

Historic Environment Review

December 2020



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It is not intended for and should not be relied upon by any third party and no responsibility is undertaken to any third party.

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Executive Summary

In 2019 Jersey's Minister for the Environment launched the Island Plan Review, with a view of developing a new 10-year Island Plan for the 2021 to 2030 period.

To inform the Island Plan Review, the Government of Jersey has commissioned Arup to undertake a comparative review of the Island's historic environment protection regime. The review aims to:

- assess the comprehensiveness, robustness and competence of the current historic environment protection legislation and policy framework under the 2011 Island Plan and other published guidance;
- assess the implementation and use of the existing tools provided for the protection of the historic environment regime in identifying and designating assets and the extent of regulation of change and the relative weight given to the same;
- assess the availability of information about the historic environment and availability of resources in support of the protection regime in the round; and
- formulate recommendations for legislation, policy and practice changes where the current framework is identified as deficient, absent or could be strengthened to align with established or emerging good practice elsewhere.

Sections 2 to 5 of the report comprise a baseline overview of the types of historic assets which make up Jersey's rich historic environment; the current legal framework, both international and national; the existing planning policy framework relating to the historic environment; and, the current processes in place for managing change in the historic environment including the process of identification and designation of heritage assets.

In Section 6 the report analyses the efficacy of each of these processes. This analysis is informed by quantitative and qualitative data gained from stakeholder engagement. The review has also been informed by a comparator analysis including examples of best practice.

The report concludes with Section 7 in which suggestions of areas for change and recommendations for the future development of the legislative and policy framework, management and resourcing are presented. The recommendations address issues identified in Section 6. These issues, along with the corresponding summary recommendations, are as follows:

Legislation	
<i>Issue 1:</i> Protection of underwater heritage. Is there a need for a wreck and salvage act?	<i>Recommendation:</i> Jersey would benefit from an Underwater Heritage Law. The law would be most effectively be framed in terms of the principles of the 2001 UNESCO Convention. The law should frame protection clearly in terms of heritage interest and would offer the opportunity to move away from a focus on the commercial elements of wreck and salvage law.

	<p>The priority afforded to enacting such a law should be determined as part of the development of an overarching Heritage Strategy.</p> <p>Pending an introduction of an Underwater Heritage Law, protection could be afforded by designating wreck sites as Listed Places with archaeological interest.</p>
<p><i>Issue 2:</i></p> <p>Management of change affecting Grade 4 listed buildings</p>	<p><i>Recommendation:</i></p> <p>Amend the legal framework to provide an exemption to the requirement for permission for works to the interior of a Listed Building Grade 4 which would not affect the special interest of the building – thereby removing the requirement for permission for internal works to Grade 4 listed buildings, as these have no interior features of special interest.</p> <p>It is recommended that this be accompanied by a statement published on the website, to clarify the most up to date position on this issue.</p>
<p><i>Issue 3:</i></p> <p>Spatial extent of protection</p>	<p><i>Recommendation:</i></p> <p>Amend GDO to refer consistently to ‘the building or its curtilage is or forms part of a Listed Building or Place or a potential Listed Building or Place or is in a Conservation Area’, thereby extending control and ensuring consistency of regulation.</p> <p>Introduce additional categories of exceptions for works that fall within the above category; for example exempting changes which are reversible, ephemeral or temporary.</p> <p>Introduce additional conditions to better regulate change. For example, it is recommended that a further condition be introduced to Part 3, Class F requiring replacement doors and windows to be similar in appearance to that which they are replacing. This would assist with the conservation of heritage assets.</p> <p>It is recommended that detailed guidance on the application of the revised permitted development rights and their application be provided in a practice note – such as the Permitted development rights for householders Technical Guidance in the UK.</p>
<p><i>Issue 4:</i></p> <p>Portable Antiquities/Treasure</p>	<p><i>Recommendation:</i></p> <p>Consult with stakeholders to develop a workable Heritage and Antiquities Law which protects the interests of all parties as far as possible.</p> <p>Consider how a Heritage and Antiquities Law might focus on heritage interest rather than precious metal content.</p> <p>Consider whether it might be beneficial to introduce a licensing system and whether such a system might extend to metal detecting and archaeological investigation.</p>
<p>Policy</p>	
<p><i>Issue 5:</i></p> <p>Policy HE1 Listed Buildings and Places</p>	<p><i>Recommendations:</i></p> <p>Put heritage central to the wider Island Plan’s focus on achieving sustainable development – that protecting heritage is about future generations and how the historic environment contributes to the</p>

