the various restrictions that we considered when the House examined clauses 18 and 19. I would just add that this very much accords with the current position in respect of ‘main river’ designations under the 1934 Act.

Having said that, I am advised that there may be some cases where the Authority will actually need to acquire the relevant land and hence the need for clause 39, for example, in order to construct a new flood defence pumping station.

Therefore, Mr Speaker, I beg to move that clause 39 stand part of the Bill, sir.

**The Speaker:** Mr Henderson.

**Mr Henderson:** Gura mie eu, Vainstyr Loayreyder.

I beg to second, sir, and reserve my remarks.

**The Speaker:** Mr Karran.

**Mr Karran:** Vainstyr Loayreyder, this clause, in particular subsection (5)(a) and (b), appears to extend to the Authority the power to blight any party’s land, be it garden, farmland or others, simply by the Authority declaring an interest. If this is so, will it give the Authority the power to prevent the development of any form of structure on this land by the landowner? Will the Hon. Member, the Caeirliagh confirm that, by granting this clause, it will not appear under any circumstances that anything other than the management of the flood control can be used by this clause as far as that is concerned?

Will he also confirm that any structure that the Authority wishes to build upon land in which it has an interest will be subject to a formal planning application as far as the issue is concerned?

I think it is important that we actually come down on what Members need to realise, that if there is a dispute, often they will look at *Hansard* to see what this Hon. House actually thought, when this piece of legislation was concerned.

The reason I put this down is just simply so that if there is something that people know where we actually are standing as far as this clause is concerned.

**The Speaker:** Reply, sir.

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

The answer to the Hon. Member is yes, to all three of his questions, in the area of the power to prevent development, the case where the Authority would go to the Planning Committee with its objections, if there were objections in that particular area. So that would be taken into account and they would not have,

obviously, the power to prevent such a development, if it was cleared by the planning authority to go ahead.

It would be there, in place for the management of flood risk and will only be in the interests of that in the future. Of course, as he says, any structures that would be proposed would obviously require the consent of the Planning Committee, sir.

I beg to move.

**The Speaker:** I put the question that clause 39 do stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 40.

**Mr Houghton:** Mr Speaker, clause 40 will enable the Authority to perform services or carry out flood defence works on behalf of private landowners on a rechargeable basis, for example in order to protect a small group of houses from the risk of flooding.

Mr Speaker, I beg to move that clause 40 stand part of the Bill, sir.

**Mr Henderson:** Gura mie eu, Vainstyr Loayreyder.

I beg to second, sir, and reserve my remarks.

**The Speaker:** I put the question that clause 40 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 41.

**Mr Houghton:** Mr Speaker, clause 41 will enable the Authority to adopt private flood risk management works, where the Authority considers that those works should come under its direct control. However, before agreeing to do so, the Authority will be able to require those concerned to pay to it an appropriate commuted sum to reflect the anticipated future maintenance obligations.

Mr Speaker, I beg to move that clause 41 stand part of the Bill, sir.

**The Speaker:** Mr Henderson.

**Mr Henderson:** Gura mie eu, Vainstyr Loayreyder.

I beg to second, sir, and reserve my remarks.

**The Speaker:** I put the question that clause 41 do stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 42.

**Mr Houghton:** Mr Speaker, clause 42 is an important provision in terms of enabling the Authority, when necessary, to apply to the High Court for an injunction, for example, against a persistent offender. Let us hope that there would not be too many of those.

Mr Speaker, I would also explain that a private individual will likewise be able to apply for an injunction against another person who is, for example, failing to comply with his flood risk management obligations, such as failing to properly maintain a flood protection wall. This has been added to the clause as a consequence of the concerns that were expressed by the Manx National Farmers' Union in relation to the equivalent provision in the 2011 Bill.

Mr Speaker, I beg to move that clause 42 stand part of the Bill, sir.

**The Speaker:** Mr Henderson.

**Mr Henderson:** Gura mie eu, Vainstyr Loayreyder.

I beg to second, sir, and reserve my remarks.

**The Speaker:** I put the question that clause 42 do stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 43.

**Mr Houghton:** Mr Speaker, clause 43 will enable the Authority to prescribe the various forms that are to be used under the Bill, for example when applying for its consent.

Therefore, Mr Speaker, I beg to move that clause 43 stand part of the Bill, sir.

**The Speaker:** Mr Henderson.

**Mr Henderson:** Gura mie eu, Vainstyr Loayreyder.  
I beg to second, sir, and reserve my remarks.

**The Speaker:** I put the question, clauses 43: those in favour, say aye; against, no. The ayes have it. The ayes have it.  
Clause 44.

**Mr Houghton:** Mr Speaker, clause 44 deals with the appointment of authorised persons for the purposes of carrying out the Authority's various functions under this Bill.  
Mr Speaker, I beg to move that clause 44 stand part of the Bill, sir.

**The Speaker:** Mr Henderson.

**Mr Henderson:** Gura mie eu, Vainstyr Loayreyder.  
I beg to second, sir, and reserve my remarks.

**The Speaker:** I put the question, clause 44: those in favour, say aye; against, no. The ayes have it. The ayes have it.  
Clause 45.

**Mr Houghton:** Mr Speaker, clause 45 will enable the Authority to make bye-laws in order to deal with detailed matters under this Bill. At this juncture, I would like to pay tribute to the Hon. Member for Onchan, Mr Karran, for his tabled amendments in relation to the equivalent provision in the 2011 Bill, under which bye-laws will need to be approved by Tynwald and which has been incorporated into the Bill now before this House.

