



**SELECT COMMITTEE
OF THE
LEGISLATIVE COUNCIL
OFFICIAL REPORT**

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**PROCEEDINGS
DAALTYN**

HIGHWAYS (AMENDMENT) BILL 2015

HANSARD

Douglas, Thursday, 21st January 2016

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Members Present:

Chairman: Mr J R Turner MLC
Mr M R Coleman MLC
Mr C G Corkish MBE MLC

Apologies: Mr T P Wild MLC

Clerk:

Mr J D C King

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Select Committee of the Legislative Council on the Highways (Amendment) Bill 2015

*The Committee sat in public at 10.30 a.m.
in the Legislative Council Chamber,
Legislative Buildings, Douglas*

[MR TURNER *in the Chair*]

Procedural

The Chairman (Mr Turner): Good morning, welcome to this public meeting of the Select Committee of the Legislative Council on the Highways (Amendment) Bill 2015. I am Juan Turner MLC, and I chair the Committee. With me are Mr Michael Coleman MLC and Mr Geoff Corkish MLC. The fourth member of the Committee is Mr Wild who is not with us today, he is unwell.
5 Our Clerk of the Legislative Council and Clerk to the Committee is Mr Jonathan King, who is alongside me here.

First of all, we would like to ensure mobile phones are switched off or on silent so that we do not have any interruptions to the proceedings this morning. Also, for the purpose of the *Hansard* recording I will be ensuring that we do not have two people speaking at once, so the recording
10 and also the live stream of this Committee is clear for those listening.

I will just do a bit of introduction first of all. The Highways (Amendment) Bill was introduced to the House of Keys on 23rd June 2015, where it was moved by the Minister for Infrastructure, Mr Gawne. It passed its Second Reading on 30th June. The clauses stage in the Keys took place on 10th November and 24th November 2015. During the clauses stage the House of Keys agreed
15 to a series of amendments which had been moved by Mr Houghton, who is a member of the Department of Infrastructure. Mr Houghton moved those amendments. The Bill then passed its Third Reading in the Keys on 1st December 2015.

On 3rd December the Bill appeared on the Legislative Council Order Paper for the sitting on Tuesday, 8th December 2015. In the early hours of that morning, Tuesday 8th December, Mr
20 Hamish Killip sent an email to all Members of the Legislative Council. When the First Reading was debated, reference was made to the email. The First Reading was carried but Mr Coleman then moved for the Bill to be sent to a committee, this committee that is here today, and we are the result of that motion. I will point out, we will be looking through the entire Bill before reporting back to the Legislative Council.

25 So this morning, as a result of the email received from Mr Killip, the Committee has decided to invite Mr Killip to make a presentation and to answer some questions here this morning. We thank you for making the time to come in and see us today, Mr Killip.

EVIDENCE OF Mr Hamish Killip,

Q1. The Chairman: Just for the formalities could you state your full name, please.

30 **Mr Killip:** My name is Hamish Forbes Mylechraine Killip.

Q2. The Chairman: Thank you, Mr Killip, and we have introduced my fellow Committee members.

If we may start, you sent us quite a considerable email regarding the Bill, in particular clause 20 which amends section 92 of the 1986 Act, the Highways Act 1986. Clause 20 was amended on 24th November when the House of Keys agreed to that amendment tabled by Mr Houghton on behalf of the Department. And I will just recap what Mr Gawne said, if I may:

I thank Mr Killip for raising some of the points and, far from just the last 48 hours, I have certainly had a full seven days of responses and emails with Mr Killip. I do thank him for raising those issues with me. I know he has raised them with the Department previously as well. We are endeavouring to resolve these matters, but, as is pretty clear, at the moment the legislation that we have in place is largely unworkable, which makes it very difficult for us to make the amendments that we need to make.

So that was what Mr Gawne said. The first question really is what discussions did you have with the Minister in November?

