

**ST. HELENA**  
**LEGISLATIVE COUNCIL**

---

**THE SPEAKER**

Mrs Margaret Anne Catherine Hopkins MBE

**EX-OFFICIO MEMBERS**

The Honourable Chief Secretary	-	Mr Owen O'Sullivan
The Honourable Financial Secretary	-	Mr Colin Owen
The Honourable Attorney General	-	Mr Kenneth Baddon

**ELECTED MEMBERS**

The Honourable Rodney Garth Buckley	-	East Electoral Area
The Honourable John Gilbert Cranfield	-	“ “ “
The Honourable Cyril Keith Gunnell	-	“ “ “
The Honourable Brian William Isaac	-	“ “ “
The Honourable Christine Scipio O’Dean	-	“ “ “
The Honourable Stedson Graham Francis	-	West Electoral Area
The Honourable Anthony Arthur Green	-	“ “ “
The Honourable Earl Hilton Henry	-	“ “ “
The Honourable Derek Franklin Thomas	-	“ “ “
The Honourable Mervyn Yon	-	“ “ “

The Honourable Raymond Kenneth Williams	-	Overseas
The Honourable Bernice Alicia Olsson	-	Overseas

**CLERK OF COUNCILS**

Ms Gina Benjamin

**PROCEEDINGS OF THE LEGISLATIVE COUNCIL**

Friday, 22<sup>nd</sup> March, 2013  
The Council met at 10.00 am  
in the Court House, Jamestown

(The Speaker in the Chair)

**ORDER OF THE DAY****1. FORMAL ENTRY OF THE PRESIDENT****2. PRAYERS**

Fr. Fred George, Vicar-General

**3. ADDRESS BY THE PRESIDENT**

.....on 11<sup>th</sup> March, we celebrated Commonwealth Day and our thanks go to the schools for their special Assemblies in which we joined. Our thanks go to the teachers and students for their work in preparing the Assemblies and to the staff from Enterprise St Helena who also took part in them. I should like to pick out two of the things Her Majesty said in her message to the Commonwealth. The first was, "It takes courage to launch into the unknown". St Helena is on its own journey into the unknown, with the airport development underway and potential developers showing interest in tourism development on the island. The journey has begun and as with any journey it may meet problems. The road may be rough in places with potholes and smoother in other places when everything seems to come together. As leaders in our community, Honourable Members, you have the challenging and sometimes unenviable job of steering the island along the route that journey will take. Secondly, Her Majesty talks about "A better future that is beneficial to all". At our last meeting of this Honourable Council, I mentioned the importance of supporting the vulnerable. If you leave any one section of the community behind you don't have progress. Gain for only one section of the community is not progress for the island. Making sure that development benefits everyone and reduces the gap between the well to do and the poor, that, Honourable Members, is progress and it will be more likely to be sustainable than any measures which only benefit certain sections of the community. The island needs a government which looks to a better future that is beneficial to all.

Since we last met, Honourable Members have conducted further consultations on the proposed Constitutional changes with specific reference to the position of a Chief Councillor and a poll will take place tomorrow. I would encourage electors to use their votes and

thereby let Honourable Members know their wishes on this issue. I look forward to hearing the resumed debate on this matter later in the meeting.

Today is the first day of what will be a two-day sitting as we have the Appropriation Bill and will follow the tradition of hearing the Financial Secretary's budget speech and then adjourning the debate on it until Monday to allow Honourable Members time to prepare their responses'. I'd appreciate it, Honourable Members, if you would use your name cards to indicate when you wish to speak and please speak into your microphones. It is my intention to break for lunch at or around 12.30 today and to take an hour and a quarter, I have indicated to Honourable Members by e-mail that I should like to have a ten-minute CPA meeting at the beginning of that lunch break. Thank you. Next item of business, please.

4.

#### **PAPERS**

The Hon. Derek Thomas (Chairman, Home, Civil Society and International Committee) –  
Madam Speaker, I beg to present Sessional Paper No. 7/2013, a Bill for an Ordinance, the Motor Vehicles Third Party Insurance (Amendment) Ordinance, 2013.

**Ordered to lie on the table.**

The Hon. Attorney General -

Madam Speaker, I beg to present Sessional Paper No. 8/2013, a Bill for an Ordinance, the Law Officers Ordinance, 2013.

**Ordered to lie on the table.**

The Hon. Mervyn Yon (Chairman, Infrastructure and Utilities Committee) –

Madam Speaker, I beg to present Sessional Paper No. 9/2013, a Bill for an Ordinance, the Billing Control Ordinance, 2013.

**Ordered to lie on the table.**

The Hon. Mervyn Yon (Chairman, Infrastructure and Utilities Committee) –

Madam Speaker, I beg to present Sessional Paper No. 10/2013, a Bill for an Ordinance, the Land Planning and Development Control Ordinance.

**Ordered to lie on the table.**

The Hon. Anthony Green (Chairman, Economy and Finance Committee) –

Madam Speaker, I beg to present Sessional Paper No. 11/2013, a Bill for an Ordinance, the Bank of St Helena Restructuring Ordinance, 2013.

**Ordered to lie on the table.**

The Hon. Financial Secretary –

Madam Speaker, I beg to present Sessional Paper No. 12/2013 entitled a Bill for Ordinance, the Appropriation Ordinance, 2013.

**Ordered to lie on the table.**

The Hon. Financial Secretary –

Madam Speaker, I beg to present Sessional Paper No. 13/2013, entitled Estimates of Recurrent Revenue, Expenditure and Capital Expenditure.

**Ordered to lie on the table.**

5.

## QUESTIONS

*Question No. 1. The Honourable Cyril Gunnell to ask the Honourable Chief Secretary.*

The Hon. Cyril Gunnell –

Thank you, Madam Speaker. Will the Honourable Chief Secretary say what monitoring of the reduction in the SHG head count is being undertaken and whether there has been adverse impact on the delivery of services?

The Speaker –

Thank you, Honourable Member. The Honourable Owen O'Sullivan?

The Hon. Owen O'Sullivan –

Head count reduction is one of the MOU targets agreed with DFID. Following this agreement, the HR Directorate drew up a strategy and plan in agreement with Directorates for a head count reduction up to March 2014. The plan sets out the approaches to reduce head count over the four-year period and these are through implementation of functional analysis, recommendations, divestment in non-core services, review of vacancies that have not been filled for a long period of time, natural wastage through retirements and resignations, review of employment of the individuals over the retirement age by ensuring that is only done when essential and where possible terminate temporary or part-time workers by allocation of relevant tasks to full-time employees. Once Directorates wish to remove posts from the structure they are required to submit a justification for this to Human Resources where the submission is analysed before it is forwarded to myself for consideration. In addition, each Directorate submits a staffing return to Human Resources each month. These are then scrutinised and clarification sought where there is any case of discrepancy. Where restructures result in individuals being at risk of redundancy, SHG makes every effort, as in the redundancy policy, to find suitable alternative employment within SHG albeit that this is not always possible. More recently, HR has been working with Basil Read, through the Airport Director, and with Solomons, through its HR Officer, to identify opportunities outside St Helena Government that are then put to staff on a redeployment register for their consideration. As part of the process for reducing head count, SHG is also focusing on the delivery of core activities and divesting/discontinuing those that are non core or those that can be delivered by the private sector. Job profiles are revised as required to take into account the changing needs of the service. There has not been any noticeable adverse impact on the delivery of services. In fact, during restructuring, we expect to see improvement in some services. Compared to other countries, our head count reduction and impact on services is minimal. In St Helena, generally the standard of services has stayed comparable. One can compare this to the situation in the UK, our main funder, where hospitals are being shut, thousands of people have allegedly, well, in fact, tens of thousands of people have allegedly died in hospitals unnecessarily and governments have had to reduce head count by up to half in some organisations and shut down completely other organisations. Only this Monday, the

UK Government slashed another two and a half billion of funds from Government organisations. When you put into the context of the world situation, I would say that St Helena has escaped any adverse impact. Thank you.

The Speaker –

Thank you, Honourable Member. The Honourable Cyril Gunnell?

The Hon. Cyril Gunnell –

Madam Speaker, given that I have not been able to make sufficient notes of what the Honourable Chief Secretary said, would he be able to send us a copy of what he has just read from and could he, Madam Speaker, do that very quickly, hopefully by the end of the day, if not tomorrow, Madam Speaker?

The Speaker –

Thank you, Honourable Member. The Honourable Owen O'Sullivan?

The Hon. Owen O'Sullivan –

I'll forward the notes as soon as I can.

The Speaker –

Thank you, Honourable Member. Honourable Cyril Gunnell?

The Hon. Cyril Gunnell –

Madam Speaker, what was the target for this financial year and what is the target for the next financial year, Honourable Chief Secretary?

The Speaker –

In terms of head count reduction, Honourable Member?

The Hon. Cyril Gunnell –

That's the subject, Madam Speaker.

The Speaker –

Thank you. Honourable Owen O'Sullivan?

The Hon. Owen O'Sullivan –

The target for this financial year is 849 staff and the target for the next financial year is 790 staff.

The Speaker –

Honourable Cyril Gunnell?

The Hon. Cyril Gunnell –

Yes, Madam Speaker, the targets are rather interesting in that someone can decide what the target ought to be for the next financial year.....

The Speaker –

Could you ask your question, please, Councillor?

The Hon Cyril Gunnell –

Madam Speaker, I'm getting around to the question and I would like to ask what criteria, Madam Speaker, is therefore used when one has to try to consider what the target ought to be for, for example, the next financial year?

The Speaker –

Thank you, Honourable Member. Honourable Owen O'Sullivan?

The Hon. Owen O'Sullivan –

The targets are set, and they have been set in, as I mentioned in my first paragraph, in the MOU targets agreed with DFID. Obviously the criteria is based on key performance indicators and the delivery of the key performance indicators. However, for example, in Health, the Directorate has, in fact, significantly overachieved in its head count target. A large proportion of the reduction in staff can be put down to budget cuts rather than the head count target and, of course, the budget was agreed by Health Committee and Councillors.

The Hon. Cyril Gunnell –

Madam Speaker, can I assume then that it is actually the budget that determines what the head count ought to be?

The Speaker –

Honourable Owen O'Sullivan?

The Hon. Owen O'Sullivan –

No, you can't assume that. What I actually said is that they significantly overachieved in their target. So, we have a target that is being significantly, so the target was to get down from 260 to 247, no, 243 staff, but at the moment in the Health it's 230.

The Speaker –

Honourable Cyril Gunnell?

The Hon. Cyril Gunnell –

Yes, Madam Speaker, we do know the impact that has been caused in the Health Service.....

The Speaker –

Your question, Honourable Member, please? Sorry, I'm going to be insisting that you ask questions, Honourable Members, Honourable Cyril Gunnell happens to be the one who has stood first to ask questions and ask supplementary questions. I reminded you at the last sitting, you do not make statements ahead of asking questions, so please make sure you start with a question.

The Hon. Cyril Gunnell –

Thank you, Madam Speaker, I think at the last sitting you weren't speaking to me specifically, but, however, yes, of course, I will ask questions. Sometimes when one makes a statement it gets around to being a question anyway, but I would like to ask the Honourable Chief Secretary who decides what the target should be, who actually decides what the target should be given that in the very beginning you decided what the target ought to be as it was so long ago, how can one be certain what the target ought to be for the three years down the line, the four years down the line?

The Speaker –

Honourable Owen O'Sullivan?

The Hon. Owen O'Sullivan –

As I said, the target is actually decided and agreed, the MOU target with DFID, but as I also made the point that the head count reduction target has been significantly overachieved in a number of departments, including the Health Department, and so it's obvious that it's not the head count reduction target that is driving the reduction in staff, that it's the budget and the requirements in terms of delivery of services.

The Hon. Cyril Gunnell –

I think, just finally, Madam Speaker, can I assume that when undertakings are given at this formal LegCo and then seemingly the undertaking is not followed through, can this be taken as an indication that this is due to insufficient staff in any way?

The Speaker –

I rather think that's well away from the particular question, it's nothing to do with what you're asking for. Any other supplementary questions, please? The Honourable Brian Isaac?

The Hon. Brian Isaac –

Thank you, Madam Speaker. May I ask the Chief Secretary are there any provisions in place for when people are made redundant or otherwise terminated from their employment of any moral or counselling support as there are people in the community who can deal with these situations and there are people who cannot deal with these situations when told that they've been made redundant or whatever?

The Speaker –

You're referring to people made redundant due to the head count reduction?

The Hon. Brian Isaac –

If there's any provisions to support these people, thank you.

The Speaker –

Thank you, Honourable Member. Honourable Owen O'Sullivan?

The Hon. Owen O'Sullivan –

Counselling is offered, there's a lot of discussion between the people who are possibly being made redundant and Human Resources and if they want counselling then it is provided.

The Speaker –

Honourable Brian Isaac?

The Hon. Brian Isaac –

Madam Speaker, on a point of information, the reason for asking this question, when staff was recently informed that their jobs were at risk, some staff took it very personal and had some difficulty in working and coping with that sort of statement made, their job is at risk and that's why I asked if there were any follow up procedures in place, such as counselling. Thank you, Madam Speaker.

The Speaker –

Honourable Cyril Gunnell?

The Hon. Cyril Gunnell –

Thank you, Madam Speaker, may I rise on a point of clarification? And just to clarify why I asked the question earlier on which you thought we went a bit too far away from the original question, and the reason for asking that, Madam Speaker, because at the meeting on 25<sup>th</sup> February, the Honourable Chief Secretary agreed to provide members a list of projects prioritised under the Infrastructure Programme spend, to check whether or not the Ossuary could be included in the priority list of projects, Madam Speaker, I have not yet received that paper.

The Speaker –

Honourable Owen O'Sullivan?

The Hon. Owen O'Sullivan –

You will not receive that paper for at least a month, because as I mentioned in Executive Council, there is a lot of background work that goes towards that and I wouldn't want to give Honourable Members a paper which is erroneous, so we need to make sure that it's correct, that it has the evidence, and these things take time to draw up, but we are working hard on the paper, the evidence and the changing scenarios, because, obviously, economic development and the change in scenarios in economic development also impact on the prioritisation of capital projects.

The Speaker –

Thank you, Honourable Member. Honourable Cyril Gunnell?

The Hon. Cyril Gunnell –

Madam Speaker, may I rise on another point of clarification? What was being asked for was a copy of the paper that the Honourable Chief Secretary read out at the meeting. All that was necessary was a copy of that to be forwarded to elected members. That needn't have taken months to do, it could have been done that afternoon or the following morning or at least within a week, Madam Speaker. Thank you.

The Speaker –

I'm not sure that we have yet received the transcript of the last meeting, I can see the Honourable Chief Secretary shaking his head, so I think we're in the position we're in. Honourable Cyril Gunnell?

The Hon. Cyril Gunnell –

Madam Speaker, I'm sorry to have to keep rising on points of clarification, but only in the last ten minutes, or five minutes, the Honourable Chief Secretary said that he would be able to give us a copy of what he just read out, the answer to the question 1, this particular question, as soon as he can, but I would assume that will be within the next two or three days or so and so I was thinking of the same thing with regards to the question that was asked and undertaking was given at the last info LegCo, Madam Speaker, and that was on 24<sup>th</sup> February.

The Speaker –

Honourable Owen O'Sullivan?

The Hon. Owen O'Sullivan –



Well, I said as soon as I can, so when the transcript comes out, I will forward it to you as soon as I can, so, you know, as soon as it's delivered, I will send it to you.

The Speaker –  
Honourable Brian Isaac?

The Hon. Brian Isaac –  
Fine, Madam, no.

The Speaker –  
Honourable Tony Green?

The Hon. Anthony Green –  
Madam Speaker, on what evidence has the Chief Secretary reached the conclusion that he mentioned before that the head count has no adverse noticeable effect?

The Speaker –  
Honourable Owen O'Sullivan?

The Hon. Owen O'Sullivan –  
On key performance indicators, as I mentioned in my answer previously.

The Speaker –  
Honourable Tony Green?

The Hon. Anthony Green –  
Madam Speaker, does not the Chief Secretary recognise that an adverse delivery of service may not be able to be just done by mechanical means, but it is about how it affects people, particularly Councillors who receive services from the public?

The Speaker –  
Honourable Owen O'Sullivan?

The Hon. Owen O'Sullivan –  
Obviously, head count reduction and reduction in budgets are difficult, but as I said in the context of the world, we are very lucky.

The Speaker –  
Honourable Tony Green?

The Hon. Anthony Green –  
Madam Speaker, could I repeat my question, because I haven't had an answer. On what evidence does the Chief Secretary base his conclusion that the head count reduction has had no noticeable impact?

The Speaker –  
Honourable Owen O'Sullivan?

The Hon. Owen O'Sullivan –

I think I did answer the question, I said key performance indicators, which are not accounting indicators, they're actually a way of looking at how the organisation delivers in strategic terms and, as I said, though we met, the majority of key performance indicators we are meeting, so I can say that, you know, though there may be some small adverse effects in some areas that we're also over delivering in others.

The Speaker –  
Honourable Tony Green?

The Hon. Anthony Green –  
May I ask again, would the Chief Secretary recognise that it is insufficient just to monitor impact through key performance indicators?

The Speaker –  
Honourable Owen O'Sullivan?

The Hon. Owen O'Sullivan –  
Obviously, we monitor wider than key performance indicators, where I'm using key performance indicators is because that is evidence rather than, you know, supposition or basing it on, you know, discussion. The evidence is that adverse impact in terms of delivery of services in the organisation is not just justified because the key performance indicators indicate them.

The Speaker –  
Honourable Tony Green?

The Hon. Anthony Green –  
Madam Speaker, would the Honourable Chief Secretary undertake to take an assessment of actually finding out from the people who receives the service, including Councillors and the public, exactly how do they feel the impact has been from the head count reduction?

The Hon. Cyril Gunnell –  
Thank you.

The Speaker –  
Honourable Owen O'Sullivan?

The Hon. Owen O'Sullivan –  
There are a number of surveys that we take. I don't want to actually commit in terms of a wide scale consultation in terms of head count reduction because of the costs, and, you know, but we will certainly look to see how the impact is in terms of delivery of services, there is a continuous, ongoing customer surveys in terms of how things are going and we will continue to do that.

The Speaker –  
Honourable Tony Green?

The Hon. Anthony Green –

Would the Chief Secretary confirm that he's actually refusing to carry out an appropriate assessment of the impact of the head count reduction on the provision of services to the public?

The Speaker –

Just before you answer, you are actually asking the Chief Secretary to give an opinion and you shouldn't be asking for an opinion. I will allow the Honourable Chief Secretary to answer, because I think he possibly wants to answer anyway. Honourable Owen O'Sullivan?

The Hon. Owen O'Sullivan –

As I would just say that I wasn't refusing, I was saying that it's continuously ongoing, so therefore, you know, it's the exercise that is ongoing throughout the organisation and we will continue to do that.

The Speaker –

Honourable Cyril Gunnell?

The Hon. Cyril Gunnell –

Thank you, Madam Speaker. Noting that there is going to be an exercise or a survey of some kind, if it is determined that there is adverse impact in services or sub standards, if you want to call it that, will there then be an increase in head count?

The Speaker –

Honourable Owen O'Sullivan?

The Hon. Owen O'Sullivan –

This is hypothetical and we're starting to move away from the question, but in terms of if our continuous monitoring indicates that there is a reduction in services, as I indicated in my question, the reduction in staff is not, in certain areas, is not because of the head count target, because it's significantly been overachieved, but because of budget cuts or budgets, so we would then have to look at the budget.

The Speaker –

Honourable Cyril Gunnell?

The Hon. Cyril Gunnell –

Thank you, Madam Speaker, I would note that if they have to look at the budget then if there is an increased budget that could well include that there is increased staff numbers. Thank you, Madam Speaker.

The Speaker –

Thank you. Next question, please.

***Question No. 2. The Honourable Derek Thomas to ask the Chairman, Education and Employment Committee.***

The Hon. Derek Thomas –

Will the Honourable Chairman of the Education and Employment Committee tell this Council when can St Helena expect to see the introduction of a properly established

apprentice scheme, designed in conjunction with the private sector, to suit the specialist skills requirements for the continued development needs of the island?

The Speaker –

Thank you, Honourable Member. The Honourable Rodney Buckley?

The Hon. Rodney Buckley –

Thank you, Madam Speaker. Madam Speaker, Honourable Members, I am happy to report that members of the Education and Employment Committee have been issued with the final draft apprenticeships policy which will be considered at the forthcoming committee meeting next Wednesday for their endorsement and implementation from 1<sup>st</sup> April. Madam Speaker, that answers the question, but since this item has been around for a very long time and I believe it would be irresponsible not to give this House and the public who are listening some background and details of the new scheme, with your permission. Thank you. In April, 2011, the Youth Training Scheme was transferred to the Education and Employment Directorate on the abandonment of the Social Services Department and administered through the Youth Development Policy work base on the job training. At the beginning of this current financial year, the Committee endorsed a mandate for officers of the Directorate to draw up a new apprenticeship scheme for apprenticeships across the island and the first draft was presented to the Committee in July last year. This new apprentice scheme will replace the Youth Training and Work Experience Scheme and the Youth Vocational Training Programme. This draft has been subject to lengthy consultation with a range of employer organisations, both large and small, public and private. A wide range of views have been taken into consideration as the proposals have been developed into a modern scheme that builds on the Youth Training Programmes that are already in place. This new scheme provides funded, accredited training opportunities, specifically related to the skills sector requirement of the economic needs of the island. One of the major changes will see these modern apprenticeship opportunities available for people who want to re-train in order to take advantage of the economic opportunities that are available to them. Staff in AVES and Enterprise St Helena has worked in partnership with representatives of the private sector to design a scheme that enables training programmes to be tailored to the individual needs of each apprentice, regardless of the level at which they enter into an apprenticeship. AVES and Enterprise St Helena will oversee the apprenticeship programme to ensure that all apprentices benefits from the high quality, relative training. Entry into the scheme is in four bands, designed to give people an opportunity to develop their own chosen field best suited to their own ability with a combination of both work based programmes and academic studies. Band One is at foundation level, Band Two at intermediate level, NVQ level and VRQ, Band Three at NVQ Level 2 and Band Four is accredited work based programmes for those who have achieved the first three Bands or who have completed their academic achievements for GCSE, 'O' level 2. The key component of the programme is to ensure equal opportunity and equal access to education and training at levels to suit the individual's ability. In addition to this policy, Honourable Members, in partnership with the Science Department of Prince Andrew School, the Directorate is also working with the Agricultural and Natural Resources Directorate training to provide a pathway which enables young people to broaden their knowledge of land based studies. An option under consideration is to move from an NVQ level two training provided by A&NRD, which is an equivalent to qualification of GCSE to a B-tech Level 3 Diploma. These courses offer qualifications by practical hands-on training in land-based work environments. This piece of work is ongoing.

Madam Speaker, Honourable Members, the island also will also be happy to know that we will also soon be getting a Marine Studies teacher for Prince Andrew School. Thank you. I'd be happy to answer any questions.

The Speaker –

Thank you, Honourable Member. Honourable Derek Thomas?