Finally, I would just add that the power to make bye-laws reflects the current position under the 1934 Land Drainage Act.

Mr Speaker, I beg to move that clause 45 stand part of the Bill, sir.

**The Speaker:** Mr Henderson.

**Mr Henderson:** Gura mie eu, Vainstyr Loayreyder.  
I beg to second, sir, and reserve my remarks.

**The Speaker:** Mr Karran.

**Mr Karran:** Vainstyr Loayreyder, thanking the mover of other Bill for recognising my input into this clause and other clauses to do with the Bill, my amendment is to ensure that any bye-law written by the Authority, pertaining to have the approval of a local authority which the bye-law is devised for, the adoption of the addition to this clause is to protect any local authority which may be adversely affected by the bye-law, which is not simply assumed to apply to the entire Island.

I think the classic example was when I was Chairman of the Water Authority, with the Millrace. The fact is that obviously in those days, under the 1934 Act, basically the only thing we ever bothered about in Government was the issue with the Lhen Trench and a few odd things, and it was left to run itself. But the likes of the Millrace, where there was severe flooding, the local knowledge was just totally ignored, as far as the local community was concerned, and whilst I welcome that they have got to have the approval of Tynwald, it is all about getting good governance, transparency and accountability.

I move the amendment where it pertains to a bye-law in a local authority, where I think the local authority should have some input into it, particularly when we hear how we are talking about local government reform and local authorities are being more on the ball, as far as this is concerned.

So I move the amendment standing in my name, to this House:

*Amendment to clause 45*

*Page 30 line 6 after 'may' insert ', with the consent of any local authority whose district is affected by the bye-laws,'.*

I am glad that they have taken on the other points, and I appreciate that and that reflects the new mood as far as the new Chief Minister is, compared to the previous horrendous five years that we had, but I still think

that the local authorities need that involvement where there are bye-laws pertaining to their local authority. They should be part of the process.

**The Speaker:** Mrs Beecroft.

**Mrs Beecroft:** Thank you, Mr Speaker.  
I beg to second the amendment.

**The Speaker:** Mr Singer.

**Mr Singer:** Thank you.

Could I ask the mover: with whom would the Water Authority consult in the process of preparing this bye-law? Are there any consultees or do they just do it off their own bat?

**The Speaker:** Mrs Cannell.

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

I am speaking to the amendment because I can see the logic in it and I support the principle of what the hon. mover of the amendment has said.

However, the amendment would read, in effect, that the Authority may, with the consent of any local authority whose district is affected by the byelaws, make bye-laws providing for any matter it considers necessary or expedient.

So in other words, one has to reach an agreed way of preparing the bye-laws. If a local authority does not give their consent and continues to oppose and block, then that is going to prevent the Water and Sewerage Authority from their responsibility under this particular clause.

So this is the only concern that I have about the amendment, actually: that it says with the *consent* of any local authority. So therefore it is giving the local authority the power to say, 'Hang on, we don't like this bye-law that you're proposing here. We're not going to consent to that, we're not going to agree to that, so you cannot make it.' That is the thing that I am a little bit concerned about.

In primary legislation, we have to go by the word and what the word and the interpretation is of the word. 'Consent' is a consent – you have to have a consent of the local authority, and if you do not have that consent, then you cannot make a general bye-law or have the power to make them.

So I just have a little bit concern about that, but I know where the hon. mover is coming from, in his amendment.

**The Speaker:** Mr Quirk.

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

The same concern I have, too, is regarding some local authorities could be reasonable but some local authorities or Borough Council could be difficult.

I know in our own constituency of Onchan there, the local authority, in my opinion, has *caused* some flooding in the urban area. If this particular clause was enacted, we could have a stumbling block, so I would be against bringing the amendment to the clause there because of the difficulties. It would not give a fair playing field as the Department or the Water Authority having their own bye-laws. Representation could be made.

So I will not be supporting that.

**The Speaker:** I call on the mover of the amendment to reply, Mr Karran.

**Mr Karran:** I think the point is, from the Hon. Member for East Douglas, what you have got to remember is, of course, if a local authority was to block anything that was reasonable, as far as the bye-law is concerned, then they would more likely be in a position of becoming maybe liable for any flooding that came about. So I would imagine that they would be very wary, not to actually go with the Authority, because it would more likely leave them open to possible litigation, if something did happen, because of that situation.

As far as the Hon. Member for Onchan is concerned, I am not particularly surprised at the input as far as the Hon. Member is concerned. I think that any responsible local authority would be very foolhardy not to take the advice as far as the Water Authority is concerned. What we have got to remember is, Vainstyr Loayreyder, the Water Authority is appointed not from a democratic basis, as a local authority is. A local authority knows that if it has severe flooding in its area, it will be held to account at the next election. The Water Authority may not find itself under the same sort of pressure.

This is a simple amendment. If this House does not want it, then that is fair enough. But what we are supposed to be talking about is local government reform, trying to get local authorities more involved, taking more direct responsibility, and we can hear some in this House saying, 'Get rid of them'.

**Mr Henderson:** Twenty-four is too many!

**Mr Karran:** The fact is what we should be doing, Vainstyr Loayreyder, is trying to get more functions away from this Hon. House to local authorities, (**Two Members:** Hear, hear.) so that we can actually help –

**Mr Quirk:** Tied up for years.

**Mr Karran:** – develop the sort of parliamentary assembly that we like to claim outside this Hon. House, which is not really the case.