Mr Killip: Yes, actually I sent a series I think of six emails detailing inconsistencies with current footpaths. It comes back to a problem relating to the definitive maps, which are the official, authoritative source if you want to know where a footpath actually goes.

I discovered, I think at the end of 2013, that those had not been maintained for over a decade and that what was held in the Registry did not reflect what existed on the ground, or indeed what had been dictated by order of Tynwald. Whatever the reason for that was I was not clear, but it meant that you could not rely on what was written in the definitive maps in relation to what Tynwald had said.

I raised this with the Department; I did not really get anywhere and as time went on this started to impinge on other things that I was doing – this had all come out by the way as a result of a planning application. By the end of last year I had been working on another planning application which had been affected by this particular inconsistency and as a result of that I looked more deeply into the problem.

I discovered not just that there was one problem, which I had initially found; that there was a whole series. Not only had the definitive maps not been updated but orders which had been issued by the High Court, or one order that had been issued by the High Court had not been implemented by the Department in relation to footpaths. In other words, there was what seemed to me to be a very serious problem in the administration, enforcement, running of the footpath business.

I wrote a series of emails to do with that to Mr Gawne and I got a very prompt response and an assurance that things would be done. The first time I did this, it was to do with the case of Langness. If you remember there was a very prominent case to do with the footpaths at Langness. The Deemster in his court had issued an order telling the Department of Infrastructure to implement changes in the footpaths there. That order contained the necessary maps and the necessary text, but even after four years I discovered those had not been implemented in terms of the definitive maps and statements, which seemed to me something verging on contempt.

I wrote to Mr Gawne about it and I was promised that that would be dealt with. I was then written again and I got another response from him and I was told that it had been implemented and that the maps had been updated. However, when I checked that was not the case. I wrote again, and I believe after that they were eventually updated.

Now, again, I do not know why that was so and what the problems is, there was no, I think, particular difficulty in doing the work, but it did indicate considerable problems. I had previously, when we had first started looking at this, come across one or two things which seemed to me would produce legal problems because of the inconsistency between what was in the Registry and what Tynwald had ordered. Therefore you as a householder, somebody who wanted to buy or sell property, would go to the Registry to see where the paths were on your land or impinging on your land and the definitive maps are the legal authority and you would accept that.

80 However, Tynwald had passed orders which had changed those maps but the maps themselves had never been updated. So the result would be that you as a neighbour, as a property owner would actually have a false impression of what had happened and unfortunately from Tynwald's point of view, the legal authority is the maps and not what Tynwald orders. The maps may not be challenged in court, that is part of section 92. Therefore it is incredibly important that those maps are maintained properly and accurately.

85 Another problem was that one of the orders concerning the application I was interested in had been entered into the definitive maps incorrectly. In other words, they had taken the map off the Tynwald order and again, for reasons we do not know, this is way back in 1994, had transcribed the detail of that map incorrectly on to the definite map so therefore the definitive map showed a path which bore no relation to what anybody wanted or what had been ordered
90 by Tynwald. Again, I made the Department aware of that, that would have been probably May 2014, I would think. As far as I know that has not been addressed yet although it is on their list of things to do.

At that point I realised that there would be legal problems because if land had been bought or sold during that period, then there would be some confusion as to what people had
95 undertaken when they bought the property and so on. I had actually asked, I think, the officials, had they thought about getting legal advice as to where they stood with this, and they said yes they would do that. I did not expect that to result in changing the law; I expected it to be advice that would say how do you deal with the problem as it stands at the moment. Because as far as I could see, the problem was in the administration of the law as it exists at the moment, not in
100 terms of the law itself. In other words, if you do not actually observe what is written in the law, especially if you are responsible for its enforcement and so on, that is not the fault of the statute; that is the problem with the Department. So I was a little bit surprised to see that it was thought necessary to change the law, it seems to me to be perfectly adequate.

