

Review of the Protection Regime for Jersey's Historic Environment

Business Case



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**Planning and Environment Department
Policy and Projects Section**

Review of the Protection Regime for Jersey's Historic Environment

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Review of the Protection Regime for Jersey's Historic Environment

1. Executive Summary

- 1.1. The document sets out the current legal and policy basis for the historic environment's protection regime in Jersey. A full description of the current protection systems and operational management is defined and sets out the areas of concern. The current system's opaque nature is explored alongside some of the more common perceptions and concerns expressed about the system.
- 1.2. In summary, the current system exhibits a complexity in decision making with complicated differential designation types which makes it bureaucratic to manage and operate. Furthermore the system is not easily understood or consistently open to appropriate procedural challenge. As a result the community of the Island appear to understand that there is protection in place but do not always grasp the subtleties of the system, and as such the current system has limited community "buy in".
- 1.3. A set of objectives are proposed that seek to simplify and streamline the current system within the context of Jersey Planning and Building Law (Jersey) 2002 and current policy context.
- 1.4. A revised system is proposed that would have one class of Historic Environment protection: a Site of Special Interest designation, with four Grades of protection. This system would be designed to mesh with the emerging proposals of Conservation Areas such that Buildings of Local Interest would migrate to Grade 4 protection and in Conservation Areas be controlled under the terms of a revised General Development Order.
- 1.5. A full re-survey of existing protected buildings is proposed, to be undertaken over two years, starting in 2009, to ensure that each protected building or site is correctly graded and that proposed Sites of Special Interest are reviewed and assigned an appropriate level of protection and grade. It is imperative that this work is undertaken, as soon as possible, after the implementation of change to the historic environment protection regime to give a point in time assessment; to ensure a consistent quality level; and to rebuild faith and confidence in the new system, with all key stakeholders.
- 1.6. For some institutional land owners on the Island there is a proposal to manage works to their historic environment and buildings in a more streamlined manner. These groups include Church denominations and major landowners such as, for example, Jersey Heritage Trust and the National Trust.
- 1.7. Finally the existing planning policy regime for the historic environment is presently the subject of review as part of the ongoing Island Plan Review. This needs to be complemented by a comprehensive review of Supplementary Planning Guidance related to the historic environment which will be updated for consultation to reflect the changes proposed. A new set of technical notes will also be prepared.

2. Current System and Controls

2.1 The Planning and Building (Jersey) Law 2002 requires the Minister to maintain a List of Sites of Special Interest. These are defined as buildings and places of 'public importance', having 'special archaeological, architectural, artistic, historical, scientific or traditional interest' (Planning and Building (Jersey) Law 2002, Art 51(2) (b)), or a combination of these. The designation process is prescribed under this Law.

2.2 In addition, Article 6 of the Law allows the Minister to publish guidelines and policies in respect of the development of specific sites and buildings in the Island. It is this provision that is relied upon to designate Building of Local Interest (BLI). The designation of BLIs is not, however, prescribed, and does not enjoy a formal right of appeal. Buildings of Local Interest are those which substantially retain their historic form and detail, or sufficient for that form and detail to be readily recovered from surviving evidence, and so make a significant and positive contribution to the architectural and historical identity, character and amenity of Jersey.

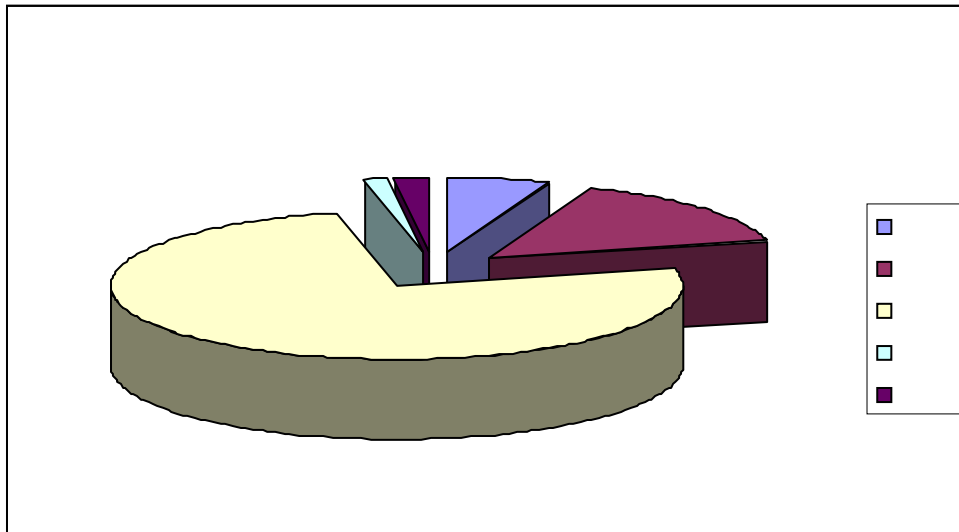
2.3 Archaeological Sites (AS) and Areas of Archaeological Potential (AAP) are also designated under the same legal provision outlined in paragraph 2.1.

2.4 There are presently 4,355 registered or listed properties, the breakdown of which is:-

○	SSI	257	(6%)
○	pSSI	697	(16%)
○	BLI	3349	(77%)
○	AS	52	(1%)

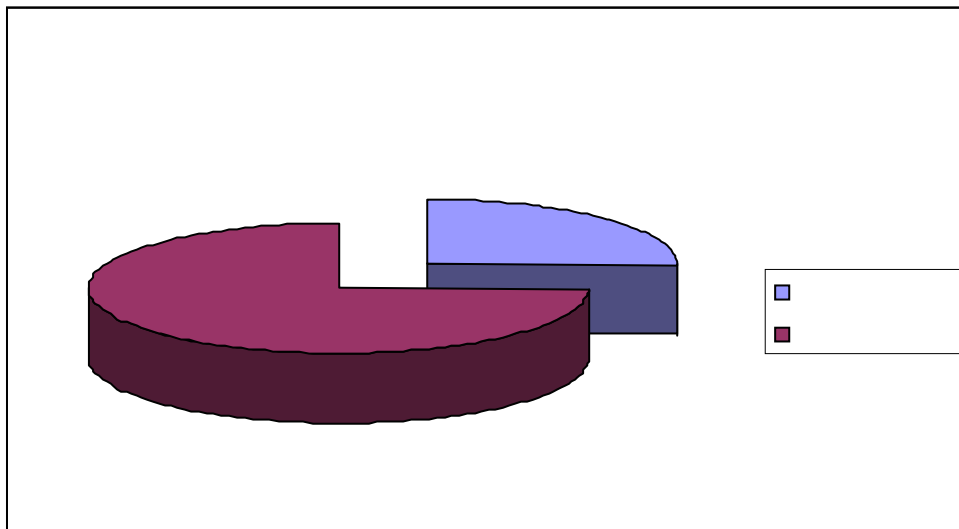
90 Areas of Archaeological Potential (AAP) have also been identified and designated, which is an area-based protection regime for archaeology.

Current Designations



It is anticipated that the review of the historic environment protection regime will result in the introduction of area-based protection (Conservation Areas) which will significantly reduce the number of individually designated buildings, particularly in St Helier, where there are currently 1,099 Listed or Registered buildings the majority of which are BLI's.

Distribution of SSI's and BLI's in St Helier



3 Evolution of the protection regime

3.1 The protection of Jersey's historic built environment started in 1964 when there was provision to designate sites of special architectural, archaeological, historical or other interest. In 1972 and 1974 a selective 'listing' of some historic buildings in St Helier and at Gorey Pier in St Martin respectively was undertaken, followed by a more comprehensive survey in 1987 - 1989.

