

PUBLIC CONSULTATION

Archaeology and Planning Draft Supplementary Planning Guidance Discussion Paper

Issued by the Planning and Environment Department on 13 October 2006

PURPOSE OF CONSULTATION: To secure comment about the content of the draft Supplementary Planning Guidance: Archaeology and Planning (October 2006) and specifically to secure answers to the following questions:

- 1) Is it clear what and who the guidance is for?
- 2) Is guidance on Archaeology and Planning needed?
- 3) Are the guiding principles of the guidance clear and do you support them?
- 4) Are the proposed designations for evaluating the archaeological resource clear?
 - i) Do you agree with them?
 - ii) Do you support the proposed criteria for determining which criteria archaeological resources should be categorised as?
- 5) Do you support the presumption in favour of the physical preservation *in situ* of archaeological remains and their settings?
- 6) Is the process for archaeological evaluation as part of a planning application clear?
- 7) Is the process for archaeological excavation and recording clear?
- 8) Is it clear what could happen should archaeological remains be discovered during development?
- 9) Is the role of public bodies clear in matters of archaeology and planning?
 - i) Should other agencies have a role and if so, what?
- 10) Do you think that the assessment of the regulatory impact of this guidance is clear and fair?
- 11) Are any further areas of guidance required to enable the provisions of this guidance note to work effectively?

DEADLINE FOR RESPONSES: Friday 24 November 2006

FURTHER INFORMATION AND FEEDBACK: Please send your comments to:

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DETAILS OF THIS PROPOSAL HAVE BEEN SENT TO THE FOLLOWING INDIVIDUALS / ORGANISATIONS

- States of Jersey Environment Scrutiny Panel
- Chief Minister
- Chief Minister's Communications Unit Consultative Panel
- Minister for Treasury and Resources
- Minister for Economic Development
- Minister for Education, Sport and Culture
- Jersey Heritage Trust
- Societe Jersiaise
- Societe Jersiaise Archaeology Section
- Societe Jersiaise Environment Section
- Save Jersey's Heritage
- Council for the Protection of Jersey's Heritage
- National Trust for Jersey
- Jersey Metal Detecting Society
- Dandara
- A.C. Mauger
- G.R. Langlois
- Marett and Sons
- Camerons
- Antler
- Waterfront Enterprise Board
- Association of Jersey Architects
- Jersey Construction Council
- Jersey Chamber of Commerce
- Hartigans
- MS Planning
- All media

SUPPORTING DOCUMENTS

Archaeology and Planning: discussion paper (October 2006)

Supplementary Planning Guidance
ARCHAEOLOGY AND PLANNING
Planning Policy Guidance Note #
October 2006

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Introduction

This guidance is for property owners, developers, archaeologists, amenity societies and the general public. It will also be used by the Minister for Planning and Environment and the Planning and Environment Department in the application of the planning process to archaeology.

It is the first of a series of guidance and policy notes, which collectively, will provide comprehensive supplementary planning guidance on the historic environment.

The draft policy and guidance contained within this document draws upon and expands existing Island Plan policy and, if adopted, would amplify Island Plan Policy G12 and its preamble, set out in paragraphs 4.35 - 4.39 of the 2002 Island Plan. It, therefore, sets out the Minister for Planning and Environment's new draft policy framework on the treatment of archaeological remains under the development plan and development control systems, including the basis of classification for archaeological remains and the weight to be given to them in planning decisions. It outlines what is to be expected to enable the Minister to make informed decisions on matters of archaeology and planning, and indicates how conditions and agreements might be used to give Ministerial decisions effect.

This draft policy and guidance does not impose any new duties on the Minister for Planning and Environment – the responsibility to protect places that have a special importance or value to the Island, and specifically the archaeological record, exists within law and the international conventions to which the Island is a signatory. What it does do, however, is to provide the Minister with a mechanism to fulfil these obligations, which has hitherto been absent. This has a resource implication which is set out in the Regulatory Impact, attached at appendix 1, which will need to be addressed as an integral part of the consideration of this new draft policy and guidance.

The draft policy and guidance also identifies other ancillary areas and issues associated with archaeology. In many instances, some work has been undertaken on these matters but requires completion: this is detailed in appendix 2.

The importance of archaeology

Archaeological remains are irreplaceable. They are evidence - for prehistoric periods, the only evidence - of the past development of our Island's civilization.