105 **Q3. The Chairman:** Well that was actually going to be my next question: did Mr Houghton's amendment actually improve the Bill? Because on the surface it goes some way to addressing your concerns, but am I right in thinking that what you are saying is that it was more the administration of what was there, rather than creating a solution to a problem that did not exist?

110 **Mr Killip:** I think one has got to split it off into two pieces. First of all, there are the current issues to do with mistakes, errors, inconsistencies between what is on the ground, what has been ordered by Tynwald and what has been recorded on the definitive maps. Those three are different and they should be the same.

115 If you then change the law while that inconsistency exists and not sorted out, then I suspect you are going to complicate the issue of sorting it out very considerably. Because you are going to be between two horses, especially when you do not know the extent of the problem. It is quite clear until very recently, nobody had been through all the sources of information to try and correlate what existed in each area – i.e. Tynwald orders, the maps, a set of draft maps
120 which are kept at the Department of Transport, which I believe they thought were the definitive maps, but of course they are not – and what landowners and so on think. Until you have actually scoped that problem and understood exactly what is wrong, I do not see how you can then start to change legislation. You need to know what the problem is before you actually tackle it.

125 In my investigation of six – and now actually there is another one I have done recently, seven of them – they can be dealt with quite successfully under the current law, that is not the problem. It is a matter of actually getting down and actually dealing with the detail. And it would mean fresh orders, it might mean talking to landowners and so on. But the law itself does not have any bearing on that, that I can see.

130 There are other issues which also need addressing, but they are completely separate from that issue. As electronic mapping, digital mapping comes in and it becomes more difficult to

maintain the definitive map, then you may need to devise a different system for the definitive maps. But that is, again, I do not believe properly addressed in the draft legislation. It is inconsistent but that is a separate issue. I think if there is a need to change the legislation, until you actually know exactly what the problem is, I do not think you should tackle that because it just means that there will be confusion.

The Chairman: Okay.

Members of the Committee, any questions at this stage?

Q4. Mr Corkish: Just going back to the problems that you have had, notwithstanding the problems, the past problems you have had with the Department, Mr Killip, I know you have met with the officers of the Department and indeed the Minister.

Mr Killip: Yes. I have not actually met with the Minister but we have exchanged emails a number of times, yes.

Q5. Mr Corkish: Would you say that there is an understanding and an acknowledgement by the Department that public rights of way are important? And what the Department is trying to do – and I will use a phrase here which may or not be right, that what the Department are doing – is trying to right wrongs, whether those errors, many of them are human, and perhaps some of those errors have derived from the changes in the landscape almost, perhaps too.

So is there a degree of compromise there between both you and the Department in what they are trying to do, realising that they think that public rights of way are important too?

Mr Killip: I have no doubt whatsoever that Mr Gawne thinks that public rights of way are important. I acknowledge that and that is quite clear.

I have to say, that I believe in evidence-based deductions and having been attempting to get things sorted out since late 2013 on a *particular* right of way, I think that it is deeply disappointing that we sit here and that is still not being tackled. That is an issue to do with, this is the incorrect transcription of the Tynwald order. It also involves an obstruction of a footpath which has not been tackled in terms of enforcement. That does not indicate to me that these things are always taken as seriously as they might be. I do not doubt that the Minister has every intent, but I have to say I can only judge it by what I see, and that has not been tackled.

The other things we have uncovered, most of them are relatively simple to put right and I am sure they will be put right as soon as they are able to do that. There may be one or two of those which are more complex and I think I talk about one or two of those in the email I sent to you. They may require a bit more work legally and so on and I am sure that will be dealt with.

At the ministerial level, I think the intent is there but it does seem to be taking a lot longer than is reasonable. I know it is not the most important thing in the world – there are bridges down, there are highways flooded and so on. But nonetheless after a period of years one would expect a little bit more action than we have seen.

Mr Corkish: Thank you for that.