The Hon. Derek Thomas –

Yes, I don't have a question, Madam Speaker, I'd just like to thank the Honourable Member for his comprehensive update and we look forward to seeing the Scheme implemented and up and running. Thank you.

The Speaker –

Thank you, Honourable Member. The Honourable Brian Isaac?

The Hon. Brian Isaac –

Thank you, Madam Speaker. Will the Honourable Chairman say what is proposed for the new, what is proposed for the trades in, what is the Technical Trades Centre currently at Prince Andrew School at the moment?

The Speaker –

If you'd like to sit down, Honourable Member. Honourable Rodney Buckley?

The Hon. Rodney Buckley –

Sorry, I need to completely understand the question, are you asking what will happen to the Trades School at Prince Andrew School?

The Hon. Brian Isaac –

Yes, any proposals for the Trade School which is currently at Prince Andrew School at the moment?

The Hon. Rodney Buckley –

That will continue its training as it is presently doing.

The Hon. Brian Isaac –

Thank you.

The Speaker –

Next question, please?

***Question No. 3. The Honourable Cyril Gunnell to ask the Deputy Chairman, Natural Resources, Development and Environment Committee.***

The Speaker –

Honourable Cyril Gunnell?

The Hon. Cyril Gunnell –

Thank you, Madam Speaker. Will the Honourable Deputy Chairman of the Natural Resources, Development and Environment Committee say what is the position with regard to

members of the public having a claim of any kind once they have contributed financially or in kind to the refurbishment or construction of property, including buildings, owned by SHG?

The Speaker –

Thank you, Honourable Member. The Honourable Mervyn Yon.

The Hon. Mervyn Yon –

Thank you, Madam Speaker. Madam Speaker, I will begin by saying that I can only give an answer to any buildings related to SHG, I cannot answer for any properties outside of that area. Claims of any type would have to be supported by an agreement to protect a financial or other in kind investment in a property, otherwise the sole beneficiary will rest with the freehold interest. Any public contributions as described above will require protection through an agreement, preferably registered as an encumbrance against the proprietor, prior to making such contribution if that investment is regarded as a loan. A public contribution, either financially or in kind, is normally a donation to provide for a specific outcome and will ultimately enhance the value of a building and this principle will apply to both privately owned or SHG buildings. In regards to SHG buildings, no such agreement is registered against any property to protect earlier contributions referred to above. In principle, the same applies to a leasehold interest where an improvement has been made to a particular building and whilst the tenant will enjoy the rights to such improvements during the term of the tenancy it will revert to the freehold owner at the end of the lease. This scenario, unfortunately, is a typical legacy of what the island has inherited over the years, no documentation to support a good intention at the time. There are two aspects to the tenancy condition, which applies to this question. Firstly, tenants are responsible themselves for carrying out minor, routine maintenance, the replacement of consumables and internal redecoration to their homes, so must bear the cost themselves. Secondly, the tenant is not entitled, without prior permission of the Landlord, to alter, improve or enlarge the accommodation or put up a shed, garage or other structure. In our experience, many of the additions to homes have been carried out without permission being granted. Granting permission does not in itself create a liability for the Government to reimburse the cost of this work at any time. If it did so, either rents, or government grants, would have to be increased to pay for this or other essential work, such as the rewiring of the flats in Jamestown, would have to be delayed. Whilst we can applaud tenants for taking pride and showing a long-term commitment to their homes, there are many other more pressing priorities for the Government in respect of the housing stock. Madam Speaker.

The Speaker –

Thank you, Honourable Member. The Honourable Cyril Gunnell?

The Hon. Cyril Gunnell –

Thank you, Madam Speaker. I thank the Honourable Member for his answer and because it was so long, I would be grateful if he could ensure that Honourable Members are given a copy of it. Thank you, Madam Speaker.

The Speaker –

Honourable Mervyn Yon?

The Hon. Mervyn Yon –

I shouldn't think that would be a problem, Madam Speaker.

The Speaker –

Thank you. Honourable Cyril Gunnell?

The Hon. Cyril Gunnell –

Thank you, Madam Speaker. As the original question was asked, because members of the public asked to ask the question, I would like to ask a supplementary question, Madam Speaker and that is, to what extent will the public be consulted when SHG buildings or property are to be disposed off or a change of use is intended where members of the public have made financial or in kind contributions? Thank you.

The Speaker –

Honourable Mervyn Yon?

The Hon. Mervyn Yon –

Sorry, Madam Speaker, the question was so long I lost track of it. I wonder if the Honourable Member would be kind enough to repeat it, please?

The Hon. Cyril Gunnell –

Always glad to accommodate, Madam Speaker. To what extent will the public be consulted when SHG buildings or property are to be disposed off or a change of use is intended where members of the public have made financial or in kind contributions?

The Speaker –

Thank you. Honourable Mervyn Yon?

The Hon. Mervyn Yon –

I cannot give a concrete answer to this, Madam Speaker, but I assume that that would be done through the Landlord before any such actions are taken.

The Speaker –

Honourable Cyril Gunnell?

The Hon. Cyril Gunnell –

Madam Speaker, that was not quite the answer I was looking for, however, Madam Speaker, can I ask, in the absence of the original question, with regard to places like Barn View, Half Tree Hollow Community Centre, Levelwood Community Centre, Levelwood Clinic, for example, that we know there have been quite significant sums of money given in by the public, can I ask in respect of those particular buildings, whether there would be, for example, any change in the intended use of the buildings or if the buildings were to be disposed off whether public consultation would take place, Madam Speaker?

The Speaker –

Honourable Attorney General, I think you want to rise?

The Hon. Ken Baddon –

Madam Speaker, I'm a little concerned about the trend, being asked to answer questions about specific properties. Every time there is a question about a specific property, the particular history of that property would need to be investigated in order to decide what is the legal position concerning it, so we're really straying, I would venture to submit, into the area of abstract legal questions, which ought not to be asked.

The Speaker –  
Honourable Cyril Gunnell?

The Hon. Cyril Gunnell –  
Madam Speaker, I have no further questions, but on a point of clarification, I don't think it is my fault that the Director of the Directorate concerned is not here to help the Honourable Chairman with answering his questions, Madam Speaker. Thank you.

The Speaker –  
Thank you. Next item, please?

## 6. MOTIONS

### *Motion No. 1. The Honourable Financial Secretary.*

#### **THE APPROPRIATION BILL, 2013**

The Hon. Colin Owen (Financial Secretary) –  
Madam Speaker, I beg to move that the Appropriation Bill, 2013, be approved in principle and referred to a Committee of the whole Council.

The Speaker –  
Thank you, Honourable Member. Is there a seconder, please?

The Hon. Anthony Green –  
Madam Speaker, I beg to second.

The Speaker –  
Sorry, and I stopped the Honourable Financial Secretary from being able to confirm that the Bill is being presented on the recommendation of the Governor, my apologies. Would you like to just formally confirm that?

The Hon. Colin Owen –  
I formally confirm that this Bill is presented on the recommendation of the Governor in accordance with Section 73 (2) of the Constitution.

The Speaker –  
Thank you, Honourable Member. I thank you for seconding it. Honourable Mover, you wish to speak to the Motion, I suspect?

The Hon. Colin Owen –  
Madam Speaker, before I start my speech, I'd like to pay tribute to the previous Financial Secretary, Paul Blessington, who sadly passed away last year. He was instrumental in SHG's reform programme and will be remembered for his excellent work as a Scout within the community. I look forward to seeing his wife, Margaret, in the near future when she returns to the island.



Madam Speaker, I wish to introduce the Bill for Ordinance to provide for service of the financial year 1<sup>st</sup> April 2013 to 31<sup>st</sup> March 2014. Hard work and making difficult decisions would be the answer I'd provide to anyone who asked me how this year's budget preparation had gone. Hard work on the part of Accounting Officer preparing the budget, hard work by Directors pulling together the budget and looking for efficiency savings, hard work by Finance reviewing the submissions and analysing submissions made, and, finally, hard work by Members in making those difficult decisions. I believe that this year's budget, more than any previous one, has been owned by Councillors. The medium term expenditure framework (MTEF), which is the yearly budget process the Government follows, has been the key factor in allowing Members to take ownership and lead the process of setting the budget. It is not a simple process. It takes considerable time and effort. It started with Members setting the expenditure limits for Directorates last May and ends on Monday. But what does this process mean to the people of St Helena? What is the outcome and how do Saints benefit from it? My aim is to tell the taxpayer how well St Helena Government has performed financially and economically in carrying out its duties to the people of St Helena over the past year and how the Government will finance the coming year.

The past two years have seen a raft of financial changes with the introduction of accruals accounting and output based budgeting. This has led to improved financial information, which, in turn, supports officials and Councillors so they can make informed decisions. Further, major changes have been made to the taxation system, including income tax reform, further tax incentives, changes to Customs duties and implementation of a service tax. These changes have put St Helena in a position where it's ready for economic growth and to make the most of impending air access. This budget supports the work of the past two years and consolidates the approach taken. As I see it, the budget steadies the ship rather than making significant changes in its course. Some would ask, why is that? We need more changes, more initiatives, additional change to the tax system, but I would say that we need to see those changes making a difference and the signs are they are making a difference. St Helena has virtually no unemployment, only one and a half percent of the population are unemployed; any other nation in the world would dream of such a fact. Over 250 Saints are now working on the airport project, wages have increased, which is reflected in income tax collecting 2012/13. The particular increase in revenue streams for Customs duty has been achieved in the financial year. Thirty-six small businesses have opened in the year and six new companies have been registered. We had significant interest from major hotel operators wanting to run and manage hotels on the island. Population growth continues to increase and at the end of February 2012/13 it stood at 4,274, which is the highest population since 2008. More encouragingly is the age range of those Saints returning with over 150 being in the 20 to 40 year bracket in the past year alone. This is an extremely positive sign for the island.

Progress made in 2012/13. I regularly get asked what do we get from Government for our hard earned taxes. I could rattle off the standard list of services that Government provides but I wanted to highlight some of the success stories over the past year. In 2013, the airport moved into construction phase and it's now hard for us to imagine life without Basil Read. The Project currently employs 350 people; it remains on time and on budget. We have seen significant advances in the standards of education achieved by our children and young people. Primary School assessments, for example, have exceeded targets set and they look to be the same again this year and we look forward to improve Secondary School results. These good results have been achieved because Government has continued to make education a top priority and has targeted resources towards improving the quality of teaching and learning, such as the investment in the raising attainment partners for Primary School, which focus on improving the quality of teaching and strengthening leadership in schools. We have continued to invest in higher education and in 2012 we saw five young Saints go to the UK to

University. These courses being studied are all relevant to the island's economic future. Education, like all Directorates, has looked hard to maximise efficiencies whilst increasing their educational outputs. The NVQ Centre is performing well and enabling more and more people to gain internationally-recognised qualifications. Such is the commitment to top upskilling and training, I am able to report that we currently have fifty-seven middle managers in SHG following leadership and business skills training.

A number of efficiencies have been achieved in Health, through better procurement of drugs and a new, expanded public transport system has led to more efficient means of transporting hospital staff. Further investments have been made in services provided with £100,000 of capital investment in modern, surgical equipment and the dental surgery. Investment in staffing has led to the appointment of a Senior Social Services Manager and the reintroduction of the Community Workforce Scheme in partnership with SHAPE. New staff appointments to support and improve the Health Service will be announced soon.

We successfully divested a number of services during the year to the private sector. These include retail firewood activities, Saint Connect will be delivering utilities from 1<sup>st</sup> April and I can report that the new Cleaning contract for Government buildings was signed on 14<sup>th</sup> March and will commence from 1<sup>st</sup> April 2013. These divestments allow Government to focus on key core activities, thus also stimulating the economy.

Enterprise St Helena has been in existence for less than a year, but has made great inroads in upskilling Saints with over two hundred Saints trained to date. Further training has been provided to eighteen people through the Hospitality Training and Learning Centre project, 2onMain and ESH has supported eight apprenticeships to date. Training though, is only one element of ESH, attracting investment is the other. They have received over a hundred and thirty overseas investor enquiries, fourteen investor visits to the island and two high profile visits from Mantis and the Protea Hotel Group.

Another important aspect of ESH is the development of the on island businesses. Within the first year, two hundred and twenty-five different businesses have been contacted. They've assisted in sixty-seven potential new business startups and ninety-eight existing businesses on island, providing four loans and twenty-six business grants. Enterprise St Helena has pooled agriculture sector funding to support the private sector, including increased covered polytunnel production resulting in an increased salad crop for the island.

In the year, we established the new Environmental Management Director, which pulls together environmental functions from across Government, providing a focused approach to environmental protection.

The Soil Waste Management Project is now implemented and a new Project Manager appointed and capital purchases are being made.

A new Probation Service is being delivered by the Police Directorate by looking through efficiencies and service deliveries, which has been positively received.

We are seeing investment in the refurbishment and upgrade of a number of SHG buildings, including the conversion of Bleak House for the use by disabled tenants and the full upgrading of a number of flats and other properties.

SHG continues to rationalise and downsize the public sector. With the introduction of Corporate Services, which now includes Finance and Strategic Policy and Planning, as well as others, this will lead to further efficiencies and a leaner public service. This is supported by improvements in the use of information technology and the introduction of SharePoint, which allow documents to be shared amongst Directorates and the imminent launch of the new SHG website.

This year, Government gave £50,000 to the Community Development Fund which awarded a series of grants to organisations across the island, ranging from the replacement of cookers in Community Centres to a grant to complete the Donkey Sanctuary building. All were worthy

causes which will benefit many and I'm pleased to announce that a further £50,000 has been set aside for next year.

But we still have considerable work to do and this budget, I believe, supports the ongoing improvements, medium service delivery and economic reform.

Turning to the 2012/13 financial outturn. As predicted earlier in the year, we're online to exceed our revenue targets for taxation and Customs duties. This has been driven by the higher private sector activity with PAYE receipts up by 35% following strong growth in the last two quarters of the year. Interestingly, we're also exceeded on revenue predictions with regards to alcohol and cigarettes. Further expenditure is broadly in line with budgeted figures and we will achieve a near balanced budget. Both sets of figures clearly indicate that improvements made to the budget process and the implementation of MTEF are working. This will be fully strengthened in 2013 through the appointment of an MTEF Adviser to support Directors in their budget setting.

Capital Expenditure. Capital spending is a key factor to the economic development and I'm pleased to say that for the first time in many years SHG has spent its allocated capital budget. On the back of this, DFID has reaffirmed a five million allocation for 2013/14. To further improve the management of our capital budget, SHG has implemented a series of changes with a new Programme Board and Project Management Unit operational from 1<sup>st</sup> April and we're looking to appoint an experienced Programme Manager to support the process and two experienced Project Managers to drive the capital programme. This will provide strategic direction and operational improvements. SHG is responding to criticism and putting its house in order. Going forward, SHG has a number of competing capital projects and difficult decisions will need to be made as to what projects are deemed to be a strategic priority. Indeed, with the airport less than three years away, the pressure on capital funds has never been higher. We must ensure everything possible is done now to support the island's future.

Turning to the DAPM settlement. I'm pleased to announce that the DAPM budget settlement, signed on 19<sup>th</sup> February this year, was confirmed by the UK Government last Wednesday, 20<sup>th</sup> March. The settlement is an excellent result for St Helena against an extremely difficult economic climate in the UK and the rest of the world. With the UK just predicting a 0.6 growth in 2013 and further budget cuts, the settlement confirms grant-in-aid to cover recurrent expenditure of £13.4 million. The RMS shipping subsidy of £5 million with half a million set aside for capital expenditure to include improvements to lifeboats and a further £5 million to fund the capital programme. Further, I can announce today that DFID have agreed to provide £1.2 million to cover short-term Technical Cooperation; this is great news for St Helena.

Turning to the 2013/14 recurrent budget expenditure. Two major changes are occurring June 2013 that impact on the presentation of revenue expenditure. Firstly, the divestment of utilities, and, secondly, the restructuring of a number of Directorates. From 1<sup>st</sup> April, SHG will no longer deal directly with the vision of electricity, water and drainage as these services will be divested to St Helena Connect Limited. The company will be more efficient and productive which will reduce costs and result in improved services to the customer and it will allow SHG to focus its limited resources on core Government business. The new Corporate Service Directorate will also come fully into effect from 1<sup>st</sup> April. This brings together the core functions of Government into one place and will result not just in cash savings through efficiencies, but a more customer focused service to Government's customers, the general public. This budget reaffirms SHG's commitment to the community and civil societies. As stated, £50,000 will go to the Community Fund and further funding will be provided to other voluntary organisations, including the National Trust, the Heritage Society, New Horizons and to support the important work done by SHAPE.

Finance will also look to increase the collection of outstanding debts and ensure that those that can afford to pay should pay. This will involve a more rigorous approach to the management of debt and actively pursuing collection from April 2013.

SHG plans to spend nearly £29 million in 2013/14. As expected, the main expenditure element will be employee costs and nearly £5 million in subsidy of the running of the RMS. This will be funded through £7 million in local taxation in Customs, £1.1 million in Fees and Charges and just over £400,000 in Treasury receipts. DFID would directly fund just over £18 million, which includes the shipping subsidy and the balance will be recharges between Directorates.

Turning now to benefits. During the year, early part of the year of 2013, Professor Ray Sainsbury carried out a detailed review of the benefits system on St Helena and SHG looks forward to the outcome of his work, which is due soon. Benefits will be revised on the back of this report and inflation increases are expected to be implemented during the coming months. Further, I can announce the full consideration will be given to introduction of the incumbent move towards a minimum income standard during 2013, which will be a positive move to address poverty on the island. One of the most important changes that will impact St Helena next year will be the introduction of the minimum wage, which will have a positive, public and social impact as it will protect the interest of the lowest paid on St Helena. Two rates will be introduced - £2.30 for over eighteens and £1.45 for sixteen/seventeen year olds. It will be introduced from 1<sup>st</sup> June 2013 and will apply to all employment on the island. While this might not seem a lot to everybody, for those spending around £1.50 an hour at present, this will be most welcome. So, to give you an example, a gardener previously earning £1.50 an hour for a 35-hour week will now be taking home an annual wage of £4,186, which is an increase of £1,456 or just over 53%. This is great news for those paid workers in our society and is a positive step forward for St Helena.

Tax Reform. With my opening remarks, I stated that this budget builds on the significant changes to the taxation policy implemented last year rather than a raft of new policies. We need to give time for a number of these initiatives to bed in so that the tax reform should have a long term aim and with regards to that point, work has started on updating the previous taxation strategy. A new three-year strategy will be introduced during 2013 which will take us through to the airport opening.

The four main changes announced last year that will make it more profitable for businesses are –

- An Investment Tax Credit – that will provide a deduction from the business's tax liability of 15% of the value of any additional assets imported to or constructed on the Island;
- Accelerated Depreciation – which will enable a business to claim an additional 20% depreciation in the first year, bringing forward the rate at which it can write off its assets against tax;
- Rollover Relief on Capital Gains – which will enable a business to claim tax relief if it reinvests the proceeds of an asset sale back into a business; and
- Unlimited Carry-forward of Losses – which will enable a business to offset any losses it makes against future taxable profits for an indefinite period.

I encourage all businesses to make full use of the tax credits rollover relief when they are filling out their tax returns this year. In fact, the use of such a relief should significantly reduce the tax burden on a high number of local businesses from paying tax. This money can be then ploughed back into the economy and reinvested to grow businesses. But tax is complicated and I recognise that support is needed for small businesses to complete tax returns. To ensure that they receive all the benefits that are offered, the Income Tax Section

will be providing out of hours call-in surgeries to businesses to help them complete their returns. These sessions will be arranged around the business and will seek to ensure that businesses claim what they are entitled to. Further, Finance will be working closely with ESH to provide information on grants that are available to all local businesses through an advertising campaign in the local press and online. In order for St Helena to travel on the path to self financing, it needs large scale investments, coupled with support to local businesses. It is recognised that one of the largest barriers to investment in St Helena is the extremely high cost of freight and the current levels of import duties. Taken together, these can increase the cost of investment in St Helena by around 40%. St Helena needs to encourage investment, be it by local investors or through inward investment. We want to and we need to encourage such investments and so a series of initiatives will be introduced later this year to support investments of over £1million and £5 million. These will include

- All investment materials to attract 0% customs duties;
- 0% Corporation Tax;
- 0% Capital Gains Tax; and
- Reduced freight rates on-board the RMS St Helena for new addition containerised investment materials of up to 50%.

The qualifying criteria is that the investor must demonstrate that the venture is a new business startup or a new business activity, that the investment is over £1million and will commence before 1<sup>st</sup> April 2015. Further details of the scheme will be announced shortly. Supporting small local business and encouraging large scale investment will further drive the economy on the island. There are no changes to the standard rates of income tax and corporation tax this year, which will remain at 25% and the current personal allowance will remain at £7,000. Stamp Duty. As stated in last year's budget, stamp duty on land sales and lease premiums will be treated as a revenue source and will continue to have a percentage rate applied. From 1<sup>st</sup> April 2013, this will rise to 2% and from 1<sup>st</sup> April 2014 it will become 2.5%. Stamp duty on share transfers will be unchanged at 1%.

Turning to Customs duties. Much discussion has been had during the past months regarding the flattening of Customs rates. A decreasing of the current rate of 20% towards 10% and the removal of the 5% rate. I am glad to say that a detailed paper will be presented to Economy and Finance Committee on the issue towards the end of April 2013 for discussion. No changes are therefore made on the rate at this time.

However, specific duties will increase from today by 6.8%. This is in line with the commitments made previously and I further reaffirm the continued approach to annual inflation increases and specific duties. This will mean that duty on a 330 ml bottle of beer below 4.5% alcohol will increase by 3p, by a higher alcohol beer will rise by 8p. A 750 ml bottle of wine will increase by 26p and a 750 ml bottle of spirits will rise by 71p.

Turning to tobacco. Smoking remains one of the biggest causes of preventable illness in the world and there is clear evidence that increasing the cost of tobacco encourages smokers to quit and discourages young people from taking it up. Further, smoking puts financial pressure on the health budget, so as from today, a packet of twenty cigarettes will rise by 27p and I look to introduce further significant increases on tobacco duty next year above the rate of inflation.

Duty on diesel will rise more slowly than predicted, by 5p to 22p per litre and duty on petrol will remain the same, at 39p per litre.

To improve the collection of Customs, a new computerised system will be introduced from July 2013 called ASACUDA, Automated System for Customs Services Data. This will

release Customs Officers time, allowing them to focus on the collection of revenues rather than administrative duties.

**Excise duty.** A proposal to introduce excise duty has been considered. The use of excise duty allows greater flexibility to promote SHG programmes from indirect taxation. Future proposals will include excise duty on locally produced alcohol and a variable rate of duty on vehicles based on CO<sup>2</sup> emissions. Owing to competing priorities, it has not been possible to introduce the excise legislation by 1<sup>st</sup> April 2013. However, every effort will be made for the relevant legislation to be in place within the first six months of the new financial year.