The Island's archaeological landscape is the product of human activity over thousands of years. A rich variety of archaeological remains survive above and below ground in Jersey, along its shoreline, and within its waters. The range of known sites of value includes, for example, the Palaeolithic site at La Cotte de St Brelade, Neolithic sites such as the passage graves at La Hougue Bie and La Hougue des Géonnais and Iron Age promontory forts at Frémont and Le Câtél de Rozel.

Our archaeological remains vary enormously in their state of preservation and in the extent of their appeal to the public. Upstanding remains are familiar enough; represented by dolmens and coastal forts and castles, but less obvious archaeological remains are also to be found in the Island. There remain many gaps in our knowledge about the archaeology of Jersey. Questions such as where the Neolithic people lived and who was in Jersey during the Gallo-Roman period and the Dark Ages remain unanswered. That the Island was occupied throughout these times can hardly be doubted, and it is the archaeological resource that holds the answers to these questions.

Archaeological remains should be seen as a finite and non-renewable resource, in many cases highly fragile and vulnerable to damage and destruction. Appropriate protection and management is therefore essential to ensure that they survive in good condition. In particular, care must be taken to ensure that archaeological remains are not needlessly or thoughtlessly destroyed. They can contain irreplaceable information about our past and the potential for an increase in future knowledge. They are part of our sense of identity and are valuable both for their own sake and for their role in education, leisure and tourism.

The present era has been a period of striking environmental change and much archaeological heritage has undoubtedly been destroyed by human activity. Historical methods of demolition and rebuilding in the town have left layers in the ground that mark the steady succession of human uses to which land has been put, sometimes over centuries, but modern construction methods and modern forms of development involving, for example, deep foundations and the introduction of underground car-parking, will have destroyed much of this archaeological evidence.

Most archaeology carried out in Jersey has, with a limited number of exceptions, been undertaken by the Societe Jersiaise. The Jersey Heritage Trust has also carried out major archaeological research of some of those heritage assets within its administration. Together they hold the Island's archaeological record. Very few of the sites and areas of archaeological value which make up this record have any form of protection presently. And there is undoubtedly much that remains to be recorded and protected.

Adoption of this draft policy and guidance will provide the basis to begin to address the current deficiencies which clearly exist within the identification, definition and protection of the archaeological resource in Jersey. A consolidation of the existing known archaeological record – which is presently held in a disparate collection of evidence between the Jersey Heritage Trust, the Societe Jersiaise and the Jersey Metal Detecting Society – is required to provide the basis for a comprehensive programme of registration and listing of known archaeological remains. This needs to be supplemented by the application of planning policies, through the development plan and development control process, to actively assess, protect and manage the archaeological resource, whilst adding to our limited knowledge of the Island's archaeology.

Strategic context

Article 2 of the Planning and Building (Jersey) Law 2002 requires the Minister for Planning and Environment to protect sites, buildings, structures and places that have a special value or importance to the Island and confers various powers to enable him to do so.

The European Convention on the Protection of the Archaeological Heritage (the Valetta Convention 1992 (revised)) was extended to Jersey in September 2000. Its principal purpose is to protect the archaeological heritage as a source of European collective memory and as an instrument for historical and scientific study. The basis of its operation is the maintenance of an inventory of archaeological heritage and the designation of protected monuments and areas. Other articles of the convention place obligations upon the Island relating to the need to ensure that planning policies provide for the protection, conservation and enhancement of archaeological sites (Article 5) and the financing of archaeological research and rescue (Article 6).

The States Strategic Plan 2006-2011 sets out a commitment to manage the Island's built heritage sympathetically (4.5) and to increase the number of Sites of Special Interest (4.5.2), including those of archaeological value. It also sets out to continue to develop the Island's international profile (5.2) by meeting, where possible, international standards set through treaties and conventions (5.2.8).

Archaeology and the planning process

If value is attached to elements of the historic environment, whether by the community or through expert assessment or both, such value ought to be a material consideration in the planning process.

Identifying and defining archaeological remains, sites and areas through the planning system can ensure that the case for preservation of archaeology is fully considered given any proposals for development or other work which might damage the asset. The planning system can also serve to consider the desirability of preserving archaeological remains. Much can be achieved within the wider planning process when developers are prepared to enter into discussions with archaeologists and consider fully the needs of archaeology.

The various options open to deal with archaeological remains are considered below: but it is important that these options are explored within the context of some clear principles.