<p>(including GD1(2), SP4)</p>	<p>island's identity (and associated focus of the emerging Plan on placemaking). Make the overarching requirement to protect heritage in objective HE 1 part of the policy itself. Heritage objectives need to be balanced with sustainability objectives such as energy efficiency.</p> <p>Ensure consistency of terminology across plan policies, with regard to case law where this is helpful – (harm, impact, preserve, special interest, enhance etc.) and where language differs, that there is a reason for this.</p> <p>Remove 'presumption in favour of the preservation of architectural or historic character' if this is already covered by strategic or general development policies on character, and for townscape, this will be covered by Conservation Areas.</p> <p>Amend policy (or supporting text) so that proposals involving the loss or harm to Listed Buildings or Places or their special historic or architectural interest or their setting will be refused except in (very) exceptional cases. In order to demonstrate that the case is exceptional, the applicant would have to prove 'overwhelming public interest' and/or significant viability issues.</p> <p>Consider making policy provision for the positive reuse of buildings of heritage interest where the special architectural or historic interest will be preserved or enhanced.</p> <p>Reflect appeal inspectors' reports and court judgements on understanding of setting in Jersey context (this may be better suited to SPG, with reference in supporting text).</p> <p>Address the issue identified by inspector on Keppel Tower appeal that the policy does not allow for a neutral change to setting of listed building, because preserve means 'keep unchanged'. Alternative wording could be 'preserve or enhance' for the listed building, and 'avoid harm to' for setting.</p> <p>The opportunities afforded by the additional information made available by the HER could be used to expand the range of listed places with archaeological interest. Similarly a review of existing Listed Places with archaeological interest could be undertaken where the extent of interest could be more extensive than formerly understood – for example where they form part of post-medieval burial grounds</p> <p>The future development of planning policy for the historic environment would benefit from being set within the context of an overarching strategy for heritage in Jersey.</p>
<p><i>Issue 6:</i></p> <p>Policy HE2 Protection of Historic Windows and Doors</p>	<p><i>Recommendations:</i></p> <p>Reflect the approach in the 'decision tree' in Appendix 2 of the SPG within the wording of policy and within the reasoned justification .</p> <p>Ensure that the reasoned justification is explicit with regard to the link between the retention of historic features and sustainability and expresses a presumption in favour of retention, along with support for appropriate energy efficiency enhancement measures.</p>

	<p>Reword policy to allow applicants to demonstrate that the existing window does not contribute to the significance or special interest of the asset, even if it is historic.</p>
<p><i>Issue 7:</i></p> <p>Policies HE3 and HE4 Conservation Areas</p>	<p><i>Recommendations:</i></p> <p>Heritage must be placed as a central element to the wider Island Plan's focus on achieving sustainable development – that protecting heritage is about future generations.</p> <p>It is recommended that 'seek to' is removed from the policy wording, as this increases certainty. The tightening of the wording would ensure consistency in approach and provide greater clarity for applicants.</p> <p>It is recommended that area-based protection, in the form of Conservation Areas, is introduced through legislative change supported by appropriate policy and guidance (for example through Conservation Area Appraisal).</p>
<p><i>Issue 8:</i></p> <p>Policy HE5 Archaeology</p>	<p><i>Recommendations:</i></p> <p>Amend the preamble to this policy to include a section on the definition and purpose of Areas of Archaeological Potential.</p> <p>Para 3.43 states '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' - a definition of 'important' would help in decision making.</p> <p>Define, in updated SPG, how the importance of archaeological remains is to be assessed.</p> <p>In view of the undeveloped nature of guidance on setting it is likely that there will be particular problems in dealing with the setting of buried archaeology (possibly for inclusion in a specific SPG on setting).</p>
<p><i>Issue 9:</i></p> <p>SPG Policy Note 1- Archaeology</p>	<p><i>Recommendations:</i></p> <p>A section on what is expected of desk based assessments, evaluations and excavations would be helpful – it would also save effort in producing individual briefs. A simple report contents list could be sufficient.</p> <p>Greater clarity in the difference between SSI and AAP would be helpful.</p> <p>Reference to policy should be brought up to date.</p> <p>Links could be provided to the online schedule with an explanation of mapping conventions and an explanation of the rationale of how the limits of the protected areas have been defined.</p> <p>Guidance on approaches and procedures to the treatment of human remains should be added – including identification of potential to encounter remains need to be addressed at the assessment stage.</p> <p>Signposting to the HER should be included and a requirement to consult it when undertaking any assessment work.</p>