**Fees and Charges.** A number of increases of fees and charges will be introduced from 1<sup>st</sup> April and others will be staggered during the first quarter of the financial year. These increases are necessary to reflect the true cost of providing individual services and many have not seen increases in a long time. Going forward, a full review of fees and charges will be carried out by Finance during 2013 to ensure that a consistent approach is being taken to the setting of fees and charges. One major increase will be increase in electricity tariffs by 10% from 1<sup>st</sup> April 2013. Freight rates and passenger rates on the RMS will both rise by 4%, but this will not apply to pre-purchased fares. Further work is needed. SHG needs to ensure that it's getting best value and appropriate return for all of its investments, be it investments in cash or shares. With this in mind, Finance will lead a review of all SHG investments to ensure that we are achieving the best return for the taxpayer. Business as usual is no longer appropriate on St Helena.

We have discussed the initiatives of a large scale investors and I've outlined the current tax breaks for businesses on island, but I believe further support is needed for the smaller businessman. Only through the development and nurturing of small businesses who may only employ one or two people, can we hope to drive the economy further. As I see it, they are the key components to the long-term economic future of the island and we need to support them further. The Tax Reform Group will therefore reconvene in early April 2013 to look at a range of incentives to encourage small businesses growth on the island and we will seek out the views of the businesses with a view to implementing changes in 2013.

In the months ahead, Education, working with ESH, will look into introduce a modern approach to apprenticeships, building upon the Youth Training Programme, but much more targeted approach towards the personal skills needed of each individual who undertakes the apprenticeship.

Health is a key SHG priority and much discussion has occurred as to how to take Health forward. With this in mind, I reaffirm our commitment, made at DAPM, to carry out an independent detailed functional analysis of Health, which will seek to then identify the appropriate level of service for the island and the financial requirements to provide that service.

Building homes is not just good for the economy, but owning your own home is an aspiration for most people. SHG needs to further support Saints to do just that and further initiatives and support will be considered, which include the process of identifying and purchasing land. SHG needs additional resources to fund capital expenditure and should consider all possible revenue streams.

The minimum wage is the first step in strengthening employees' rights and will have a real impact on many low paid Saints, but further work, I believe, is needed in this area and other areas, such as maternity and paternity leave, sick leave and holiday entitlement will be considered in the future.

St Helena's national product and future economic growth will heavily depend on the tourism market. One of the key sellers of St Helena is a green product. SHG will seek to use further future excise duty to promote environmental friendly and the polluter will pay. This could include duties on plastic bags and importing of inefficient electrical goods.

In terms of financial results, SHG has performed well in 2012/13, with expenditure coming in as expected and revenue streams exceeding expectations. Further, we have over achieved on our capital programme. From an economic perspective, the population is increasing with more Saints of workable age returning to the island, new businesses starting up and virtually no unemployment, but we cannot and must not be complacent, we must strive, not just as a Government, but as a nation, to further invest in the island and its people in order to reap the benefits that the future will bring. Madam Speaker, I beg to move.

The Speaker –

Thank you, Honourable Member. In accordance with Standing Order 13, Rule 1 (3), the Motion stands adjourned until the next sitting. This will be a sensible point in time to suspend the sitting. I suspend the sitting for fifteen minutes. Thank you.

**Council suspended.**

**Council resumed.**

The Speaker

Thank you, Clerk. Next item of business.

***Motion No. 2. The Honourable Anthony Green, Chairman, Economy and Finance Committee.***

The Hon. Anthony Green –

Madam Speaker, I beg to move that the Bank of St Helena (Restructuring) Bill, 2013, be approved in principle and referred to a Committee of the whole Council.

The Speaker –

Thank you, Honourable Member. Is there a seconder, please?

The Hon. Stedson Francis –

Madam Speaker, I beg to second.

The Speaker –

Thank you. Honourable Tony Green?

The Hon. Anthony Green –

Madam Speaker, this Bill, the Bank of St Helena (Restructuring) Bill, 2013, has emerged after years of discussions. These discussions culminated in September 2011 in Executive Council advising the Governor that in principle the Bank of St Helena should become a company limited by shares and that the Attorney General should proceed to establish a company limited by shares with all shares owned by SHG in order to facilitate the change. The preparation of articles of incorporation has required extensive consultation and specialist, legal input and only recently has the final form of articles been agreed. At present, the Bank of St Helena is established under the Bank of St Helena Ordinance, 2003, but the Ordinance does not specify who owns the Bank. By default, the Bank of St Helena is owned by the Government of St Helena. The 2003 Ordinance also does not provide a mechanism for the Bank to raise capital. The lack of clear ownership creates a problem in establishing relationships with international banks which will be of ever increasing importance as the Bank of St Helena seeks to do more business internationally. With economic growth as a

result of air access, the Bank may need to raise capital to meet local demands for loans. The Bank itself and the Financial Services Regulatory Authority would like to see the changeover take effect on 1<sup>st</sup> April 2013, the start of the new financial year. In order to effect the change, it is necessary to repeal the current Bank of St Helena Ordinance and secure the transfer of assets from the current Bank to the new Company as provided for in this Bill. The Bill before this House today, if passed, will be the final piece in the jigsaw of actions necessary to allow the Bank to commence from 1<sup>st</sup> April as a company limited by shares. Madam Speaker, I beg to move.

The Speaker –

Thank you, Honourable Member. I put the question that the Bank of St Helena (Restructuring) Bill, 2013, be approved in principle and referred to a Committee of the whole Council. The question is open for debate. Any Honourable Member wish to speak? The Honourable Attorney General.

The Hon. Ken Baddon –

Madam Speaker, just to add a point or two of detail on the legal technicalities of this. I can confirm to the Council that the new company, Bank of St Helena Limited, was incorporated yesterday, so it does exist and is ready to assume the business currently carried on by Bank of St Helena, not limited, with effect from 1<sup>st</sup> April. As the Honourable Mover has said, in order to achieve that, we need to transfer the assets, which are presently held, by what the Ordinance calls, the Bank, to, what the Ordinance calls, the new Bank and then wind up the old Bank and that is what this very short Bill achieves. I shall give further explanation in Committee in the usual way, but I thought Honourable Members might like to have that background.

The Speaker –

Thank you, Honourable Attorney General. Any other Honourable Member wishes to speak, please? Honourable Rodney Buckley?

The Hon. Rodney Buckley –

Thank you, Madam Speaker. I rise in support of the Bill. As a member of the Economy and Finance Committee, I can confirm that this item has been on their books as early as 2010, very early in 2010 and in July 2011 the Committee made the recommendation to Executive Council to form a company limited by shares owned by the St Helena Government. As the Honourable Mover has said, with ownership as a limited company by shares, the Bank will now be able to establish relationships with international banks, which will become necessary as the economy develops through the financial injections resulting from the air access. The Bank could also raise capital by issuing shares, either to its existing shareholder or to other third parties. This, of course, is a risk factor, when viewed in relation to security of islanders' deposits and no doubt will make some depositors nervous. In becoming a company limited by shares there is also the risk, of course, that there could be detrimental public, social impact if access profitability came from a bigger gap between savings, lending rates and increased charges, which, of course, will be an operational issue, but nevertheless it is a risk to be recognised. However, having said that, and in relation to the issuing of shares, the Bank would not be able to sell shares without the permission of a shareholder or shareholders and even if that power was delegated to the Board of Directors, the St Helena Government as the only shareholder to commence with, the Board would require their permission. Seriously, of course, the future Executive Council would need to keep an eye on the Bank of St Helena and



its development activities. Madam Speaker, this Bill will bring St Helena into the twenty-first century in the banking sector. Thank you.

The Speaker –

Thank you, Honourable Member. The Honourable Stedson Francis?

The Hon. Stedson Francis –

Madam Speaker, it has often been asked who owns the Bank of St Helena and the Bank of St Helena Ordinance under which the Bank has been established does not specify who owns the Bank and the lack of clear ownership of the Bank creates a problem. The conversion of the Bank from a corporation created by an Ordinance to a registered company under the 2004 Companies Ordinance will bring benefits in establishing relationships with offshore and international banks which will become an issue as St Helena seeks to do more business internationally. It would also provide better banking services and enable expansion of the Bank which would benefit the economy as well as promote investment through greater lending power. With air access a real possibility as well as economic growth, it would be possible to raise capital in order to meet local demands for loans. At present, there is no mechanism for doing so and this has got to be a great step forward. With the Bank of St Helena being established as a company limited by shares, the ownership would be with the shareholder, SHG initially, this being the case would facilitate establishing relationships with international banks. The Bank would also raise capital by issuing shares, either to SHG or to others interested in purchasing shares. Madam Speaker, I support the Bill.

The Speaker –

Thank you, Honourable Member. Does any other Honourable Member wish to speak? The Honourable Cyril Gunnell?

The Hon. Cyril Gunnell –

Madam Speaker, it does appear that the transfer will bring potential benefits that will be for the benefit of the whole island and make more transparent the ownership of the Bank. Madam Speaker, I would support the Bill.

The Speaker –

Thank you, Honourable Member. Any other Honourable Member wishes to speak? The Honourable Mervyn Yon?

The Hon. Mervyn Yon –

Thank you, Madam Speaker. I just rise in support of the Bill, Madam Speaker.

The Speaker –

Thank you, Honourable Member. Honourable Brian Isaac?

The Hon. Brian Isaac –

Madam Speaker, I rise in support of the Bill. Very often the public has asked who owns the Bank of St Helena and, as has been said around this room this morning, we will now own the Bank of St Helena and it gives more openness and transparency for the depositors and we also give wider opportunities for the Bank to develop and for the island to support the Bank through economic growth. Thank you, Madam Speaker.

The Speaker –

Thank you, Honourable Member. The Honourable Derek Thomas?

The Hon. Derek Thomas –

Thank you, Madam Speaker. I rise in full support of the Bill. The Bill do provides the Bank with opportunities to develop and this, in turn, only can be of real benefit to the public. I support the Bill, Madam Speaker.

The Speaker –

Thank you, Honourable Member. Any other Honourable Member wishes to speak? In which case, I invite the Honourable Mover to reply to the debate.

The Hon. Anthony Green –

Thank you, Madam Speaker. Thank you, Attorney General, for the update which you told us that the Bank has now been incorporated as of yesterday. Thank you to Councillor Buckley who supports the principle and flexibility and also confirms, as I mentioned in my introduction, that this topic has been on the books for a number of years and been under consideration for a long time. Councillor Stedson Francis appreciated the clarity of ownership and also about the Bank activities being allowed to expand. Councillor Gunnell talked about the potential benefits and the clarity of ownership and I thank Councillor Mervyn Yon and Brian Isaac and Derek Thomas for their support and Councillor Thomas also took the opportunity to say that the clarity of ownership will also give an opportunity for development. Madam Speaker, thank you, I beg to move.

Question that the Bill be approved in principle and referred to a Committee of the whole Council, put and agreed to.

The Hon. Anthony Green –

Madam Speaker, I beg to move that the Council do resolve itself into a Committee to consider the detailed provisions of the Bill.

The Speaker –

Thank you, Honourable Member. Is there a seconder, please?

The Hon. Stedson Francis –

Madam Speaker, I beg to second.

Question that the Council resolves into a Committee to consider the detailed provisions of the Bill, put and agreed to.

### *Council in Committee*

The Speaker –

I put the question that the Title, Enacting Clause and Clause 1 do stand part of the Bill. Does any Honourable Member wish to speak?

Title, Enacting Clause and Clause 1.

Question put and agreed to.

The Speaker –

I put the question that Clauses 2 and 3 do stand part of the Bill. Honourable Attorney General?

The Hon. Ken Baddon –

Madam Speaker, Clause 2 is the crux of the matter. It says that subject to Clause 3, which contains transitional provisions, the 2003 Ordinance is repealed and the Bank, that is the current Bank of St Helena, no longer exists and that will be from 1<sup>st</sup> April, according to Clause 1. Clause 3 effects the transfer of assets to the new Bank, Bank of St Helena Limited. It says that the shares issued to me in my official capacity, not in my own capacity, .....incorporation of the company will be deemed to have been fully paid once those assets are transferred. The magic of the number in subsection (1)(b) is that that number of shares represents the value of the assets which SHG originally transferred to the Bank in 2004. Then there are requirements that the Directors of the Bank should, despite its abolition, act as its Administrators in order to complete the accounts and their audit and that they must comply with any instructions which the Governor may give to ensure that that is done properly. The expenses of doing that have to be paid by the new Bank, and, finally, we say that the licence issued by the Financial Services Authority to the old Bank will remain in full force and effect as if it had been issued to the new Bank, that's simply a continuity provision.

The Speaker –

Thank you, Honourable Attorney General. Any questions or comments, Honourable Members? Honourable Rodney Buckley?

The Hon. Rodney Buckley –

Yes, a comment, Madam Speaker, I don't know if the Attorney General or the Financial Secretary could answer it, but the value of the shares - £3,219,285 shares, would that be present day value or the value at 2004 when it was transferred?

The Hon. Ken Baddon –

It represents the value shown in the balance sheet for the assets which were transferred as it was in 2004. We did have a detailed meeting on this to discuss which figures should be used and, in particular, whether we should also take account of, like accumulated profits since 2004 and the collective view which we reached was that we should use the value of the assets which were actually transferred from the outset. It's a little academic in a sense, because since we own all the shares if we were to wind up the Bank on 2<sup>nd</sup> April we would divide its total current value by £3,219,285 so we would still get the whole of the value, so it's a little bookkeeping exercise, but it was consulted upon. I don't know if the FinSec would like to add anything because he was involved in that discussion.

The Hon. Colin Owen (Financial Secretary) –

Not really, I think the Attorney General just said, you know, Government own hundred percent of those shares, so there is no real bearing really on the value going forward, if it was to wind up now it would be hundred percent owned by Government.

The Hon. Cyril Gunnell –

Are the shares valued at £1.00 each?

The Hon. Ken Baddon –

I welcome this Ordinance has a glitch in it, which I must get around to fixing, you're not allowed to fix a nominal value of shares under our Companies Ordinance, but we proceeded on the basis that they have a nominal value of £1.00 which is why we got that number, which I'm not going to read out again, times £1.00 equals the value of the assets transferred, but their actual value, if we were to wish to sell any of them, will be the current balance sheet divided by that number, so if we were to start selling shares right away we will make an instant profit.

The Speaker –

Any further questions? Councillor?

The Hon. Christine Scipio O'Dean –

Thank you, Madam Speaker. Just to ask the Attorney General for clarification under 3(2), (b) actually, 3(b), sorry, I'm looking at the wrong one, number two, it states that the existing Directors shall hold the office of administration it says for the purpose of securing the completion of the Ordinance of 31<sup>st</sup> March 2013. These Directors, will they continue after the new Bank from 1<sup>st</sup> April or will the Governor appoint different Directors, I just wondered if you could explain, a point of clarification, what will happen to the existing Directors?

The Hon. Ken Baddon –

The Directors of the new Bank are the same three people who hold office at the moment as Directors of the old Bank and there is capacity to appoint a further two Directors at some point in the future, but to get the thing up and running and maintain continuity we have appointed the same three Directors who currently hold office in the old Bank to be a Director of the new Bank and they will also, under subclause (2) there, be required to act as administrators of the loose ends of the old Bank, to ensure an orderly transition and the auditing of accounts.

The Hon. Christine Scipio O'Dean –

Thank you. Can I ask how long these Directors will be in term for, I mean, I know you said that we need to have people in place now because it will commence 1<sup>st</sup> April, but how long will they remain as Directors?

The Hon. Ken Baddon –

Well, that's not regulated by this Bill, it's regulated by the Acts of Association of the new Company and if I remember correctly, I don't have them with me, but if I remember correctly, it says up to three years.

The Hon. Christine Scipio O'Dean –

Okay. Could you confirm that by e-mail? Thank you.

The Speaker –

Any other questions, Honourable Members?

Clauses 2 and 3.

Question put and agreed to.

***Council Resumed.***

The Speaker –  
Honourable Tony Green?

The Hon. Anthony Green –  
Madam Speaker, I beg to report that the Bank of St Helena (Restructuring) Bill, 2013, passed the Committee with no amendments and to move that this Council approves the said Bill and recommends to the Governor it should be enacted.

The Speaker –  
Thank you. Is there a seconder, please?

The Hon. Stedson Francis –  
Madam Speaker, I beg to second.

The Speaker –  
Thank you. Does the Honourable Mover wish to speak to the Motion?

The Hon. Anthony Green –  
Thank you, Madam Speaker, I would just like to say that I thank Members for their interesting questions and comments which will, I'm sure, be very useful as we move forward. No further comments. Madam Speaker, I beg to move.

The Speaker –  
Thank you. I put the question that this Council approves the Bank of St Helena (Restructuring) Bill, 2013, and recommends to the Governor that it should be enacted. Does any Honourable Member wish to speak? In which case, I don't think I need to ask the Honourable Mover if he wishes to respond.

Question that Council approves the Bank of St Helena (Restructuring) Bill, 2013, and recommends to the Governor that it should be enacted, put and agreed to.

The Speaker –  
Honourable Members, before I ask the Clerk to call the next item of business, just to say the reason for my stopping anybody from opening the flaps on the air conditioning is that when they're open it affects, it distorts the sound for Councillor Yon's microphone and somebody else's, so we sit knowing that there's better system for the air conditioning, but we can't use it, because it will just distort everything that's going through on to the radio and on to the recording, so my apologies. What I'll do at lunchtime is I'll ask, well, I'll do it myself if not, we'll actually open the flaps and let the room get really cool. Okay, thank you. Next item of business, please.

The Hon. Brian Isaac –  
Madam Speaker, I know it's not protocol, but would you allow for the gentlemen to remove their jackets under this condition. I know it's not your wish to do so?

The Speaker –  
As you have asked so nicely, Councillor, if gentlemen wish to remove their jackets they may do so.

The Hon. Brian Isaac –

Thank you very much, Madam Speaker.

The Speaker –

And ladies as well if they have jackets. Thank you. Next item of business, please?

***Motion No. 3. The Honourable Kenneth Baddon, Attorney General.***

Madam Speaker, I beg to move that the Law Offices Bill, 2013, be approved in principle and referred to a Committee of the whole Council.

The Speaker –

Thank you, Honourable Member. Is there a seconder, please?

The Hon. Colin Owen –

Madam Speaker, I beg to second.

The Speaker –

Thank you.

The Hon. Ken Baddon –

Madam Speaker, another very short Bill, three clauses again. This is a Bill which the man in the street will not notice if it is passed, it's a purely technical one. It flows from the fact that quite recently, in recognition of the reality that the former Crown Counsel was the *de fact*, a deputy of the Attorney General, the title of his office was changed to Solicitor General. This Bill mirrors provisions which exist in England and Wales which enable the Solicitor General to perform any of the functions of the Attorney General. It's, as I say, administrative and technical. It will simply improve efficiency by enabling the Solicitor General instead of having to pass bits of paper to me for me to read and sign to sign them himself, it will reduce duplication of effort in that sense. Unlike the English legislation, this draft has a proviso in Section 2 subsection (1) making clear that this Bill does not enable the Solicitor General to take the Attorney General's seat in this Council or the Executive Council. Such a provision would, I think, be unconstitutional, but we have put it beyond doubt. So if the Attorney General should be off the island or should be ill for a significant period of time there would then need to be an appointment of an Acting Attorney General. It would, of course, be the Solicitor General who will be appointed, but that bit of paper we cannot avoid. I passed round the table during the break earlier this morning, Madam Speaker, a note concerning the effect of Clause 3. Clause 3 picks up on something which we have been intending to do for some time as part of rewriting the Companies Ordinance. That task has proved to be more complicated and time consuming than we had originally thought and we have been overtaken by events in that the Chief Magistrate's terms of reference envisage that he will take over from the Attorney General responsibility for supervising the work of the Registrar of Companies. At a practical operational level, he has been doing so since he assumed office in July of last year, but the opportunity of this Bill is taken to amend the Companies Ordinance to say that the Chief Magistrate will have that function. So, Madam Speaker, those are the effects of the three Clauses and as the note which I passed round during the break indicates when we get to Clause 3 in the Committee I shall be proposing a minor amendment. Madam Speaker, I beg to move.

The Speaker –

I put the question that the Law Offices Bill, 2013, be approved in principle and referred to a Committee of the whole Council. The question is open for debate. Does any Honourable Member wish to speak? Honourable Tony Green?

The Hon. Anthony Green –

Thank you, Madam Speaker. I rise in support of this Bill, but I also would like to seek just one clarification, because this Ordinance makes provision for the functions of the Attorney General other than serving as ex officio member of Executive Council and Legislative Council to be exercised by the Solicitor General, I'm just wishing to have clarification because one of the functions of the Attorney General is also to be Attorney General of Ascension Island and Tristan da Cunha?

The Hon. Ken Baddon –

Madam Speaker, shall I deal with that now rather than wait until Committee?

The Speaker –

Thank you.

The Hon. Ken Baddon –

This Ordinance will not affect the law of Ascension or Tristan da Cunha, it cannot unless those territories choose to adopt this.

The Speaker –

Thank you. Does any other Honourable Member wish to speak? Honourable Stedson Francis?

The Hon. Stedson Francis –

Thank you, Madam Speaker. Madam Speaker, I support the Bill. As the Attorney General has said, this Bill allows the Solicitor General to deputise for him without having a formal appointment to act and it also it does not allow this Solicitor to take the Attorney General in Executive or Legislative Council, so acting appointments will still be necessary there and it also gives the Chief Magistrate supervisory responsibilities for the Companies Registry which currently rests with the Attorney General. I support the Bill, Madam Speaker.

The Speaker –

Thank you, Honourable Member. Does any other Honourable Member wish to speak? Honourable Mervyn Yon?

The Hon. Mervyn Yon –

Thank you, Madam Speaker. Madam Speaker, it's not much more that can be said to this Bill, but I just rise to say that I support it.

The Speaker –

Thank you, Honourable Member. Honourable Brian Isaac?

The Hon. Brian Isaac –

Madam Speaker, I rise in support of this Bill. Thank you.

The Speaker –

Does the Honourable Mover wish to reply to the debate?

The Hon. Ken Baddon –

Just the one sentence, Madam Speaker, I thank Honourable Members for their support and I beg to move.

The Speaker –

Thank you.

Question that the Bill be approved in principle and referred to a Committee of the whole Council, put and agreed to.

The Hon. Ken Baddon –

Madam Speaker, I beg to move that the Council do now resolve itself into a Committee to consider the detailed provisions of the Bill.

The Speaker –

Thank you, Honourable Member. Is there a seconder, please?

The Hon. Colin Owen –

Madam Speaker, I beg to second.

The Speaker –

Thank you.

Question that the Council resolves itself into a Committee to consider the detailed provisions of the Bill, put and agreed to.

### **Council in Committee.**

The Speaker–

I put the question that the Title, Enacting Clause and Clause 1 do stand part of the Bill. Does any Honourable Member wish to speak?

Title, Enacting Clause and Clause 1.

Question put and agreed to.

The Speaker –

As there's an amendment to Clause 3 we'll take the two clauses separately. I put the question that Clause 2 do stand part of the Bill. Does any Honourable Member wish to speak?

The Hon. Ken Baddon –

Madam Speaker, this is the operative clause. It is simply lifted from the corresponding UK provision and it's been working perfectly satisfactorily there for a good number of years except that, and I mentioned during Stage 1, we've inserted a proviso to avoid any possible argument that this Bill automatically enables the Solicitor General to sit in Council.