Guiding principles

Positive planning and management can help to bring about sensible solutions to the treatment of sites with archaeological remains and reduce the areas of potential conflict between development and preservation. Appropriate planning policies in the Island Plan and associated guidance, and its adoption and implementation through development control, is especially important. Where **important** archaeological remains and their settings, whether formally protected or not, are affected by proposed development there should be a presumption in favour of their physical preservation. Cases involving archaeological remains of lesser importance will not always be so clear cut and the Minister for Planning and Environment will need to weigh the relative importance of archaeology against other factors including the need for the proposed development.

The key to informed and reasonable planning decisions is for consideration to be given early, before formal planning applications are made, to the question of whether archaeological remains exist on a site where development is planned and the implications for the development proposal. When important remains are known to exist or when archaeologists have good reason to believe that important remains exist, developers will be able to help by preparing sympathetic designs using, for example, foundations which avoid disturbing the remains altogether or minimise damage by raising ground levels under a proposed new structure, or by the careful siting of landscaped or open areas. There are techniques available for sealing archaeological remains underneath buildings or landscaping, thus securing their preservation for the future even though they remain inaccessible for the time being.

If physical preservation *in situ* is not feasible, an archaeological excavation for the purposes of 'preservation by record', may be an acceptable alternative. From the archaeological point of view this should be regarded as a second best option. The science of archaeology is developing rapidly. Excavation means the total destruction of evidence (apart from removable artefacts) from which future techniques could almost certainly extract more information than is currently possible. Excavation is also expensive and time-consuming, and discoveries may have to be evaluated in a hurry against an inadequate research framework. The preservation *in situ* of **important** archaeological remains is therefore nearly always to be preferred.

Regardless of the circumstances, taking decisions is much easier if any archaeological aspects of a development site can be considered early on in the planning and development control process.

Island Plan

It is one of the functions of the Island Plan to reconcile the need for development with the interests of conservation, including archaeology. The Island Plan should include policies for the protection, enhancement and preservation of sites of archaeological interest and of their settings. Whilst a handful of archaeological sites are protected in Jersey, the 2002 Island Plan recognised that many archaeological sites and areas are not. There is a need for them to be identified, defined, evaluated and protected, as appropriate, through planning policy. Such policy ought to provide an important part of the framework for the consideration of individual proposals for development which affect archaeological remains and they can help guide developers preparing planning applications.

Although the surviving numbers of archaeological remains are finite and irreplaceable, obviously not all of them are of equal importance. There is a need to develop policies based on an evaluation of the Island's known archaeological record.

Evaluating the archaeological resource

Formal recognition and protection of buildings and places by planning law and policy in Jersey is achieved by inclusion in the Register of Buildings and Sites of Architectural, Archaeological and Historic Importance, and by statutory listings where appropriate. Whilst a handful of special archaeological sites are protected, through listing as Sites of Special Interest and inclusion on the Register, the current system of registration does not allow for other archaeological sites and areas to be embraced. There is a need to expand the classes of categorisation in the Register to address this. There is also a need to introduce a new area-based definition for areas of potential archaeological resource which will form part of the Island Plan policy framework.

Jersey's archaeology is not just limited to the landmass of the Island. The identification and definition of the Island's archaeological resource will be applied to sites on land and within Jersey's territorial waters, including wrecks.

The relative value of archaeological sites and areas can only be defined in the context of their contribution to the cultural inheritance, identity and amenity of Jersey. Their categorisation needs to be based on definitive criteria and the following are proposed. The Minister for Planning and Environment will determine whether sites and places satisfy these criteria in order that they might be added to the Register of Buildings and Sites of Architectural, Archaeological and Historic Importance – using the same process that is employed presently for historic buildings - or defined as part of the Island Plan.

Archaeological Sites of Special Interest

The basis for the listing of an archaeological site as a Site of Special Interest will normally be either that it is an intrinsically outstanding site of self evident 'public importance' (like La Hougue Bie or Mont Orgueil), or that it is one of best preserved examples of its category included within the Register. Listing of archaeological sites as SSIs will therefore generally require assessment of their state of preservation, nature, extent and significance, as the basis of consideration.

Specifically, the considerations are:

- **Period:** all types of registered sites that characterise a category or period will be considered
- **Rarity:** there are some categories which are so scarce that all surviving examples which still retain some archaeological potential should be preserved. In general, however, a selection will be made which reflects the typical as well as the rare. This

process will take account of all aspects of the distribution of a particular class of archaeological monument, both in Jersey and beyond.