	<p>A requirement to notify the HER of the results of archaeological work should be made explicit in the SPG in order to tie in with requirements laid out in the briefs issued by the Historic Environment Team.</p> <p>Clarification of the long-term responsibility for excavation archives should be added to the SPG.</p>
Process	
<p><i>Issue 10:</i></p> <p>Interpretation and application of heritage-specific policy</p>	<p><i>Recommendations:</i></p> <p>It is recommended that policy be amended to provide a clearer framework for decision-making when proposals involve harm to, or demolition of, listed buildings. This will provide certainty to applicants and help with consistency. In addition, a clearer framework would help to improve public perception of the way viability is treated in relation to heritage.</p> <p>Viability assessments which should be required and should be made publicly accessible. The requirement for these should be enshrined through publishing a practice note and, enforcing this requirement through development control processes, it could become a validation requirement. There should be greater transparency with regard to the assessment of viability in heritage-related cases.</p> <p>Ensure an on-going programme of training for all officers, with specific focus on heritage and viability.</p>
<p><i>Issue 11:</i> Designation of listed buildings</p>	<p><i>Recommendations:</i></p> <p>Consider promoting a publicly accessible online system which allows anyone to submit recommendations for listing a building or place, such as Historic England's function to 'Apply for Listing' on their website.</p> <p>Designation process to include consultation with owners, applicants (if put forward by member of the public), and wider public to capture oral history/ communal values etc.</p>
<p><i>Issue 12:</i> Resourcing</p>	<p><i>Recommendations:</i></p> <p>It is clear that resourcing levels are presently unsustainable and do not provide the resilience required.</p> <p>It is recommended that resourcing be enhanced through training and reviving deleted posts, to increase resilience and allow for a more proactive service provision.</p> <p>Prioritisation of resource requirements should establish where the need is greatest and would ideally be guided by an overarching strategy - for example support for current function in order to provide capacity and resilience might be first priority; expansion of professional resource to cover aspects such as marine archaeology and outreach which are currently un-resourced might be second; and establishing a field archaeologist post, where there is current provision, albeit outsourced, might be third.</p>

Engagement with stakeholders was a key component of the methodology used in the review. The engagement plan and list of stakeholders consulted can be found at Appendix A. Appendix B details the sources consulted. The results of the initial online questionnaire can be found at Appendix C. Output from the workshop which examined the emerging conclusions from the baseline analysis can be found at Appendix D.

1 Introduction

1.1 Background

In 2019 the Minister for the Environment launched the Island Plan Review Programme, with a view of developing a new 10-year Island Plan for the 2021 to 2030 period. However, the impact of the Covid-19 pandemic has meant that it is no longer possible to deliver this 10-year Island Plan as was originally envisaged. To best respond to the current context, a shorter-term ‘bridging’ plan will exist between the two longer-term plans (the current Island Plan 2011 to 2020; and a future Island Plan 2025 to 2034).

To inform the Island Plan Review, the Government of Jersey has commissioned Arup to undertake a comparative review of the island’s historic environment protection regime. The objective of the review is to inform the creation of the most robust and appropriate planning regime for protecting Jersey’s heritage in all its aspects.

Whilst the focus of the review is on how the historic environment is managed as part of the planning system, the review took place in the context of a developing and more wide-ranging cultural heritage strategy for Jersey¹ and work on island identity.²

1.2 Aims of the Review

The review aims to:

- assess the comprehensiveness, robustness and competence of the current historic environment protection legislation and policy framework under the 2011 Island Plan and other published guidance;
- assess the implementation and use of the existing tools provided for the protection of the historic environment regime in identifying and designating assets and the extent of regulation of change and the relative weight given to the same;
- assess the availability of information about the historic environment and availability of resources in support of the protection regime in the round; and
- formulate recommendations for legislation, policy and practice changes where the current framework is identified as deficient, absent or could be strengthened to align with established or emerging good practice elsewhere.