The Chairman: Mr Coleman, do you have any questions at this stage?

Q6. Mr Coleman: The examples you quote, basically all the problems are caused by faulty definitive maps, is that correct?

Mr Killip: Well there is nothing wrong with the definitive maps, they are what they are. It is a failure to maintain them.

Q7. Mr Coleman: So they do not reflect the true world?

185 **Mr Killip:** This is difficult. The problem is the definitive maps are what they are, and that is the path. It is rather like having deeds to a property: there has to be somewhere an authority that says, 'That is what it is', and that is where we start. If those at any point fail to be maintained or you do not update them, you do not change them, then unfortunately that is the legal authority despite that.

190 So the fault does not lie in any way with the definitive maps; it lies with the administration of those maps and the failure to take action when Tynwald orders or the High Court orders, or a failure to check from time to time that things have not changed. That seems to be where the thing has broken down. And that is the cause of most of it, yes.

195 **Mr Coleman:** Okay.

Mr Chairman: Anything else, Mr Coleman, at this stage?

200 **Q8. Mr Coleman:** I think what we are saying really is that the old section 92 did not cause the problems; it is just the fact of the actual procedure of updating which is not working.

205 **Mr Killip:** Yes. In a sense I was quite surprised when legislation was proposed because I did not see why it was at all necessary. The initial proposal, which was an eight-line paragraph, was very strange indeed because it in a sense was incompatible with the Act as it currently stood, and it was withdrawn.

The new section 92 is, in my view, a lot more complicated than it needs to be and in fact it does not change anything in relation to the problems that are faced. The justification for that, which has changed as it has been introduced, again does not seem to me to bear examination as regards what is required.

210 I think a more considered ... For example, none of this was in the consultation for the Act. The two amendments were introduced at very short notice without any real scrutiny or any chance for people to look at them, hence my somewhat desperate attempt to send you an email hours before you came in to consider it, I am sorry about that. But I do not understand the need to bring this legislation in at all, far better that the problem is examined, that the current problems are sorted out, which I believe they all can be sorted out, and then people take a long hard look at it and say, 'Now, do we actually need to change this legislation?' The answer probably is yes, but it has got nothing to do with this. It has got to do with the mapping and it has got to do with perhaps looking further forward as to how you should record and make information available to the public.

220 **Q9. The Chairman:** So if I understand this correctly then, the example you gave, and we do not want to stray into what might be live planning applications that may be underway, but if I give you an example, correct me if I am wrong:

225 If this room represents a piece of land and there is a footpath going along the edge of the wall, and that is what the map says and I am purchasing this property, so I go to the Registry and find that it is marked as along *that* wall, but what happened is that Tynwald at some point has actually had the footpath defined as going along *this* wall, but because the Department has not updated the map, the only thing I can rely on is the definitive map and therefore I cannot even challenge the fact that it has moved. Is that the problem?

230 **Mr Killip:** That is my understanding. Paragraph 10 of section 92 says you may not challenge the definitive maps.

235 **Q10. The Chairman:** So at some stage then the Department having been ordered by either
Tynwald or the High Court to move the path from that wall to this wall could still be done, even
though I have now purchased this property and I am due to build on it or whatever, and I would
have absolutely no recourse.

240 **Mr Killip:** That obviously occurred to me when I was looking at this. There is a phrase in the
Act which says, I think, that the map should be amended, 'as soon as may be', I think is the
phrase that is used in the Act.

Q11. The Chairman: So they could still do it?

245 **Mr Killip:** Well I think I would argue that if after 20 years they have not changed the definitive
maps, the term 'as soon as may be' would indicate that the Department has failed in its duty.
Therefore – I am not a lawyer – but I think you would have a right to challenge that because you
cannot expect to have to wait 20 years for somebody to go, spend two hours up at the Registry
with a Rotring pen and a draft map making an amendment, which probably takes 10 minutes.

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The Chairman: It is certainly beyond reasonable, I would agree.