- **Documentation:** the significance of a site or monument may be enhanced by the existence of records of previous investigation or, in the case of more recent monuments, by the supporting evidence of contemporary written records
- **Group Value:** the value of a single monument (such as a field system) may be greatly enhanced by its association with related contemporary monuments (such as a settlement and cemetery or with monuments of different periods). In some cases, it will be preferable to protect the complete group of monuments, including associated and adjacent land, rather than to protect isolated monuments within the group.
- **Survival/Condition:** the survival of a monument's archaeological potential both above-and below-ground is a particularly important consideration and will be assessed in relation to its present condition and surviving features.
- **Fragility/Vulnerability:** highly important archaeological evidence from some field monuments can be destroyed by a single ploughing or unsympathetic treatment (The Threshold Effect).
- **Diversity;** some monuments may be selected for designation because they possess a combination of high quality features, others because of a single important attribute.
- **Potential:** there are cases where the nature of the evidence cannot be specified precisely but it may still be possible to document reasons anticipating its existence and importance.
- **Sustainability:** some sites and monuments will show greater potential for long term sustainable management, including exploitation of their educational value.

Most prehistoric, Roman and early medieval sites and monuments will be listed as SSIs. Medieval sites including houses, castles and religious monuments, together with sites of former structures, settlements and field systems of sufficient completeness or with suspected potential, either above or below ground, will similarly be listed SSIs. Post-medieval monuments or sites which demonstrate the principal stages of development, or are good examples of an individual style or type of military engineering, industrial and agricultural technology or public works will also be listed SSIs. Many of these will include structures, which also meet the criteria for SSI listing as historic buildings.

Archaeological Sites (AS)

The basis for this registration will be where there exists specific information about the nature and location of archaeological artefacts or remains. Sites are to be defined as follows;

- any building, historic landscape feature, structure, archaeological/ environmental deposit or work, whether above or below the surface of the land or sea, and any cave or excavation, or the remains thereof; or
- any site comprising, or comprising the remains of, any vehicle, machinery, vessel, aircraft or other movable structure

which is judged to be of archaeological and/or historical value.

Specifically, the considerations for registering Archaeological Sites are;

- **Archaeological evidence:** the existence of archaeological evidence in the form of physical evidence e.g. flint scatters, metal hoards or physical structures; or documentary evidence e.g. published records or aerial photographs.
- **Quantity and concentration of evidence:** How much evidence is there for archaeological activity? How many artefacts have been discovered? Are there

significant concentrations of artefacts? Is there more than one source of documentary evidence?

- **Period:** To what period does the physical evidence date? The significance of the site will vary according to its age e.g. the buried remains of a 1920s car will be of less interest than those of a medieval cart. In assessing significance, varying threshold dates may be applied according to the nature of the site.
- **Rarity:** How rare is the evidence of archaeological activity? Evidence of industrial activity is much less common in Jersey than that for agricultural activity.
- **Level of disturbance:** How disturbed is the site? Is there likely to be significant archaeology *in situ*?

The basis for the registration of an Archaeological Site is the precise location of known archaeological evidence such as find spots or clear documentary references. From this a boundary for the site should be derived and justified based on the known archaeological evidence.

Areas of Archaeological Potential (AAP)

It is crucial to recognise that while historic buildings and archaeological monuments that are upstanding or otherwise known can be identified, registered, and so protected, a vast stock of archaeological information in Jersey remains unknown, buried in the ground. The potential for this type of archaeology may be indicated by proximity to already known sites or areas of archaeological interest or by their topographical setting (e.g. a level terrace or hilltop). A similar situation can occur where a superficially nondescript building is suspected, by its location, form or history, to conceal an earlier structure.

The basis for defining Areas of Archaeological Potential – which will be added as defined areas on the Island Plan Proposals Map - will be where there exists evidence of known archaeological significance, based on the listing or registration of one or more archaeological SSI or AS, but where it is possible to infer the likelihood of the survival of other archaeological material. The basis for their definition is thus;

- **Association with archaeological evidence:** AAPs will normally be extrapolated by association with areas of known archaeological significance, whether extant or recorded but destroyed i.e. they will be adjacent to or include one or more SSIs or ASs or be derived from undisputed sites of archaeological value that have been previously recorded. The evidence must be such that the land contained within the boundary of the AAP can reasonably be considered to contain archaeologically sensitive material.

The historic core of St. Helier is likely to constitute an Area of Archaeological Potential. Further areas will be identified through the development of a consolidated archaeological record for the Island.