The review has sought to identify whether the present arrangements are suitably resourced and enable the Government of Jersey to meet its obligations under international treaties dealing with the historic environment.

¹ A cultural heritage strategy paper has been commissioned by Jersey Heritage which is due to be delivered in late 2020.

² Information on the Island Identity Policy Board can be found at <https://www.gov.je/Government/PolicyDevelopmentBoards/Pages/IslandIdentityPolicyBoard.aspx>

It has also examined whether the existing arrangements are fit for purpose in balancing the need to protect the historic environment against achieving sustainable development in the island.

A comparative assessment of best practice in the management of the historic environment has informed the recommendations.

1.3 Structure of the Report

This report first provides an overview of the types of historic assets which make up Jersey's rich historic environment; buildings, landscapes/townscapes, archaeology (including treasure) and underwater archaeology.

The report then examines the current legal framework relating to each of these parts of the historic environment, both international and national.

Next, the report looks at the existing policy framework, specifically the planning policy framework relating to the historic environment. Other relevant Government strategies or policies are examined briefly, to establish if these align with the planning framework.

Following this, the report looks in detail at the current processes in place for managing change in the historic environment; the process of identification and designation, the process of policy formulation and the decision-taking/development regulation process.

Once this baseline situation has been established, the report then analyses the efficacy of each of these processes. This analysis is informed by quantitative and qualitative data gained from the stakeholder questionnaires³ and detailed interviews. Where relevant, data and summary views are included in the analysis of Jersey's processes and procedures. Similarly, the analysis has been informed by a comparator analysis. Where relevant, details of difference and examples of best practice from these comparator studies are incorporated into the analysis presented.

Lastly, the report concludes with two discursive sections. Section 6 addresses 'Issues for Discussion' which serves to highlight those matters which benefit from more detailed consideration and potential change. This is followed, in Section 7, by suggestions of areas for change and recommendations for the future development of the legislative and policy framework, management and resourcing.

Throughout the report, key information is highlighted in coloured boxes to guide the reader. Blue boxes provide a summary of stakeholder feedback, while green boxes summarise relevant findings from the study of comparators. White boxes with bold text summarise the key conclusions relating to that section, and which inform the recommendations in Section 7 of the report.

³ Analysis of questionnaire responses can be found at Appendix C

1.4 Methodology

Based on the brief provided from Government of Jersey a methodology and engagement plan was developed. This sets out how the assessment would be undertaken and the approach to engaging with stakeholders. The methodology and engagement plan is included at Appendix A.

1.4.1 Baseline Preparation

This stage comprised the following work strands:

- **Review of existing historic environment protection regime.** This took the form of a desk-based study of material, a full list of which is provided at Appendix B.
- **Assessment of comparators.** Guernsey, Isle of Man, and the Unitary Authority of Bournemouth, Christchurch and Poole Council⁴ were assessed in terms of current policy and practice. The Institute for Historic Building Conservation (IHBC) was engaged to benchmark UK best practice. These comparator authorities were selected as similar island jurisdictions in the case of Guernsey and the Isle of Man. Bournemouth, Christchurch and Poole Council was selected as similar in its rural and urban mix with comparable development pressures. Specific comparison has been made to practice in Ireland in respect of protection to historic windows and doors.
- **Stakeholder engagement.** Stakeholder engagement was key to understanding how the existing heritage protection regime is experienced by those working with the planning system in Jersey. Engagement was conducted through a number of means including digital questionnaire,⁵ email and telephone interview. In selecting stakeholders an attempt was made to ensure that as wide a range of interested parties as possible was consulted. These included developers, professional service providers (architects and planning consultants), government officers and representatives of heritage interest groups, including metal detectorists.⁶

1.4.2 Developing Recommendations

Issues identified in the baseline review were shared with the Government of Jersey and tested at a stakeholder workshop. The workshop took place online, hosted and facilitated by Arup. The findings of the workshop were incorporated into the recommendations and addressed: legislation, policy and guidance, management of assets and resourcing.