The Speaker –

Any questions or comments, Honourable Members?



Clause 2.

Question put and agreed to.

The Speaker –

I put the question that Clause 3 do stand part of the Bill.

The Hon. Ken Baddon –

Madam Speaker, as I indicated in Stage 1, there is an amendment necessary to this. The purpose of the Clause is to enable the Chief Magistrate to be the supervisor of the Companies Registry, but as Members can see from the paper I handed out this morning Section 2(1)(ii) of the Companies Ordinance actually has two references to the Attorney General and they both need to be changed. I therefore beg to amend this Clause by deleting the one in brackets after 2(1)(ii) so it will simply say Section 2(1)(ii) of the Companies Ordinance 2004 and then insert in the second line before the words “and substituting” the words “wherever they appear”, so what it will then read is “Section 2(1)(ii) of the Companies Ordinance 2004 is amended by repealing the words “The Attorney General” wherever they appear” and substituting therefor the words “The Chief Magistrate”. I beg to move the amendment.

The Speaker –

Thank you. Is there a second to the amendment, please?

The Hon. Colin Owen –

Madam Speaker, I beg to second.

The Speaker –

Thank you, Honourable Member. Does any Honourable Member wish to speak to the amendment, please? I put the question that Clause 3 is amended to read, Section 2(1)(ii) of the Companies Ordinance 2004 is amended by repealing the words “The Attorney General” wherever they appear and substituting therefor the words “The Chief Magistrate”.

Question on amendment, put and agreed to.

Clause 3. (as amended) –

Question put and agreed to.

**Council resumed.**The Hon. Ken Baddon –

Madam Speaker, I beg to report that the Bill passed the Committee with one amendment and to move that the Council approves the said Bill and recommends to the Governor that it should be enacted.

The Speaker –

Thank you. Is there a seconder, please?

The Hon. Colin Owen –

Madam Speaker, I beg to second.

The Speaker –

Thank you. Honourable Attorney General?

The Hon. Ken Baddon –

Madam Speaker, I don't think I need to say much. The Bill clearly has the approval of Council. Just for completeness and only for completeness because we do not debate the explanatory note, the amendment to Clause 3 will result in a correction to the explanatory note, but we shall deal with that administratively. Madam Speaker, I beg to move.

The Speaker –

Thank you. I put the question that this Council approves the Law Offices Bill, 2013, and recommends to the Governor that it should be enacted. Does any Honourable Member wish to speak?

Question that Council approves the Bill and recommends to the Governor that it should be enacted, put and agreed to.

The Speaker –

Next item, please?

***Motion No. 4 – The Honourable Derek Thomas, Chairman, Home, Civil Society and International Committee.***

Madam Speaker, I beg to move that the Motor Vehicle (Third Party Insurance) (Amendment) Bill, 2013, be approved in principle and referred to a Committee of the whole Council.

The Speaker –

Thank you. Is there a seconder?

The Hon. Ken Baddon –

Madam Speaker, I beg to second.

The Speaker –

Thank you. Honourable Derek Thomas?

The Hon. Derek Thomas –

Madam Speaker, this is a short Bill to amend the Motor Vehicle (Third Party Insurance) Ordinance. The Bill makes provision to increase the financial penalty from £250 to £1500 for using a motor vehicle on a road without having a policy of insurance. This increase is considered necessary to enable the Magistrates to exercise a greater level of flexibility in fining persons up to £1500 if they consider the nature of the offence warrants a more serious type fine. The Bill also amends the provision to give the Court discretion to impose a disqualification and more flexibility on the period of disqualification. Under the current provision, it is mandatory for the Court to disqualify a person from holding or obtaining a licence for a period of twelve months or such longer period as the Court may determine. With this provision, the Magistrates have no option but to disqualify in all cases. This forces the Magistrates into something which they might be of the view is inconsistent with their judicial oath, because it's just not fair or just. The circumstances of certain cases would not warrant the disqualification. Madam Speaker, I beg to move.

The Speaker –

Thank you, Honourable Member. I put the question that the Motor Vehicle (Third Party Insurance) (Amendment) Bill, 2013, be approved in principle and referred to a Committee of the whole Council. The question is open for debate. Does any Honourable Member wish to speak? Honourable John Cranfield?

The Hon. John Cranfield –

Thank you, Madam Speaker, I rise in support of the Bill as this is merely a tightening up exercise and I rise in support of the Bill. Thank you, Madam Speaker.

The Speaker –

Honourable Stedson Francis?

The Hon. Stedson Francis –

Madam Speaker, this Bill amends section 3(2) of the Motor Vehicles (Third Party Insurance) Ordinance, Cap 103, which currently gives no discretion to Magistrates who are bound to disqualify a person committing an offence of driving without insurance or allowing another person to drive without insurance for a period of twelve months. Being unable to exercise discretion, the Magistrates are often bound to impose a sentence which is disproportionate to the facts and circumstances of a particular case. Madam Speaker, I see that it is possible for a person in all good faith, drives a motor vehicle not knowing that he is driving without an insurance and because of this I welcome this as it removes the mandatory disqualification period and enables the Magistrates to exercise their discretion. Thank you, Madam Speaker.

The Speaker –

Thank you, Honourable Member. Any other Honourable Member wishes to speak? The Honourable Cyril Gunnell?

The Hon. Cyril Gunnell –

Thank you, Madam Speaker. For the explanations given, I would certainly agree that the amendment is necessary, I therefore support the Bill, Madam Speaker.

The Speaker –

Thank you, Honourable Member. The Honourable Earl Henry?

The Hon. Earl Henry –

Thank you, Madam Speaker. I rise in support of the Bill because I can relate to incidences whereby genuine mistakes have been made and had a conviction been handed down it would have impacted drastically on the livelihood of people. Whilst the explanatory note uses the words “give the Court discretion”, I am confident that the Court will rule accordingly to the facts of the case. Thank you, Madam Speaker.

The Speaker –

Thank you, Honourable Member. Honourable Mervyn Yon?

The Hon. Mervyn Yon –

Thank you, Madam Speaker. Madam Speaker, having had the opportunity to debate this Bill within our Committee stage, I feel that I have no objections, but just to say I support the Bill.

The Speaker –  
Honourable Brian Isaac?

The Hon. Brian Isaac –  
Madam Speaker, I rise in support of the Bill. Thank you.

The Speaker –  
The Honourable Tony Green?

The Hon. Anthony Green –  
Thank you, Madam Speaker. I rise in support of the Bill. I know that in earlier discussions flexibility was supported, but the issue was raised about discretion being exercised in a consistent way, even if it was only perception, but I have complete confidence that it will be exercised in a fair way and also in a way that will be seen to be fair. Thank you, Madam Speaker.

The Speaker –  
The Honourable Rodney Buckley.

The Hon. Rodney Buckley –  
Thank you, Madam Speaker. If I rise to oppose the Bill I can see I will be very much defeated. However, I just need to make the point that I am a very strong supporter of removing discretionary from laws and policies wherever we can. I have to admit that I am a little bit dubious about the removal of the mandatory law, to replace it with a discretionary, but I guess that I have been convinced by my learned legal friends that this will be properly dealt with by the Courts and there is the necessity for the Courts to have some flexibility when dealing with some of these issues. I think that we do need to be careful though that genuine excuses, or genuine mistakes rather, that we have heard mentioned this morning, is not something that will be the norm going forward. I think it is the responsibility of every individual to have the insurance, not so much for themselves, but to protect the other people who walk the streets, so Madam Speaker, I am going to support the Bill, but I do have concerns that flexibilities are not such a good thing in our society, but in this case I will trust my Courts to give justice where it is due. Thank you.

The Speaker –  
Any other Honourable Member wishes to speak? Would the Honourable Mover like to reply to the debate?

The Hon. Derek Thomas –  
Thank you, Madam Speaker. I'd like to thank the Members for their support to the Bill. Councillor Buckley is a bit concerned about removing the mandatory disqualification to the discretion by the Courts, he indicated there might be genuine excuses, genuine mistakes, probably abuse, but I would say that should be taken up within the investigation, that should be covered within the investigation of each case and the Courts are trained and they need to determine whether a person ought to be disqualified or not, so thank you, Madam Speaker, I beg to move.

The Speaker –  
Thank you.

Question that the Bill be approved in principle and referred to a Committee of the whole Council, put and agreed to.

.....

**Council in Committee.**

.....

Title Enacting Clause and Clause 1.

Question put and agreed to.

The Speaker –

I put the question that Clause 2 do stand part of the Bill. Does any Honourable Member wish to speak?

The Hon. Ken Baddon –

Madam Speaker, I think it's already been explained but I'll offer a customary explanation in Committee stage that this is actually the nuts and bolts of the Bill. It has the effect which has been so widely debated during Stage 1 of giving the Court the flexibility to impose a higher fine up to £1,500 rather than the current limit of £250 and one has to remember that the Courts only in the most exceptional circumstances would ever award the maximum, so with a maximum of £200, we end up with fines of £30 or £40 for what is, in fact, quite a serious offence. On the other hand, the mandatory disqualification does somewhat tie the Court's hands in deserving cases where there has been a genuine mistake. The Courts do have discretion in sentencing right through our criminal justice system. If the maximum penalty is £1500 then anything up to £1500, that is discretion. If the maximum sentence is six months, then anything up to six months, again, that is discretion and the Courts are accustomed to exercising that kind of discretion. And if they do get it wrong there is always the appeal to Supreme Court.

The Speaker –

Thank you. Does any Honourable Member wish to speak on Clause 2?

Clause 2.

Question put and agreed to.

**Council resumed.**

The Hon. Derek Thomas –

Madam Speaker, I beg to report that the Motor Vehicle (Third Party Insurance) (Amendment) Bill, 2013, passed the Committee with no amendments and to move that this Council approves the said Bill and recommends to the Governor that it should be enacted. Madam Speaker, I beg to move.

The Speaker –

Thank you, Honourable Member. Is there a seconder?

The Hon. Ken Baddon –

Madam Speaker, I beg to second.

The Speaker –

Thank you. Does the Honourable Mover wish to speak to the Motion?

The Hon. Derek Thomas –

No, Madam Speaker, just to thank the Honourable Members for their support to the Bill.

The Speaker –

I put the question that this Council approves the Motor Vehicles (Third Party Insurance) (Amendment) Bill, 2013, and recommends to the Governor that it should be enacted. Does any Honourable Member wish to speak?

Question that Council approves the Bill and recommends to the Governor that it should be enacted, put and agreed to.

The Speaker –

Next item of business, please?

***Motion No. 5. The Honourable Mervyn Yon, Deputy Chairman, Natural Resources, Development & Environment Committee.***

Madam Speaker, I beg to move that the Land Planning and Development Control Bill, 2013, be approved in principle and referred to a Committee of the whole Council.

The Speaker –

Thank you, Honourable Member. Is there a seconder, please?

The Hon. Ken Baddon –

Madam Speaker, I beg to second.

The Speaker –

Honourable Mervyn Yon?

The Hon. Mervyn Yon –

Madam Speaker, the Land Planning and Development Control Bill, 2013 is the first of two Bills, which, together, are intended to replace the 2008 Land Planning and Development Control Ordinance. That Ordinance has been in operation for almost five years, a good time to review it, but there have been some specific events or changes which drives a review of the law at this time. There is now, what there was not in 2008, a Council Committee with policy responsibility for land and environmental management. The air access decision and the associated MOU with DFID we promised to review this law to make it development friendly, transparent and non discretionary and the need in order to get our airport licensed for use to ensure that the Land Planning law contains protection for the operational safety of the airport. During the review of the current law, technical advice was received and the current Ordinance covers two distinct matters which ought to be managed under separate laws, thus the reason for two Bills. The present Bill deals with land use while a separate one, which I do not wish to anticipate just now, deals with issues concerning the construction of buildings. This Bill for an Ordinance to make new provisions for the planning and regulations of the

development and use of land and for matters connected therewith or incidental thereto is very much based on the relevant parts of the 2008 Ordinance. I will mention in a moment some changes of substance, but first would like to say that a lot of effort has gone into identifying and removing possible ambiguities and presenting the material in a more coherent way. This, along with moving very detailed rules from the Ordinance and placing them in regulations will make this package of law much more user friendly. A consistent thread running through the revision is to separate policy making planning from the implementation of policy, administering and enforcing the law. As I said before, the 2008 Ordinance was put in place at a time when no Council Committee had responsibility for these items, so the Land Planning and Development Control Board, with no democratic mandate whatsoever, found itself with significant input to the formulation of policy. Whilst its successor will still have an important role to play in advising policy making, changes in the detailed provisions make it clear that the new Authority will be there to administer laws and policies made by Councillors. In terms of transparency and accountability, the Bill proposes that both the new Authority and the Appeals Tribunal will be open to the public and that their decision must be guided by the relevant laws and policies. They must not take into account matters which are not material planning considerations and there will be a process for publishing guidance, which when published must be followed by decision makers to help potential developers to know how specific issues are likely to be dealt with. These factors will also reduce the scope for discretionary decision making so making the process more predictable and development friendly whilst retaining, and, in some areas, strengthening protection of the island's environment, culture and heritage. Madam Speaker, I hope I have said enough to demonstrate why this Bill is presented, why it is presented at this time and why it is a good Bill. We can examine details in the Committee, but for the moment I am content to conclude by saying, Madam Speaker, I beg to move.

The Speaker –

Thank you, Honourable Member. I put the question that the Land Planning and Development Control Bill, 2013, be approved in principle and referred to a Committee of the whole Council. The question is open for debate. Any Honourable Member wishes to speak? Honourable Stedson Francis?

The Hon. Stedson Francis –

Madam Speaker, I support this Bill. The air access Memorandum of Understanding required SHG to review its laws and practices to achieve a more development friendly, non discretionary planning regime, taking into account the necessary environmental safeguards. One of the changes in this Land Planning and Development Control law is to remove the detailed procedure and technical information from the Ordinance and to put it into regulations. Some of the main changes are – renaming the former Land Planning and Development Control Board as the Land Development Control Authority and reducing the number of members, at least five, but not more than seven, including the Chairman and although the Board has opened its meetings to the public the Ordinance now makes this explicit. There is provision to enable the preparation and adoption of planning guidance which will help applicants with design so that they will comply with the Land Development Control Plan. Another important provision is a new one and it is one for conditions to be imposed under granting of outline development permission where appropriate. It enables the applicant to be certain that they will be able to do the development before incurring costs of detailed plans. There is provision of making tree preservation. Whilst there are building preservation Ordinance there are none for trees and there are also provisions to revise the system of appeals against planning decisions. This will be a Tribunal presided over by the

Chief Magistrate to ensure that it has proper legal guidance. Other provisions include development permission to lapse if not commenced within five years and provision to widen the definition of ‘conflict of interest’ where members of the Authority involved in the design of proposed developments, including Councillors, take no part in the debate, and, finally, there is provision for consultation on development applications with the airport operator. I support the Bill, Madam Speaker.

The Speaker –

Thank you, Honourable Member. The Honourable Rodney Buckley?

The Hon. Rodney Buckley –

Thank you, Madam Speaker. I suspect there are one or two other people who are as pleased as I am today to finally have this Bill placed before this House. I say that because this Bill is the result of the requirement of the 2010 MOU pre-condition for the signature of the airport contract. The MOU required a review of the existing Land Development Control Plan and planning application process to achieve a more development friendly non discretionary planning regime and incorporating appropriate environmental safeguards, including environmental impact assessments. The fact is, Madam Speaker, which you will quickly realise, is that meeting the MOU requirements is well over a year ago, so, Madam Speaker, Honourable Members, and the listening public, I just need to explain why this bit of the MOU is so far behind delivery date. As a member of the Land Development Control Plan working group and since then a member of the Planning Board, I can assure you the reality is that nobody envisaged the amount of work that was needed to bring the Land Development Control Plan and the Planning Ordinance into the 21<sup>st</sup> century when we agreed the planning frame back in early 2011. All of the staff in the Land Planning Department and the Legal Department is to be congratulated on the large amount of work input it took to achieve a modern land Development and planning regime, it is the result of the people’s input and which the people can proudly can take ownership. Just, Madam Speaker, to explain where we are with the pre-condition, the DFID MOU assessment team that came to the island towards the end of 2011 did find sufficient work in hand on land reform to warrant giving the go ahead for the fourth condition, subject, of course, that the pre-condition be completed, hence the job has taxed my brain power over this long period and I am today very happy that the end is near. Madam Speaker, Honourable Members, the Bill before us contains eleven changes of substance, which, of course, will be flagged up in Committee stage. We’ve heard from Councillor Francis just now, most of those changes. At the early stage of the review it was quickly realised that to amend the existing Ordinance to bring it into the 21<sup>st</sup> century would produce a user unfriendly Ordinance. It was then decided to rewrite the Ordinance and separate land development control from building control and move much of the detail of the Ordinance into regulations. As members are aware, regulations can be reviewed and updated fairly quickly as economic development dictates. Members are also aware that regulations are already in draft but can only be completed once this process today is completed. The end result is like I said earlier; there are only eleven changes of substance. Whilst the Ordinance is still a large Bill and most of the sections have been renumbered when compared to the existing Ordinance, the new law retains a fair amount of the original details. The signification and reorganisation by separating the three laws provides a much more friendly user law, which is now very much simpler and clearer for the people who have to use it. Madam Speaker, I commend the Bill to the House, it has had wide and long consultation with all the stakeholders, closing the gap on two years and has during this period taken numerous opportunities to clarify and simplify details and wordings which were identified by



stakeholders and have been implemented. I am more than satisfied that the island people can take ownership of this Ordinance. Madam Speaker.

The Speaker –

Thank you. Honourable Members, as we're so close to 12.30, I'm going to suspend the sitting for an hour and a quarter. We will resume at a quarter to two and I would remind you please, Honourable Members, that we need to have a CPA meeting before you leave to go and have your lunch. Thank you.

**Council suspended.**

**Council resumed.**

The Speaker –

Thank you, Clerk. Next item, please?

Resumed debate – Land Planning and Development Control Bill.

The Speaker –

Thank you. The Honourable Christine Scipio O'Dean.

The Hon. Christine Scipio O'Dean –

Thank you, Madam Speaker. I'd like to carry on, Madam Speaker, from what was mentioned just before we break for lunch, the Honourable Member Buckley highlighted about the Land Development Control Plan and he applauded the staff who did the amount of work to go out and do the findings and talk to the people at public meetings and I'd like to say at that time I was part of that team so I do appreciate and understand how much work did go into the Land Development Control Plan. I also appreciate the amount of work that's been carried out to this Bill that's been presented to us today, but Madam Speaker, I do have concerns about this legislation, which I will raise at the Committee stage. I'm still trying to understand why there is a need for a new law when we already have an Ordinance. There are clauses embedded in the existing Ordinance with intention to remove them to be included into regulations. Members, can I ask you, are you satisfied with removing these regulations out of the, the clauses out of the Ordinance, because my understanding is that if these clauses are included into regulations then they would take the power away from elected members here, all of the elected members to make the final decision, because I believe that regulations are approved by the five Executive members. Madam Speaker, I do feel that the consultation period for the Land Planning and Development Control Ordinance was very short, despite that it was agreed not to have any public meetings, I did not support that decision. Representations received from the consultation process were not circulated to me until two days ago, hence I have not been able to make comparisons that I feel appropriate. Madam Speaker, my understanding of the purpose of the revision is to make it more, make development matters more simple and transparent, but, Madam Speaker, I do believe that the Land Development Control Plan that was implemented, adopted and issued in April 2012 is incomplete and the reason why I feel that it is incomplete, because the Land Development Control Plan refers to Appendices and to date those Appendices have not been finalised. The Land Development Control Plan also refers to the historic environmental record and I will see clarification at the Committee stage regarding this matter. I do welcome the changes in Part 12 for the procedures in relation to the appeal provision system, but I am still, Madam Speaker, trying to understand why there is

a real need for making these changes at this present moment. I believe that this proposed Bill should be deferred until the Appendices are finalised so that they can be presented as a complete package. Thank you, Madam Speaker.

The Speaker –

Thank you, Honourable Member. The Honourable Earl Henry?

The Hon. Earl Henry –

Thank you, Madam Speaker. I have to start by saying I can only but echo the words of Councillor Christine Scipio O'Dean. She touched on the legal status of the Land Control Development Plan being incomplete. I was given a copy during my induction nine months ago and I raised the issue and there still hasn't been any appendices forthcoming. Part 6, section 23, whilst I accept there might be good reasons for the Governor in Council to have certain matters referred to them, at the outset of the 2008 Ordinance there were a very small number of developments that was required to be referred to the Governor in Council. During the latter half of last year, 2012, the list was considerably enlarged to include a number of SHG projects. What I'm going to ask is that Council must be ever mindful of creating an unlevel playing field between SHG and the general public and also the protection of our very fragile heritage sites. Also, the Ordinance, the proposed Ordinance, has had some detail removed with a promise of it being included in regulations to support the Bill. Whilst I might not have the right understanding about regulations, it would have been much more helpful to myself if draft regulations were prepared so as that we could, or at least I could have seen what exactly was being removed and how it was intended to be used in regulations for future. Also, Councillor O'Dean made reference to the historic environmental record. It's my understanding that the work done so far is a small portion, is only a small part of a much larger project that also needs further funding. There are concerns that I will raise at the Committee stage, Madam, but in closing I ask elected members to consider carefully that we defer this Bill until all of the work has been completed and that we can give the Bill the due consideration that is deserved. Recently I've heard the phrase being used, "the devil is always in the detail". I believe we need to heed those words and act accordingly. I cannot support the Bill as presented in its present format. Thank you very much.

The Speaker –

Thank you, Honourable Member. The Honourable Cyril Gunnell?

The Hon. Cyril Gunnell –

Thank you, Madam Speaker. The two colleagues who have just spoken have had some dealings in this kind of work in the past, I haven't, but from what they have been saying it does appear that there is some work that is still outstanding, Madam Speaker, they both referred to regulations and I have to say that when we took the Social Security Ordinance through this House it was without draft regulations, regulations came afterwards and, well, you know, we still have some problems we are trying to deal with today, because the regulations were not in place at that time. But, Madam Speaker, the Appendices that my two colleagues haven't seen, I haven't seen them either and so if it is incomplete without the Appendices then I think the whole work is incomplete and I would agree with my two colleagues that, you know, why not defer it until the work is complete, Madam Speaker.

The Speaker –

Thank you, Honourable Member. Does any other Honourable Member wish to speak? The Honourable Derek Thomas. I did mean to say to the gentlemen that if they wish to remove their jackets they may do so, sorry.