Mr Killip: It is unreasonable, yes, and disproportionate. So therefore I think you would
expect, and similarly with the Langness case, four years is too long to adjust a map.

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Q12. The Chairman: Well obviously our next stage will be to invite the Department to meet
with the Committee, which we will endeavour to hold in public and these are questions that we
will put to them. The Department does have an officer here today in the gallery who is taking
notes, so no doubt they will be able to answer these, so thank you for that.

260 We will just move on if we may, unless there is anything you want to add at that stage.

We have touched on this already, you have provided the six examples where there are or
have been errors in the definitive maps and you say none of the problems identified have been
created or exacerbated by the existing law as defined in section 92. So I suppose this Bill is on
the question I asked you before about Mr Houghton's amendment improving the Bill. Do you
think the proposed changes will actually make matters worse?

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Mr Killip: Yes, because I think they will inevitably confuse the issue that in a sense you have
got to do all your good housekeeping in getting things to, if you like, a level playing field under
the current legislation which has dictated everything that has happened up to date. That needs
to be sorted out before you can then start to look at changing it into something different
because, I think of one particular case where probably an amendment has been made to
something that is not actually a public footpath. If you start to change the legislation half way
through it I do not know where that leaves you. Certainly, there would be a lot of toing and
froing over it, it would be difficult.

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The Chairman: Any questions from members of the Committee at this stage?

Mr Corkish: No, not at this stage for me, Chairman.

280

The Chairman: Mr King.

Q13. The Clerk: I am just looking back at the 1986 Act, section 92. Subsection (4) says if there
is an order under section 33, 34 or 91, or that something happens such as the orders you have
been talking about:

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The Department shall as soon as may be after the coming into operation of the order ... cause the definitive maps ... to be amended.

It then goes in subsection (5):

Before any such amendment is made otherwise than in pursuance of an order under section 33, 34 or 91 or an agreement under section 4 or 87,

290 and there is a different process: the Department shall publish in a newspaper a statement about the amendment. In other words, the Department under subsection (5) has a facility to amend maps, even when it does not come out of an order or an agreement.

I would just be interested to know from the time you have spent looking at these maps, can you tell if that has ever been used?

295

Mr Killip: All I can say is the ones I have looked at have all been to do with the orders that have been to do with the maps themselves, and I have not come across something that has not gone through that process, but that is where I was looking so I cannot say what else may have occurred.

300

I hasten to add I am not an expert on this! I have had to look to into this simply ... I would be in a similar situation as I guess most of are, when I started this. I happened to have two footpaths on my own land but that is as far as I knew, so I had to start from scratch looking at this thing and it was quite an eye-opener in its way.

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Q14. The Clerk: Just one more if I may, Chairman.

You have given the Committee six examples where something has gone wrong. (**Mr Killip:** Yes.) What would that be as a proportion of the number of maps you have looked at? In other words, is every map that you have looked at wrong or are some of the maps okay?

310

Mr Killip: You cannot ... Until you have actually done an exhaustive examination by putting the set of maps in the Registry next to the set of draft maps which contain what the Department has been doing and then pile up and find all the orders from Tynwald and put those three together and do a reconciliation, it is not possible to answer that question.

315

And that is what I have been pressing to be done and I am pleased to say that the Department is doing that. I was sent an update earlier this week and I think the process is more or less complete. I am not absolutely clear that they have finished it, but I believe that on top of that there may be another few that have been found, but I do not think most of them are very serious. I think it is a handful; it is not a huge problem.

320

Nonetheless every one of these, if you happen to be, if your house is next door to it or it is running across your garden then it is serious to you, so it does matter, yes.

Q15. The Chairman: I was going to say that to the casual viewer outside looking at this, this might appear to be a trivial issue about footpaths, but of course if people are purchasing land and investing, then it could actually have quite serious financial implications for them.

