

# TOWN & COUNTRY PLANNING (AMENDMENT) BILL 2018

## CONSULTATION SUMMARY REPORT

### Introduction

A wide-ranging consultation conducted between October 2017 and January 2018 sought input from the public about many different aspects of the current legislation and issues of concern with planning in general. This informed the "Action Plan to Improve the Planning System" which was published in May 2018.

Implementing this action plan requires legislative amendments to the Town and Country Planning Act 1999. Specifically:

- New powers for the subsequent introduction of National Policy Directives which, with Tynwald approval, could override the Development Plan to better meet our needs.
- A new Community Infrastructure Levy taking effect in early 2020.
- The powers to introduce a method for faster minor amendments to existing planning approvals by the end of 2019.
- Introduce a definition of 'General Importance to the Island' as set out in Section 11(1)(a) of the Act.
- Discretionary powers for the Cabinet Office to appoint a planning advisory body under Section 40 of the Act.
- Explicitly define the statutory basis for Planning Committee(s) and their decisions

The Bill to make these proposed legislative changes was published for consultation between 3rd September and 31st October 2018 <https://consult.gov.im/cabinet-office/amend-town-and-country-planning-act/> .

Seventy-one responses were received, almost all via the consult.gov.im page. The few responses by letter were added to the consultation host page as scanned PDF files. These responses included contributions from local authorities, conservation and heritage groups, government departments and individuals.

A summary of those responses is hereby published, grouped into the six themes laid out in the action plan.

These responses have been analysed carefully, and are being taken into account as the bill is prepared for introduction into Tynwald.

It is expected that the Town and Country Planning (Amendment) Bill 2018 will be introduced into the House of Keys early in 2019.

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### Summary of consultation comments received

#### National policy directives (NPD)

Feelings about these were mixed, ranging from support through to outright rejection.

It is clear that some respondents had not noticed that NPDs need positive approval by Tynwald before they take effect.

One clear concern is that whilst NPDs may be useful in some circumstances misuse may lead to the views of people being disregarded. Moreover this approach could be used to fast-track a particular development. As one respondent put it: "the most concerning is the apparent singularity attached to Council of Ministers who may "whenever it is satisfied that it is in the national interest" issue a national policy directive."

Additionally some respondents suggested similar consultative input for NPDs as for the development plan itself; and, building upon this, some recommended building in measures to safeguard against potential misuse in the process of making NPDs, for instance independent assessment.

For instance one respondent sought appropriate consultation: "to enable the Departments and anyone else with an interest to consider all of the implications of such directives on their statutory responsibilities and duties. This aligns with the principles contained within the Aarhus Convention which includes access to environmental information, public participation in environmental decision making and access to justice."

Another wrote: "We firmly believe that the creation of the proposed national policy directives as a means of redirecting planning policy must be seen to be a transparent process to have democratic validity." And another submitted: "the decision of what is in the "national interest" is open to wide interpretation and possible abuse therefore the safeguard of a democratic process is essential."

Another was very straightforward in its view: "The Area Plans have and/or will have gone through a process of public scrutiny and democratic accountability. The Council is therefore of the view that the national policy directives should also be the subject of public consultation, public scrutiny and democratic accountability before finalisation and would ask that this be included within the proposed amendments."

Clarification in respect of the possible coverage and use of NPDs was sought by some respondents, and periodic reviews of how they have been used were suggested to assure consistency and fairness.

Additional clarifications sought were in respect of i) the validity of an area plan which has been amended in line with a NPD which was subsequently revoked, ii) the mechanism to rescind, redirect or replace a NPD by an incoming administration outside the changes effected when preparing or revising a development plan and iii) how the question of a legal challenge by way of judicial review of a NPD is dealt with, as provided for in section 5 of the TCPA99 regarding the development plan itself.

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### **Community Infrastructure Levy (CIL)**

Most respondents were supportive of this proposed levy. Statements were made about how such levies have been utilised in other places to useful effect. Some respondents suggested that the Council of Ministers should make regulations providing for the imposition of the CIL rather than may make regulations.

Comments were also made about needing to ensure that developments attracting a CIL are not constructed without the essential associated infrastructure. Other potential use for the CIL included transport infrastructure (including bicycle parking), natural infrastructure, education, health and other social infrastructure.

Questions were raised about likely calculation factors for a CIL, and how such would be applied within versus outside existing towns and villages. As one respondent put it: "the amount payable under CILs should vary depending on the nature of each development ... potentially CILs could be used to help regenerate unoccupied and unutilised sites in the towns ahead of building on the countryside."

Respondents also expressed concern about how a CIL would be applied for minor or ancillary works.