It is up to this House what it decides to do. I think it is wrong, when we see Members attacking local authorities on a regular basis that have no voice in this Hon. House, like my colleague for Onchan, as far as our local authority is concerned, and they have no way of coming back on that sort of thing.

Hon. Members need to make a simple declaration: do they think that where the bye-law affects purely a local authority's area, they should have input into that bye-law? Any local authority that would be crazy enough to actually go against the professional advice of the Water Authority, leaving themselves open to the opportunity of the problems that could come their way, would have to be absolutely crazy, as far as that is concerned.

I think we will see, with other things which happen, particularly on the outskirts of Ramsey, where the local knowledge would have been far more important in the process... I just leave it up to the Hon. House whether they want to vote for this, but I do think that it is a ridiculous situation to think that they are going to leave themselves open to veto anything that the Water Authority is concerned... We are talking about local authorities, getting them more involved with the local issues, and I just this that is an aid, just like the other aid that has been incorporated into this piece of legislation – it is nice, for a change, to get some sort of recognition, as far as the work I do in this Hon. House.

**The Speaker:** Mr Houghton to reply.

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

In relation to the substantive clause and in relation to the Hon. Member for Ramsey, Mr Singer's enquiry, with whom would the Authority consult, the Authority would consult with relevant parties, such as the Manx National Farmers' Union, and any other relevant parties that they would see fit, under the inappropriate circumstances.

In relation to the Hon. Member's amendment and in answer to those who spoke on the amendment, I would envisage that any bye-laws would apply Island wide. It would add unnecessary bureaucracy to create a statutory obligation (**Mr Quirk:** Hear, hear.) for the Authority to obtain the consent of every local authority. In addition to the provision under clause 73, which requires Tynwald approval for those bye-laws.

Therefore, Mr Speaker, I cannot support the Hon. Member's amendment and I would ask all Hon. Members of this House to equally not support his amendment, sir.

Thank you.

**The Speaker:** Hon. Members, I put the amendment to clause 45 in the name of Mr Karran. Those in favour, please say aye; against, no. The ayes have it.

*A division was called for.*

**Mr Corkish:** I am sorry, I pressed the wrong button.

**The Speaker:** We will re-vote. (*Interjections*)

*There was a technical difficulty with the electronic voting system.*

**The Speaker:** In the circumstances, we will do a called ballot. (**Mrs Cannell:** Hear, hear.) The Clerk will read out the names in time-honoured fashion – a system we have not used for some time. I call on the Secretary of the House.

*Voting resulted as follows:*

**FOR**  
Mrs Beecroft  
Mr Karran  
Mr Ronan  
The Speaker

**AGAINST**  
Mr Cannan  
Mrs Cannell  
Mr Corkish  
Mr Cregeen  
Mr Cretney  
Mr Crookall  
Mr Gawne  
Mr Hall  
Mr Henderson  
Mr Houghton  
Mr Quayle  
Mr Quirk  
Mr Robertshaw  
Mr Shimmin  
Mr Singer  
Mr Skelly  
Mr Watterson

**The Speaker:** Hon. Members, the result of the ballot was: 4 Members voted for, 17 against. Therefore the amendment fails to carry.

I put clause 45 as it stands: those in favour, please say aye; against, no. The ayes have it. The ayes have it. Clauses 46 to 48, Mr Houghton.

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

Firstly, I would point out that part 6 of the Bill has been specifically incorporated at the request of the Manx National Farmers' Union, who wanted to see the equivalent provisions in the 1934 Land Drainage Act retained.

Secondly, I would explain that clauses 46 to 48 will enable a landowner to lay drains through the land of a neighbour. This situation could arise, for example, if the landowner needed to develop his land, but in order to do so needed to improve his drainage arrangements.

In the first instance, the landowner will need to seek the agreement of his neighbour and his tenants, if any, before proceeding with the work. However, in the event of the parties failing to reach agreement, then the landowner will have direct recourse to the independent Flood Risk Management Tribunal, who will decide on the matter.

Mr Speaker, I beg to move that clauses 46, 47 and 48 stand part of the Bill, sir.

**The Speaker:** Mr Henderson.

**Mr Henderson:** Gura mie eu, Vainstyr Loayreyder.

I beg to second, sir, and reserve my remarks.

**The Speaker:** I put the question that clauses 46 to 48 do stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clauses 49 and 50.

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

Clauses 49 and 50 provide a system of deeds registration in respect of drainage agreements under part 6 of the Bill. This system will ensure that such agreements are binding on successors in title to the land involved.

Mr Speaker, I beg to move that clauses 49 and 50 stand part of the Bill, sir.

**The Speaker:** Mr Henderson.

**Mr Henderson:** Gura mie eu, Vainstyr Loayreyder.

I beg to second, sir, and reserve my remarks.

**The Speaker:** I put the question that clauses 49 and 50 stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clauses 51 to 55.

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

Clauses 51 to 55 provide that the landowner who carried out the drainage work or his successors in title

will remain responsible for maintaining those works in the future. However, if the landowner fails to do so, then the neighbour's land through which the drains have been laid will be able to undertake the required maintenance work and to recover the costs involved from those responsible.