The Hon. Derek Thomas –

Madam Speaker, I rise in support of this Bill. This Bill is designed to improve on the provisions of land planning and building control. The Bill as it stands, is user friendly, it makes provisions for a Chief Planning Officer and provides for a range of delegations of power to grant development permission in relation to certain types of development. This, in my view, is a positive step forward; it will cut out a lot of red tape and allow developers to progress. The Bill, as I see it, is well balanced, it is suited to support and encourage development and at the same time supporting conservation and built heritage of the island which is very important to the island. The Bill makes provision for the Planning Authority to do their business in a more transparent manner by having the provision that all planning business will be open to the public. The Bill also provides for a proper appeals system through the establishment of an Appeals Tribunal. This is transparent and in line with good practice. The concern I have, Madam Speaker, is that the Appendices to the Bill is not completed, I've been made to understand, we've been waiting almost a year for the Appendices, so whereas I support the Bill I would not recommend the implementation of this Bill until the Appendices have been completed and Honourable Members have sight of the Appendices and then I would support the implementation of the Bill, but I would recommend the Bill is not implemented until the Appendices are completed and properly circulated. Thank you, Madam Speaker.

The Speaker –

Thank you, Honourable Member. The Honourable Brian Isaac?

The Hon. Brian Isaac –

Madam Speaker, I rise in support of this Bill, I think that this is a very good piece of legislation and I've been privileged to debate this in informal LegCo and also at ExCo, but I do share the concerns of the three previous colleagues, also Councillor Thomas on the Appendices. I have raised this issue within ExCo and was told that the Appendices will come following the implementation of this Bill, passing of this Bill, but I too feel that I would like to see a complete package, including the Appendices and the Regulations. Thank you, Madam Speaker.

The Speaker –

Honourable Member. Honourable Attorney General?

The Hon. Ken Baddon –

Madam Speaker, two issues seem to be troubling Honourable Members and perhaps I can just deal briefly with each of them. References to the appendices to the Land Development Control Plan. Of course, the Plan is not part of this Bill, that's the document which already exists, but there does seem to be an issue of some allegedly missing appendices and we're presently awaiting the return to the island of the Head of Planning who is actually on the ship at the moment, to try to get to the bottom of that issue and resolve it. Honourable Members will note that the Bill, as presented, will not come into force immediately, it comes into force by Order in Council and that brings me to the related point of the Regulations. Frankly, Madam Speaker, it would be absurd to present draft regulations with the Bill, because the detailed contents of the regulations depends upon the final form of the Bill. If the Bill is

amended during committee stage today that will affect the content of the regulations. It also is inconsistent with the very fundamental principle underlying the change, which is that this Council has set out the major policies in primary legislation and then secondary legislation fills in the details. Secondary legislation is more responsive to changing circumstances. Most of the Bill, there are a few clauses that could be brought into force more quickly, but most of the Bill cannot sensibly be brought into force until the regulations have been approved. That's why Clause 1 envisages bringing it into force by Orders in Council and both the regulations and the Orders to bring it into force will have to go through ExCo, and as we all know, all twelve members of LegCo see all the ExCo papers, so there will be an abundance of consultation about these things, but one has to do things in a logical sequence and I'll just emphasise that the vast majority of the provisions simply cannot sensibly be brought into force until the regulations have been approved, because otherwise we'll have a section into the law that says something or other to be prescribed and it's not been prescribed, so the thing can't work. So we do have to have an orderly sequence of events over the next, I would guess, two to three months, before we get to bring this thing into force. The Honourable Derek Thomas mentioned delaying implementation, I think that's exactly right, not delay the whole Bill, but delay its implementation. It will have to be delayed anyway, because otherwise it won't work. The point is that we need to have the primary legislation approved so that we have the basic information that we need to enable us to write regulations which will make sense.

The Speaker –

The Honourable Tony Green?

The Hon. Anthony Green –

Thank you, Madam Speaker. I have no reason not to support the principles of the Bill, but I've listened with interest and concern to, particularly two previous speakers, I myself have no particular full background in the matter, although I have read all the different feedback that we've had. There've been thirty-eight comments from seven different sources, but I also note that at least fifteen of those issues, that is around forty percent, have not been agreed and I just want to say that I assume that those comments that have not been agreed by those responsible, which would be the Planning Board and the Directorate, that they will give appropriate feedback to the people who have made those comments. So, thank you, Madam Speaker, I support the principles, but I'll await and decide on my final judgement once we've had a look at the details. Thank you, Madam Speaker.

The Speaker –

Thank you, Honourable Member. Does any other Honourable Member wish to speak? You've already spoken.....

The Hon. Christine Scipio O'Dean –

A point of clarification?

The Speaker –

Yes, by all means.

The Hon. Christine Scipio O'Dean –

A point of clarification, may I ask the Attorney General that an Ordinance is approved or voted by the twelve elected members and regulations is voted by five Executive Council members.

The Speaker –

I think she's asking if that is correct, Honourable Attorney General?

The Hon. Ken Baddon –

Yes, Madam Speaker, it speaks for itself, that's exactly the way the system works and if this democracy is ever going to grow and become more modern than it has been in the past we will have to move towards the more modern system of having the legislature approve the big principles and the Executive being able to approve the details. In the UK there are something of the order of fifty pieces of primary legislation each year, it varies from year to year, there are something of the order of three thousand pieces of secondary legislation. The business of Government, as Government grows and becomes more complex, cannot work in the way that it has been done here historically, we have to move forward. The Executive is accountable for its actions and in terms of the secondary legislation it is accountable in advance because of recent developments here whereby the full twelve members see in advance of ExCo's decision and have an option to comment in advance of ExCo's decision on everything which is going to ExCo. In that sense, we are actually ahead of the UK and many of the Overseas Territories, because ExCo gets the opportunity, sorry, the non ExCo members get the opportunity to lobby the ExCo members on business which is coming through the system before it ever gets passed.

The Speaker –

Thank you, Honourable Member. Does any other Honourable Member wish to speak to the Motion? Honourable Cyril Gunnell, I think I've already ticked you off as I think you have already spoken?

The Hon. Cyril Gunnell –

I'd like to rise on a point of clarification, Madam Speaker, if I may?

The Speaker –

You....., sorry.

The Hon. Cyril Gunnell –

The Attorney General mentioned that all twelve members do see all of the Executive Council papers, or the green papers as we refer to them as, but Madam Speaker, could I ask that the green papers then, are sent to us in good time so we can caucus them properly and not a couple of days before ExCo meets. I think the rule is that they ought to go out on the Wednesday before the Tuesday Executive Council meeting. That hasn't been happening in recent times, maybe because there's a shortage of staff or so on, but it hasn't been happening in recent times and I'd just like to make certain, Madam Speaker, that with this very important paper here, that members do get to see it in good time for them when they do caucus to be able to make more sense of it and make a better and informed decision. Thank you, Madam Speaker.

The Speaker –

Thank you, Honourable Member. I think I'm correct in recalling that this issue was brought up in an informal LegCo meeting the other day and the Deputy Chief Secretary, yes, Deputy Chief Secretary said that he would pursue it. Thank you. Is there any other member who wishes to speak to the Motion? In which case, I'll invite the Mover, the Honourable Mervyn Yon, if he'd like to respond to the debate?

The Hon. Mervyn Yon –

Thank you, Madam Speaker and I thank the Honourable Members for their support and their queries/concerns. I would like to thank the Honourable Stedson Francis for his support and explanation of the Bill, the Honourable Rodney Buckley for his support and for making reference to the Bill, especially to the MOU requirements, also the amount of work involved in bringing this Bill up to date and the details of the Bill. The Honourable Christine Scipio O'Dean for her input, but will be keen to hear her concerns at the Committee stage. She also voiced her concerns about the time given for the consultation of this Bill, I believe I would like to remind her and other members that this Bill, the feedback on this consultation was circulated to all members well in advance and therefore I feel that, I think she also had some information relating to the Bill as such. The Honourable Earl Henry for his input who re-echoed his support for the Honourable Christine Scipio O'Dean to have mixed feelings about the Bill and talked about how fragile the heritage sites. He also talked about the regulations and asked to have the Bill deferred, but will seek to have further questions asked during the Committee stage. Councillor Gunnell also supported the issues raised by Henry and O'Dean and he too talked about having the Bill deferred. The Honourable Derek Thomas, thanks for his support, and he thinks otherwise in regards to the Bill. He talked about how the Bill will cut out red tape and allow the Authority to carry out the work more efficiently. He, like his fellow colleagues, talked about the Appendix of the Bill and asked if the Bill could be deferred and not taken away at this time until a later date when other things are in place. Councillor Brian Isaac supported the Bill but also shared a concern of the Appendices and I also thank the Attorney General for his explanation about the Appendices and the regulations relating to the Bill and agreed that there could be a delay in the implementation of the Bill. And finally, I'd like to thank the Honourable Tony Green for his support of the Bill, in particular the principles. Thank you, Madam Speaker.

The Speaker –

Thank you, Honourable Member.

Question that the Land Planning and Development Control Bill, 2013, be approved in principle and referred to a Committee of the whole Council, put and agreed to.

The Hon. Mervyn Yon –

Madam Speaker, I beg to move that the Council do resolve itself into a Committee to consider the detailed provisions of the Bill.

The Speaker –

Is there a seconder, please?

The Hon. Ken Baddon –

Madam Speaker, I beg to second.

Question that the Council resolves into a Committee to consider the detailed provisions of the Bill, put and agreed to.

**Council in Committee.**

The Hon. Ken Baddon –

Madam Speaker, before you call the first item, could I invite you to consider inviting the Director of Physical Environment to join you at the Clerk's table since he may be able to assist with technical matters?

The Speaker –

Thank you. Would the members be happy, I will invite the Director of, and I forget the full title, if he'd like to come and join us, please?

Right, I put the question that the Title, Enacting Clause and Clause 1 do stand part of the Bill. Any Honourable Member wish to speak?

The Hon. Ken Baddon –

Madam Speaker, can I just reiterate something which I mentioned in Stage 1, that this is a Bill which, in Clause 1, envisages that it will be brought into force by probably not one, but a series of commencement orders as different provisions are ready to be brought into force. This is necessary because one of the principles in the line of preparation of the Bill is to remove a lot of detail clutter into regulations. There's no point in bringing the clauses of the Bill into force until the regulations are also in force, so we will have to go through that in a systematic way over a period of, I would guess, six to eight weeks, it might be a little longer before we can actually bring this into force and that will also give us an opportunity to resolve this outstanding issue about Appendices from the Land Development Control Plan, for which we need the Head of Planning back on island, so, as I say, there are specific provisions here that this thing will not come into force next week or even next month, it will be brought into force in an orderly fashion by a series of orders linked to the relevant regulations.

The Speaker –

Thank you. Any Honourable Member wishes to comment or question?

Title, Enacting Clause and Clause 1.

Question put and agreed to.

The Speaker –

I put the question that Clause 2 do stand part of the Bill, the Interpretation Clause.

The Hon. Ken Baddon –

Thank you, Madam Speaker. The customary list of definitions of words and phrases which are found elsewhere. A number of the definitions have been removed, a number of new ones inserted, for example, "amenity order" isn't defined in the current law, although the current law does refer to amenity orders, so this dictionary, if you like, has been made more comprehensive so that we get the cross references which we need. The only really significant difference from the present law to Clause 2 is in the way that we deal with the definition of "development" because the Orders is about controlling development. Currently the Ordinance has a list of exceptions built within it and because it's in the Ordinance it's inflexible and it's difficult to respond to evolving circumstances, so the intention at subsection 2, which defines development, is that we have a basic definition of development there, but then when we get to, I think it's Clause 16, we will find that, yes, Clause 16, will give us the mechanism for creating something called a General Development Order, which is the way these things are dealt with in more advanced systems of planning control, whereby you'll have an order made

by the Governor in Council which lists things, minor things like boundary fences and small or temporary adverts which do not need planning permission, so that's one of the changes, moving things from the face of the Ordinance into regulations.

The Speaker –  
Any questions?

The Hon. Christine Scipio O'Dean –  
Thank you, Madam Speaker. Just a very minor item on Clause 2. Attorney General, is there a typo under Chairman where it says “and included”, it should say “and includes” and there is no closed bracket?

The Hon. Ken Baddon –  
Sorry. The actual Chairman reads, Chairman means the person appointed by the Governor under section 3(2) to be the Chairman of the Authority and includes,.....the person lawfully presiding a meeting of the Authority. Provided 3(2) is correct, which I'm just checking, yes, 3(2) is correct, I can't actually see a typo there.

The Hon. Christine Scipio O'Dean –  
So, it's not “included”, it shouldn't read “includes” instead of “included”?

The Hon. Ken Baddon –  
Oh, I do beg your pardon, yes, I see it now.

The Hon. Christine Scipio O'Dean –  
Thank you, Attorney General.

The Hon. Ken Baddon –  
Yes, can we regard it as a typo rather than a formal amendment, Madam Speaker, and we'll correct it administratively?

The Speaker –  
And I'm sure the Honourable Attorney General will appreciate if any other typos .....

The Hon. Ken Baddon –  
Sorry, Madam Speaker?

The Speaker –  
I said I'm sure you will appreciate if any other typos appear to.....

The Hon. Christine Scipio O'Dean –  
And also, Attorney General, there is no closed bracket after “Authority” in the same line, Madam Speaker.

The Speaker –  
Under Chairman.....

The Hon. Ken Baddon –



No, actually the closed brackets should be after “admits”, there’s a comma there, which should be a closed brackets, so it then reads “includes (where .....admits) a person lawfully presiding at a meeting of the Authority. Thank you.

The Hon. Christine Scipio O'Dean –

Under the same Clause, Attorney General, I just wondering if you could give me a little explanation about the relevant interest which is referred to by regulations made under section 70?

The Hon. Ken Baddon –

Yes, well, the idea is the problem with the present law is that it defines something called ‘personal interest’ and that’s too narrow. It allows people on the Planning Authority to vote on issues in which they perhaps have economic interests rather than personal interests, so we move to the concept of relevant interest, we also then put the definition into regulations so that it can respond to evolving circumstances. I would .....be very careful what I say so as not to identify individuals, but there has been at least one occasion in the past of someone who, according to any kind of commonsense, would have declared interest and taken no part, who did so, and would have to wait until today to amend the law to fix that problem.

The Hon. Christine Scipio O'Dean –

Okay, thank you.

The Speaker –

Any other questions or comments?

The Hon. Rodney Buckley –

Just a second, Madam Speaker, before we got too deep into the Bill itself, it might be useful for the Attorney General or the Director just to clarify that we are dealing with the Bill and the Land Development Control Plan is a separate document and the Bill is aligned with the LDCP, so, you know, they are two separate issues really.

The Hon. Ken Baddon –

I think that’s right and if the Director wants to add something I’d be very happy for him to do so, but the Land Development Control Plan does already exist, it’s been through a very detailed process of consultation. It seems there might be a problem with a missing Appendix somewhere, which we have promised to sort out when the Head of Planning gets back, but that document already exists, what we’re talking about here is bringing the law up to date to make it mesh properly with the Land Development Control Plan. Land development, someone mentioned the historic environment record in Stage 1, that’s mentioned in the Land Development Control Plan, but it’s not actually mentioned in the present law, and so we want to put it into the law so that the two things mesh together properly and we’ll get to that at a later clause.

The Hon. Rodney Buckley –

Also, before the Director takes over, also the Appendices relates to the policy in relation to the Land Development Control Plan, it’s not part of, it is part of it, but it is setting out the policies in relation, aligned with the Control Plan.

Director, ENRD, Mr Tony Earnshaw –

Madam Speaker, perhaps just to clarify that. Perhaps the best way of thinking about all those things is they're all part of the same overall planning framework, the things which we will use and will be used by the Government and will be used by the Planning Board to be able to make decisions and to have the powers to be able to make those decisions, but they related but entirely separate in the sense that it would be quite right, the Land Development Control Plan has already been formally adopted by Government and it's being used as a policy document to inform planning decisions, has been for eleven months. It is true that there's at least one of the Appendices missing from the Land Development Control Plan and we do need to resolve that, but, again, those in themselves are separate detailed forms of guidance on things like colours of roofs or the development of management plans and other areas like that. There will be additions to those during the course of the lifetime of this Bill if it's enacted is in place through supplemented planning guidance of one form or another, so those will constantly be updated and will be things which sit under the Land Development Control Plan, but the Bill is designed at the moment to reflect the current situation by taking into account the Land Development Control Plan that was approved a year ago.

The Hon. Ken Baddon –

I think just picking up on that, Madam Speaker, if I may, that the listening public on the radio won't be able to see my kind of gesticulations, so I'm going to try to use my hands to try to explain what I'm saying. You have a system of tiers. The very top tier, right up here somewhere, is the Ordinance and that's what we're discussing today. The next tier down is Regulations and the Regulations are also law, like the Ordinance is, so you've got the two top tiers which are different types of law and then you come down to the next tier below that, which is the Land Development Control Plan, which is a policy statement so that the people who are administering the law are required to be guided by that statement in the way they do their job and then one of the new things that we have in this Bill, which we come to a bit later on, is something underneath the Land Development Control Plan, which is policy statements, I think the Director called it Supplementary Planning Guidance or something like that, which actually .....by the, what will now be called the Authority, just to clarify the way they interpret the other three layers, so you get this cascading down of information which help the public to understand the way they are going to be treated if they apply for permission to develop.

The Speaker –

Honourable Earl Henry?

The Hon. Earl Henry –

Will the Attorney General clarify that the Ordinance gives legal status to the Land Development Control Plan inasmuch as that what is written in there is bound by the Ordinance, inasmuch as that the concerns about the Appendices being missing, it's an incomplete document and therefore if incidents occur they would, we don't have the mechanisms in place to control them?

The Hon. Ken Baddon –

The Land Development Control Plan with or without its Appendix or Appendices is actually already mandated by the current Ordinance. It exists, it has legal force under the current law. This Ordinance won't change that. If there's a gap in it, then we need to plug that gap, but this Ordinance doesn't actually affect the position. There's already an Ordinance that says that the Land Development Control Plan has the backing of the law, it's written under legal authority. Now, if there's a gap in it, we need to go back and investigate that and fill the gap,

but this Ordinance does not change that, either it's valid and it will remain valid or it's not valid and it will remain invalid.

The Hon. Earl Henry –

Thank you, Madam Speaker, thank you, Attorney General, the point is that because it has got a gap in it and my concern is that we haven't fixed the gap and there might be a tendency for it to roll over in exactly its present format under the new Ordinance and this is the concern that I have.

The Hon. Ken Baddon –

Well, I think when the Governor in Council is looking at commencement orders and transitional provisions they will be very well aware of the discussions which are taking place today about the alleged missing Appendix and also the discussions which took place in an informal meeting of this Council about the same topic, so those matters will have to be taken into account before the new Ordinance is brought into force, but the new Ordinance, as I say, does not affect the question of that missing Appendix. What we have at the moment under present law, let's suppose for a moment that this Bill were to be rejected today, we would have a situation in which we've got a law, the current Ordinance, which says that there'll be a Land Development Control Plan, we've got a Land Development Control Plan, which apparently, and I haven't investigated it myself, apparently has a missing Appendix. That is the present position. The debate today doesn't alter that.

The Speaker –

Any further questions or comments on Clause 2?

Clause 2.

Question put and agreed to.

The Speaker –

As far as possible, I intend taking the Parts, if you like, at a time, rather than individual clauses, so if we look at Part II, I put the question that Clauses 3, 4, 5, 6 and 7 do stand part of the Bill.

The Hon. Ken Baddon –

Madam Speaker, I suppose the single most conspicuous change in this Part is that what is currently the Land Development Control Board will be replaced by something called the Land Development, sorry, it's the Land Planning and Development Control Board, will be replaced by something called the Land Development Control Authority. The importance of this is that the word "Planning" has been removed, because the current law was written at a time when there was no Council Committee with responsibility for this subject area, so the current Land Planning and Development Control Board has, by reason of including Planning in its title, got itself involved in the establishment of policy. The establishment of policy is the role of Councillors and in this particular context, according to the current Council Committee structure, the land, Natural Resources, Development & Environment Committee, so the idea is to make clear that, as the Honourable Mervyn Yon mentioned in his exposition in Stage 1, the politicians make policy, therefore they deal with questions of land planning, which is about policy and then the new Authority replacing the Board deals with the implementation of that policy; applications for planning permission, issuing enforcement notices and so on. It's consistent with the whole way that our Government has been evolving

for well over a decade now where we recognise the importance of distinguishing between policy, which is the role of Councillors, and the implementation of that policy, which is the role of officials or separate Boards. So that's the single, biggest change. A couple of other minor points perhaps worth mentioning, we put into the law the requirement for the Authority, as it will now be called, to meet in public. The current Board actually imposed that requirement on itself, a little over a year ago I think it was, but it's thought better in terms of ensuring transparent decision making that that should be in the law. There's a reduction in the size of the body by two members in total. The new Authority will consist of a Chairman and not less than four, no more than six other persons, so that's a maximum of seven. Sorry, I'm just pausing to make sure I'm looking at the right section, and, yes, I'm looking at Section 3, subsection 2, a Chairman and not less than four, no more than six other persons to be members of the Authority. It has had as many as ten in the past and has been thought by some to be unwieldy and therefore not as efficient in managing the business as it might have been. The present members of the Board, it has to be said, are against that change, but the relevant Council Committee was in favour of the change and so were ExCo when it was considered there. The duties of the Authority, which are in Clause 5, have been slightly modified to emphasise that the Authority is not there to exercise discretion, it's not to be whimsical and discretionary, it is to make decisions according to the law, the Land Development Control Plan and any other lawful policies, therefore, decisions should within bounds be predictable, so that's part of the ...?...commitment to make the thing less discretionary. I think probably I've said enough about the changes in that Part unless the Director thinks I missed anything.

Mr Tony Earnshaw –

I think that covers it, thank you.

The Speaker –

Any questions or comments, Honourable Members?

The Hon. Stedson Francis –

Can I ask the Attorney General, in this case what is the difference between a Board and an Authority?

The Hon. Ken Baddon –

In a way I don't think it matters, because what matters is what duties they have. You can have a Board, you can have an Authority, you can have a Commission, you can have a Committee, it really doesn't matter which label you stick on the end of it. The reason for changing it on this occasion is just to emphasise the point that this is something new, it's not the old Board wearing a different hat, it is something new and different so I thought it sensible to change the word on the end of the title just to emphasise the point that this is something new and different.

The Hon. Stedson Francis –

Okay.

Clauses 3 to 7.

Question put and agreed to.

The Speaker –

Part III of the Bill, I put the question that Clauses 8, 9 and 10 do stand part of the Bill.

The Hon. Ken Baddon –

Thank you, Madam Speaker. The changes here, apart from the cosmetic ones, I meant to say earlier that there are a lot of grammatical rearrangements to make the language clearer and easier to understand, but the changes of substance here are that we established a post of Chief Planning Officer which is really to bring us up to date with things which have changed operationally since the current law was written. It talks only of the Planning Officer, but we have had now for, I'm guessing around about eighteen months, a Head of Planning, who actually supervises the whole process. That's not actually provided for in the Ordinance at the moment, so the idea is to have a Chief Planning Officer and however many other Planning Officers we need. If the economy does develop in the way which it is hoped for we may well need three or four Planning Officers rather than the number that we have at the moment, so the law introduces that kind of flexibility to do that. There is a provision about the Planning Officer being able to grant minor applications. This is in Clause 8, subclause 5, where the Authority can delegate to the Chief Planning Officer the power to grant development permission in certain circumstances. That does exist in the current law, but what is new is the proviso in subsection 5 which says that if someone is dissatisfied with the Chief Planning Officer's decision they can have it reviewed by the Authority. The current law is defective because if the Planning Officer makes a decision which the applicant doesn't like, the matter has then to go directly to the Tribunal, there's no way of getting it back before the current Board, so this is just making the thing again more user friendly and accessible. And I think that is it for that Part in terms of changes of substance.