- 3.2 *The Protection of Jersey's Architectural Heritage* (October 1991), prepared by the Island Development Committee, set out the Committee's intent to use the Island-wide survey to identify and grade historic buildings in Jersey based primarily on their age, supplemented by criteria used by English Heritage to define townscape value. This resulted in the informal establishment of the Register of Buildings of Architectural, Archaeological and Historical Importance, comprising a schedule of all buildings and places considered to be of some particular interest, with an associated grade. The grade system has not been rolled forward through subsequent changes to the system.
- 3.3 The existence of a building on the Register was to be used to highlight the particular interest of the building or place in the consideration of planning applications. It was also the Committee's intent to statutorily designate only those buildings and places in Jersey which were categorised as belonging in Grade 1, as Sites of Special Interest.
- 3.4 These interim policies were superseded by the planning policy regime established by the 2002 Island Plan. The principles and criteria for the identification, assessment and designation of historic buildings and places remain. They have been amended to reflect the introduction of the new Planning and Building (Jersey) Law 2002, where relevant.
- 3.5 These criteria were supplemented, in February 2002, by the introduction of criteria to assess the potential interest of twentieth century buildings and places.
- 3.6 Specific criteria, and new categories of designation, were also introduced in January 2008 specifically to deal with sites of archaeological interest. The criteria for archaeological sites can be found in Policy Note 1 *Archaeology and Planning* (January 2008).

4 Criteria - Principles for Listing/ Registration

4.1 The essential criterion for the designation of an historic building as a **Site of Special Interest** is that its special interest extends substantially to its authentic fabric, plan form, interior features, or historical associations of the interior: in other words, it is not substantially confined to the exterior of the building and the contribution which it makes to the character or appearance of its townscape or landscape setting. The criteria can be summarised as follows: clearly, not all designated buildings will qualify under all these elements, but many will qualify under more than one.

- Archaeological interest:
- Architectural interest of the exterior:

- Architectural and scientific interest of the structure:
- Architectural or traditional interest of the plan form:
- Architectural or artistic interest of the interior: interiors.
- Historical interest

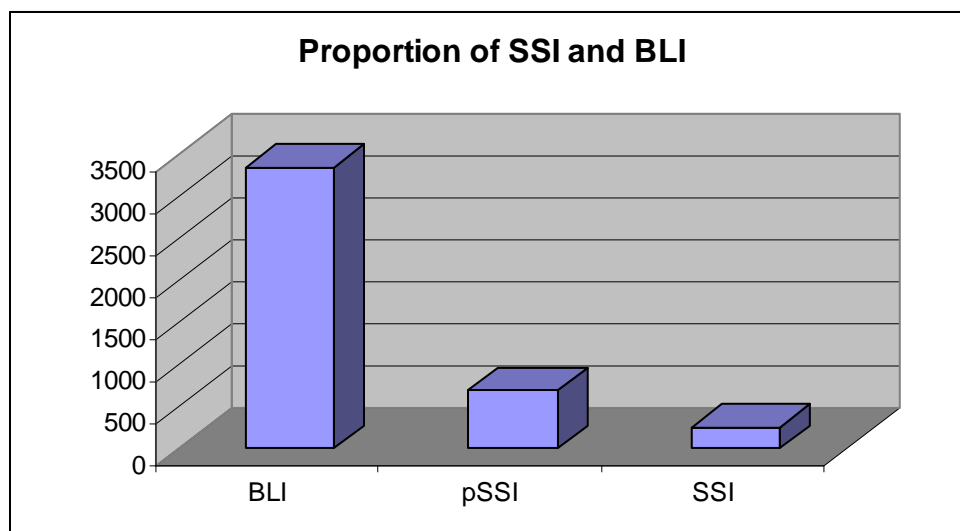
4.2 For **Buildings of Local Interest** those buildings included in the Register are those which substantially retain their historic form and detail, or sufficient for that form and detail to be readily recovered from surviving evidence, and so make a significant and positive contribution to the architectural and historical identity, character and amenity of Jersey. The main criteria for selection of BLI's in brief are:

- Architectural interest:
- Historic interest:
- Scenic and group value,

4.3 For both BLI's and SSI's not all of these criteria will be relevant to every case, but a particular building may qualify for designation under more than one of them. In addition there is a consideration of age, uniqueness and for BLI's, townscape value alone.

4.4 The older a building is, the fewer examples of its kind are likely to survive, and thus the more likely it is to have historic importance. Thus, the more recent and numerous the building or type, the more rigorous is the selection. Designation tends to become increasingly selective as age decreases. In Jersey, any building which survives in recognisable form from before the middle of the 19th century will normally be of listing or registerable quality for its historic interest, as well as, normally, meeting at least one of the other principal criteria.

4.5 These criteria have been reassessed to allow a single tier of designation to be implemented. The proposals are outlined in Section 8 below. Revisions have been proposed based on current best practice and the proposed amendments to the Island's designation system in draft at Appendix 1.



4.6 **Archaeological** designations are relatively new. There are over 160 archaeological sites and areas, designated as SSI's; Archaeological Sites (AS) and Areas of Archaeological Potential (AAP). The criteria for archaeological designation are at Appendix 2.

5 Supplementary Planning Guidance

5.1 Article 6 of the Planning and Building (Jersey) Law 2002 allows the Minister to publish guidelines and policies. This is issued as supplementary planning guidance and is issued in three different forms.

5.2 **Policy Notes** build on the provisions of the Planning and Building (Jersey) Law 2002 and the policies in the Island Plan 2002. **Advice Notes** provide detailed advice about the ways in which the provisions of the law and Island Plan policies are likely to be interpreted and applied by the Minister. **Practice Notes** aim to provide information about how the planning system's protocols and procedures operate.

5.3 There is a selection of Supplementary Planning Guidance published to explain the system developed to manage change in the historic environment and give further owner and developer support. These are:

- Archaeology and Planning
- Archaeology and Planning: Schedule of Designated Sites of Archaeological Interest
- Windows and Doors in Historic Buildings
- A History of Windows and Doors in Jersey
- Repair Grants for Historic Buildings
- Managing Change in Historic Buildings