In addition, the enabling landowner will be able to divert the drains that were originally laid through his land, if, for example, their position prevents the subsequent development of his own land, but only on condition that he provides suitable replacement drains.

Therefore, Mr Speaker, I beg to move that clauses 51, 52, 53, 54 and 55 stand part of the Bill, sir.

**The Speaker:** Mr Henderson.

**Mr Henderson:** Gura mie eu, Vainstyr Loayreyder.

I beg to second, sir, and reserve my remarks.

**The Speaker:** Mr Quirk.

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

I was just going to ask the Member moving it there, that all the parties downstream would be notified of the implications and that they would fall into that category of risk assessment.

That is all I want to ensure.

**The Speaker:** Mr Houghton.

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

In relation to the Hon. Member's question, I am not sure whether it is quite relevant to these clauses, but in the case of a flood risk management, anyone going downstream, speaking generally, then yes, there would be those appropriate people, indeed landowners, that would actually be consulted, as a measure of that.

But the clause itself is dealing obviously with their successors in title on land, where one farmer – on the upper land, if you like – or one landowner wishes to amend his works, and anyone succeeding that down land might wish to object to the actual imposition that may be laid upon him. Of course, that is where there would be the occasion to go to a tribunal, in those cases where they could not agree, sir.

I beg to move.

**The Speaker:** I put the question that clauses 51 to 55 inclusive stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 56.

**Mr Houghton:** Mr Speaker, clause 56 makes it an offence, for example, to obstruct the carrying out of approved drainage works under part 6 of the Bill.

Mr Speaker I beg to move that clause 56 stand part of the Bill.

**The Speaker:** Mr Henderson.

**Mr Henderson:** Gura mie eu, Vainstyr Loayreyder.

I beg to second, sir, and reserve my remarks.

**The Speaker:** I put the question, clause 56: those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clauses 57 to 61, Mr Houghton.

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

Hon. Members will recall when we passed through the Bill, I drew the attention of the House to various rights of appeal to an independent tribunal. Clauses 57 to 60 set out the necessary machinery to dealing with such appeals by a newly appointed Flood Risk Management Tribunal which will operate under the Tribunals Act 2006.

Clause 61 provides for further right of appeal from a decision of the Flood Risk Management Tribunal to the High Court, but only on a point of law.

Mr Speaker, I beg to move that clauses 57, 58, 59, 60 and 61 stand part of the Bill, sir.

**The Speaker:** Mr Henderson.

**Mr Henderson:** Gura mie eu, Vainstyr Loayreyder.  
I beg to second, sir, and reserve my remarks.

**The Speaker:** I put the question that clauses 57 to 61 stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.  
Clauses 62 to 65.

**Mr Houghton:** Thank you, Mr Speaker.  
Although conveniently grouped together, I will briefly deal with these clauses separately.  
Clause 62 makes it a criminal offence to unlawfully obstruct the carrying out of, for example, works by the Authority under the Bill.  
Clause 63 makes it an offence to wilfully interfere with apparatus installed under the Bill.  
Clause 64 likewise makes it an offence to wilfully give false information to the Authority.  
Finally, clause 65 deals with offences that are committed by corporate bodies. As Hon. Members will recognise, this is a fairly standard provision in legislation of this nature.  
Mr Speaker, I beg to move that clauses 62, 63, 64 and 65 stand part of the Bill, sir.

**The Speaker:** Mr Henderson.

**Mr Henderson:** Gura mie eu, Vainstyr Loayreyder.  
I beg to second, sir, and reserve my remarks.

**The Speaker:** I put the question that clauses 62 to 65 stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.  
Clauses 66 and 67.

**Mr Houghton:** Thank you, Mr Speaker.  
Clauses 66 and 67 mean that, except in cases of emergency, the Authority will require the prior consent of the statutory utilities or, in the case of harbours, the Department of Infrastructure, before carrying out any works by the Authority under the Bill that may affect the operations of such bodies. I believe that these clauses strike a fair balance between the functions of the Authority under the Bill and the operations of our various utilities.  
Therefore, Mr Speaker, I beg to move that clauses 66 and 67 stand part of the Bill, sir.

**The Speaker:** Mr Henderson.

**Mr Henderson:** Gura mie eu, Vainstyr Loayreyder.  
I beg to second, sir, and reserve my remarks.

**The Speaker:** Clauses 66 and 67: those in favour, say aye; against, no. The ayes have it. The ayes have it.  
Clause 68.

**Mr Houghton:** Thank you, Mr Speaker.  
In clause 68 of the Bill, which is an entirely new provision in the context of flood protection, it will ensure that in future the risk of flooding is fully taken into account when applications for planning permission are being determined. The effect of this clause is that flood risk management will become a material consideration for the purposes of the town and country planning legislation.  
I now turn to two queries that were raised with my officials by the Hon. Member for Rushen, Mr Watterson in relation to the equivalent provision in the 2011 Bill. Firstly, I confirm that, in the Authority's view, the requirements to take into consideration flooding implication from a proposed development is indeed best set out in primary legislation, as opposed to merely relying on, for example, strategic plans.  
Secondly, I am advised that the granting of planning permission does not amount to some form of guarantee against flooding, if the development goes ahead, and the properties are in fact flooded.  
Therefore, Mr Speaker, I beg to move that clause 68 stand part of the Bill, sir.