⁴ The preparation of a new Local Plan covering Bournemouth, Christchurch and Poole is underway. The consolidated Bournemouth Christchurch and Poole Local Plan will replace the existing Local Plan documents adopted by the preceding three Councils but, at present, the Poole Local Plan (adopted 2018) is the statutory development plan for Poole. Poole is the preferred term used throughout the remainder of this document.

⁵ Charts summarising the responses to the questionnaire can be found at Appendix B

⁶ A list of the stakeholders who responded to the invitation to participate in the engagement exercise is given at Appendix A.

2 Jersey's Historic Environment

2.1 Sites of Special Interest (SSI)

Buildings and places are listed in Jersey because they have a special interest that is of public importance. Most of these assets will be listed because they are of special historical or architectural interest, and others may have archaeological or cultural significance. In some cases, heritage assets may have more than one form of special interest.

The Jersey Heritage Trust acts as the Government's principal adviser on the heritage value of buildings and places in the island. They carry out this work through an agreement with the Government of Jersey.

2.2 Buildings

As part of the designation of sites of special interest, buildings of special archaeological, architectural, artistic, cultural or historic value in Jersey are designated as listed buildings. Currently there are over 4,300 listed assets in Jersey (including listed buildings and places). Historic buildings represent around 7% of the total building fabric in the island⁷.

Each listed building or place has an official designation description and plan, which is hosted and made publicly available on the Government of Jersey website⁸. An edited version of the record is also kept by Jersey Heritage and a version is made publicly available through the Historic Environment Record (HER).

There are four non-statutory grades at which a building or place is listed in Jersey. The grading system gives an indication of significance, and is structured as follows:

- Grade 1 - Buildings and places of exceptional public and heritage interest to Jersey and of more than island wide importance, being **outstanding** examples of a particular historical period, architectural style, building type or archaeological site.
- Grade 2 - Buildings and places of special public and heritage interest to Jersey, being important, **high quality examples** of a particular historical period, architectural style, building type or archaeological site, that are either substantially *unaltered or whose alterations contribute* to the special interest.
- Grade 3 - Buildings and places of special public and heritage interest to Jersey, being **important, good quality examples** of a particular historical period, architectural style, building type, or archaeological site; but *with*

⁷[https://statesassembly.gov.je/assemblyquestions/2019/\(137\)%20con%20buchanan%20to%20env%20re%20use%20of%20energy%20efficient%20measures%20on%20listed%20buildings.pdf](https://statesassembly.gov.je/assemblyquestions/2019/(137)%20con%20buchanan%20to%20env%20re%20use%20of%20energy%20efficient%20measures%20on%20listed%20buildings.pdf)

⁸ <https://www.gov.je/citizen/Planning/Pages/HistoricEnvironments.aspx>

alternations that reduce the special interest and/or have particular elements worthy of Listing.

- Grade 4 - Buildings and places of special public and heritage interest to Jersey, being **good** example of a particular historical period, architectural style or building type; but defined *particularly for the exterior characteristics and contribution to townscape, landscape or group value.*

A large number of the listed buildings are under care of local heritage organisations, as follows:

- 170 sites owned by the National Trust for Jersey, including 30 historic buildings;
- 17 buildings / sites owned by the Société Jersiaise;
- 32 buildings / sites under the management of Jersey Heritage; and
- 21 buildings / sites under the management of Channel Islands Occupation Society.

2.3 Landscapes / Townscapes

Currently, there are no designated Conservation Areas in Jersey. However, Grade 4 listed buildings and places are defined particularly for their exterior characteristics and contribution to townscape, landscape or group value.

The list of sites of special interest includes listed places as well as buildings. The listing of these places conforms to the same system of the listing and, therefore, enjoy the same protection afforded to listed buildings. These listings cover a range of features such as street surfaces and finishes, intertidal peat beds and designed landscapes. In some instances, sites defined as listed places can embrace a wide area.