Another issue raised was whether the provisions regarding the CIL are adequate to permit contributions to be required in respect of vacant property as well as development.

Views were also expressed about which part of Government should raise the levy and the need to set out governance and decision-making authority in the primary legislation. One respondent also suggested that the conditions for CIL "needs close consultation with the local commissioners to reflect local needs."

One respondent summarised the bill in respect of CIL as follows: "the primary legislation fails to set any scope and control over the intended secondary legislation to be made thereunder", and went on to suggest, "that seems a fundamentally flawed concept and leaves no point of reference back to set the legal limits of the effect of the orders and regulations to be made under the same" and "the process needs to proceed to conclusion with expedition to avoid the resulting economic harm of uncertainty the greatest enemy of enterprise."

### **Development procedure orders – minor amendments to planning approval**

This amendment was generally supported, although the need for clarity was stressed regarding what a minor amendment really is.

Supportive comments included reducing unnecessary bureaucracy.

Questions about how fees and process would operate were posed, and a small number of respondents raised the question of how minor amendments might or might not be advised to neighbours.

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One suggestion was that “changes are put forward for a period of time for objection, if none have arisen then it can go through as a minor change, if objections are received then a new planning application would need to be sought”.

### General importance, and referral of applications to the Council of Ministers

Several respondents commented that the definition of general importance needs careful consideration and clarification, and some expressed concern about how narrowly or widely the General Importance term may be interpreted. It was suggested that the lack of case law may require additional guidance to be provided for this new statutory definition.

Some respondents also suggested it would be helpful if definitions for “national interest” and “overriding national need” were also provided.

One respondent suggested that: “all that needs to happen is TCPA1999 Section 11.1a altering from “considerations of general importance to the Island” to ‘matters of strategic national importance’ and section TCPA1999 Section 11.1b removed.”

The threshold approach contained in the draft bill drew comment, pointing out that for example, a development of more than thirty homes can vary considerably in shape and form, from apartments to free-standing dwellings in remote locations. Whether this was the intent of the amendment was questioned.

Many respondents raised concerns about process and perceptions of fairness arising when applications were referred to the Council of Ministers for determination. These comments sometimes went beyond the scope of the proposed amendment. Some respondents made comment about a need to minimise the perception of the Council of Ministers being open to influence by proponents of certain developments. One specific respondent comment was in the form of a question: “is it all applications identified in 45A (1) (b) will be referred to Council when the provisions of 45A (1) (a) are also met i.e. when the application does not accord with the use for which the land has been specified or does it requires all applications which do not comply with section 45A to be referred to the Council? The manner in which this is clarified could result in a significant number of applications being referred to Council which may not conform with the proposed definition of “general importance”.”

### The planning committee

Only general comments were received about this change, and there was general acknowledgement of the merits of providing a specific legal basis in statute for the planning committee. Many of these comments led on to other points which were outside the scope of the amendment bill.

### Outside organisations

Some respondents commented that at present the statutory obligation to have a consultative body under Section 40 of the Town & Country Planning Act 1999 was not being observed. Caution was expressed by some - particularly organisations involved with heritage and conservation - about accepting this failure and changing the legal position by transforming the statutory obligation into an option. An alternative was proposed by one

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respondent to make Manx National Heritage, Manx Wildlife Trust, Antiquarians, Director of Public Health etc. as statutory consultees.

#### **General comments**

Many respondents said that they found the consultation difficult as it required comment on legislative language and syntax which is much more formal than everyday written English. As one respondent wrote: "The published material to accompany the consultation does little to aid the public's understanding of the proposals. This limits the democratic process for adequate consultation." There were some questions from respondents about how consultations are publicised.

Some respondents commented on elements associated with land use planning on the Isle of Man which are not affected by the proposed amendment bill.

These included the conduct of the approval process for planning applications, as well as how objections are dealt with, including the identification of third parties who may make such objections. As one respondent put it: "removal of third-party appeal status .... This important item from the original consultation seems to have been actioned independently apparently ignoring/sidestepping the feedback provided and contrary to it ... with the new Interested Person Status Operational Policy."

Another request outside the envisaged scope was a request for "a strict liability offence of breach of planning conditions, perhaps within a fine structure, and certainly cross referenced into Building Control legislation with a completion certificate being unable to be presented before any fine is paid."

Generally respondents expressed support for ideas to streamline the planning process and to remove unreasonable provisions which may obstruct the progress of appropriate, sensitive and well-designed proposals.

One Government Department requested that further provision were included covering periodic review of minerals and waste permissions.

Disappointment was expressed that "more widespread improvements which have been identified over many years and referred to in the Tynwald Policy Decisions Report have not been incorporated into this Bill."