Preservation of archaeological resources

The desirability of preserving archaeological remains, based on the presumption in favour of their preservation *in situ*, and their setting, where appropriate, is a material consideration in the determination of planning applications. But the conservation of our historic environment is not about preventing change, but managing change through decisions that are informed by understanding the cultural values that would be affected. The Minister for Planning and Environment recognises that the extent to which remains can or should be preserved will depend upon a number of factors, including the intrinsic importance of the remains. With the many demands of modern society, it is not always feasible to save all archaeological remains. The key question is where and how to strike the right balance.

There is a range of options for the determination of planning applications affecting archaeological remains and their settings. Where significant archaeological remains, whether listed as SSIs or not, and their settings, are affected by proposed development there should be a presumption in favour of their physical preservation *in situ* ie, a presumption against proposals which would involve significant alteration or cause damage, or which would have a significant impact on the setting of visible remains. The case for the preservation of archaeological remains must however be assessed on the individual merits of each case, taking into account the Island Plan and supplementary planning policies for the preservation of archaeological resources, together with all other relevant policies – such as G11 Sites of Special Interest and G13 Buildings and Places of Architectural and Historic Interest, as applicable - and material considerations, including the intrinsic importance of the remains and weighing these against the need for the proposed development.

There will be occasions, particularly where remains of lesser importance are involved, when the Minister for Planning and Environment may decide that the significance of the archaeological remains is not sufficient when weighed against all other material considerations, including the need for development, to justify their physical preservation *in situ*, and that the proposed development should proceed.

Permitted development rights (set out in Schedule 1 of the Planning and Building (General Development) (Jersey) Order 2006) do not apply to any buildings and places on the Register of Buildings and Sites of Architectural, Archaeological and Historic Importance – which includes Archaeological Sites of Special Interest (SSI) and Archaeological Sites (AS) – by virtue of Article 2 of the Planning and Building (General Development) (Jersey) Order 2006. Specific planning permission must be obtained for normally exempt development in respect of these buildings and places. This does not apply to Areas of Archaeological Potential (AAP) which do not form part of the Register: they are defined and form a part of the Island Plan.

POLICY HE1: PRESERVATION OF ARCHAEOLOGICAL RESOURCES

There will be a presumption in favour of the physical preservation *in situ* of archaeological remains and their settings.

Development which would involve significant alteration or cause damage, or which would have a significant impact on the setting of visible archaeological remains will normally only be permitted where the Minister for Planning and Environment is satisfied that the intrinsic importance of the remains is outweighed by other material considerations, including the need for the development.

Archaeological evaluation

The needs of archaeology and development can be reconciled, and potential conflict very much reduced, if developers discuss their preliminary plans for development with the Planning and Environment Department at an early stage. Once detailed designs have been prepared and finance lined up, flexibility becomes much more difficult and expensive to achieve. In their own interests, therefore, prospective developers should in all cases include as part of their research into the development potential of a site, which they undertake before making a planning application, an initial assessment of whether the site is known or likely to contain archaeological remains. This is particularly important for Archaeological SSIs because works that do not necessarily amount to development will still need to be the subject of an SSI application which may require further archaeological evaluation.

The first step will be to contact the Planning and Environment Department or the Jersey Heritage Trust who hold, or will likely have access to, the Register of Buildings and Sites of Architectural, Archaeological and Historic Importance and a consolidated archaeological record for the Island.

These consultations will help to provide prospective developers with advance warning of the archaeological sensitivity of a site. As a result they may wish to commission their own archaeological assessment by a professionally qualified archaeological organisation or consultant. This need not necessarily involve fieldwork and can be a desk-based evaluation of existing information: it can make effective use of records of previous discoveries, including any historic maps, held by the Jersey Heritage Trust and the Societe Jersiaise, or of geophysical survey techniques. This will be a minimal requirement for development proposals within Archaeological Sites of Special Interest (SSI) and Archaeological Sites (AS) that appear on the Register of Buildings and Sites of Architectural, Archaeological and Historic Importance, and Areas of Archaeological Potential (AAP) as defined in the Island Plan. It is important to note, however, that because of the paucity of information about the archaeological record across the Island desk-based evaluations may not be sufficient and further evaluation may be necessary in many instances.