**The Speaker:** Mr Henderson.

**Mr Henderson:** Gura mie eu, Vainstyr Loayreyder.  
I beg to second, sir, and reserve my remarks.

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

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

I wish to move the amendment to clause 68, as printed on the Order Paper:

*Amendment to clause 68*

*Page 39, for lines 10 to 12 substitute –*

*‘(3) If the proposed development includes the construction or erection of a building in an area of flood risk the Department must not determine the application unless it has given the Authority 21 days’ notice to advise whether or not the flood risk is significant.*

*(4) If, within the notice period mentioned in subsection (3), the Authority advises the Department that the flood risk is significant, despite section 10 of the Planning Act, the Department must refuse the application.*

*(5) In this section "building" does not include –*

*(a) any building used for agricultural or horticultural purposes other than a dwelling house;*

*(b) any building used primarily for storage or refuge;*

*(c) any lighthouse or lifeboat station; or*

*(d) any other category of building that may be prescribed.’.*

Hon. Members will recall that at the Second Reading of the Bill, both the Hon. Member for East Douglas, Mrs Cannell and I commented on the wording in clause 68(3), which said that:

*‘If that Department considers the flood risk is significant, it may refuse planning permission or grant the planning approval subject to conditions under section 10 of the planning Act.’*

The word we picked up on was ‘may’. As worded, what does this mean? It means that having received the comments and recommendations of the Water Authority, the Department of Infrastructure, which is the planning authority, will consider them before making a decision, but need not necessarily accept them.

My contention is that the experts here are the Water Authority. They have the engineers who are deeply involved with drawing up the flood area maps and are the people we rely on to know the risks, and what to do now and in the future, taking into account the projections of further flood risk, much due to the changes in the climate. The planning authority are not the experts in this case, whatever consultations take place between them and the Water Authority, and in this Bill, the latter’s comments need not be followed, and are only treated as recommendations.

Hon. Members are well aware of the problems of the last few years, where dwellings built in recognised flood risk areas have resulted in severe damage to property and heartache for families who bought properties in good faith. In my constituency, we have new houses built in flood risk areas. With climate changes, risk of flooding is becoming more likely, and when that occurs, the owner of property in that area will not only suffer damage, perhaps irreparable, to their property, but because of the potential risk identified in the flood risk maps, could encounter potential property value drops, insurance problems, and in fact, selling the property might become impossible. So I believe that we have to ensure that we protect the potential purchasers before a new property is even built.

I am sure we will be told that the planning authority always consult the Water Authority and take their views into account, whether it is recommending the plans are refused or that suitable flood attenuation can be put in place without moving the potential flooding problem to another area. That is good as far as it goes; but not good enough. The Water Authority do have a very important place in the planning regime.

Whilst I somehow feel that they consider they should not be the final arbiter, this is where I disagree.

Let me repeat: they are the experts. That is why they are consulted. They have not axe to grind. They are not susceptible to pressure from developers but they have a major responsibility in getting it right.

This amendment does not stop any consultation taking place between the Planning Division and the Water Authority; it reinforces under number (3) in the amendment, that consultation must take place, that the Water Authority are advised of the application, and that they have to reply within 21 days as to whether or not the risk is significant, and/or any recommendations as to attenuation procedures that need to be incorporated into the plan. So I hope Members support this clear direction definition as to the necessary procedure.

Subsection (4) here is where I feel necessary clarification is needed. If the Water Authority in their expert view consider that the risk is significant enough to deserve refusal that no attenuation improvements will negate high flooding risk and advise so, the planning authority have no other recourse but to refuse the application. Purchasers or developers of properties in the area deserve that protection.

If I may briefly refer to subsection (5) in the amendment, this provides for exceptions, which I trust Hon. Members will agree with. The decision to construct these specified buildings is a risk that will be fully accepted by the builder, who will have full knowledge of the potential flood problems, having gone through the normal planning procedure, where required. Subsection (5)(d) has been inserted to ensure there is a flexibility in the future for circumstances that are not envisaged at this time.

Finally, I would like to emphasise that this amendment refers to new build. It does not apply to extensions or material alterations to established properties, which would go through the normal planning procedures, and if granted would be at the applicant's own risk, having available the comments of the Water Authority.

Therefore, Mr Speaker, I beg to move the amendment to clause 68 as printed.

**The Speaker:** Mrs Cannell.

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

I am more than happy to actually second the amendment. In fact, Mr Singer and I have worked and had meetings at the Attorney General's department, to try and draft an appropriate set of words which hopefully would embrace any concerns that might arise as a consequence of the amendment.

I think the important part of the amendment is that there are exceptions to the rule, and those are: any building used for agricultural or horticultural purposes other than a dwelling house; any building used primarily for storage for refuge; any lighthouse or lifeboat station; or any other category of building that may be prescribed. So that is looking at the future.

The main concern is, as the hon. mover has said, that in the wording of the original clause in the Bill... I will just read it, for clarification. It applies to:

'the Department of Infrastructure when it is considering an application for planning approval...'

They, the Department, have to have regard to the Water and Sewerage Authority's published flood risk management plans and strategies – have regard to – and:

'the extent to which the proposed development creates an additional flood risk.'

If that Department – that is, the Department of Infrastructure –

'considers the flood risk insignificant, it may refuse...'

– equally, in law, it may not refuse –

'... planning permission or grant the planning approval subject to conditions under section 10 of the planning Act.'

Now, the presumption, whether it is favourably judged or not, is in favour of development. That is the presumption within planning: the presumption is always in favour of development and it is subject to what is being proposed in a planning application.