In addition, the Jersey Coastal National Park covers 1,925 hectares of the island. The Coastal National Park embraces all those parts of the island that are of highly sensitive and valuable landscape quality which are vulnerable to change and damage and warrant the highest level of protection against development. It was established to conserve and enhance the natural beauty, wildlife and cultural heritage of Jersey's special areas and to give everyone the opportunity to understand and enjoy its qualities.

In relation to the historic environment, the distinctive character of the Coastal National Park is evidenced by the wealth of historic environment features. Buildings that represent the farming tradition, fortifications, harbours as well as a wealth of archaeological sites demonstrate the long human settlement of the coastal areas and centuries of human intervention in the landscape.

The Design Guidance for St. Helier (2013) Supplementary Planning Guidance (SPG) provides overarching design principles for consideration during development within the town, and a set of guidelines for each of the defined character areas within St Helier. Each of these sets of guidelines contains a subsection which identifies the existing built heritage assets or specific aspects of the character areas which are significant in terms of the historic environment.

2.4 Archaeology (Including Treasure, Underwater Archaeology and human remains)

Jersey has a rich archaeological heritage of remains dating from the earliest prehistory to the 20th century. Archaeological remains are included in the statutory list of sites of special interest. The use of a single designation system to protect all aspects of the historic environment represents a more holistic approach than that employed in some of the comparator jurisdictions.

The list of sites of special interest includes 114 listed places designated for their archaeological significance (41 listed at grade 1, 58 at grade 2 and 15 at grade 3). There are also 98 areas of archaeological potential (AAP). These AAP have been defined where there is considered, from documentary or place-name evidence, to be some archaeological value. Where planning applications fall within the boundary of an AAP, some form of archaeological evaluation is required.

A review of sites of archaeological interest was undertaken in 2008 on the basis of known archaeological evidence at that time. The majority of listed places with archaeological interest are of prehistoric date, reflecting the quantity and importance of surviving monuments of this period in Jersey. An example of a grade 1 listed place with archaeological interest is La Cotte de St. Brelade (BR0255) an internationally significant site with important Neanderthal remains. Remains of other periods are also protected as examples of monument types which are rare survivals in the context of Jersey, for example the medieval strip fields at La Rue de la Campagne (OU0046) are also grade 1 listed.

Whilst archaeological sites were included in the recent review of listed buildings and places the subsequent development of the HER has highlighted the potential for further designations. Other areas of potential archaeological interest, including the island's mill heritage; and underwater archaeology have also been identified since as areas of potential for further designation.

Stakeholder feedback included comment to the effect that archaeological sites needed to be reviewed in the same way that buildings had been in the period up to 2018. Additional resource may be required in order to consolidate the archaeological knowledge base to the same level as that for the built environment.

Jersey has a notable concentration of hoard find sites the most recent example of which was made at Grouville in 2012. Also referred to as the Le Catillon II hoard the find comprised nearly 70,000 coins, 11 gold torcs and other gold and silver jewellery. Dating to the last decades of the first century BC it is the largest known find of its kind in Europe. Conservation of the find is now complete but determination of value and ownership has still to be fully resolved.

At present there is no equivalent of the UK Portable Antiquities Scheme (PAS)⁹. However, an informal agreement has meant that finds are reported to Jersey Heritage by those abiding by the code of practice of the Jersey Metal Detecting

⁹ <https://finds.org.uk/>

Society. Visiting metal detectorists are encouraged to abide by the code of practice.

Underwater archaeology in Jersey waters takes the form of shipwrecks, submerged landscapes and inter-tidal structures. The knowledge base for underwater archaeology is not well developed. The HER is a good starting point however most discoveries made in the last decade or so have yet to be published. Maîtresse Ile, Les Minquiers provides an example of a significant inter-tidal zone landscape with well attested prehistoric remains which has been listed for its archaeological interest.

Threats to underwater assets principally derive from natural erosional processes – trawling and inter-tidal zone exploitation are controlled; aggregate extraction and off-shore renewables are not a feature of development at the present (although as the climate change and sustainability agenda becomes more advanced this may change). A certain level of protection is *de facto* provided where underwater archaeological remains lie within the Marine Protected Areas. These cover approximately 150 km² (or 6.5%) of Jersey's total seabed area. Included within this are two important offshore reefs at Les Ecrehous (15 km²) and Les Minquiers (47.5 km²).