The Speaker –

Councillor Cranfield?

The Hon. John Cranfield –

Thank you, Madam Speaker. The 8, subsection 6, Madam Speaker, in brackets, with or without conditions and not without, without conditions?

The Hon. Attorney General –

Thank you, we'll treat that as a typo, if I may, Madam Speaker.

The Speaker –

Any other questions or comments on Clauses 8 to 10?

Clauses 8 to 10.

Question put and agreed to.

The Speaker –

Part IV, I put the question that Clauses 11 and 12 do stand part of the Bill.

The Hon. Attorney General –

The changes here are really just grammatical and linguistic, except that those changes are designed to ensure that the scope for whimsical discretionary decision making is narrowed, in particular the concluding words of Clause 11 (2) are new. It says, The Authority, and the last few words, shall not take account of any matter which is not a material planning consideration. And there is a definition of material planning consideration in Clause 2, it's

got to be something which is to do with land development and land use rather than I don't like the colour of the applicant's eyes, to take a ludicrous example, but that's the, it's just those extra words, again, trying to pin down the non discretionary transparent nature of this process.

The Speaker –

Any Questions, Honourable Members?

Clauses 11 and 12.

Question put and agreed to.

The Speaker –

I put the question that Part V, Clauses 13 to 15 do stand part of the Bill.

The Hon. Ken Baddon –

Thank you, Madam Speaker. The substance of this is not materially different from the present law, but this is one of the areas where quite a lot of detail is being shifted out of the Ordinance to go into Regulations. A development plan, the only development plan we have at the moment is the Land Development Control Plan, which is just a type of development plan, so the new provisions are essentially the same, that we can have development plans and once those plans have gone through a complex process of public consultation and many people around this table and the esteemed public will remember the process for the current Land Development Control Plan, go through a lengthy process of consultation, eventually it is approved by the Governor in Council and it then is actually binding for the Planning Authority, the Development Control Authority, has to be guided by that plan when it's making decisions. Details such as the length .....consultation period, how the consultation is conducted, they will go into Regulations and I mentioned in Stage 1 that there's no point in bringing parts of this law into force until the Regulations are there. There's no point in bringing Part 5 into force until those Regulations have been made because otherwise we've got a Part that says you can do this, you've got to do it in accordance with the Regulations, but there are no Regulations, so it is going to be a careful process of going step by step making sure that the i's are dotted and the t's are crossed, but in terms of the actual substance of Part V I don't think there are any significant changes, unless the Director thinks I've missed something.

Mr Tony Earnshaw –

No, I think that's a fair assessment of the difference between the two versions of the Bill.

The Speaker –

Councillor Scipio O'Dean?

The Hon. Christine Scipio O'Dean –

Thank you, Madam Speaker. Attorney General, I'm a little grey....it's just one of the concerns I have, Section 13 (1) states that it's required by the Governor in Council shall submit proposals for the preparation of a development plan. Does this mean there's going to be another development plan or are you referring to the development plan that's already in existence?

The Hon. Ken Baddon –

I'm sorry, can you pull your microphone down a bit, I'm having trouble hearing you.

The Hon. Christine Scipio O'Dean –

Sorry, can't hear me, I hope that the listeners out there can hear me okay. I will repeat, Attorney General, Section 13(1) it states that it is required by the Governor in Council shall submit proposals to the Governor in Council for the preparation of a development plan.

The Hon. Ken Baddon –

Yes.

The Hon. Christine Scipio O'Dean –

Is this going to be a new development plan or are you referring to the development plan, the Land Development Control Plan?

The Hon. Ken Baddon –

No, it's only if the Governor in Council says I want a development plan. You must remember we've only got one plan at the moment. The current law enables us to have several plans. We can have a national plan, a Land Development Control Plan, which we've got, it covers the whole island, but even under current law we can have a series of further plans. We can have one called the Fisheries Development Plan, for example, which focuses on things to do with the fishing industry, we can have one that deals with Natural Heritage, the equivalent to what is going to be called the Historic Environment Record under the new law, we can already have those additional plans and there's no change in that. We can have one plan, which we've already got, or we can have multiple plans and there are rules about which one takes precedence if you've got two that say different things.

The Hon. Christine Scipio O'Dean –

So it would be entirely up to the Governor in Council if they would like to see a different plan?

The Hon. Ken Baddon –

The Planning Officer is able at any time to make recommendations to Governor in Council saying I think we need a plan that deals with this, that or the other. Alternatively, the Governor in Council can say we think we need a plan that deals with this, that or the other, the Planning Officer please produce one.

The Hon. Christine Scipio O'Dean –

Okay, thank you.

The Hon. Ken Baddon –

It can work either way around.

The Hon. Rodney Buckley –

It is exactly the same wording in the existing Ordinance.

The Speaker –

Any other questions?

Part V – Clauses 13 to 15.

Question put and agreed to.

The Speaker –

Part VI, I think we're going to take it division by division since we now have divisions in the law, so we'll take Division A, which is Clauses 16 and 17.

The Hon. Ken Baddon –

Madam Speaker, these are essentially the same as in the current law except for one point of clarification. What is 17 in this draft refers to two sides of development permission, outline development permission and full development permission. The current terminology is outline development permission or detailed development permission. That has caused some confusion in the past, so we have tried to clarify .....by saying you have outline, which is permission in principle to use that site to do that and then you get the detailed development permission which is, yes, you can build thirty houses rather than twenty-five or whatever the case may be, but that's really just a point of clarification without changing the intended meaning. Oh, I'm sorry, I'm sorry; I should have mentioned section 16(2). I did mention earlier that the exceptions to development will go into Regulations instead of being in Schedule to the Ordinance. Section 16(2) is the one that enables that to happen as it says that the Governor in Council may make an Order called the General Development Order which gives plan .....implied permission for specified types of development. The first draft of that Order is in existence but we can't finalise it, as I was saying earlier, we can't finalise the Regulations until we know what the Ordinance looks like. The first draft is already in existence and we should hopefully be able to move on that one fairly swiftly once the Ordinance has been passed.

The Speaker –

Any questions on Clauses 16 and 17?

Clauses 16 and 17.

Question put and agreed to.

The Speaker –

I put the question that Clauses 18, 19 and 20 do stand part of the Bill.

The Hon. Ken Baddon –

Again, Madam Speaker, no significant change of substance here. Honourable Members will recall mention in Stage 1 of the fact that the air access MOU required us to ensure that we have a transparent and non discretionary scheme which protects the environment and, in particular, deals with environmental impact assessments. With hindsight, it's odd that that bit about EIA's is in the MOU because we already actually have in the present law a requirement requiring environmental impact assessments. What we have found though is that an awful lot of procedural detail is on the face of the Ordinance and cut...?it up and makes it difficult to understand and so this is another of the areas where we're saying that the details will go into Regulations, but the actual substance, the idea of having environmental impact assessments and the idea of a developer or potential developer being able to ask the Planning Officer to do one of these screening opinions or scoping opinion, none of that is new, it's just that some of the detail, which is in the Ordinance at the moment, will go into Regulations.

The Speaker –



Any questions, Honourable Members?

The Hon. John Cranfield –

Just that the, sorry, Madam Speaker, the EIA is to be at the developer's expense?

The Hon. Ken Baddon –

I'm sorry, say that again?

The Hon. John Cranfield –

The EIA is to be at the developer's expense?

The Hon. Ken Baddon –

It is under current law.

The Hon. John Cranfield –

Yes?

The Hon. Ken Baddon –

Yes.

Clauses 18, 19 and 20.

Question put and agreed to.

The Speaker –

I put the question that Clauses 21, 22, 23, 24 and 25 do stand part of the Bill.

The Hon. Ken Baddon –

Thank you, Madam Speaker. I meant to mention earlier that I circulated during the lunch adjournment a list of typos and minor corrections which I had spotted by that stage. The first of these is in Clause 21, subclause 1, paragraph (b). At the beginning of that clause the word "to" is missing. I think that's more than a typo so I will formally move, if I may, that the clause be amended by inserting the word "to" at the beginning of paragraph (b) and keep my fingers crossed that someone will second it.

The Speaker –

Is there a seconder to the amendment?

The Hon. John Cranfield –

I'll second that amendment, Madam Speaker.

Question that Clause 21(1) (b) be amended by adding the word "to" ....., put and agreed to.

The Hon. Ken Baddon –

Madam Speaker, there is then another one in Clause 22, 22(1)(c) in the first line, which is at the top of the next page. If in the opinion of the, insert the word "Chief", If in the opinion of the Chief Planning Officer, so I beg to move that amendment and perhaps combining it with the next one since it's only three lines further down. At the end of paragraph (d) subsection 4

should be subsection 3, so I beg to move the insertion of the word “Chief” in paragraph (c) and changing (4) to (3) in paragraph (d).

The Speaker –

Is there a seconder to the amendments, please?

The Hon. Mervyn Yon –

I beg to second, Madam Speaker.

The Speaker –

Thank you, Honourable Member.

Question on amendments to Clause 22, put and agreed to.

The Hon. Ken Baddon –

And one final amendment in this group of clauses, Madam Speaker, the heading to Clause 24 caused some consternation in an informal meeting of this Council. I’ve given some thought to how best to resolve it and I think the way to resolve it is to delete all the words after “matters” and to substitute “to be considered” so that the heading of Clause 24 then says “matters to be considered”. I beg to move that the Clause be so amended.

The Speaker –

Is there a seconder, please?

The Hon. John Cranfield –

I’ll second it, Madam Speaker.

The Speaker –

Thank you, Honourable Member.

Question on amendment to heading of Clause 4, put and agreed to.

The Hon. Ken Baddon –

Madam Speaker, as far as the substance of these clauses is concerned, there are only minor changes really to the present law. The ability of the Planning Officer to call for further information is not new but has been clarified; the business about consultation on applications has been somewhat clarified to set out in a little more detail what exactly the Planning Officer is required to do; and one of the changes there is something which is required by Air Safety Support International if they are to licence our airport and that is to ensure that there is a mechanism for checking that proposed development will not interfere with the operational safety of the airport and we find that in Clause 22, subclause 3, which says that, in addition to whatever other consultations take place the Chief Planning Officer must inform the airport operator of all planning applications. Now, it has to be said that in other places this bit of law could take several pages, because it has to be more complicated. What Air Safety Support International have agreed here is that it is sufficient if we have a general requirement that the airport operator be consulted, but then in order not to create unnecessary paperwork, the airport operator and the Chief Planning Officer can agree between themselves that specified types of application will not be referred to the Chief Planning Officer, so it.....things like within a certain radius of the airport anything not exceeding a certain height need not be consulted upon. Related to that is a requirement in Clause 23, which is the one to do with the

types of case that have to go to Governor in Council, that if the airport operator does protest that the physical development will be prejudicial of the airport, that application must go to the Governor in Council rather than be dealt with by the Land Development Control Authority. So that's those two. In terms of matters to be considered, Clause 24, there is no significant change, I think, although there is generally throughout this part a proposal that Regulations will impose time limits and that doesn't exist at the moment. Development agreements, it doesn't work at the moment. This is a system whereby, and the best example I can give is, those members who remember going out to visit the proposed SHELCO site, it must be about a year ago now we went on that site visit, there was discussion about whether SHELCO could be required to spend money improving a road which goes down between their site and Casons, which is not part of their site. This clause could be used to deal with that kind of thing, an agreement between the Government and the developer saying, yes, you can have development permission for your site, but you've got to improve that road. In a comprehensive development area it could be, yes, you can have permission to build twenty-five houses, but you must also build a shop and a community centre. It's that kind of thing and it doesn't work at the moment, because it says that the Board can enter into that agreement, but the Board has no surrounding powers to enforce and monitor the agreement so the concluded decision we've come to is that it should be the Attorney General on behalf of the Government who enters into that type of agreement and we can then resort to ordinary civil proceedings through the Courts if we need to enforce it. Sorry, that group of sections has taken a few minutes, but those are the main changes.

The Speaker –

Can I just ask if .....typing error.....Section 25, at the end of the line

The Hon. Ken Baddon –

25?

The Speaker –

.....the Government of St Helena.....

The Hon. Ken Baddon –

I'm sorry, Madam Speaker.

The Speaker –

On behalf of Her Majesty in right of her Government....

The Hon. Ken Baddon –

Yes, yes, on behalf of Her Majesty in right of her Government of St Helena, that's the correct formulation. I won't digress, but in St Helena we're accustomed to using the abbreviations SHG for our Government and HMG for the UK Government and that's because the Government in UK is technically Her Majesty's Government of the UK, we are, although we don't use the full title when we're talking informally, we are Her Majesty's Government of or for St Helena.

The Speaker –

I think we.....full title, don't you, Honourable Members?

The Hon. Ken Baddon –

So, maybe we'll change the acronym.

The Hon. Cyril Gunnell –

We're a part of Her Majesty's Government, I like that.

The Speaker –

Sorry, Councillor Henry?

The Hon. Earl Henry –

Madam Speaker, can the Attorney General say when it comes to these development orders, will they, because they will apply to areas outside of the development, or could apply to areas outside of the development application site, what will be the consultation process or how will public be involved in that?

The Hon. Ken Baddon –

I think it depends on the circumstances, because if it's a narrow strip of Crown land down the side of the site that involves improving the road they could be discussed as part of the ordinary consultation on the basic planning application, but the point is, it's Crown land. If it affects private land then obviously the private landowner is going to have to be consulted and there's a different clause, I can't remember which one it is at the moment, where the current law is defective because it says that the Planning Board under present law can require things to be done on land which the developer doesn't own and there are no safeguards around it whatsoever for the rights of the landowner, so the Development Control Board, under the current law, could say, and you've got to improve that road that runs down the side of your site. The person who owns that land might not want to improve, so we've tried to plug that kind of gap and make the thing consistent and compatible and make sure that private land rights are respected.

The Hon. Earl Henry –

What is also my concern is the fact that what we're trying to encourage is additional development that should be for the benefit of the community, but then you're gonna .....generally everybody else thinks that the shopping centre is needed, but the shopping centre is gonna be slap bang on the corner of my property. Now, do I get a chance to object or how does that feed into the development process, that's my question?

The Hon. Ken Baddon –

Can I invite the Director to comment, because you have experience of how this kind of thing works in the UK?

Mr Tony Earnshaw –

Yes, Madam Speaker, that's an entirely valid question that the Honourable Member's asking. The way it would work in that particular example, to quote the example that you used there, is that if you required work to be done which in itself was considered development, you mentioned the example of a shopping precinct or something, and it being adjacent to where you live, that in itself would require a separate planning application to be submitted and .....to go through the full consultation process that any planning application would go through, so you would be given the opportunity in the same way as you would have been in the first instance to comment or to object or to support as you saw fit.

The Hon. Earl Henry –

Thank you very much, Madam Speaker.

The Speaker –

Honourable Christine Scipio O'Dean?

The Hon. Christine Scipio O'Dean –

Thank you, Madam Speaker. May I ask the Attorney General, just a point of clarification, in section 22 (1) (c) where it states that if the opinion of the Chief Planning Officer the proposed development is likely to have damaging effects on amenities, that the people, the occupiers will be given written notice, so does he do that himself? Also, number 3, it says that the Chief Planning Officer shall send a copy of every application for development permission; I'm concerned that the Chief Planning Officer is dealing with administration work?

The Hon. Ken Baddon –

No, there's a separate provision of the Chief Planning Officer can delegate to other Planning Officers, so we're not gonna have, necessarily gonna have the Chief Planning Officer doing all of these things in every individual case, so we've got to place the responsibility on someone who is going to ultimately be responsible for making sure it happens, so just because it says Chief Planning Officer doesn't mean that it's got to be the Chief Planning Officer that deals with it in a particular case.

The Hon. Christine Scipio O'Dean –

I read it as the Chief Planning Officer, hence that's my interpretation.

The Hon. Ken Baddon –

Sorry?

The Hon. Christine Scipio O'Dean –

I read it as it says here the Chief Planning Officer; hence I have interpreted it as the Chief Planning Officer.

The Hon. Ken Baddon –

Go back to.....yes, the reference to Chief Planning Officer it says the Chief Planning Officer, but somewhere it says that he may delegate, just.....let me see if I can find it. Yes, Clause 8, subclause (4) which we already approved, the Chief Planning Officer may delegate any of his powers and duties under this Ordinance to any other Planning Officer.

The Hon. Christine Scipio O'Dean –

Thank you for the clarification.

The Speaker –

Any other questions on Clauses 21 to 25?

The Hon. Stedson Francis –

Yes, 23(1)(b), the Governor in Council may direct the Chief Planning Officer to refer to him for decision all applications for development permission in relation to any locality in St Helena. Does that mean private as well, development?

The Hon. Ken Baddon –

Yes, it doesn't matter whether it's Crown or private, it's the locality. One of the requirements which has been in existence now for about three years or so is anything within, I think it's fifty metres, of the sea is to go to the Governor in Council, so you're refining an

area which might be particularly sensitive from a planning point of view. I think there's, if I remember right, there's also one to do with close to the Run, but I'm not sure about that. Just to .....it was said in Stage 1 about the cases which are going to the Governor in Council, perhaps being more extensive than they need to be, I think we have given an assurance to the Land Development Control Board that once we know what the new law looks like we will look at trying to reduce the numbers of types of cases that need to go to the Governor in Council. It has been extended, that was a perfectly fair comment in Stage 1, but it may be that when we have the new law in place we will be able to review that and the Governor in Council has said to the Planning Board, because the Planning Board obviously want to be able to make as many decisions as they can, we have said to them we'll take a fresh look at it but we're not going to take a fresh look at it now and then look at it again when we've got the new law in place, we'll do the two things together.

The Hon. Stedson Francis –

What is development, if I build two houses, is that a development or do it have to be a big or just one house?

The Hon. Ken Baddon –

Building one house, building a garden shed is a development.

The Hon. Stedson Francis –

Even my own fit for me to live in?

The Hon. Ken Baddon –

Yes, yes.

The Hon. Stedson Francis –

Okay.

The Hon. Ken Baddon –

That's the current law, but you get these exemptions for small things, like a small extension to a house would be exempt and that would be a General Development Order under Clause 16. Erecting boundary fences, provided they're not over a certain height, are usually exempt, but that would be defined a General Development Order, but basically any kind of construction or excavation or mining is development and it's controlled in the best interests of conserving the environment for the community as a whole.

The Hon. Stedson Francis –

Thank you.

The Speaker –

Any other questions, Honourable Members?

Clauses 21, 22, 23, 24 and 25.

Question put and agreed to.

The Speaker –

I put the question that Clauses 26, 2 and 28 do stand part of the Bill.

The Hon. Ken Baddon –

Thank you, Madam Speaker. Nothing radical here in terms of changes. There's some extra words at the end of the proviso to 26(1). Currently the Planning Authority, sorry, the Planning Board does give reasons if it refuses permission or imposes conditions, but it's not a legal requirement, so going back to anything about transparency we're making that a legal requirement. And then we've got in 27, yes, just in case Members are puzzled, the concluding words of 27, the application will be deemed to have been refused if a decision isn't given. That's not new, it's in the current law, but the reason it's in the current law is that if the Board now or the Authority under the new law prevaricate over making a decision, the applicant has no remedy. By saying that the permission is deemed to have been refused, that automatically triggers the right to appeal to the Tribunal, so it provides a remedy against prevarication.

The Speaker –

Any questions on those Clauses, Honourable Members?

Clauses 26, 27 and 28.

Question put and agreed to.

The Speaker –

I put the question that Clauses 29 and 30 do stand part of the Bill.

The Hon. Ken Baddon –

There's nothing significantly new here, Madam Speaker. There may be some grammatical clarifications, but I don't think there's anything of significance.

The Speaker –

Any comments or questions, Honourable Members?

Clauses 29 and 30.

Question put and agreed to.

The Speaker –

I put the question that Clause 31 do stand part of the Bill.

The Hon. Ken Baddon –

Madam Speaker, this is one where there's an amendment. I mentioned earlier that we'd abandoned the expression "detailed development permission" in favour of the expression "full development permission", but we missed the consequential changes in this Clause. There are a total of four references to detailed development permission, the first is in the second line of subclause (1), the second is in the third line of subclause (2), the third is in the first line of subclause (4) and the fourth is in the third line of subclause (4). I beg to move that all of those references to detailed development permission be changed to full development permission.

The Speaker –

Thank you. Is there a seconder to the amendments, please?

The Hon. Mervyn Yon –  
I beg to second, Madam Speaker.

The Speaker –  
Thank you, Honourable Member.

Question on amendment, put and agreed to.

The Speaker –  
Any questions on that Clause please, Honourable Members?

The Hon. Ken Baddon –  
There's no significant change in it, Madam Speaker, apart from the change of the wording.

The Speaker –  
Thank you.

Clause 31 (as amended)

Question put and agreed to.

The Speaker –  
Right, I put the question that Clauses 32, 33.....

The Hon. Ken Baddon –  
If it will assist, Madam Speaker.....

The Speaker –  
.....Division C in this one, which is just confusing me slightly.

The Hon. Ken Baddon –  
If it assists, Madam, the whole of Part VII contains no significant changes; there are only grammatical and linguistic corrections.

The Speaker –  
Thank you, in which case, I'll put the question that clauses 32 to 38 do stand part of the Bill.  
Any questions, Honourable Members?

Clauses 32 to 38.

Question put and agreed to.

The Speaker –  
I put the question that Clause 39 do stand part of the Bill.

The Hon. Ken Baddon –  
Madam Speaker, this is new. The context of it is that the Land Development Control Plan got a little bit ahead of the law, by contemplating creating something called An Historic Environment Record, the purpose of which is to replace the Crallen Report as the authoritative list of listed buildings. The Historic Environment Record will go a bit further



because it will include also conservation areas and archaeological sites. It is envisaged already in the Land Development Control Plan, this brings the law into line with the Land Development Control Plan and what we're saying is that in order to put the Historic Environment Record in context, we're saying that it will have the same status as a development plan, under one of the clauses that we've already dealt with. That will mean that the Development Control Authority will be bound to act in accordance with the Historic Environment Record, so just completing the bits of the jigsaw that was started by the relevant bit in the Land Development Control Plan.

The Speaker –  
Councillor Scipio O'Dean?

The Hon. Christine Scipio O'Dean –

Thank you, Madam Speaker. This is another section that I had a little grey area with and hopefully that the Attorney General, if he can hear me okay, will be able to clarify. He mentioned that the Land Development Control Plan was a little ahead of itself to the law because the Historic Environment Record has been referred to in the Land Development Control Plan, but I notice now that we do have it in here in a new Ordinance, so I'm trying to understand if it's been referred to but hasn't been adopted, finalised, but there isn't any reference here if it's supposed to be issued or adopted and implemented within a particular timeframe?

The Hon. Ken Baddon –

.....if they do that, to be honest, because someone mentioned in Stage 1 that they're not quite sure how far work has progressed with the Historic Environment Record, there's no point putting in the .....law this must be done within two months and then finding it can't be done within two months, so all I know is that the work is definitely in progress, I don't know whether the Director knows more?