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Mr Killip: Yes. I think there is one particular one, I will not go into which one it is, but a path might or might not run next to your house or be moved from between two properties you own and might be in another place. That matters to you a great deal, I would imagine. And if a mistake has been made or something has not happened, then I think you would have a right to be very aggrieved about it.

330

Q16. The Chairman: But just to come back to the earlier point, are we saying that there is no recourse because the law says the definitive maps are the law and that is the end of the matter, so there is no recourse for people?

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Mr Killip: My understanding is that the thing stops with the definitive maps. In other words, at some point you have to have a place you can go and work out where the things are, and that is the definitive maps. And, as I say, with subparagraph (10) it makes it the legal authority.

340 You can change them and that is the procedure that the secretary has gone through, there are ways of changing them through the system, administered by the Department and through the courts and so on but that is the way you have to go.

345 If something has gone wrong internally in the process of Government changing the maps, which is what we are talking about here – in other words, the Department has not amended something – then I guess you would have legal recourse going back to the Department and asking them to explain and so forth.

Q17. The Chairman: It is almost like then there should be a time limit to amend the maps from the moment an order is issued of say three months, or whatever is decided.

350 **Mr Killip:** I guess, although I do not know whether lawyers know what the meaning of the term ‘as soon as may be’ means, but reasonably it is not four years, I would not have thought.

Q18. Mr Corkish: Are you undergoing, Mr Hamish, continuing talks with the Department on this?

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Mr Killip: Yes, there are sporadic emails backwards and forwards. I have submitted all the material I have found. For each one of those items that I sent to you in that email there is a long and rather tedious email with maps and photographs and stuff on it. I think I gave you a paragraph on each one: that is represented by a four-page email to the Department which gives chapter and verse, and I hope would allow them to get on with the amendment process if they wish to do so. I have gone as far as I can go with that.

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Q19. Mr Coleman: Can I ask how you identified those? One may be personal; one may be high profile.

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Mr Killip: It is a good question. It started, when I was on the Planning Committee we were asked to view a particular property by walking *only* on the public footpath because it was the nearest highway and therefore that is where you would see the property. I was puzzled because having walked that path in the past it did not actually strike me as being what I remembered. Then some time later I had a look at the definitive maps and found it wasn't. It actually was not a public footpath we were on; it was something else. That started me off on the process.

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When that was not tackled, I went back to the definitive maps to look at them again and on that same definitive map was Langness. I remembered about the case at Langness and I thought, ‘That’s odd, there are not any amendments to the Langness definitive map.’ Surely, I thought that they had agreed to do something so I looked into that and found that they had but they had never been entered.

375

That led me to look across the water to the Airport, and find that the footpath still runs bang through the runway, even though the runway had been extended and that technically you could join in the middle of the runway. And so it went on.

380

At that point I then, I think, looked at the neighbouring map and discovered that you – was it a sewage farm you could walk through? Most of them are actually trivial and are easily sorted out and they are not complicated, but it is just unfortunate it has not been done.

385 **Q20. Mr Coleman:** I think the point I was trying to make – well, you have answered the question I posed to you – but in reality we have no idea of the problem.

Mr Killip: We have a better idea.

390 What I then did, later, was to try and track back all the orders, the statutory documents that have been passed through Tynwald in relation to these in the last 20 years. That proved to be slightly more difficult than I expected and even when I got hold of them, I found one of them did not have a map attached and various other ... It took time. But I believe that I have now found all of them, with certain key examples missing. Where a new path has been created I still have not found the legislation that brings that into being, but that is the problem that I have, no doubt the Department has that.

395 I think we now have the scope of the statutory documents, the maps exist, so all the information is there. It is a matter of grinding through it and doing a meticulous check, and I believe the Department has done that. And I think most of the problems are relatively trivial and that in most cases there are not issues because people are observing the changes to the paths, it is just that they have not made to the definitive maps – but there are a few exceptions.