Human remains are from time to time encountered in the course of archaeological works. These have included Neanderthal remains from the internationally significant site at La Cotte de St Brelade as well as remains associated with later prehistoric and more recent burial sites. Several historic burial grounds have been designated as listed buildings or places, for example Macpela and Almorah cemeteries from the 1850s. Other burial grounds, now no longer active, include the Cimetiere des Mielles or Strangers' Burial Ground on which All Saints Church was established following closure of the burial ground in the early 1830s. Sites such as the Strangers' Burial Ground which are less well defined or protected may be subject to development pressure at a future date with consequent impacts upon the *in situ* burials.

3 Legal Framework

3.1 International Treaties/Obligations

The following conventions apply to Jersey in relation to the historic environment:

- European Cultural Convention (The Paris Convention) 1954
- Convention on the Protection of the Archaeological Heritage 1969
- Convention concerning the Protection of the World Cultural and Natural Heritage (The World Heritage Convention) 1972
- Convention for the Protection of the Architectural Heritage of Europe (The Granada Convention) 1985
- Convention on the Protection of the Archaeological Heritage (The Valletta Convention) 1992

The following heritage and historic environment-related convention has been adopted by the United Kingdom but does not apply to Jersey:

- Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict (1954)

The following heritage and historic environment-related conventions have not been adopted by the United Kingdom and do not apply to Jersey:

- UNESCO Convention on the Protection of the Underwater Cultural Heritage (2001)¹⁰
- Convention for the Safeguarding of Intangible Cultural Heritage (2003)
- Faro Convention on the Value of Cultural Heritage for Society (2005)

3.2 General Heritage Legislation for Jersey

Article 2(b) of the Planning and Building (Jersey) Law 2002 sets out an intention to protect sites, buildings, structures, trees and places that have a special importance or value to Jersey. This is given effect by Part 6, Chapter 1 which enables the Chief Officer (as defined) to maintain a list, called the List of Sites of Special Interest and to include, on that list, each building or place that has public importance by reason of its special archaeological, architectural, artistic, cultural or historical interest that attaches to it.

¹⁰ <http://www.unesco.org/new/en/culture/themes/underwater-cultural-heritage/2001-convention/>

3.3 Legislation Relating to Listed Buildings

3.3.1 Planning and Building (Jersey) Law 2002

This is the principal law in relation to planning and building and came into force on 01 July 2006¹¹. Part 3, Chapter 1, Article 5 sets out the definition of ‘development’. However, Part 6, Article 54 extends the requirement for permission for works affecting listed buildings and places that do not amount to development, but which adversely affect the special interest of the site. This is required because there is no separate legislative regime governing alterations to listed buildings. The law does not make specific reference to the preservation of the setting of listed buildings.

Article 19(2) of the law identifies that all development should be in accordance with the Island Plan unless there is sufficient justification for granting permission that is inconsistent with the plan.

Since its approval several orders have been made under the Planning and Building Law. The Law, therefore, should be read in conjunction with the orders listed below:

- Planning and Building (Display of Advertisements) (Jersey) Order 2006
- Planning and Building (Moveable Structures) (Jersey) Order 2006
- Planning and Building (Environmental Impact) (Jersey) Order 2006
- Planning and Building (Public Enquiries) (Jersey) Order 2008
- Planning and Building (Application Publication) (Jersey) Order 2006
- Planning and Building (General Development) (Jersey) Order 2011

Of particular note is the Planning and Building (Amendment No.6) (Jersey) Law 2014, which came into force on 10 March 2015. The Amendment introduced the right of appeal against decisions and actions taken under the law with the Minister for Environment making the decision on the appeal. It therefore amended the first tier of decision making and identified the Chief Officer as a first-tier decision maker. The Chief Officer delegates decision-making to other officers, as set out in the *Chief Officer decision-making protocol*. Decision-making procedures are examined in detail in Section 5.2 of this report.