In the case of Archaeological SSIs and ASs, and where early discussions with the Planning and Environment Department, JHT or the Societe Jersiaise Archaeology Section, or the developer's own research, indicate that important archaeological remains may exist, the Minister for Planning and Environment will require the prospective developer to arrange for an archaeological field evaluation to be carried out before any decision on the planning application is taken. This sort of evaluation is quite distinct from full archaeological excavation. It is normally a rapid and inexpensive operation, involving ground survey and small-scale trial trenching, but it should be carried out by a professionally qualified archaeological organisation or archaeologist. The Institute of Field Archaeologists, publishes a directory of members, which developers may wish to consult: it is, however, important that an archaeological evaluation carried out by non-resident archaeologists is set within the context of local knowledge to ensure that the importance or potential of a site is not misconstrued. Evaluations of this kind help to define the character and extent of the archaeological remains that exist in the area of a proposed development, and thus indicate the weight which ought to be attached to their preservation. They also provide information useful for identifying potential options for minimising or avoiding damage. On this basis, an informed and reasonable planning decision can be taken.

The Minister for Planning and Environment will expect developers to provide the results of such assessments and evaluations as part of their application for sites where there is a good reason to believe there are remains of archaeological importance: this will become part of the public record, as an integral element of the planning application. If developers are not prepared to do so voluntarily, the Minister for Planning and Environment may direct the applicant to supply further information under the provisions of Article 9 (1)(b) of the Planning and Building (Jersey) Law 2002 and if necessary may consider refusing permission for proposals which are inadequately documented.

When planning applications are made without prior discussion with the Planning and Environment Department, the department will seek to identify those applications which have archaeological implications, and to assess their likely archaeological impact. When it is evident that a particular development proposal is likely to affect archaeological remains, applicants may be asked to provide more detailed information about their scheme - for example, the type of foundations to be used - or they may be asked to carry out an evaluation. The Planning and Environment Department will seek to secure the appropriate archaeological advice, as it sees fit, to ensure that the Minister is fully informed about the nature and importance of the archaeological site and its setting.

In particular cases where the developer is a non-profit making community body, or in the case of an individual making a householder application, the Minister may exercise discretion and seek to provide assistance to ensure an appropriate archaeological evaluation.

POLICY HE2: ARCHAEOLOGICAL EVALUATION

The Minister for Planning and Environment will normally require an archaeological evaluation to be carried out, to be provided by the developer, for development proposals which may affect archaeological remains: this information should form part of the planning application.

The nature of archaeological evaluation may vary, depending upon the archaeological sensitivity and value of the site and the extent of existing information. Any archaeological evaluation must provide sufficient information to enable the Minister for Planning and Environment to make an informed planning decision, having regard to the value of the archaeological remains and the likely impact of the proposed development.

Planning applications for development proposals which do not provide sufficient information to enable the value of the remains and the likely impact of the proposed development to be determined will normally be refused.

Archaeological excavation and recording

Where the Minister for Planning and Environment decides that the physical preservation *in situ* of archaeological remains is not justified in the circumstances of the case and that development resulting in the destruction of the archaeological remains should proceed, the Minister will seek to ensure, before granting planning permission, that the developer has made appropriate and satisfactory provision for the excavation and recording of the remains. Such excavation and recording should be carried out before development commences, working to a project brief prepared by the Planning and Environment Department and taking advice from archaeological consultants. This can be achieved through agreements reached between the developer, the archaeologist and the Minister for Planning and Environment.

Agreements covering excavation, recording and the publication of the results may take different forms. Voluntary planning obligation agreements, made under Article 25 of the Planning and Building (Jersey) Law 2002 can provide for the excavation and recording of sites before development work starts. Voluntary agreements are likely to provide more flexibility and be of greater mutual benefit to all the parties than could be provided for by alternative statutory means. They have the advantage of setting out clearly the extent of the developer's commitment, thereby reducing both uncertainty over the financial implications of having to accommodate any archaeological constraints and the possibility of unforeseen delays to the construction programme. Such agreements should also provide for the subsequent publication of the results of the excavation.

In the absence of such agreements the Minister will secure excavation and recording by imposing conditions. Such conditions will prohibit the carrying out of development until such time as works or other action, e.g. an excavation, have been carried out by a third party, in accord with a written scheme of investigation.

In particular cases where the developer is a non-profit making community body, such as a charitable trust or housing association, which is unable to raise the funds to provide for excavation and subsequent recording without undue hardship, or in the case of an individual who similarly does not have the means to fund such work, the Minister may exercise discretion and seek to provide assistance.

The Minister may also impose conditions to protect archaeological remains during construction and to ensure that reasonable access is given to a nominated archaeologist - either to hold a "watching brief" during the construction period or specifically to carry out archaeological investigation and recording in the course of the permitted operations on site.