Mr Tony Earnshaw –

Madam Speaker, we do actually have a draft Historic Environment Record in place, but it has no status at the moment, we're not using it as a document yet. It will have to go through, first of all the stage of looking at it to make sure that we're happy with what is in there, because it's been commissioned by an outside body, there will also then need to be a period of consultation, for consultation on the island because of the potential implications of it. Assuming it goes through that process and comes back to Members and is formally adopted as a policy of the Government, it is expected it then would become, to use the phrase we used before, one of the forms of supplementary planning guidance that will be used in determining .....applications and other planning issues, but at the moment the HER has no formal status.

The Hon. Christine Scipio O'Dean –

Okay. My concern is, Attorney General, is that section 39(1) states, the Chief Planning Officer may submit to Governor in Council a proposal for the preparation of development plans, so I'm a little concerned that it say 'may' knowing that it's already been referred to in the Land Development Control Plan.

The Hon. Ken Baddon –

Well, may, and if so directed by the Governor in Council shall. I don't think this piece of work is going to get lost, it's work which is actually already in progress, it's just a question of making sure we go through the relevant processes. By declaring that the HER is a type of

development plan that incorporates all the procedural requirements for a development plan, which means that, as the Director has mentioned, there will have to be the same type of consultation as would be required for any other kind of development plan, such as a replacement for the Land Development Control Plan.

The Hon. Christine Scipio O'Dean –

So not necessary it means that, we have highlighted that the Appendices need to be completed, so it's not necessary mean that the Appendices and the Historic Environment Record should be completed by a certain time for the Bill to be implemented?

The Hon. Ken Baddon –

It would be dangerous to do so, because you..... we had a problem with the first Land Planning Development Control Ordinance which came in 1998, if I remember right, I wasn't here at the time, by the time I had got back to the territory in 2004 the first Land Development Control Plan was way overdue and we still didn't get it for another two or three years after that. It's dangerous to put that kind of time limit in primary legislation, you .....rely on the Governor in Council to push this forward. It does say, if so directed by the Governor in Council shall.

The Hon. Christine Scipio O'Dean –

Okay, thank you for that and so that means to say that if it isn't carried out by Governor in Council we could always vote as 'no confidence'?

The Hon. Ken Baddon –

Even ask questions in LegCo.

The Hon. Christine Scipio O'Dean –

We will.

The Hon. Cyril Gunnell –

Madam Speaker, could I ask the Director who is leading on the HER, compiling it?

Mr Tony Earnshaw –

Madam Speaker, it's been, the initial work, the client, what was actually the Tourism Section of SHG before they moved over to Enterprise St Helena, but I've determined that it's appropriate for the Head of Planning to pick up the work now because essentially it will be, or potentially will form part of the submitted planning guidance so it will be dealt with by the Head of Planning.

The Hon. Cyril Gunnell –

Thank you.

The Hon. Earl Henry –

The other question that I have please Attorney General and that is based on the Director's explanation of the timeframe that the HER will possibly take to get up and running, and if what transitional arrangements are there, because the old plan incorporates with the old Ordinance through the Land Development Control Plan is to incorporate the Crallan Report which was agreed is out of date or needs updating but it is the only piece of information or record that we've got, so what transitional arrangements will we have between now and the Historical Record?

The Hon. Ken Baddon –

Well, until we get the HER we've got to rely on Crallan, that's what the present Land Development Control Plan says and nothing in the Ordinance, nothing in this Bill will change that. All we've got at the moment is Crallan, however weak it may be, that's all we've got, so I agree that means that there's got to be an eye kept on making sure that progress takes place with the HER, but you used the expression transitional provisions, which just reminds me to go back to Clause 1 subclause (3) when an Order is made to bring a particular part of the Ordinance it may contain transitional provisions. The one relating to the development plans and the HER we'll have to say that. Until we get the HER the Land Development Control Plan remains in operation.

The Hon. Earl Henry –

Thank you, Sir, because that leads me to ask or to say that the Land Development Control Plan Appendices is paramount in implementing it today because of the fact that is the only place where the Crallan Report is mentioned, you see, it is an Appendix or it was an Appendix to the previous Land Development Control Plan.

The Hon. Ken Baddon –

Well, we've already agreed that we'll look into the question of this missing Appendix, I think we all know that in terms of current land planning policy we regard the Crallan List as being the definitive list of listed buildings. It's far from ideal, we need to do something about it and that's why the HER is being prepared.

The Hon. Earl Henry –

Thank you.

The Hon. Christine Scipio O'Dean –

Thank you, Madam Speaker. I heard the Director mention that the HER report has commenced, how long ago did work start on the HER?

Mr Tony Earnshaw –

Madam Speaker, I think the work actually started about same time I arrived on island, although I wasn't involved with it, so eighteen months ago or something like that.

The Hon. Christine Scipio O'Dean –

And would you say it is 80% complete, 50% complete?

Mr Tony Earnshaw –

Depends on the next stage when we come to look at what's actually there. Most of the actual basic work has been done in terms of the survey work and in terms of the individual artifacts and buildings and it includes, at the moment, something like nine hundred and sixty or nine hundred and seventy individual entries potentially so it's quite a detailed piece of work which is why it's going to take a while to actually get it through a process of deciding that it is actually what we want, because there is so much information in there.

The Hon. Christine Scipio O'Dean –

So for the overall project would you say what percentage is complete?

Mr Tony Earnshaw –

I'd hate to put a percentage on it, but I would say 75, 80% complete, perhaps?

The Hon. Christine Scipio O'Dean –  
Okay, thank you.

The Hon. Derek Thomas –  
Can I just say, Madam Speaker, I might have missed it, but who's leading on producing this Report, who's leading on this work?

Mr Tony Earnshaw –  
It's being led by the Head of Planning, but the technical input will be from the new Architect we've got on island who's been recruited specifically for that purpose, among other purposes.

The Speaker –  
Any more comments or questions?

The Hon. Rodney Buckley –  
Just to clarify, Madam Speaker, it's been longer than eighteen months before he came on to the island; it's been going on longer than that. It was input from the Tourism and then with the National Trust and there is well over, as far as I know, a thousand entries that was pulled together on that, including cement posts and that Napoleon touched and stuff like that, so it has been quite an issue and we had the gentleman here under the National Trust who led on the issue. I forgot his name right now, Madam Speaker, but you would....

The Speaker –  
Ben Jeffs.

The Hon. Rodney Buckley –  
Ben Jeffs was the man who went round and checked on every little creek and corner so we've got near enough a thousand listed HERs.

The Hon. Derek Thomas –  
But we can expect that report, Madam Speaker, to be presented to Governor in Council at some stage?

Mr Tony Earnshaw –  
Absolutely, it can't be designated as supplementary to planning guidance until it's been through a consultation and adoption process, including going through Governor in Council, correct.

The Hon. Ken Baddon –  
That's the point of saying in here that it has the status of a development plan, because if we simply have it referred to in the Land Development Control Plan as something that's going to be written that begs for questions, who's going to write it, who's going to consult it, what kind of consultations they're going to be and who is going to finally sign it off. All of those questions are answered by saying in here that it will be a type of development plan.

The Hon. Derek Thomas –  
Well, we will have to push that through Governor in Council, Madam Speaker.

The Hon. Rodney Buckley –

I suggest, Madam Speaker, that it will be for public consultation first, because it said belongs to the island and we need to be satisfied that we are in agreement with the entries in that HER.

The Hon. Ken Baddon –

But this Council today can't decide on the detailed consultation process, all we can do is note that work is ongoing and that the consultation will have to take place.

The Hon. Christine Scipio O'Dean –

We also note how long it has taken for it to come and still not finalised is my concern.

The Hon. Ken Baddon –

Ask a question at the next LegCo as to what progress has been made.

The Hon. Cyril Gunnell –

Thank you, we'll do that.

The Hon. Rodney Buckley –

It's been a real battle with this HER and the National Trust and the Heritage and so forth, it's been quite a battle.

The Speaker –

Any other comments, Honourable Members?

Clause 39.

Question put and agreed to.

The Speaker –

I put the question that Clauses 40 and 41 do stand part of the Bill.

The Hon. Ken Baddon –

Madam Speaker, I have to confess that when I looked at the current provisions about the Building Preservation Orders I didn't understand them, so I had a long discussion with the Head of Planning with a view to rewriting them, because I thought if I don't understand them how am I going to deal with them if we end up in Court over it. There is no actual change of substance though the notion still is that a building which is of .....importance can be the subject of a Building Preservation Order and if it is the subject of a Building Preservation Order then the general development or there will not allow development of it, you've got to go through a proper planning application because it's a special building not an ordinary common or garden one. So that is the basic principle of 40 and 41 which has not changed but I hope that it is presented in a more intelligible way. I've just spotted one of those famous typos in 40 subsection (9) the first letter 'N' should not be capitalized, sorry, it should be capitalized, it should not be bold.

The Speaker –

Any questions on Clauses 40 and 41?

Clauses 40 and 41.

Question put and agreed to.

The Speaker –

I put the question that Clauses 42 and 43 do stand part of the Bill.

The Hon. Ken Baddon –

Madam Speaker, there is no provision in the present law for Tree Preservation Orders. The idea of including such provision met no resistance during public consultation as far as I can recall, it's consistent with good development control practice elsewhere and the concept follows very closely the concept of a Building Preservation Order but modified to reflect the fact that you're dealing with a living thing rather than a non living one.

The Speaker –

Any questions on Clauses 42 and 43? Councillor Henry?

The Hon. Earl Henry –

Just one question, Madam, that bothers me and that is can the Attorney General tell us where we would get our expertise on tree management from?

The Hon. Ken Baddon –

I think I'd rather the Director answer that if he can because it's not a legal question.

Mr Tony Earnshaw –

I think it would depend on the nature of the problem. I think on a day to day basis it would be somebody from within the Forestry Section of what is currently Agricultural and Natural Resources Directorate.

The Hon. Earl Henry –

My whole reason for asking that, Sir, is the fact that we have seen tree surgery work carried out before and if you look at the one in the AVEC boundaries and what was once a tree has now become a bush and if we're talking about Preservation Orders then it is my wish to preserve trees, not to turn trees into shrubs and bushes. Thank you.

The Hon. Ken Baddon –

I think on that, I mean, some people would say it was a tree but mostly it was dead, we now have a smaller tree which is very obviously healthy, but we do use the expertise that we've got and the expertise they applied to that particular case apparently said get rid of the dead wood and it will start growing properly again and that's what's happened.

The Hon. Earl Henry –

Well, Madam Speaker, I differ in opinion for the simple reasons that a tree to me has branches and limbs and trunks and so forth and for what you can actually see in that area at this point in time isn't what I expect.

The Hon. Stedson Francis –

It might have been that it was requested to have it lopped to that height no doubt.

The Speaker –

As a point of information I do know that on at least one occasion they did refer .....to Kew Gardens .....advice before lopping it..... Any comments or other questions on Clauses 42 and 43?

Clauses 42 and 43.

Question put and agreed to.

The Speaker –

I put the question that.....

The Hon. Brian Isaac –

Madam Speaker, excuse me, with your permission, could I just ask a question back on Clause 24? I don't need to change anything, just to clear something in my own mind? The Attorney General, it speaks on 24 (d), the last paragraph, it says, it talks about the use of existing buildings and it says that the adequate provision to facilitate access and usage by persons with disabilities. Do that Clause need further explanation to it, such as wheelchair access, toilets with wheelchair access, do it need an explanation or clarification on that or that's adequate enough .....disabilities?

The Hon. Ken Baddon –

I think it will depend on the nature and location of the site as to what is actually practicable, but can you help us?

Mr Tony Earnshaw –

I don't think this is necessarily the place for the definition, I do think there's a relationship though between this and potentially the Building Control Regulations and certainly in the UK that's where a lot of accessibility issues are dealt with within those regulations. I also think that one of the things we may need to do is to issue supplementary guidance covering that specific issue, which would lay that out in a lot more detail than would be appropriate within the Ordinance, because, I agree with you Councillor, I think it is important that we do specify what we actually mean by that.

The Hon. Brian Isaac –

Yes.

The Hon. Cyril Gunnell –

Madam Speaker, for clarification, there is now the St Helena definition for disability and, you know, perhaps that word could be put in the Interpretation.

Mr Tony Earnshaw –

And that could form part of the basis of whatever regulations we think are required to determine what we mean by accessible as well, that would potentially form the basis.

The Hon. Cyril Gunnell –

Yes, okay.

The Hon. Brian Isaac –

Thank you for allowing that, Madam Speaker.

The Speaker –

I put the question that Clauses 44 and 45 do stand part of the Bill.

The Hon. Ken Baddon –

There's no significant change here, Madam Speaker, it's a repeat of current law, but with some just tidying up of the language and grammar to try to make it more user friendly.

The Speaker –

Thank you. Any questions, Honourable Members?

Clauses 44 and 45.

Question put and agreed to.

The Speaker –

I put the question that Clauses 44 to 49 do stand part of the Bill.

The Hon. Ken Baddon –

Again, Madam Speaker, points of clarification here and there but the substance of these provisions is simply a repetition of current law.

The Speaker –

Any comments, Honourable Members?

Clauses 44 to 49.

Question put and agreed to.

The Hon. John Cranfield –

I think you meant to say 46, Madam Speaker, you've finished 44 already.

The Speaker –

Sorry, thank you. 46 to 49.

Clauses 46 to 49.

Question put and agreed to.

The Speaker –

I put the question that Clauses 50 and 51 do stand part of the Bill.

The Hon. Ken Baddon –

Similar comment, Madam Speaker, this last part, Part XI, is a repetition of current law, but perhaps with ratifications in there.

The Speaker –

Any questions, please?

Clauses 50 and 51.



Question put and agreed to.

The Hon. Earl Henry –  
Madam Speaker?

The Speaker –  
Yes, Sir.

The Hon. Earl Henry –  
May I, with your permission, go back to Section 46 and ask the Attorney General if he would just clarify when we say no right to compensation how exactly is that .....the first thing that jump at me is that we can't claim, right, can you just .....

The Hon. Ken Baddon –  
46 is saying something is not identical, I've forgotten to bring the present law with me, but 46 is really to say what is in the present law and what I would expect to find in a law such as this, provided that the Crown, the Governor or the Authority, the Appeals Tribunal or the public officer concerned is acting in good faith then there's no claim for compensation against them. There may be a claim for compensation against the Government under 47 in the circumstances which are listed there, but the basic principle is if someone is performing functions under this law and act in good faith then they can't be sued personally for compensation.

The Hon. Earl Henry –  
Okay, but what you're saying is that it could apply to the Government?

The Hon. Cyril Gunnell –  
I think we need to be very careful how we actually, or have we said yes to this already?

The Speaker –  
We've already said yes.

The Hon. Cyril Gunnell –  
No, but I think sometimes things just fly by you, but I.....

The Speaker –  
I think the Honourable Attorney General did clarify a little bit more clearly that section 46 all the same, you've got no claim against an individual, then under 47 it's actually saying where you do have the right to claim, yes?

The Hon. Ken Baddon –  
The current 46 is what is now 46 is a simplified version of a quite long and complicated clause 64 in the present law and it begins with the phrase exactly as in the 46. No claim for compensation in this Ordinance shall lie against the Crown, the Governor, the Board, the Appeals Tribunal or any public officer in connection with or arising out of, and then some complicated language which we simplified to say, doing their job acting in good faith.

The Speaker –  
And then am I right in saying that the next Clause defines where we do have the right to .....

The Hon. Ken Baddon –  
Yes, and there's a similar provision in the current law.

The Speaker –  
Alright?

The Hon. Earl Henry –  
Okay, thank you.

The Speaker –  
Actually, I was thinking that maybe we'll just take a short break and then we'll come back to it.

The Hon. Cyril Gunnell –  
We can do that in good faith, Madam Speaker.

The Speaker –  
So let's take a comfort break for ten minutes and we'll resume.....

**Council suspended.**

**Council resumed.**

The Hon. Ken Baddon –  
Part XII, the Appeals Provisions do have some significant changes, Madam Speaker, but before I speak to them can I deal with a couple of corrections that need to be made? Firstly, in Clause 53, second line, there's a word missing. It should say "against any decision made by the Authority", I beg to move the insertion of that word, please, at that location.

The Speaker –  
Do you want to take them individually?

The Hon. Ken Baddon –  
I can take them as a group if that's convenient, Madam Speaker.

The Speaker –  
.....take the amendments as a group?

The Hon. Ken Baddon –  
And then the next one is that Clause 54 needs an additional subclause. This is to include, when we get to the next Bill, there's a cross reference with appeals going to this Appeals Tribunal. We can't, off course, mention the other Bill, because we haven't passed it yet, the wording I wish to insert as subclause (3) in Clause 54 is on the sheet I handed out. The clause reads (3) the Tribunal may exercise such other functions, if any, are conferred upon it by or under any other law. That enables us to deal with the amendment without actually anticipating the other Bill. And then 62 subsection (1). Sorry, 61, subsection (2) in the second line, the word "appeals" should not be there because we're calling the Tribunal simply as a Tribunal, but the reference to the Authority is also missing, so the amendment is

to delete the word “appeals” and substitute “Authority, the” so it reads, a review of a decision of the Authority, the Tribunal or the Governor in Council. So that’s three amendments to that group of Clauses, which I will tick off as a single amendment if they be approved.

The Speaker –

Is there a seconder to the proposed amendment?

The Hon. Mervyn Yon –

I beg to second, Madam Speaker.

The Speaker –

Thank you.

Question on amendment, put and agreed to.

The Speaker –

Now perhaps we can .....

The Hon. Derek Thomas –

Madam, can I just go back on one section just for clarification, please? 46, Madam. It says here no claim to compensation lie on the Crown, Governor, the Authority, the Appeals Tribunal, what is in place to challenge if it did not work in good faith?

The Hon. Ken Baddon –

Clause 46 is about claiming monetary compensation, it’s not to do with challenging decisions. The part that we’re looking at at the moment is to do with appeals against decisions, so if you don’t like a decision you appeal against it to the Tribunal and if you appeal to the Tribunal and you don’t like the Tribunal’s decision you can apply to the Supreme Court for Judiciary Review. That’s about reversing incorrect decisions, it’s not about compensation.

The Hon. Derek Thomas –

You can apply to the Supreme Court for Judicial Review?

The Hon. Ken Baddon –

Yes, but that’s not going back to 46, that’s the bit we’re looking at at the moment and, in particular, Clause 61, which is the one that says you can apply for Judicial Review.

The Hon. Derek Thomas –

Thank you, Madam.

The Speaker –

That’s alright. Can you just take us through Clauses 54 to 61, please?

The Hon. Ken Baddon –

Yes, thank you, Madam Speaker. There are some changes to appeals provisions. The present appeals process actually .....presumes that the vast majority of appeals will be dealt with by reading the papers behind closed doors. Now, there is no transparency or openness, there’s no public hearing, it is totally unacceptable in terms of a transparent and non discretionary process. There have been cases in the past I am told where the present Tribunal

has made decisions based on reasons which actually are nothing to do with planning law at all, going back to the discretionary nature of things, which we discussed earlier in the context of the Authority. So the changes are, firstly, the current Tribunal includes the word "Planning" in its title for the same reason that we've removed it from the title of the new Authority, we moved it from the title of the Tribunal. The Tribunal is dealing with land development, not with policy decisions about land planning. We provide the Chief Magistrate shall be the President of the Tribunal in order to give it a judicial character and a transparency of process. We refer in 54(1) (b) to the fact that if the Tribunal is going to change the decision it can only put in another decision which the Authority could lawfully have made. That ties the Tribunal to complying with the Ordinance, the Land Development Control Plan, Supplementary Planning Guidance and only taking account of material of planning considerations rather than the .....of someone's eyes, to use the same example that I used earlier. There's nothing in the current Tribunal provisions about conflict of interest, we insert that at 55(3). 55(5) is the one that says that generally speaking the Tribunal will determine appeals in public in the same way that the Authority must deal with applications in public. And those are the points of principle. We clarified the bit about judicial review. I should mention, having made the amendment at 61 subsection (2) to include the Authority, judicial review against the Authority will be rare because you can only apply for a judicial review if you've exhausted your other remedies so if the Authority makes a decision and there's a right .....of the Tribunal you've got to get the Tribunal first, you cannot jump straight in first to the Supreme Court, so judicial review of the Authority will be rare, but the Authority might make decisions where there is no appeal to the Tribunal in which case someone will be able to go to the Court for judicial review. And apart from those sort of substantive things, as with so much of this, we've tried to tidy up the language to make it more transparent to people who pick up things to read.

The Speaker –

Could I just ask for clarification of one point, please?

The Hon. Brian Isaac –

Yes, you can.

The Speaker –

52, sub paragraph 4 says the President shall be paid. The President is the Chief Magistrate, I thought he was already being paid, is he now going to be paid for.....

The Hon. Ken Baddon –

Sorry, which clause are you in, Madam Speaker?

The Speaker –

52, sub clause 4.

The Hon. Ken Baddon –

Yes, but what we've said in 62 (1) is that there shall be a Tribunal which shall consist of a President and not less than two and no more than four additional members and then in (2) we say that the Chief Magistrate shall be the President. The reason for having the two expressions is that in the proviso to (2) if the office of the Chief Magistrate is vacant then the Governor can appoint a JP to act as President. It is a bit like in this Chamber, the Standing Orders refers to President and it means the Speaker or the Deputy Speaker or the Governor or whoever else is lawfully presiding.

The Speaker –

I think you didn't catch my question, my question was, actually I was asking if he's already being paid as Chief Magistrate why does it stipulate that the President shall be paid under sub paragraph (4), I'm just a little confused.....is he going to be paid twice?

The Hon. Ken Baddon –

Almost certainly not, because what we're saying is such remuneration and other allowances as the Governor may determine. The Governor will presumably determine that the Chief Magistrate is getting paid enough already, but provide allowances for the other members.

The Speaker –

Thank you. Any questions from Honourable Members?

The Hon. John Cranfield –

Just a clarification, Madam Speaker. Is the Chief Magistrate a public officer?

The Hon. Ken Baddon –

No, he's a judicial officer.

The Hon. John Cranfield –

He's not, okay.

Clauses 52 to 61 (as amended)

Question put and agreed to.

The Speaker –

I put the question that Clauses 62 and 63 do stand part of the Bill.

The Hon. Ken Baddon –

This is very similar to the present law, Madam Speaker, except that the current version of what is now 63 is a dreadfully complicated provision which lists all sorts of things which have to be included in the annual report and it's very rigid so we've simplified it by saying in 63(2) "containing such information as may be prescribed" and we'll set out in Regulations what should be included, but the substance of these two sections is essentially the same as current law.

The Speaker –

Any questions, Honourable Members?

Clauses 62 and 63.

Question put and agreed to.

The Speaker –

I put the question that Clauses 64 to 67 do stand part of the Bill.

The Hon. Ken Baddon –

We've done some simplification of the language, Madam Speaker, and I think we have also revised the penalties for some of the offences to make them more realistic, although I have just noticed there is a penalty at the end of 64 of only £500 or imprisonment for six months, six months is quite a lot, but the £500 isn't much, but these have been discussed, they've been through consultation, I don't want to start changing them at this stage, but the penalties might actually need some further attention before too much longer.