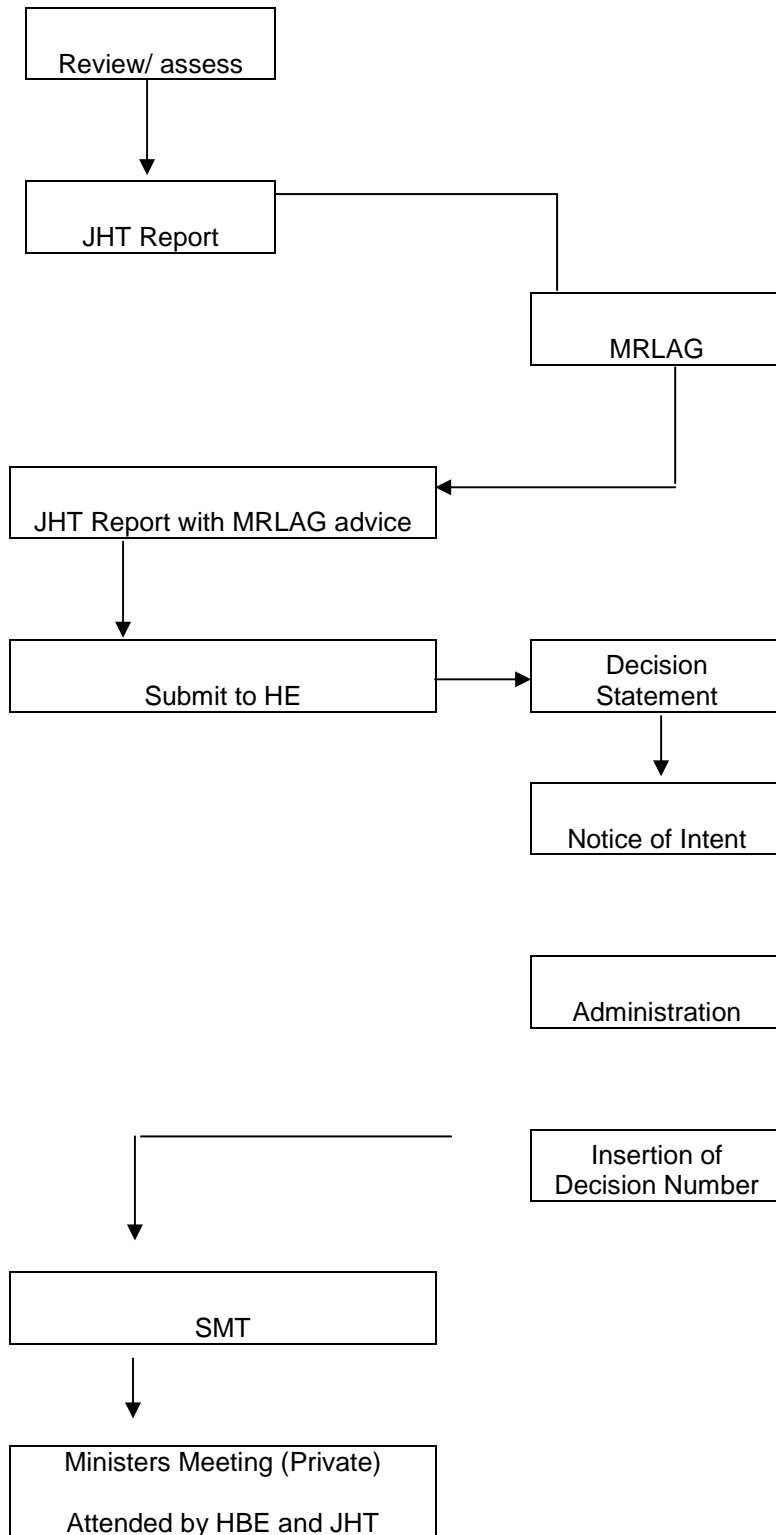
5.4 These published policy and guidance documents will need to be updated as discussed at Section 11 below.

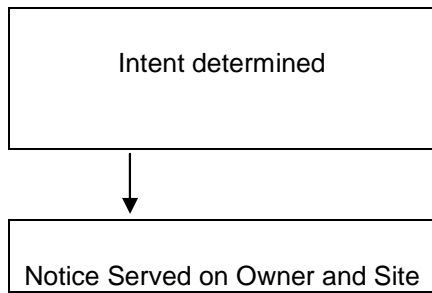
6 Procedure and Process for Registration

- 6.1 The procedure to List a SSI is complex and rooted in the Planning and Building Law 2002. As such there is a prescribed process outlined below in diagrammatic form. The procedure for Registration of BLI's is not legally prescribed, however, the same procedure as for the Listing of SSIs is adopted and employed to ensure a consistency of approach and to engender some clarity and common understanding.
- 6.2 There is a need to ensure division of responsibilities between the regulator, the Minister for Planning and Department, and the advice the Minister receives on proposed changes to the designation of heritage assets. To ensure this, a Service Level Agreement was established between the Jersey Heritage Trust and the Planning and Environment Department in 2005, whereby requests to consider the designation of heritage assets are independently and professionally assessed by Jersey Heritage in order that the Minister might receive and consider impartial and expert advice, unrelated to the process of determining planning applications.
- 6.3 When deciding whether or not to add, maintain or remove a building or site from the List or Register the Minister looks to Jersey Heritage Trust to provide professional and independent advice about what makes a building or place special: it is able to expertly assess the history, architecture and archaeology of a site, and to judge this against the Minister's own criteria for designation. Jersey Heritage undertakes independent assessments and makes recommendations about designation to the Minister.
- 6.4 The Minister can also seek other expert views. This is supported by a group of local people who are knowledgeable about the Island's history, architecture and archaeology (the Ministerial Registration and Listing Advisory Group: MRLAG). The process of recruitment to MRLAG and its terms of reference has been reviewed, in accord with best practice as advised by the Jersey Appointments Commission, and the new reconstituted Group met on 8th June 2009. Other expertise, such as that of English Heritage specialists in particular building types, will also be sought, where necessary.
- 6.5 MRLAG comments are incorporated into a full Technical Report by JHT which is then forwarded to the Planning and Environment Department for formal progression through the designation processes set out below.
- 6.6 Before the Minister decides whether to add or remove a building or place from the List or Register, the Minister will also consult owners, and provide them with an opportunity to make their views known to about whether their building warrants designation.

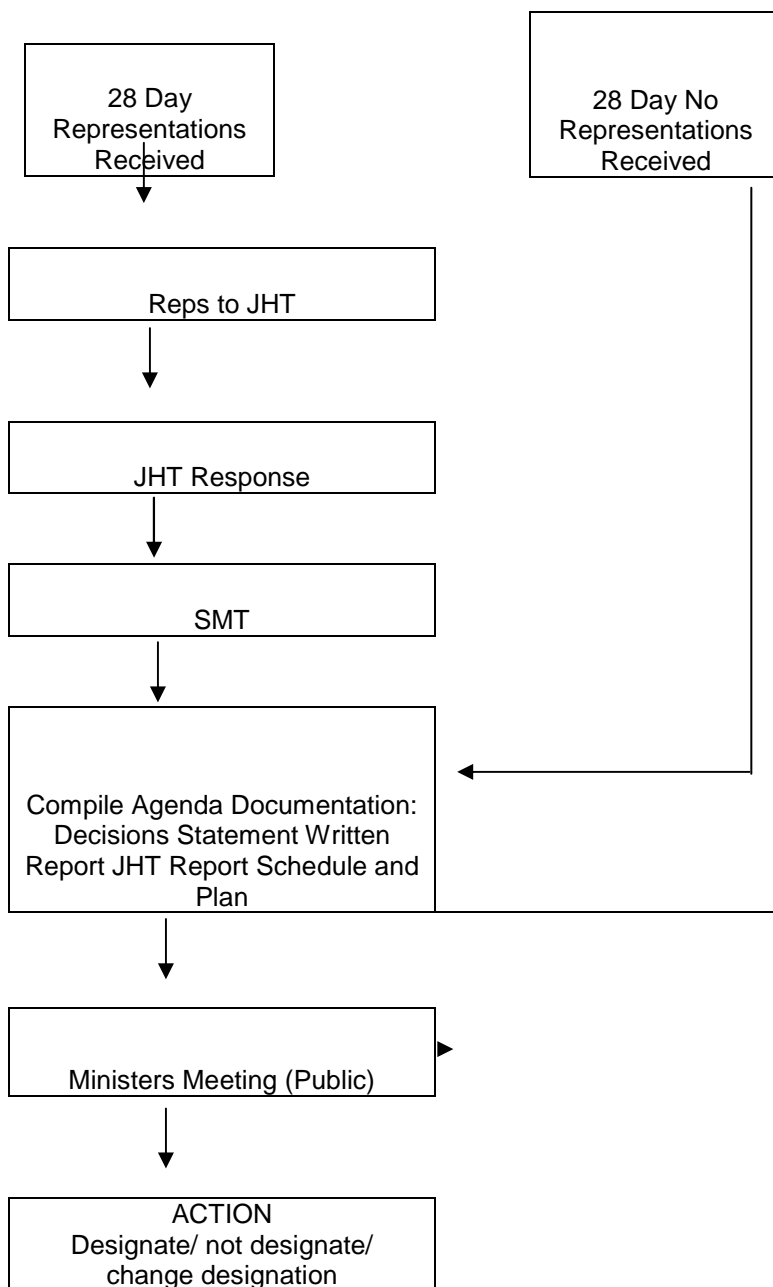
Table 1: Designation process

Stage 1: Intent to Designate





Stage 2: Designation



7 Proposed Changes to the Designation System

7.1 To update and simplify the designation system, add transparency and simplicity to managing the historic environment and ensure appropriate levels of protection are in place there are a range of proposals in Sections 8 and 9. The proposals are in italics following an initial statement.