Such conditions serve to ensure that if remains of archaeological significance are disturbed in the course of the work, they can be recorded and, if necessary, emergency salvage undertaken.

POLICY HE3: ARCHAEOLOGICAL EXCAVATION AND RECORDING

Where it is determined that the physical preservation *in situ* of archaeological remains is not justified, the Minister will seek to ensure, through the use of planning obligation agreements and/or planning conditions, that the developer has made appropriate and satisfactory provision for the excavation and recording of the remains and for the publication of the findings, before granting planning permission.

Discovery of archaeological remains during development

The preceding guidance has been framed to minimise occasions when totally unexpected problems arise while development is in progress. Nevertheless, and in spite of the best pre-planning application research, there may be occasions when the presence of archaeological remains only becomes apparent once development has commenced. Developers may wish to consider insuring themselves against the risk of a substantial loss while safeguarding the interest of historic remains unexpectedly discovered on the site.

Where fresh archaeological discoveries are deemed by the Minister for Planning and Environment, on Jersey Heritage Trust's advice, to be of particular significance, in accordance with published criteria, the Minister for Planning and Environment has power to provisionally List the remains. In that event developers would need to seek separate SSI consent before they continue work.

It is also open to the Minister for Planning and Environment to revoke a planning permission if deemed necessary, in which case there is provision for compensation. In the majority of cases, however, it should prove possible for the parties to resolve their differences through voluntary discussion and for a satisfactory compromise to be reached.

Useful contacts

Planning and Building Services

Planning and Environment Department, South Hill, St Helier, Jersey, JE2 4US

t. 01534 445508 f. 01534 445528

e: planning@gov.je

w: www.gov.je/PlanningBuilding/Pages/default.aspx

The Minister for Planning and Environment is responsible for setting the general framework for the planning system, and for the protection and preservation of archaeological remains of importance through the development plan process, and for giving effect to its policies and guidance through the development control process. The Minister is also responsible for both compiling and maintaining a List of Sites of Special Interest, subject to legal protection, and for the control of works to such Listed buildings or places through the SSI consent procedure.

Jersey Heritage Trust

The Weighbridge, St Helier, Jersey, JE2 3NF

t. 01534 633300

e: info@jerseyheritage.org

w: www.jerseyheritage.org

Jersey Heritage Trust's specific functions relating to archaeological remains are to provide the Minister for Planning and Environment with general advice in relation to archaeological remains and specifically on whether particular remains are worthy of protection, through the Register of Buildings and Sites of Architectural, Archaeological and Historic Importance. The JHT also manage a number of the Island's major heritage sites and is also responsible for the management of the Jersey Archive and the Island's museums, a remit which encompasses curatorship of part of the archaeological record and the promotion of public awareness and access to the resource.

Societe Jersiaise Archaeology Section

7 Pier Road, St Helier, Jersey, JE2 4XW

t. 01534 758314 f. 01534 888262

e: societe@societe-jersiaise.org

w: www.societe-jersiaise.org

La Société Jersiaise was founded in 1873 to promote and encourage the study of the history, the archaeology, the natural history, the language and many other subjects of interest in the Island of Jersey.

Other bodies

The Institute of Field Archaeologists (IFA)

t: 0118 378 6446

e: admin@archaeologists.net

w: www.archaeologists.net

The IFA is the UK's professional institution for archaeologists in Britain. It is concerned with defining and maintaining proper professional standards and ethics in field archaeology. All members conform to a Code of Conduct and there is a disciplinary procedure for investigating and dealing with allegations of improper conduct. A Directory of Members is published which lists the registered areas of competence of each member. Corporate membership of the Institute carries the distinction MIFA, AIFA or PIFA according to experience and qualifications.

Appendix 1

Regulatory impact

This draft policy and guidance does not impose any new duties on the Minister for Planning and Environment – the responsibility to protect places that have a special importance or value to the Island, and specifically the archaeological record, exists within law and the international conventions to which the Island is a signatory. What it does do, however, is to provide the Minister with a mechanism to fulfil these obligations, which has hitherto been absent.

Risks

Without the implementation of this policy and guidance there is a high risk that the Island's archaeological resource will continue to be eroded on the basis that it remains to be identified, defined, assessed and protected.