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Q21. The Chairman: Right, thank you.

I am going to move on now to objections to rectification involving the involvement of owners and users. Paragraph 16 of your email, you talk about users and owners of land which may be affected by topographical changes and you say:

Surely they should not be denied the right to be involved in the process,

405 In section 92A and B as now proposed by the Bill, as amended, if the Department wants to rectify a definitive map they have to publish their changes on a website and if anyone objects, the Department cannot make the change without going to the High Court. Does this not allow for people to be involved in the process?

410 **Mr Killip:** It does but when I first wrote this we were dealing with the first of the amendments, which did not make such provision. It just said that they could put things right without going any further. That is partially addressed in section 92, I would still say that you actually need to be in touch with the people involved and you need to give them chapter and verse on what they are doing. It is a little unreasonable just to say, 'Well, you should have seen the website.' That seems to me inadequate.

415

I do not know whether – do you feel comfortable, does anybody feel comfortable with the thought that something that might affect them directly like a path was up on a website for three weeks but because you did not do anything it went ahead?

420 **Q22. Mr Coleman:** There is of course in section (2)(b) the thing which says they will:

serve written notice on the owner, lessee and occupier ...

Mr Killip: If you go through the normal process. I mean at the moment the process is a bit like a planning application, it involves notices, it involves talking to people and so on and it would seem to me that that should be quite clearly stated for every single one of these actions because it does affect people exactly as planning applications affect people.

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Q23. The Chairman: So they could, like the now well-known yellow planning notices, in fact put some of those out.

Mr Killip: Which in fact is what they do at the moment, yes.

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Q24. The Chairman: We are not talking about scores and scores of these, so it should not be too –

Mr Killip: It is one I think.

435

The Chairman: – over administrative to do that. Would that be a better process than simply ... They could put it on the website as well, with the detail?

Mr Killip: Yes, the website is a good idea. and it is what is happening in a sense with planning applications, there is a map and all of the rest of it goes, and if it mirrored what has been done by planning that would be sensible. But at the same time planning still involves people on the ground as well. I think that is important because you cannot rely on everybody having access to the internet and picking these things up that way.

445 **Q25. Mr Coleman:** In the 1986 Act it says:

...publish in at least one newspaper published and circulating in the Island...

As well, so would you think that that would be a good idea?

Mr Killip: I think that is still ... And that is also the case in planning. Well, there are changes going ahead with that, but you need to have some system in place where you ensure that anybody who is likely to be affected ...

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I mean, let's go back to the principle behind it, why do you do it? Because you want people who are going to be affected to be aware of what is happening and give them a chance. It is not a game that people are playing, 'How can we slip it in without anybody noticing?' So therefore you have got to have a system that will actually accommodate that.

455 I am not particularly concerned *how* it is done, but there has to be something in place that ensures that anybody who is likely to be affected has some information, knows that it is happening and that you cannot fail to know that.

Q26. The Chairman: The definitive maps: basically who is responsible for keeping the definitive maps? In paragraph 17, you say:

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what is proposed does not make it clear who is responsible for keeping the successor documents to the current definitive maps and statement ...

For the existing maps, what is unclear about the proposal of new section 92(1)?

Mr Killip: I was unable to work out how that system was going to work in the future. That may be me, but I just could not work out what they were going to do.

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Q27: The Clerk: I think that in the proposed new section 92(1) it says:

The definitive maps and statement prepared, before the coming into operation of this section as originally enacted, under [the] 1961 Act, shall continue to be deposited in the General Registry.

Mr Killip: Yes, but that freezes them therefore at the point at which the Act comes in. What then subsequently happens to those maps? The problem is that those definitive maps will, as time goes on, have less value because changes will occur and there does not appear to be any obligation to update those – or have I misunderstood something? It was not clear to me, let's put it that way.