7.2 To help define the scope of these changes the following 8 simple Objectives set out the fundamental philosophy to be used in assessing the protection of Jersey's historic environment and reflect the existing published Island Plan policy framework and supplementary planning guidance.

- *The historic built environment of the Island is a finite resource and an irreplaceable asset which has a value in its own right and deserves protection and conservation by the current generation.*
- *The responsibility of stewardship is shared by everyone. There should be a general presumption in favour of the conservation of the character and integrity of protected buildings and sites.*
- *The physical survivals of our past are to be valued as a central part of our cultural heritage and our sense of Island identity.*
- *The Historic Environment adds to the quality of our lives, by enhancing the familiar and cherished local scene and sustaining the sense of local distinctiveness which is so important an aspect of the character and appearance of our Island.*
- *The historic environment is central to the principles of sustainable development - of not sacrificing what future generations will value for the sake of short-term and often illusory gains.*
- *The historic built environment of Jersey is all-pervasive. It cannot in practice be preserved unchanged. We will identify what is of value in the historic environment; to define its capacity for change assess the impact of change on the historic environment and give it full weight, alongside other considerations.*
- *Conservation and sustainable economic growth are complementary objectives. Most historic buildings can still be put to good economic use and are a valuable material resource and can contribute to the prosperity of the economy. Conservation can play a key part in promoting economic prosperity by ensuring that an area*

offers attractive living and working conditions which will encourage inward investment.

- *Economic prosperity can secure the continued vitality, and the continued use and maintenance of historic buildings, provided that there is a sufficiently realistic and imaginative approach to their alteration and change of use reflecting the needs of a rapidly changing world.*

7.3 To further assist the streamlining of the process there has been a review of the Listing Criteria which will be used in the future to assess applications for Registration. The proposed draft new Criteria form Appendix 1.

8 Single tier of designation for buildings and sites

8.1 To address the issues of complexity the major change proposed will be *to introduce a single tier of designation. This will be made under existing legislative provision, of Article 51 of the Planning and Building (Jersey) Law 2002, whereby all site specific buildings and places of heritage value would be designated as Sites of Special Interest.*

8.2 Under existing legal provisions, the Minister is able to List buildings or places that the Minister is satisfied have public importance by reason of, inter alia, its special archaeological, architectural, artistic, historical, scientific or traditional interests. In so doing, the Minister is statutorily required to specify the site's special interest, and it is proposed that the current practice of preparing schedules – which describes the particular elements or aspects of the building or place that are of particular interest and define the spatial extent of that interest – would remain.

8.3 The adoption of a single tier of designation for all buildings and sites of particular interest – as Sites of Special Interest – would entail the loss of the Building of Local Interest (BLI) designation and the Archaeological Site (AS) designation, as these would be designated as SSIs. Sites already designated as SSI would remain designated but defined with a new Grade as shown in Table 1

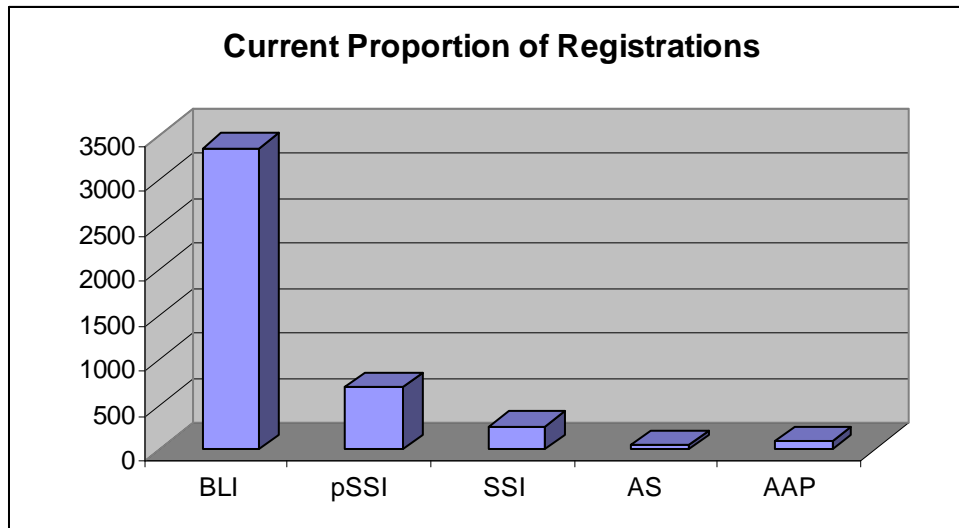
9 Area Protection

9.1 It is important to note that this site specific single-tier of designation for buildings and sites would be complemented by the designation of areas of cultural interest, made under the provisions of the Planning and Building (Jersey) Law 2002 at Article 6, through supplementary

planning guidance. Consideration is presently being given to the inclusion of an explicit provision, conferring powers to make area-based designations, in the primary law *This would include the designation of areas as Conservation Areas. Work to define a new protected area for St Helier is progressing and future consultation with interested parties and the public is expected shortly.* Area designation for Areas of Archaeological Potential (AAP) is already in effect.

10 Grading system

10.1 Whilst the current dualistic system of SSI and BLI for historic buildings allows a crude level of ‘grading’, as detailed in Section 3 it is confusing because of the different ‘rules’ and processes that apply to each type of designation. A system of grading is, however, still required to differentiate between the significance of the heritage asset and the relative weight that should be attached to its ‘value’ in any decision-making process.



10.2 To address this, it is proposed that a non-statutory grading system be introduced which would help inform decision-makers when considering the relative value of a cultural asset. This has been separated into four levels of grading which, in essence, relate to the significance that an asset might have beyond Jersey; within Jersey; and where part of a structure or site, or a group of structures or buildings might be locally significant.

10.3 The addition of further levels of grading is not considered to be warranted on the basis that it would add, further unnecessary complexity; it would be increasingly difficult to apply and differentiate between the respective grades; and it has no statutory value anyway and is simply informative.

Table two: **suggested (non-statutory) grading system**

Grade	Description
Grade 1	Buildings, structures or sites of the greatest public importance including fine examples of a particular period, style or type including outstanding sites of more than Island wide importance.
Grade 2	Buildings, structures or sites of significant public importance within Jersey, including major examples of a particular period, style or type.
Grade 3	Buildings, structures or sites of public importance having particular elements worthy of listing, or which might individually not be included but which by virtue of their contribution as part of a group or set piece merit inclusion.
Grade 4	Current BLI Registered buildings, defined particularly for their local interest, exterior character and townscape value. Most will be removed from the Register if included in an area designation under Article 6 of the 2002 Law.

10.4 To initiate the single tier system at a defined and easily understood point in time the existing designations will be changed to fit with the following Grade table. This will allow an immediate change, will ensure all buildings are appropriately protected and the levels of control are not onerous.