There is a consequential risk that Jersey's international reputation would be harmed as a result of failing to adhere to the requirements of the European Convention on the Protection of the Archaeological Heritage (the Valetta Convention 1992 (revised)) which have been extended to the Island.

Benefits

Economic benefits of protecting the Island's archaeology will be related to its value to the tourism and leisure industries and will serve to maintain and enhance the strength of the Island's unique offer based on its distinctiveness and variety within a small compass.

Environmental and social benefits will be reflected in the enhancement of the Island's cultural identity and strong sense of place. Jersey's rich and varied environment forms an important backdrop to our lives and is an integral part of our identity as an Island. A greater understanding of the formation of the environment and of the people who shaped it is considered to be of significant educational and cultural value.

Costs

On the basis that the Island's archaeological resource is a finite and non-renewable resource, the value of its loss is unquantifiable.

As the extent of Jersey's archaeological resource is unknown, the costs of regulation imposed by the introduction of new policy and guidance cannot be defined. An indicative assessment of the nature (rather than the extent) of costs that would be borne by affected sectors is given below.

Planning and Environment Department: the development and application of this policy and guidance would require particular archaeological skills and expertise. This resource is not presently available within the Planning and Environment Department. The department has, through its service level agreement with the Jersey Heritage Trust, the ability to secure some archaeological support, but not of the form and extent required of this policy guidance.

As stated above, until the extent of the archaeological resource is known, the costs of regulating the asset cannot be accurately determined: it is clear that as the archaeological record is collated, defined and protected, and as the requirement to provide archaeological information as part of some development applications begins to provide new information about archaeology in Jersey, there will be a greater level of resource required to regulate and facilitate the policy framework.

The department does not presently have the capacity to facilitate the provision of an Archaeological Field Officer post or to purchase significant external assistance to fulfil this role from within existing human and financial resources without affecting the delivery of other services.

On the basis that there is an evident requirement to strengthen the protection of archaeology in Jersey it is, however, proposed that limited funds are found from within the existing Planning and Environment budget to secure external assistance to begin to define the extent of the resource and to facilitate the regulatory framework. It is envisaged that initially the department would engage and retain archaeological expertise on an annual part-time consultancy basis to provide the functions of an archaeological field officer. Once the guidance and regulatory framework is established and operating, the extent of resource required will become clearer.

As the archaeological resource is identified and defined there would also likely be an increase in the number of appeals against the refusal of planning permission based on the adverse implications of development for archaeological remains. This will likely increase the workload of existing officers within the department dealing with appeals.

Applicants: as the archaeological resource is identified and defined there would be an increase in the number of development proposals with implications for archaeological remains requiring applicants to fund the provision of appropriate archaeological evaluations.

Applicants would also be required to fund mitigation options, where preservation *in situ* is deemed appropriate, or archaeological excavation, recording, analysis and publication, where the value of the development is deemed to outweigh the preservation of archaeological remains. In both instances, this would represent an additional cost to the developer.

In the case of householder applications, or applications from not-for-profit organisations, it is likely that the resource implications of archaeological evaluation or excavation and recording would fall to be met by the Planning and Environment Department. This would need to be resourced directly, with the work being undertaken by an archaeological resource within the department, or outsourced to a consultant archaeologist.

Courts: as the archaeological resource is identified and defined there would likely be an increase in the number of appeals against the refusal of planning permission based on the adverse implications of development for archaeological remains.

Archaeologists and archaeological advisors: as the policy and guidance enhances the requirement to provide information about the known archaeological resource, there is likely to be greater demands made of archaeological advisors, such as the Societe Jersiaise Archaeology Section and the Jersey Heritage Trust.

There is also likely to be a demand for qualified archaeologists to provide expert advice and services to the development industry and also possibly to the Planning and Environment Department.

Appendix 2

Requirement for ancillary guidance

The publication of this draft guidance and policy on Archaeology and Planning seeks to establish the Minister for Planning and Environment's policy framework for dealing with archaeological remains. It is acknowledged that further, more detailed advice may be required in relation to associated issues and procedures. Some of this is represented by work in progress, which has been undertaken under the auspices of preparing comprehensive supplementary guidance for the historic environment. The following areas are identified as requiring further work to effect completion and adoption;

- Standards and guidelines for;
 - Deposition of archival material and artefacts;
 - Evaluation of archaeological sites and mitigation;
 - Funding of post excavation work for archaeological remains
 - Treasure Trove and Portable Antiquities;
- Codes of practice for:
 - Marine archaeology;
 - Treatment of human remains;
 - Metal detecting