The Hon. Brian Isaac –

Yes, Madam Speaker, I pick up on that because throughout there it says unlimited fine when we move down to 65 which speaks of a fine of £25,000, you know, unlimited £25,500, any explanation for the unlimited.....and not having a figure in there, because we've got one in there for £25,000?

The Hon. Ken Baddon –

It's quite common for serious offences or offences which can be serious and offences which can be committed by corporations to have an unlimited fine. The Magistrates Court will only be able to impose, I think it's £20,000 when the Chief Magistrate is sitting, but if the case is serious enough to go to the Supreme Court and the offence is committed by a multimillionaire or by a very rich company, the Chief Justice should be able to impose a penalty which is actually going to mean something to that individual or corporation.

The Hon. Brian Isaac –

Thank you.

The Hon. John Cranfield –

65, Madam Speaker, relates to members of the Authority and Tribunal don't it, yes?

The Hon. Ken Baddon –

Yes.

The Hon. Anthony Green –

Madam Speaker, on 64, I think there's some renumbering may be necessary, 64(1)(a), (b) and (c) but no (d) and (e) .....to be changed.

The Hon. Ken Baddon –

Sorry, can I have that again?

The Hon. Anthony Green –

64(1), (a), (b) (c) is right, but then you need (d)....

The Hon. Ken Baddon –

Yes, okay, we'll treat that as a typo, there's no (d), so we just need to re-letter them.

The Speaker –

Any other comments or questions on Clauses 64 to 67?

Clauses 64 to 67.

Question put and agreed to.

The Speaker –

I put the question that Clauses 68, 69, 70 and 71 do stand part of the Bill.

The Hon. Ken Baddon –

This group of sections has no significant changes other than tidying up the grammar, Madam.

The Speaker –

Any questions or comments, Honourable Members?

Clauses 68 to 71.

Question put and agreed to.

The Speaker –

We now have an amendment, I think, to the heading?

The Hon. Ken Baddon –

Yes, indeed, Madam Speaker. The current heading is a leftover from a previous draft where we had transitional provisions in the draft and, as we've seen in Clause 1, we now intend to put the transitional provisions in the commencement orders, so the heading simply needs to be changed to reflect what is in the part and I beg to move that the heading of Part XVI be amended by deleting the words after Repeal and substituting the words "and consequential amendments" so it will say Repeal and Consequential Amendments.

The Speaker –

Is there a seconder, please?

The Hon. Stedson Francis –

I beg to second, Madam Speaker.

Question on amendment, put and agreed to.

The Speaker –

.....Councillor Christine Scipio O'Dean.....

The Hon. Christine Scipio O'Dean –

I just wondered if the Attorney General could just clarify something before we actually move from the Committee stage, but is it appropriate for me to do that now, Madam Speaker?

The Speaker –

.....

The Hon. Christine Scipio O'Dean –

Thank you. Attorney General if he could clarify for me, because we have discussed quite a lot this afternoon, and I just want to remind myself, that this Bill, what is the date for implementation, I think you probably mentioned much earlier.....

The Hon. Ken Baddon –

It may be, in fact, it probably will be several different dates with different parts coming into force at different times depending upon how long it takes to get the various Regulations in

place. There are various parts of it which there is simply no point bringing into force until the Regulations are there. There may be some parts that can be brought into force sooner, but we'll take stock of the situation when we know that the final form of it, and we almost do now, because we've got the last clause, but it is likely that there will be a series of commencement orders bringing different provisions in at different times and linked to the relevant Regulations.

The Hon. Christine Scipio O'Dean –  
Okay, thank you.

The Hon. Earl Henry –

Just to follow on from that, can you explain why would that be necessary, please, because, you know, we do have an Ordinance at the moment that has got or been having some flaws highlighted, but why would it be necessary to bring this in in three steps, four steps, rather than in one?

The Hon. Ken Baddon –

It's a question of having flexibility. It's very commonplace in more developed legal systems that pieces of legislation come into force, are phased over a period of time. I think this one might be no more than two or three phases but we do need to give it some further thought when we've got the final form of the Ordinance printed and we know what we're dealing with. It may be possible, for example, to bring into force the new Authority to replace the Board and the new Tribunal to replace the old Tribunal so that we get the new administrative procedures in place. Why we've got to wait to bring into force, with the rules about development plans, because we need some regulations for those, but we don't need regulations for the Authority or the Tribunal, but I'm not pre-judging the issue of which bits will be brought into force when, what I'm saying is that section 1 has been deliberately prepared to give that flexibility, to respond to evolving circumstances.

The Hon. Earl Henry –  
Thank you, Madam Speaker.

The Hon. Anthony Green –

Madam Speaker, a small but significant point, I think we've always in the past and now tried to ensure that each Bill/Ordinance has an explanatory note, I think this one has that omitted for the moment.

The Hon. Ken Baddon –

That's my next note, something I was going to mention when we actually started talking about the clause. This Bill does not have an explanatory note. It is actually, I understand, the usual practice in the UK for the explanatory note to be added after the thing has gone through the House because, of course, the explanatory note gets affected by things which happened in the Chamber, but I do already have a note to say that we must add an explanatory note to this Bill, which will be an Ordinance by then, assuming Stage 3 goes alright.

The Speaker –

.....

The Hon. Ken Baddon –



Clause 72, Madam Speaker, it repeals the old law and it makes a consequential amendment to the land Acquisition Ordinance. Honourable Members were provided in Info LegCo with a printout of that amendment in order to understand it. The point is that the Land Acquisition Ordinance contains a cross reference into the current Land Planning and Development Control Ordinance and we need to correct that to make it a cross reference to the corresponding provisions in this Ordinance.

The Speaker –

Any questions, Honourable Members?

Clause 72.

Question put and agreed to.

**Council resumed.**

The Hon. Mervyn Yon –

Madam Speaker, I beg to report that the Land Planning and Development Control Bill, 2013, passed the Committee stage with six amendments and to move that this Council approves the said Bill and recommends to the Governor that it should be enacted as soon as the supporting Regulations and other supporting documents are in place.

The Speaker –

I just need a little bit of clarification from the Honourable Attorney General, because you added words to the Motion as it stood.

The Hon. Ken Baddon –

Well, Madam Speaker, although the original Motion for Stage 1 needed to be read as on the Order Paper, at Stage 3 it's actually a new Motion and the Honourable Member has chosen to add some words to it compared to the printed checklist and I don't see anything wrong procedurally with that. I'm the seconder for this Bill and, in fact, I'm content to second it in its revised form.

The Speaker –

Well, can I have the wording again, please?

The Hon. Mervyn Yon –

You need for me to read out the .....

The Speaker –

No, if you read from “move that this Council approves the said Bill and recommends to the Governor that it should be enacted”.....

The Hon. Mervyn Yon –

As soon as the supporting Regulations and other supporting documents are in place.

The Speaker –

Thank you, Honourable Member. So I've got, move that this Council approves the said Bill and recommends to the Governor that it should be enacted as soon as the supporting Regulations and other supporting documents are in place, yes?

The Hon. Mervyn Yon –  
Yes.

The Speaker –  
Thank you.

The Hon. Ken Baddon –  
Sorry, Madam Speaker, having said I was content with it, having listened to it again, I'm not entirely content, because some of the Regulations cannot be made until it's enacted, we need it enacted in order to make the Regulations. Can I suggest that we leave it as printed, "and recommend to the Governor that it should be enacted", which is the normal form of wording, but accept my assurance to the Council, which I've already given several times this afternoon, that most of it can be brought into force before the Regulations are there, so as a matter of practice, it will not be brought into force without the Regulations being there, but although there are one or two little bits that perhaps don't need Regulations, but the point is that all of this will have to go through the Governor in Council. It will not come into force without the whole of this Council knowing about it, because the whole of this Council will see the papers which are going through to Executive Council. So, I would, with hindsight, suggest leaving the Motion formally as printed, because we do need to proceed with enactment before we can make the Regulations.

The Speaker –  
Thank you, Honourable Attorney General. Honourable Mervyn Yon, do you want to .....

The Hon. Mervyn Yon –  
No, Madam Speaker, I thank the Attorney General for that advice and I think I will go along with his advice since he's given an assurance that nothing can happen without the whole of this Council having sight of it. Thank you, Madam Speaker, thank you, Attorney General.

The Speaker –  
Thank you. So you have now moved that this Council approves the said Bill and recommends to the Governor that it should be enacted. Is there a seconder, please?

The Hon. Ken Baddon –  
Madam Speaker, I beg to second.

The Speaker –  
Thank you. Honourable Mervyn Yon, do you wish to speak to the Motion?

The Hon. Mervyn Yon –  
Nothing much, Madam Speaker, just to say that there were a few amendments from Member and from the Attorney General in particular, they were necessary to put in and I am happy with the amendments and I thank the Attorney General for his support with taking the Bill forward. Thank you, Madam Speaker.

The Speaker –  
Thank you, Honourable Member. I put the question that this Council approves the Land Planning and Development Control, Bill, 2013, and recommends to the Governor that it should be enacted. Does any Honourable Member wish to speak at this point? The Honourable Christine Scipio O'Dean?

The Hon. Christine Scipio O'Dean –

Thank you, Madam Speaker. I've heard everything that was said this afternoon but I am still concerned that this Bill will be implemented, enacted in phases. I'm of great concern that we may just lose sight of different processes that need to be carried out for it to be enacted, so the Attorney General has provided reassurance that the information and documentation will come back to elected members and upon that assurance I hope that we will then have the correct documentation and the complete package very soon.

The Speaker –

Thank you, Honourable Member. Does any other Honourable Member wish to speak? Does the Honourable Mover wish to respond to the debate?

Question that Council approves the Bill and recommends to the Governor that it should be enacted, put and agreed to.

The Speaker –

Next item of business?

***Motion No. 6. The Honourable Mervyn Yon, Deputy Chairman, Natural Resources, Development & Environment Committee.***

The Hon. Mervyn Yon –

Madam Speaker, I beg to move that the Building Control Bill, 2013, be approved in principle and referred to a Committee of the whole Council.

The Speaker –

Thank you, Honourable Member. Is there a seconder, please?

The Hon. Ken Baddon –

Madam Speaker, I beg to second.

The Speaker –

Thank you, Honourable Member. Honourable Mervyn Yon?

The Hon. Mervyn Yon –

Thank you, Madam Speaker. Madam Speaker, the previous Bill dealt with land use and the protection of the environment and St Helena's vital culture and heritage, but this one, the Building Control Bill, we turn to address a separate but related issue, regulations concerning the construction of buildings. There is already a law allowing for the making of building regulations, but it is muddled up with the separate issues of land use creating a separate law will aid transparency as well as keeping separate two fundamental different objectives. This bill for an Ordinance to make provisions for building regulations and for the appointment of Building Inspectors and for matters connected therewith or incidental thereto contains only five clauses. Without seeking to anticipate discussion in Committee, it might be helpful if I summarise what those five clauses contain. The first is the usual clause about administrative matters, citation, commencement and interpretation. Clauses 2 and 3 reproduce the substance of Sections 62 and 63 of the current Ordinance, but with some simplifications and clarifications. Clause 4 is new. In the current law, a failure to comply with the Building

Regulations is a criminal offence. With no mechanism for enforcing them through civil processes, Clause 4 introduces a simple mechanism by way of enforcement notices similar to the process for breaches of the Land Planning and Development Control Plan control law. Clause 5 deals with offences and is similar to current law. Madam Speaker, I beg to move.

The Speaker –

Thank you, Honourable Member. I put the question that the Building Control Bill, 2013, be approved in principle and referred to a Committee of the whole Council. The question is open for debate. Does any Honourable Member wish to speak? Honourable Attorney General?

The Hon. Ken Baddon –

Madam Speaker, just perhaps to fill in a little, from a technical, legal point of view, on what the Honourable Mover has said. We have, of course, just approved a Bill which provides for the repeal of the whole of the current 2008 Land Planning and Development Control Ordinance. That Ordinance contains the provisions for Building Regulations, so we need to make separate provision for Building Regulations before that gets repealed. The technical advice from the specialists is that this ought always to have been a separate law anyway, because there are conceptual differences between the purposes of two Ordinances, so that is what we're about. It is a very short Bill, it essentially reproduces existing law, except that, as the Honourable Member has said, it introduces a civil mechanism for enforcement instead of the rather draconian criminal one only, so in that sense it is more user friendly for potential building operators. Madam Speaker, I am very happy to support the Bill.

The Speaker –

Thank you, Honourable Member. Does any other Honourable Member wish to speak? The Honourable Derek Thomas?

The Hon. Derek Thomas –

Yes, Madam Speaker, I rise in support of the Bill, it makes separate provision for Building Regulations which are necessary as we build and develop our economy and it also makes provision for Building Inspectors to enforce and monitor the regulations, so it is a sensible piece of legislation and will add to progress and development of the island. I beg to move, Madam Speaker.

The Speaker –

Thank you, Honourable Member. Does any other Honourable Member wish to speak to the Motion, please? The Honourable Brian Isaac?

The Hon. Brian Isaac –

Madam Speaker, I rise in support of the Bill, but I would just ask the Attorney General, just my own observations on the wording, Chief Building Inspector, I know we have Assistant Building Inspectors, but the word Chief, is that new or it could be changed to Senior or, I don't know, maybe Chief is the appropriate word, I'm just asking, the word, Chief?

The Speaker –

The Honourable Attorney General?

The Hon. Ken Baddon –

Rather than wait until Committee, Madam Speaker, we just dealt with one that had a Chief Planning Officer and we're having a consistent approach. We are likely, as I said during debate on the previous Bill, to need to increase the complement of .....officers for enforcing both of these pieces of legislation as the economy begins to develop so the idea here, consistent with what is in the other Ordinance and consistent with what we have in other areas of law, we have a Chief Immigration Officer, for example, we have a Chief Customs Officer and so we seem to be following a well established pattern. The idea is that we will have a Chief Building Inspector and probably also some supporting Building Inspectors in the fullness of time.

The Speaker –

Thank you, Honourable Member.

The Hon. Brian Isaac –

I thank the Attorney General for his response.

The Speaker –

The Honourable Cyril Gunnell?

The Hon. Cyril Gunnell –

Just for clarification, Madam Speaker, except that in the other Bill, Chief Planning Officer is in the interpretation, within this one, Chief Building Inspector isn't in the interpretation, so perhaps you could be consistent.

The Speaker –

Honourable Attorney General?

The Hon. Ken Baddon –

They're consistent conceptually, Madam Speaker, in that we're going to have a Chief and we're going to have some Indians. The definitions in the current one say Building Inspector includes the Chief Building Inspector and any Assistant Building Inspector appointed under the provisions of section 3. The end result is the same. The precise form of words is perhaps slightly different between the two Bills.

The Speaker –

Any other Honourable Member wish to speak? In which case, I invite the Honourable Mover to reply to the debate.

The Hon. Mervyn Yon –

Thank you, Madam Speaker and I thank the Honourable Members who did make any representation to the Bill and that's all I have to say, it's nothing more. Thank you.

Question that the Bill be approved in principle and referred to a Committee of the whole Council, put and agreed to.

The Speaker –

Honourable Mervyn Yon?

The Hon. Mervyn Yon –

Madam Speaker, I beg to move that this Council do resolve itself into a Committee to consider the detailed provisions of the Bill.

The Speaker –

Thank you, Honourable Member. Is there a seconder, please?

The Hon. Ken Baddon –

Madam Speaker, I beg to second.

Question that the Council resolves itself into a Committee to consider the detailed provisions of the Bill, put and agreed to.

### **Council in Committee.**

The Hon. Ken Baddon –

Madam Speaker, as with the previous Bill, may I suggest you invite the Director to join you?

The Speaker –

Oh, please do, yes.

The Speaker –

I put the question that the Title, Enacting Clause and Clause 1 do stand part of the Bill. Does any Honourable Member wish to speak?

The Hon. Ken Baddon –

Madam Speaker, can I just mention the sequence of events here. As with the previous Bill, the proposal is that this one will be brought into force by an Order of the Governor in Council and, of course, we have to marry the two together quite carefully because of the fact that this Bill replaces provisions which are currently in the law which is repealed by the other Bill, so there will be some careful work to be done there to make sure that we tie them up. Subclause 3 also mentions transitional provisions being .....in order. Work is already in hand to prepare new Building Regulations because the current ones are somewhat dated and we will, as part of the process I've already described about making sure we mesh these things together, we will just need to make sure that we make an informed decision whether to delay this until the new Regulations are ready or whether we have a transitional provision to keep the existing ones in force on an interim basis, but that's work which will need to be done in conjunction with the work on the other Bill.

The Speaker –

Any questions, Honourable Members? Councillor Green?

The Hon. Anthony Green –

Madam Speaker, just for clarification, I'm not too genned up on this, but under the definition of building, and I declare a partial interest in this, where people have, like, containers and other small things to hold property, tools or whatever, we seem to go through the same full process and I'm just wondering whether the whole thing is getting unwieldy because we could be applying here rules and regulations to small things where a garden shed, and I understand that in UK there might be different rules for different areas if I have heard correctly, and I'm just wondering in St Helena whether we might be just slightly going overboard with regard to our controls on what might be useful contraptions for individual

households. I do expect people to be sensible when they are sitting these things, but to actually be controlling everything, and I wouldn't want to see that we've actually got legislation in place and actually can't carry it out.

Mr Tony Earnshaw, Director, ENRD –

Madam Speaker, the Honourable Member is right to voice those concerns, it's certainly not one of the main thrusts of either this or the previous Bill to actually make it more difficult for people to do things on land that they own. I think the Building Regulations themselves, once those are prescribed, will make that clear.

The Speaker –

Any other questions on Clause 1?

Title, Enacting Clause and Clause 1.

Question put and agreed to.

The Speaker –

I put the question that Clause 2 do stand part of the Bill.

The Hon. Ken Baddon –

Madam Speaker, this closely mirrors the provisions of the existing Section 62, but the language has been simplified somewhat in the hope that it will be easier to follow. There is no significant change of the actual meaning.

The Speaker –

Any questions on Clause 2, Honourable Members?

Clause 2.

Question put and agreed to.

The Speaker –

I put the question that Clause 3 do stand part of the Bill.

The Hon. Ken Baddon –

Only elaboration on what is currently Section 63 of the existing law. As has already been noted, the intention is to prepare for a time, which might not be that far off, when we need to have a Chief Building Inspector and one or more other Building Inspectors and that is provided for, which is not provided for at the moment. We also spell out, which is not actually spelt out in the existing law, that the Building Inspectors have the duty of administering and enforcing the Ordinance and the Building Regulations. That's in subclause 3, but apart from those points, this is essentially ensuring that there are mechanisms for enforcement broadly similar to those that we have at the moment.

The Speaker –

Any questions, Honourable Members?

Clause 3.

Question put and agreed to.

The Speaker –

I put the question that Clause 4 do stand part of the Bill.

The Hon. Ken Baddon –

Madam Speaker, this is new. As was mentioned during Stage 1, under the present law if someone commits what might be a fairly trivial breach of the Building Regulations the only sanction is to prosecute them for a criminal offence. We have therefore incorporated here in Clause 4 a mechanism to use an enforcement notice which is very similar with, just where necessary modifications to make it fit, to the enforcement notice procedure which is set out in the Ordinance, the Bill which we passed here earlier this afternoon and that will mean that routine breaches can be dealt with by way of an enforcement notice and the criminal law only gets invoked as we shall see when we get to the next Clause, if someone then fails to comply with the enforcement notice.

The Speaker –

Any questions, Honourable Members?

The Hon. Ken Baddon –

Sorry, Madam Speaker, I should just have mentioned, for completeness, it will be recalled that there was an amendment to the previous Bill to ensure that the Appeals Tribunal created by that law would be able to deal with appeals under this one and the cross reference, if Members want to look at it, is in Clause 4, subclause (6) which says that, there can be, yes, it is subclause (6) so the appeal goes to the Tribunal which is established by the other Ordinance, is the point I'm trying to make.

The Speaker –

Any questions, Honourable Members?

Clause 4.

Question put and agreed to.

The Speaker –

I put the question that Clause 5 do stand part of the Bill.

The Hon. Ken Baddon –

Madam Speaker, this brings back in the criminal sanction for those cases that warrant it. For any .....and serious breaches it will be possible to go, bypass the enforcement notice and go straight to prosecution, but this section is really about people who fail to comply with enforcement notices and the, I do have an amendment to propose, because there's some words missing at the end. The maximum penalty currently is shown as five years imprisonment or a fine, that means, going back to a previous discussion this afternoon, an unlimited fine if the offence is serious enough, but the amendment I wish to propose is to add the words "or both", so it's five years or a fine or both. I beg to move that amendment.

The Speaker –

Is there a seconder to the proposed amendment, please?



The Hon. Mervyn Yon –

I propose to second it.

The Speaker –

Thank you, Honourable Member.

Question on amendment, put and agreed to.

Clause 5 (as amended)

The Hon. Ken Baddon –

And I might just perhaps add, Madam Speaker, that the maximum penalty is deliberately significant because a failure to comply with building regulations can have serious implications for the health and safety of people in and around the building, it can lead to fatalities and in a sufficiently serious case it should carry an appropriate consequence. If it is simply putting in a window which is half a centimetre too small obviously it's probably not going to be prosecuted in the first place and if it is it will be a modest punishment.

Clause 5 (as amended)

Question put and agreed to.

**Council resumed.**

The Hon. Mervyn Yon –

Madam Speaker, I beg to report that the Building Control Bill, 2013, has passed the Committee with one amendment and to move that this Council approves the said Bill and recommends to the Governor that it should be enacted.

The Speaker –

Thank you, Honourable Member.

The Hon. Ken Baddon –

Madam Speaker, I beg to second.

The Speaker –

Thank you. Does the Honourable Mover wish to speak to the Motion?

The Hon. Mervyn Yon –

Thank you, Madam Speaker, that's it.

The Speaker –

I put the question that this Council approves the Building Control Bill, 2013, and recommends to the Governor that it should be enacted. Does any Honourable Member wish to speak at this point?

Question that Council approves the Bill and recommends to the Governor that it should be enacted, put and agreed to.

The Speaker –

Honourable Attorney General?

The Hon. Ken Baddon –

Madam Speaker, that seems to be a convenient point at which I might move the adjournment as the only two remaining items of business cannot be dealt with today, one for practical reasons and ..... technical one, I therefore beg to move that the Council do now adjourn until 10.00 am on Monday morning.

The Speaker –

Thank you. Is there a seconder to the proposal to adjourn, please?

The Hon. Mervyn Yon –

Madam Speaker, I beg to second.

The Speaker –

Thank you. I put the question that this Council do adjourn until 10 o'clock on Monday morning, I might specify it's Monday, 25<sup>th</sup> March.

The Hon. Ken Baddon –

Yes, Madam Speaker, and consequently just to specify that there is no adjournment debate today.

Question on adjournment, put and agreed to.

The Speaker –

Honourable Members, thank you for your attendance today and your contributions to the debates.

**Council adjourned.**