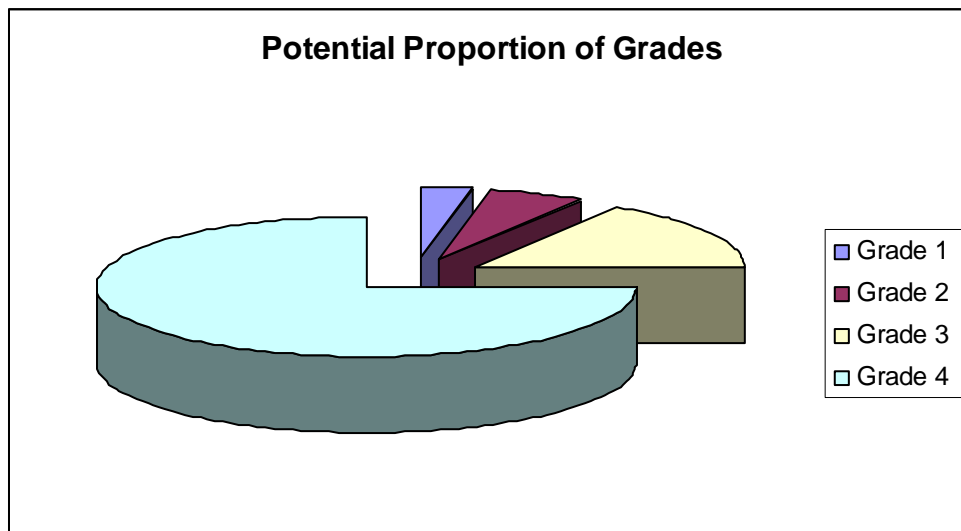
Current Designation	Description	Grade Proposed
SSI	Clearly of international and significant Island Importance	Grade 1
SSI	Remaining SSI's on the list	Grade 2
pSSI	Buildings that have remained proposed 1992	Grade 3
BLI	Of Local Interest and of Streetscape importance in general	Grade 4

10.5 The Archaeological Sites will not be graded. Archaeological Sites are clearly defined and changed managed with agreed policy formats. Those Archaeological Sites that are currently SSI's will remain, those that are not will become pSSI's. At this time it is considered that further grading of Archaeological Sites would not be appropriate. Areas of Archaeological Potential will remain as area

designations which again do not need to be graded to offer sensible protection and manage change.

10.6 This proposal ensures that only BLI's are Grade 4's and on the designation of area protection the Grade 4 buildings would no longer have specific protection as Registered Buildings. Over time the only Grade 4 buildings will be rural buildings that have strong character in their landscape or streetscape context or buildings in smaller urban contexts that are not designated as Conservation Areas.

10.7 An estimate of the likely proportion of grades is set out below. As the number of Island/ internationally significant buildings, structures of sites (Grades 1 and 2) is likely to be much lower than the more common Grade 3. It is envisaged that over time the high proportion of Grade 4 will reduce as area protection is introduced. Those BLI's with defined internal interest will move to Grade 3, which will become the highest proportion.



11 Revision and consolidation of assessment criteria

11.1 The existing designation criteria have been revised and consolidated. A critical review of the form and application of the current Jersey criteria has been undertaken by officers of the Planning and Buildings Services Department together with officers of Jersey Heritage Trust. This has also taken account of issues which have arisen in Jersey where the use of the current criteria has caused particular difficulties. A review of the designation criteria employed in the English and Scottish systems of heritage protection has also been undertaken. The outcome of this work is the development of a new consolidated set of criteria against which the value of sites and buildings can be assessed in order to determine whether they are of

‘special’ interest of public importance (as set out in the Law) and worthy of Listing. The new and consolidated criteria are set out in draft at Appendix 1.

- 11.2 The criteria for archaeology (as a ‘stand alone’ interest not associated with buildings) have been in use for a relatively short time and thus are not proposed for change at this time. It is proposed that they be carried forward, with only minor change to reflect the proposed new framework, and integrated with new criteria for historic buildings and other structures, as set out at Appendix 2.

12 Subsequent Changes and Efficiency

- 12.1 The current system has evolved from Jersey Law, changing planning policy, changing governance arrangements, differential registrations for historic buildings and archaeological interest without the parallel use of area protection. As a result the system has inherent inefficiency that the changes proposed in this document seek to remove.

- 12.2 As described in Section 8 there is a proposed streamlining using the basis of SSI Listing as a basis for all future designation.

Whilst largely represented by Table 1 above a fast track route for non contentious Listings is proposed. That is, on the initial 28 day notification, any proposed Listing that receives no objection will move to a full SSI designation. As this would be a delegation of Ministerial responsibility to defined authorised officers this will require amendment of the Delegation Agreement. These delegated decisions would be notified at the next available Ministerial meeting. In addition the Minister would have the right to “call in” any proposed Listing at the “Intent to List” stage for a decision in Public. It is estimated that this change would remove over of 60% of non-contentious registrations from the Ministers Public meeting, creating efficiencies that can be used to further streamline the system, described below. This change will be highlighted in amended SPG as detailed in paragraph 11.13 below.

- 12.3 At present there is no formal or quick assessment of a proposal to designate a building. The process of designation can add delay to the planning process and introduce uncertainty. Whilst a common sense approach is taken a more formal approach may be advantageous.

It is proposed that any candidate buildings or sites will go through an initial assessment prior to full appraisal. In practical terms this will require the request for an assessment to be made to the Department. This will be discussed with the Head of Historic Buildings at Jersey Heritage to ensure the building has

merit and can be fast track assessed. The Trust will then carry out this initial assessment of designation quality based upon the revised criteria above at Appendix 1. This has the advantage of giving certainty to developers that either the building will go through the full listing process or that it is likely not to be of value. This reduces unforeseen delays on the receipt of a planning application. Confirmation of this assessment can be sought by MRLAG and/ or the Minister.

This system will undergo a very early review to ensure it is fit for purpose and does not disenfranchise any affected party. The aim is to remove spurious claims of heritage value.

Nominations are made for a number of reasons, development pressure, risk of irrevocable change, concerns from neighbours etc.

It is further proposed that any nomination of a candidate building will need to be made on an application form. This will then be submitted to Planning and Environment Department, who will assess whether to forward this to Jersey Heritage Trust. The aim is to ensure the workload under the existing Service Level Agreement is managed in a sensible way and to take a common sense approach. This also ensures that appropriate data is gathered at the earliest stage and ensures that the full assessment is only undertaken on credible suggestions.

This system will undergo a very early review to ensure it is fit for purpose and does not disenfranchise any affected party. The aim is to remove spurious claims of heritage value.

- 12.4 At present there is a programme of thematic reviews. Major building types and groups; these include castles, forts, towers, churches and manor houses that have been assessed to ensure appropriate designations are in place. However there is a large backlog of pSSI's from the 1992 review which tends to be assessed on an ad hoc basis dependant on risk. Thus a pSSI is a greater development risk as its final designation assessment can delay any planning application. In addition during the planning application process the identification of a potential SSI or BLI adds delay to the consideration of the application.

As part of a resurvey of the Island's heritage assets the pSSI designation will be given first priority to ensure there is a final view taken on the value of this group of buildings. This will bring the best quality examples within appropriate control and those that have lost significant special can be deleted from the list. Development proposals i.e. applications for development, affecting pSSIs would continue to be assessed in the normal way and would only engender additional work where an

assessment of the special interest of the building extended to the interior and where full designation to SSI was completed, where an additional SSI application was required.

- 12.5 At present there is an *ad hoc* system of identification of potential new candidates for designation alongside a more rigorous thematic review process to help set a quality standard for inclusion of, for example Jersey farmhouses.