If Hon. Members look at the explanatory memorandum in respect of clause 68, it says:

'This clause imposes a requirement on the Department of Infrastructure, when it considers applications for planning permission, to consider (inter alia) the extent to which the development may create a significant risk of flooding.'

It is interesting that in the explanatory memorandum, the word 'significant' is used, but in the Bill before us, following 'significant' it says 'it may refuse'.

'If so, it will be open to the Department to either refuse [...] or to impose appropriate conditions, for example, requiring the developer to construct suitable flood protection works before the project can proceed.'

Again, the emphasis is in favour of the development.

What we support is the professionals in this matter. As the hon. mover, Mr Singer, has said, the Water and Sewerage Authority are the professionals when it comes to flood risk issues and drainage issues. They are the professionals.

We heard earlier on, on another clause Mr Speaker, planning permission has priority over designation of a flood risk area. Again if Hon. Members refuse the amendment, you will be underpinning that.

The hon. mover of the Bill said, on an earlier clause, if a planning application was in, an inspection would be carried out to consider a designation of flood risk. In other words, if a planning application comes in, the

Water Authority would consider whether or not there was going to be significant risk to that. If they considered it was, it would be significantly risky to build there, because of the flood problems. They have no power, other than to try and influence the planning authority. They do not have party status in planning applications. They are put in a subservient position, if this clause stays intact, and that is the problem that I have.

The Hon. Member for Onchan said on an earlier clause, going against the professional advice of the Authority would be madness. I would suggest it would, if Hon. Members do not support this amendment, which clearly places the final say, in a flood risk area, of whether or not a new development can take place. I think we owe it to the Authority to actually extend that power in this particular instance, for new build.

I am happy to second.

**The Speaker:** Mover to reply, Mr Houghton. There has been no comment.

**Mr Houghton:** I do apologise, Mr Speaker.

After enormous amount of consultation by the Hon. Member for Ramsey, Mr Singer – I do thank him for his consultation prior to this being moved on the floor today – I simply cannot support the Hon. Member's amendment.

Whilst I appreciate his good intentions, I am concerned that some elements of the amendments are either unnecessary or ambiguous and have the potential to add time and complexity to the planning process. I believe that the intent can be addressed more appropriately through secondary legislation, policy or procedure. This can be achieved if the Authority and the Planning Division of the Department of Infrastructure continue to work together to address the relationship between flooding issues and the planning process.

To address the detail of the amendment, in relation to part (3), the Authority has already consulted on planning applications, albeit on a non-statutory basis, and therefore is fully engaged in the planning process. In parts (3) and (5), the amendment refers to buildings, rather than development as defined in the Town and Country Planning Act. The proposed list of buildings under part (5) would therefore create confusion, with much time spent on arguing over the use and the status of such buildings.

The amendment in relation to part (4) is somewhat self-defeating, as an initial planning refusal would not prevent an applicant from going through the appeal process, whereby the refusal could potentially be overturned.

Therefore, Mr Speaker, I would ask Hon. Members not to support the amendment.

I beg to move.

**The Speaker:** Hon. Members, I put the amendment first. Those in favour, please say aye; against, no. The ayes have it.

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

**FOR**

Mrs Cannell  
Mr Singer

**AGAINST**

Mr Anderson  
Mrs Beecroft  
Mr Cannan  
Mr Corkish  
Mr Cregeen  
Mr Cretney  
Mr Crookall  
Mr Gawne  
Mr Hall  
Mr Henderson  
Mr Houghton  
Mr Karran  
Mr Quayle  
Mr Quirk  
Mr Robertshaw  
Mr Shimmin  
Mr Skelly  
Mr Watterson  
The Speaker

**The Speaker:** With 2 votes for, 19 against, the amendment therefore fails to carry.

I put clause 68 as it stands: those in favour, say aye; against, no. The ayes have it. The ayes have it. Clause 69.

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

Clause 69 means that when the Department of Economic Development or its lessees exercise their functions under the Minerals Act, they will be required to consider whether to do so could create an additional risk of flooding. If so, they will be under a duty to consult with the Authority before proceeding.

Mr Speaker, I beg to move that clause 69 stand part of this Bill, sir.

**The Speaker:** Mr Henderson.

**Mr Henderson:** Gura mie eu, Vainstyr Loayreyder.  
I beg to second, sir, and reserve my remarks.

**The Speaker:** I put the question, clause 69: those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 70.

**Mr Houghton:** Mr Speaker, clause 70 is largely a technical provision that has the effect of abolishing, in relation to designated flood risk management works or watercourses, any private flood-related obligations that may still exist under the current land drainage legislation, for example, an obligation to maintain a particular flood wall.

So therefore, Mr Speaker, I beg to move that clause 70 stand part of the Bill, sir.

**The Speaker:** Mr Henderson.

**Mr Henderson:** Gura mie eu, Vainstyr Loayreyder.  
I beg to second, sir, and reserve my remarks.

**The Speaker:** Clause 70: those in favour, say aye; against, no. The ayes have it. The ayes have it.  
Clauses 71 and 72.

**Mr Houghton:** Mr Speaker, as Hon. Members will understand, clauses 71 and 72 deal with certain technical matters relating to the penalties that are imposed in respect of the various offences that are created by the Bill.

Mr Speaker, I beg to move that clauses 71 and 72 stand part of the Bill, sir.