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475 **Q28: The Clerk:** At 92A and 92B it says:

The Department must, as soon as practicable after the happening of a relevant event, amend a definitive map and associated statement...

480 And at 92B, if there is a rectification, the Department must take the same steps to rectify as it would take if it was an amendment under 92A. So it replicates the old 'as soon as may be', it has been translated –

485 **Mr Killip:** This business of, there appeared to be a cut off which I did not really understand. It is just the way it is worded, I guess. But again that is me and my understanding, I am not claiming to be a lawyer or a legislator, it was how I understood it.

490 **Q29: The Chairman:** It is an interesting point because one of our key objectives is to make legislation that passes through the Legislative Council understandable to everybody, not just lawyers. So if there are areas that we think are not clear, then hopefully that is our job to try and clear them up. So that is something we will look at in detail as the Committee carries on with its work.

495 **Mr Killip:** Yes. I would just say that I did not find the freshly drafted Act, the new section 92, at all easy to understand at first reading. You have much more experience of these things than I, but it was not intuitively obvious what some of it meant. Whereas, I have to say, the original 92 was admirably clear and straightforward.

The Chairman: We will certainly look into that.

500 **Mr Killip:** But again, that is just purely a personal opinion, obviously.

The Chairman: Okay. I will just ask the other members of the Committee just before we draw to a close, any further questions for Mr Killip? Mr Corkish.

505 **Mr Corkish:** No, Chairman, apart from as a relatively new member of the Department of Infrastructure, I am glad that continuing talks are happening and that there is a degree of amicability there as well. I hope that continues to a common aim.

Mr Killip: Thank you for that.

510 If I can do anything for this I am delighted to do so and there is no point in me collecting information separately from other people collecting information and not sharing it.

Mr Corkish: Right, thank you.

515 **Mr Coleman:** I am pleased this process is going on and I am pleased to have suggested the Committee.

520 **Q30. The Clerk:** In summary, Mr Killip has said, I think, that it would be better to fix the problem under the existing legislation before amending the legislation, so I think it follows that you would prefer clause 20 to be removed from the Bill altogether.

Apart from removing clause 20 from the Bill altogether, is there anything else that you would regard as an improvement to clause 20?

Mr Killip: No. I think you have summarised my view admirably.

525 I think that this particular amendment, clause 20, is premature. I am not excluding the possibility that there needs to be a change in the legislation as regard footpaths, but I do not think that can be undertaken until the current problems are understood and rectified. And I think the emphasis on any changes needs to look at the impact of digital mapping and of the change of the physical process of recording and so on, and it needs to be a little bit more radical when it comes to look at that because clearly the definitive maps will not last forever as they go
530 on. There needs to be a system to replace them possibly.

But that is a separate issue and has nothing to do with what is being tackled, in a sense, by section 20 as it stands at the moment.

Q31. The Chairman: Thank you. Final point, we intend to invite the Department in to give
535 evidence to us. What would you like us to ask the Department?

Mr Killip: Oh, interesting.

Clearly, I would like to ask them ... well, in your situation, I would wish to know precisely why they thought this amendment was necessary, in some detail.

540 I would like to know whether they are confident that they have understood the scope of the problems with the current relationship between the definitive maps, the orders of the High Court, Tynwald, the draft maps held in the Department and any other correspondence and stuff that they have got. In other words, the reconciliation of all the information and how far they have got with that process and when they expect to complete it.

545 Finally, what they see as the future of the definitive maps in relation to digital mapping and would that require further legislation?

The Chairman: Thank you. Anything further Mr Corkish?

550 **Mr Corkish:** Nothing from me, Chairman, apart from thanking Mr Killip.

The Chairman: Mr Killip, can I thank you for coming in this morning, very enlightening for the Committee. Thank you for your time and for coming here today.

That concludes our hearing this morning and the Committee will now sit in private.

555

Mr Killip: Thank you, gentlemen, thank you very much.

The Committee sat in private at 11.19 a.m.