The aim will be to undertake a full a resurvey of the Island's heritage assets across 24 months, prioritised by grade and risk. This will give a point in time assessment of stock, set an identifiable quality bar and minimise the future incidence of new designations.

As part of the Island review a template survey approach will be undertaken which will record the buildings special interest internally and externally. In the case of proposed Grade 4 buildings the intention will be to largely exclude the interiors as of specific interest unless there are features that are worthy of protection. These will be specifically mentioned in the statement of significance. Those Grade 4 buildings within areas of protection will of course only remain protected under the terms of the General Development Order unless their interior features are worthy of their elevation to a Grade 3 SSI.

A key part of this work will be to enable access to survey interiors. As this is likely to be the most time consuming element of work it is proposed to grade any pSSI that cannot be internally inspected as a Grade 3 SSI with file note to ensure the full assessment can be carried out once access has be granted. Say for example when development proposals come forwards. This will then give owners an incentive to allow an early assessment of the full significance and heritage value of the system. Full consultation with owners and good publicity will hopefully assist in reducing the incidence of barred access.

- 12.6 There have been incidences of buildings being registered, de-registered then re-registered. This approach can bring the system into question. There needs to be a rigorous and agreed approach to nominations for listing, using a quick sift to ensure an effective initial assessment is undertaken prior to the process being initiated through to the Minister.

Deregistered building will remain so for 3 years to ensure certainty for owners, business and developers. A new system of assessment, at developers expense, will allow a certificate of immunity from listing to be offered to increase certainty.

However this change will need to be assessed to ensure this amendment can be met within the existing legal framework.

- 12.7 There are some organisations and institutions on the Island that manage a portfolio of buildings and manage historic sites. There is a need to work in a dynamic and proactive way with these bodies to ensure the management of their heritage assets is expedient and does not experience undue delays or repetitive applications for work. There are two specific groups which will receive different support:-
- Ecclesiastical buildings in use for worship
 - Large land owning institutions

- 12.8 To deal with these it is proposed to develop two systems of heritage management.

For Ecclesiastical buildings in the Island it is proposed to complete the review of the designation of all churches agree designation under this new system to ensure this major heritage asset is protected for future generations. However to ensure than no further onerous controls are exerted it is proposed to move to a allow the Minister to “waive consent” where it can be shown there is a robust and equally open system of management of change in Listed ecclesiastical buildings in use for worship. For those faiths that can demonstrate a competent and robust control mechanism, in which suitable early discussion with the Minister and his/ her advisors is possible, the Minister will waive the requirement for SSI consent. This will be managed by way of internal Written Reports. A conflict resolution protocol will be agreed prior to this system coming into place. A more detailed set of criteria is shown at Appendix 3. Works requiring planning permission would remain to be dealt with under the existing secular system of development control.

*To work with major **heritage portfolio owners** it is proposed to develop detailed and agreed management plans. These will set de-minimus levels and agreed management protocols which will allow works to be undertaken without further SSI consent. As with the proposal at paragraph 9.10 there will be an agreed conflict resolution protocol in place prior the this system being implemented. A more detailed set of criteria is shown at Appendix 4.*

- 12.9 The SPG’s outlined in Section 5 will need to be updated to reflect the change in the designation system proposed alongside the proposed reshaping of the system proposed in Section 10.

- 12.10 Finally there is a requirement to ensure the information on the historic environment is presented to the public in a clear and accurate manner.

It is proposed to develop a Heritage Environment Record system (HER) which would ensure that each SSI has a unique number, date of designation, is plotted on a scaled plan, address (with alternative spellings noted), has a description of its special interest in summary, relevant photographs and any other relevant information as set out as a statement of significance. This would be hosted on the website and be searchable by address or key word.

13 Procedural Action Points

The following table sets out the Key Tasks outlined in the Project Plan attached as Appendix 6 on Page 42.

Business Case agreed

Introduce Single Tier List

- Assess draft Grades
- Amend Keystone to show Grade 1 Buildings
- Identify Key Stakeholders
- Implement Change *
- Notify Change to Stakeholders

Consultation on Review

- Identify Key Stakeholders
- Formal Consultation
- Process Changes

Designation Criteria

- Historic Buildings Criteria
- Archaeology Criteria
- Listing Process Changes
- Ecclesiastical Waiver System
- Management Plans for Major Portfolios

Review Policy

- Amend Existing SPG
- Draft new SPG
- Define HERS
- Agree Pro Forma
- Assess fit with Keystone
- Assess fit with GIS/ mapping data

Area Protection

- Define role of Conservation Areas
- Review existing GDO and PD impact

- St Helier Conservation Area (SHCA)
 - Draft St Helier Conservation Area Appraisal
 - Define St Helier boundary
 - Consultation on St Helier Boundary
 - Review and Refine SHCA Boundary and Appraisal
 - Designate SHCA
 - Review and Designate Further Areas
- Define other potential Conservation Areas in principle
 - Consult on other CA

** Legal advice required prior to implementation.*

14 Legal and resource implications

14.1 The proposals outlined above could be given effect by the provisions of the current primary legislative framework provided by the Planning and Building (Jersey) Law 2002. They provide a single and comprehensive regime for the designation and regulation of site-specific cultural assets.

14.2 Importantly, the adoption of a single-tier of designation that is based on the Planning and Building (Jersey) Law 2002 provides a single, generic and human-rights compliant appeal mechanism against designation: the lack of an appeal mechanism against BLI designation under the current regime in particular, has been the subject of criticism in the Royal Court, post judgement, in the matter of Premier Tour Ltd v the Minister for Planning and Environment, and the proposed review addresses and responds to this issue.

14.3 There are some practical implications of proposing the adoption of a single tier of designation related to:-

- assigning grades to existing SSIs;
- reviewing the status of all buildings and sites that are presently on the register but not SSIs;
- extending a greater level of control to those registered buildings and sites which subsequently become SSIs (SSI designation extends control to the interior of buildings and also enables the regulation of matters that would otherwise not be defined as development);

14.4 The resource implications of these practical matters will need to be dealt with within the existing resource constraints of the Planning and Buildings Services Department.

14.5 In practical terms, if adopted, the review of the grading of existing SSI's is a relatively discrete task and could be completed with existing resources as part of the initial step change. All sites and

buildings that are presently BLI's would, at the time of change, become proposed SSI Grade 4 until such time that they were formally reviewed and designated as SSI's albeit Grade 4's in accord with the requirements of the Law.

14.6 The process of formal re-survey of existing SSI's would need to be undertaken as a discrete review. The requirement to undertake such an exercise has already been identified and endorsed by the Minister (see MD-PE-2007-0150 at Appendix 5). At present there is an ad hoc assessment on informal nominations and requests to de-register. By streamlining this process there will be efficiency savings. time saving will be used to undertake the first task. That is to migrate all registered buildings and archaeological sites into grades within Keystone and update the data on the website. Then the first tranche of re-survey work (pSSI's) will be undertaken across the next 12 months, and the remaining assessments carried out in the following year. This assumes some 800+ entries will be removed by introducing areas controls within St Helier.

14.7 To manage this process a bid for resource will be made in next years budget. Whilst it is reasonable to initiate this work the re-survey will need extra resources. In terms of indicative costs current thematic surveys cost £25,000, the SLA for JHT is £75,000 but this covers more than registrations of buildings. It is assumed JHT contribute the equivalent of one officer's time for 3 days per week. A 35% efficiency saving should free a day a week to initiate the changes proposed. Further time limited direct administrative support into Historic Environment would be advantageous and free up professional officer time to migrate the system as described above. The estimated budget required for resurvey is in the order of £50,000 per year for two years. It is proposed to use the current funding within the Historic Environment budget and if needed the existing Policy and Projects Budgets to cover the direct costs of the resurvey. This would require the use of the current grant budget, reduce any specific consultancy commissions and cessation of new thematic reviews for this time.