**The Speaker:** Mr Henderson.

**Mr Henderson:** Gura mie eu, Vainstyr Loayreyder.  
I beg to second, sir, and reserve my remarks.

**The Speaker:** I put the question, clauses 71 and 72: those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 73.

**Mr Houghton:** Mr Speaker, clause 73 deals with the making of subordinate legislation under the Bill. Ordinarily, orders made by the Authority, for example designated orders, will be subject to annulment by Tynwald. However, bye-laws that are made by the Authority will need to actually be approved by Tynwald before they can come into force.

Mr Speaker I beg to move that clause 73 stand part of the Bill, sir.

**The Speaker:** Mr Henderson.

**Mr Henderson:** Gura mie eu, Vainstyr Loayreyder.  
I beg to second, sir, and reserve my remarks.

**The Speaker:** Clause 73: those in favour, say aye; against, no. The ayes have it. The ayes have it.  
Clause 74 to 78.

**Mr Houghton:** Mr Speaker, clauses 74 to 78 contain important transitional and saving provisions. These provisions will ensure a smooth transfer from the current land drainage legislation to the proposed new Flood Risk Management Act, without any undue red tape.

Mr Speaker, I beg to move that clauses 74, 75, 76, 77 and 78 stand part of the Bill, sir.

**The Speaker:** Mr Henderson.

**Mr Henderson:** Gura mie eu, Vainstyr Loayreyder.  
I beg to second, sir, and reserve my remarks.

**The Speaker:** I put the motion that clauses 74 to 78 inclusive stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.  
Clause 79.

**Mr Houghton:** Mr Speaker, the House will recall that when we considered part 7 of the Bill, which was clauses 57 to 61, I drew the attention of Hon. Members to the appeal rules that will apply under the Tribunals Act.

Clause 79 provides that as an interim measure, pending the introduction of such rules, the draft model rules will be used for the determination of any appeals under the Bill.

Mr Speaker, I beg to move that clause 79 stand part of the Bill, sir.

**The Speaker:** Mr Henderson.

**Mr Henderson:** I beg to second, sir, and reserve my remarks.

**The Speaker:** I put the question that clause 79 do stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.  
Clause 80 to 82.

**Mr Houghton:** Mr Speaker, clauses 80 to 82 repeal the current land drainage legislation and amend two associated Acts.

Mr Speaker, I beg to move that clauses 80, 81 and 82 stand part of the Bill, sir.

**The Speaker:** Mr Henderson.

**Mr Henderson:** Gura mie eu, Vainstyr Loayreyder.  
I beg to second, sir, and reserve my remarks.

**The Speaker:** I put the question that clauses 80 to 82 stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.  
Clause 83.

**Mr Houghton:** Mr Speaker, as Hon. Members will see, clause 83 amends the Rating and Valuation Act 1953. This will mean that the Authority will, in appropriate cases, be able to obtain details of land ownership, for example, where it needs to enter onto land in order to carry out ground investigations before deciding whether or not to carry out flood risk management works on that land.

Mr Speaker, I beg to move that clause 83 stand part of the Bill, sir.

**The Speaker:** Mr Henderson.

**Mr Henderson:** Gura mie eu, Vainstyr Loayreyder.  
I beg to second, sir, and reserve my remarks.

**The Speaker:** I put the question, clause 83: those in favour, please say aye; against, no. The ayes have it. The ayes have it.  
Clauses 84 to 88.

**Mr Houghton:** Mr Speaker, clauses 84 to 88 make some technical amendments to associated legislation. Therefore, Mr Speaker, I beg to move clauses 84, 85, 86, 87 and 88 stand part of the Bill, sir.

**The Speaker:** Mr Henderson.

**Mr Henderson:** Gura mie eu, Vainstyr Loayreyder.

I beg to second, sir, and reserve my remarks.

**The Speaker:** I put the question, clauses 84 to 88: those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 89.

**Mr Houghton:** Mr Speaker, clause 89 amends the Wildlife Act 1990, the effect of which is that except in emergency situations, the Authority will require the agreement of the Department of Environment, Food and Agriculture before the Authority can exercise its various functions under the Bill, in circumstances that may have implications for wildlife, including wild birds and plants.

At this juncture, I would add that this amendment is in addition to the general conservation duties that are imposed on the Authority by virtue of clause 13 of the Bill. Here again, I would just make the comment that I believe that this provision represents a very fair balance between the need to protect our environment and at the same time ensure that, as far as possible, the risk of flooding is appropriately managed.

Mr Speaker, I beg to move that clause 89 stand part of the Bill, sir.

**The Speaker:** Mr Henderson.

**Mr Henderson:** Gura mie eu, Vainstyr Loayreyder.

I beg to second, sir, and reserve my remarks.

**The Speaker:** I put the question that clause 89 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clauses 90 to 91.

**Mr Houghton:** Mr Speaker, clauses 90 and 91 make some technical amendments to associated legislation.

Therefore, Mr Speaker, I beg to move that clauses 90 and 91 stand part of the Bill, sir.

**The Speaker:** Mr Henderson.

**Mr Henderson:** Gura mie eu, Vainstyr Loayreyder.

I beg to second, sir, and reserve my remarks.