14.8 To procure the re-survey it is proposed to use the existing working relationship with Jersey Heritage Trust to manage the procured route. These routes could include the Minister seeking expressions of interest with estimated costs from the commercial sector, commission JHT to re-survey with an indication of costs or commission a defined individual with proven competence to undertake this discrete task. The next step will be to seek clarification of the preferred route with Jersey Heritage Trust to ensure the most efficient route is found. In addition the work programme will need to agree priorities and the most efficient way of conducting the survey across 24 months. These discussions would be apposite alongside discussions of the amended Service Level Agreement in 2009/2010.

Appendix 1

Revised Registration Criteria

Principles for Listing as Sites of Special Interest: Buildings

Sites of Special Interest are defined as buildings and places of 'public importance', having 'special archaeological, architectural, artistic, historical, scientific or traditional interest' (Planning and Building (Jersey) Law 2002, Art 51(2) (b)), or a combination of these.

The relevant general criteria used to inform a decision to register a building, structure or place are:-

Archaeological interest: Where the fabric of the building and the land beneath and around it, which is the primary document for its history and antecedents, contains, or can be expected to contain, unique and valuable evidence about its development, and the culture which produced it, which can be understood through systematic investigation. This will be an important consideration for any building originating before about 1800, and tends to increase with age. It can also be important for some more recent industrial buildings, where the rate of change tends to be rapid, in response to technological change, the evidence for which often remains encapsulated in the fabric. Archaeological interest can be increased by the building's association with a larger archaeological site.

Architectural interest of the exterior: Where buildings are of special interest for their architectural design or style, artistic decoration, craftsmanship, composition, or use of materials and details, whether it be in the vernacular tradition, or as a result of conscious design. Such architectural interest may be enhanced by the contribution of the building to a larger group, or to a townscape or rural setting, or its role as a landmark.

Architectural and scientific interest of the structure: Where the structure of the building contributes significantly to its special interest, because of its distinctive character (for example, the traditional timber-framed interior structure of some warehouses) or technological innovation or virtuosity (for example, the early or experimental use of particular materials or techniques, like cast iron roofs in the early 19th century, or reinforced concrete before the early 20th), whose interest may not necessarily be expressed in high aesthetic quality.

Architectural or traditional interest of the plan form: Where the internal plan form contributes significantly to the special interest of the building, by virtue of its distinctiveness, innovation, or ability to shed light on the cultural traditions of Jersey. The latter will normally be important in domestic buildings dating from before 1700, and in many cases in those dating from before 1800.

Architectural or artistic interest of the interior: The survival of substantially complete domestic rooms from before 1700, the major elements of historic interiors from before 1840, and domestic interiors of particular quality and interest of later date, are likely to justify Listing, as are the existence of works of art, sculpture, carving etc which are integral and fixed elements of the design or decoration of historic interiors.

Historical interest: Buildings which illustrate significant aspects of or innovations in Jersey's social, economic, cultural or military history, or where there is close, documented, historical association with significant people or events. This includes interiors associated with such a significant event, or occupation or use by a key figure in the Island's history, particularly when the interior concerned has survived with little significant change.

Scenic and group value, particularly where a group of buildings together, or an individual building in its landscape setting, comprise a formal or informal ensemble whose collective quality is more than the sum of the parts.

Assessment Procedure and Detailed Registration Criteria

For a structure, site or space to be registered as a Site of Special Interest the following criteria will be used to assess each case on its merits. There will be a logical assessment made which will test whether the standard is met. The issues taken into account will include:

- How old is the building?
- What is the history of the site and why is this of interest?
- What type of building is it and how unusual or common is this?
- An assessment of all aspects of the physical building leading to an appreciation of its architectural interest
- Are there any important historical associations?
- What is the landscape / setting of the building and how does this assist / impact on its interest?

Special Historic Interest

To be registered a building, structure or place must demonstrate special historic interest. The assessment undertaken will define this special historic interest.

The building, structure or place will need to fit the general principles above to ensure it is a representative example of its type, age, style and quality. The detailed criteria will be the final test applied. This will ensure that a registered building has gone through a rigorous and robust process to ensure the level of protection offered is appropriate and protects the best examples of the extensive range of heritage on the Island.

Age - the older a building is and the fewer of its type that survive the more likely it is to present a special interest. Age is a major factor in the evaluation process and period definitions are given to aid the assessment but are not intended to be watersheds.

- All buildings and structures erected before 1700 which are of notable quality and survive predominantly in their original form are likely to be registered.
- Buildings and structures erected between 1700 to 1850 survive in their original form and which are of a definite character either individually or as part of a group are likely to be registered.
- As the survival rate increases after 1850 greater selectivity will be applied to take account of intactness, lesser rarity and relative age. Architectural quality, or the extent to which particular buildings or types define or make a major contribution to local character and identity, or represent the tangible legacy of formative trends, trades or events, become more significant and are likely to be registered.
- Those erected after 1945 of exceptional quality or importance may be registered. Buildings less than 30 years old will only very rarely be registered, if they are of outstanding quality intact and of definite architectural quality and/ or and under threat.
- Well documented association with important people or events, where the fabric is also of some quality can add weight to the possible registration. It is however essential that the information is accurate and dependable.

It is important to recognise that most historic buildings are the product of incremental change through many generations – this is not necessarily a bad thing and the key is to assess whether that change has been detrimental or is now part of its interest

In assessing a building, structure or place the extent the original intrinsic interest of the building has been compromised by damaging change will be important as will be the quality and sensitivity to the historic context of later additions

Rarity - To be of special historic interest a building or structure must illustrate important aspects of Jersey's social, economic, cultural or military history and / or have close historical associations with important people or events in the

Island's history. Where the interest relates primarily to a person or event, the fabric should also have some special interest in its own right.

Aesthetic merits – The appearance of a building or structure, both its intrinsic architectural merit and any group value, for example, does it comprise an important architectural or historic unity (e.g. a farmstead) or is it a fine example of planning (e.g. a town terrace) is a key consideration in judging registration. In some cases the special interest of a building will not be expressed in obvious external visual quality. Buildings or structures that are important for reasons of technological innovation, or as illustrating particular aspects of social or economic history may be registered in their own right. In other cases the setting of a structure can offer additional support to a registration proposal especially if the historic context is intact and relevant.

Selectivity – When there are a group of geographically diverse structures of buildings which qualify for registration on the strength of special architectural interest multiple examples may be registered. However, a building may be listed primarily because it represents a particular historical type in order to ensure that examples of such a type are preserved. Registration in the later case is comparative and needs to be selective, with only the most representative or significant examples included.

Special artistic interest –When the building, structure or place has artistic interest, that is elements of the building demonstrate conscious use of skill and creative imagination then this may be registered. Examples may include painted interior of churches, decorated stonework or other craft manifestations.

Technology - to be of special architectural interest a building or structure must be of importance in its design, decoration or crafts, or must display particularly important examples of building types or technique, technological innovation or virtuosity. The use of exceptionally fine materials and / or decoration adds weight to a case for registration.

Vernacular - examples of local vernacular buildings and structures that meet the some of the other criteria above will normally be registered because together they uniquely illustrate the importance of Island traditions in type, material and form and often use.

Architectural innovation - the best examples of various styles of polite architecture and design that meet the some of the other criteria above will normally be included as they show how building and design here has been influenced from elsewhere and has developed locally. Such buildings etc may well include works by known and respected architects and designers.

Plan form - may not be evident from the exterior but often serves to explain the way in which buildings and groups were meant to function and can be an important element in the overall interest of the building, structure or site.

Interior design and detailing can add to the case for listing. The survival of for example skirting boards, plasterwork, dado rails, chimneypieces, staircases, doors and architraves, wine cellars, shop and pub fittings and similar elements may well contribute to the character of the whole and support registration. Evidence of structural or material innovation

Setting - the context in which a structure sits can be a critical factor in its evaluation. A structure, whose setting has changed adversely, removing the original contextual character, has a weakened case for inclusion.

State of repair – The state of repair of a building or structure is not a relevant consideration when deciding whether a building meets the test of special interest.

Appendix 2

Archaeological Registration Criteria

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 site or building, both in Jersey and beyond.

Documentation: the significance of a site or building may be enhanced by the existence of records of previous investigation or, in the case of more recent sites or buildings, by the supporting evidence of contemporary written records

Group Value: the value of a single site or building (such as a field system) may be greatly enhanced by its association with related contemporary sites or buildings (such as a settlement and cemetery or with sites or buildings of different periods). In some cases, it will be preferable to protect the complete group, including associated and adjacent land, rather than to protect isolated sites or buildings within the group.

Survival/Condition: the survival of a site or building'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 sites or buildings can be destroyed by a single ploughing or unsympathetic treatment (The Threshold Effect).

Diversity; some sites or buildings 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 or buildings 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 fortifications 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 buildings 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 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. 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, where there is a greater quantity and concentration of archaeological evidence, 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 or contained by the fabric of more recent development. 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 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 identified and defined on a map base issued as supplementary planning guidance - 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; where there are find spots of limited artefact evidence, or where other documentary evidence might indicate the potential existence of archaeology. 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;

Limited artefact and documentary evidence: AAPs may also be defined on the basis of evidence which suggests the potential for archaeological remains.

This might include find spots of limited artefact evidence, field names or old maps which indicate the potential presence of earlier land use or structures;

Building age or type: AAPs may be defined in association with the registration of buildings or particular building types, such as industrial or military structures where there is the possibility that the fabric of an older building may be incorporated within more recent construction or where it may lay beneath the current building or site.

Appendix 3

Code of Practice for Procedures to enact Ecclesiastical Waived Consent

The Minister decided to introduce a new procedure to allow identified religious denominations who own and/or manage Registered Buildings on the Island to remain largely free of the need to apply for formal consent to carry out works to their buildings. This mirrors a system used in the UK since 1913, amended in 1994.

Under Jersey Law a complete exemption from Ministerial and secular planning control is not available. The Minister can however waive the right to ask for planning consent so long as the procedures and measures taken by the Denomination are robust, fair, transparent, independent and rely on the views of experts in heritage. In all cases the Minister retains the right to “Call In” any proposals for works which may not be in the best interests of the Island’s heritage or its community.

The aim of this Ministerial Waiver is to ensure the conservation of historic places of worship whilst allowing them to change and adapt to the needs of 21st century worship. It is believed the best assessment of this need rests with the Church. However the special character of the Registered Building must remain at the forefront of this thinking and any changes proposed and enacted must respect the historic character of the building and its setting.

This Waiver will not apply to the complete or substantial demolition of a building or a structure within its curtilidge. Significant changes to the external character of the building, extension or other major development will not be subject to this Waiver and will require secular Planning Consent. The aim is to waive the need for SSI Consent alone.

The following sets out the requirements of the decision making process needed for Denominations to be able to use the Ministerial Waiver for their buildings in use for worship.

Advice Giving Body

There will be an organised body of people who are called upon to advise the denomination on its proposals for changes to places of worship with a level of expertise to balance the secular, heritage and ecclesiastical needs.

Provision of Expert Advice

There will be the provision for expert heritage and design advice which will be given due weight in reaching decisions on change in Registered Buildings.

Public Engagement

The system to manage change in Registered Buildings will have provision for the public's input and ability to comment on the proposals at hand. These representations will be considered as part of the decision making process.

Formal Consultation of Interested Parties

At an early stage in the developing the proposals engagement with Interested Parties will be required. Whilst this list can be determined by the Denomination in all cases the Historic Environment Team will be consulted to ensure the Minister is made aware of works in development.

In developing the proposal a competent person, in many cases this will be a heritage architect, will ensure clear understanding of the changes proposed. These will have been discussed with Interested Parties whose responses will be considered by the Advice Giving Body in their deliberations.

External Validation and Challenge

The system will allow for external validation and challenge at the request of the Minister of Planning and Environment. The Minister will retain the right to remove the Waiver should the processes agreed at the start not continue with due rigor and control.

Decision making process

There will be a decision making process that is fair, robust and transparent. The decisions will be taken by those independent of the Incumbent, but will take account of local, ecclesiastical and the advice giving body.

Ministerial Consideration

At the point proposals are clear and a decision is sought the Minister will be consulted. The Minister will consider the proposals using the following system:-

- i) to agree the proposals and issue a Ministerial Waiver which would negate the need for SSI consent.
- ii) to agree the proposals and issue a Ministerial Waiver which would negate the need for SSI consent, but seek agreement on detail via condition
- iii) to call in the proposal and in effect seek full SSI consent
- iv) to seek amendments or further work

The point of confirmation of the Waiver will depend on each denominations processes. As full exemption cannot be achieved this system retains Ministerial control. However those denominations that have set up the systems outlined above would rely upon a general presumption in favour of securing the Ministerial Waiver.

NB: Given the involvement of the Historic Environment Team in developing the proposals this process will be an internal formal consideration using current Ministerial management arrangements. There will be a commitment to ensure proposals are dealt with in an effective manner so that in general the expectation of a Waiver can be relied upon, but the Ministers discretion is maintained.

In all cases the Church can choose to use the secular system if this would suit their planning need more.

Appendix 4

Protocol for Management Agreements for Major Heritage Assets

A full set of guidance will be produced to ensure owners of significant portfolio's or Registered Buildings or a complex Registered Building can seek a Management Agreement with the Minister for Planning and Environment.

This agreement will define future maintenance matters, programmed works and other foreseen estate management practices to allow this work to proceed to agreed quality standards, working practice using approved materials and methods without the need for multiple SSI Applications for consent. The Management Agreement will be used to agree a pre-cursor full SSI consent for a defined time period, not more than 5 years, with the right of either party to withdraw from the Agreement in the event of irresolvable differences.

A Management Agreement will cover areas such as:-

- Routine maintenance and repair of windows, doors and fittings
- Rolling programmes of repair to walls and structures
- Landscape management, including vegetation control
- Re-pointing and other works to masonry walls
- Roofing works
- Survey and agreed enabling works

This is by no means an exhaustive list. Works are requirements will be assessed on a case by case basis.

To ensure the Management Agreement is drafted in full cognisance of the special interest of the building a full assessment of the built heritage, its significance and a relevantly detailed point in time record of the structures will be required. This will usually be in the form of a Conservation Plan. Following on from this an agreed schedule of works, full specifications and working methodology will be developed. This will all then form part of the Agreement.

This should give estate managers certainty, ensure competent care of the historic environment and allow for the proper planning of maintenance schedules and other interventions. It will also assist in the streamlining of the planning process by minimising similar and non-contentious applications in agreement with responsible building owners and managers.

This scheme is not designed for individual building owners, or for structures that can be ordinarily dealt with under the existing planning frameworks.

Appendix 5

DS MD-PE-2007-0150

APPENDIX 6

MS OFFICE – PROJECT PLAN GANTT CHARD

The Microsoft Office Project file is on the L:\ Drive and is linked here:-

[Designation Review 2009.mpp](#)