**The Speaker:** I put the question, clauses 90 and 91: those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 92.

**Mr Houghton:** Mr Speaker, clause 92 has the effect of amending the Tree Preservation Act 1993, so that, except in cases of emergency, the Authority will require prior authorisation of the Department of Environment, Food and Agriculture, where the Authority needs to cut down a protected tree, for example a tree that is obstructing the flow of a designated watercourse.

Mr Speaker, I beg to move that clause 92 stand part of the Bill, sir.

**The Speaker:** Mr Henderson.

**Mr Henderson:** Gura mie eu, Vainstyr Loayreyder.

I beg to second, sir, and reserve my remarks.

**The Speaker:** I put the question, clause 92: those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 93.

**Mr Houghton:** Clause 93 amends the Sewage Act 1999 in two substantive respects: firstly, to enable the Sewerage Authority to refuse its consent to the making of a connection to the public sewerage system, where it considers that the capacity of that system is inadequate and, as a consequence, an additional risk of flooding would be created.

However, the Authority will not be permitted to refuse consent where the connection with the public sewerage system is necessary in order to allow a development to go ahead, where that development has been granted planning permission by the Department of Infrastructure.

At this juncture, I would like to formally record the Authority's thanks to the Hon. Member for Onchan, Mr Quirk, whose tabled amendment in relation to the equivalent provision in the 2011 Bill has been incorporated into what is now clause 93.

Secondly, this clause creates an enabling power for the Authority at an appropriate stage in the future to introduce sewerage charges. However, I would emphasise that before such charges can be introduced, the Authority will need to make an order which will require the formal approval of Tynwald.

Mr Speaker I beg to move that clause 93 stand part of the Bill, sir.

**The Speaker:** Mr Henderson.

**Mr Henderson:** Thank you, Vainstyr Loayreyder.  
I beg to second, sir, and reserve my remarks.

**The Speaker:** Mr Karran.

**Mr Karran:** I am very pleased to hear from the mover of the Bill that it will not be able to, through a back door, stop development that has legitimate planning. We need to make sure that what we are concerned about is a one-stop procedure as far as planning is concerned, so that we have a clear understanding of how development works.

As far as I am concerned, I am happy about that. I think the situation is that the idea of a sewerage charge, let us be honest about it, this has been on the agenda for a long time. Fortunately, the safeguards are now in place, that it will have to come to Tynwald, as far as that is concerned. Unfortunately, to be fair to the Council of Ministers, and the situation of political cowardice in the past, we should have addressed the issue of the rate re-valuation, which at the present time is an absurdity, in that it is based on perceived rental values of 1971. It is completely out of date, as far as that is concerned, so that we end up with the absurdity where people in the likes of Douglas and Onchan, if we do not support this proposal, would end up proportionally paying more for a service which actually costs less for the people in the urban areas over the rural areas.

So as far as the charge is concerned, I think that we have no choice but to support the principle of a level charge throughout the Island, allowing for the fact that previous administrations and this administration have not addressed the ridiculous situation where you have an identical property, in size, design, location, that can have the absurdity of having a 40% or 50% discount because they are in some other part of the Island, where the value of the actual property is more likely two or three times the actual purchase value of an identical property in a less salubrious area of the Island.

So as far as I am concerned, I think we have got the safeguards as far as the charge is concerned. Tynwald will have to agree that charge, as far as that issue is concerned, so I think we all know what we are actually voting for today. It is a shame that we cannot actually get the rate re-valuation, so we would not need this absurdity, as far as the charge is concerned.

**The Speaker:** Mover to reply, Mr Houghton.

**Mr Houghton:** Thank you, Mr Speaker.  
I would like to thank the Hon. Member for his supportive comments.  
I beg to move.

**The Speaker:** I put the question that clause 93 do stand part of the Bill. Those in favour, say aye; against, no. The ayes have it.

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

**FOR**

Mr Anderson  
Mrs Beecroft  
Mr Cannan  
Mr Corkish  
Mr Cregeen  
Mr Cretney  
Mr Crookall  
Mr Gawne  
Mr Hall  
Mr Henderson  
Mr Houghton  
Mr Karran  
Mr Quayle

**AGAINST**

None

Mr Quirk  
Mr Robertshaw  
Mr Shimmin  
Mr Singer  
Mr Skelly  
Mr Watterson  
The Speaker

**The Speaker:** Clause 93: 20 votes for, none against, the clause therefore carries.  
Clauses 94, 95 and 96.

**Mr Houghton:** Thank you, Mr Speaker.  
Clauses 94 and 95 again make some very minor amendments to associated legislation.  
And finally, clause 96 deals with certain technical matters.

Mr Speaker, before I move this, I would like to take this opportunity of thanking the association's main employee who has been involved in this, who is Neil Caine, the Strategic and Technical Services Manager, for some real hard work over quite some considerable period of time, and a considerable period of time before my time, for which I take no thanks for this. It is all for the work of the previous Chairman and the Authority, including its Chief Executive, Mr Winstanley, for real hard work in putting this together, of which I am very pleased to commend those officers of the Authority and their Chairman. (**Mr Crookall:** Hear, hear.)

Mr Speaker, I beg to move the clauses 94, 95 and 96 stand part of this Bill, sir.

**The Speaker:** Mr Henderson.

**Mr Henderson:** Gura mie eu, Vainstyr Loayreyder.  
I beg to second, sir, and reserve my remarks.

**The Speaker:** I put the question that clauses 94 to 96 do stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it. That brings us to the end of the Bill for consideration of clauses. I congratulate the mover on the way this was conducted.