3.3.2 Planning and Building (General Development) (Jersey) Order 2011

This order grants deemed planning permission for specific forms of development – known as permitted development. It is a key piece of secondary planning legislation in Jersey. The order splits development into eight categories of permitted development, which are then broken down further into classes:

- Part 1: Within the curtilage of or to a dwelling

¹¹ <https://www.jerseylaw.je/laws/revised/Pages/22.550.aspx>

- Part 2: Within the curtilage of or to a flat
- Part 3: Repairs, maintenance and minor works to land and buildings
- Part 4: Renewable energy
- Part 5: Development at industrial or similar premises
- Part 6: Development by providers of public services and utilities
- Part 7: Demolition
- Part 8: Changes of use

Most works are not permitted if the dwelling-house and other buildings and land is or forms part of a listed building or place.

Notwithstanding that there are currently no designated conservation areas, the order references conservation areas. It is notable that, at present, the provisions of Part 1, Classes A, E and F are applicable within conservation areas and, subject to the criteria and conditions being met, extensions, loft conversions and flues could therefore be erected without express planning permission being granted. This contrasts to the English system of permitted development which is more restrictive in terms of development that come forward within conservation areas without the need for planning permission to be secured.

A review of the order was commissioned by the Government in 2016. This review concluded that there was generally a mixed response to the provisions in the order; some respondents felt strongly that historical and architectural assets should be preserved and protected through a managed application process, and others felt that private individuals should be able to do more with their own homes without government interference. On the whole, people recognised that listed buildings and places are important, but some wanted to see more flexibility in how changes to these buildings are managed.

3.4 Townscapes

Part 6, Article 50 of the Planning and Building (Jersey) Law 2002 relates to sites of special interest. Within this, there is the provision for places, as well as buildings, to be listed. Grade 4 listed buildings and places are defined particularly for the exterior characteristics and contribution to townscape, landscape or group value. Grade 4 have external protection only, derived from policy and adopted by the Minister under decision reference MD-PE-2013-0058.¹²

However, legislation in relation to townscape of heritage value is limited in Jersey. The law does not currently contain any provision for the designation of conservation areas, as a form of area-based heritage protection: it is proposed that this law is amended to address this and work to effect this is in train.

¹²

<https://www.gov.je/government/planningperformance/pages/ministerialdecisions.aspx?docid=E5C523BD-5630-41A9-9EB0-1EED2D70FB76>

3.5 Archaeology

In 1996 UK law on treasure and portable antiquities was updated by the adoption of the Treasure Act. In Jersey practice remains based on customary law and convention. Definition of treasure remains essentially that of treasure trove and as a result concentrates entirely on objects of precious metal.

The Le Câtillon II Celtic coin hoard uncovered in 2012 is viewed as demonstrating that the current legislation in Jersey, as one stakeholder commented, ‘*out of step with modern requirements*’. In practice aspects of the Treasure Act have been applied in determining the recompense for the finders.

The Isle of Man was in a similar situation to Jersey until 2017 when it adopted the Isle of Man Treasure Act. The Act defines Treasure, including base metal objects found associated with precious metal objects and coins. Furthermore, there is a provision which extends the definition of Treasure to:

“any object which, when found, in the opinion of the Trust (Manx National Heritage), is —

(i) so closely connected with Manx history and national life that its loss would be a misfortune;

(ii) of outstanding aesthetic importance; or

(iii) of outstanding significance for the study of any branch of Manx art, learning or history.”

The Act also details the notification requirements when treasure is found and the circumstances in which a reward will be paid to the finder and others with an interest in the treasure.

The Planning and Building (Jersey) Law 2002 defines land for planning purposes as including land covered by water. As a result, the seabed out to the territorial limit is included within the remit of the 2002 law.

Under the Shipping (Jersey) Law 2002 it is an obligation that the finder of a wreck must inform the Receiver of Wreck of the find and its location. Failure to do so is an offence under the law and may result in the forfeit of any claim and a fine.

Additional protection from the effects of trawling is provided by the Sea Fisheries (Jersey) Law 1994.

Aggregate extraction is controlled by the Sea Breaches (Removal of Sand and Stone) (Jersey) Law 1963. In practice no licenses have been granted since the 1980s.

The Wreck and Salvage (Vessels and Aircraft) (Bailiwick of Guernsey) Law, 1986 provides a definition of historic wreck and makes provision for restricted areas around important wrecks. Three historic wreck sites within the jurisdiction of the Bailiwick of Guernsey have been the subject of Wreck and Salvage (Restricted Area) orders since the law was enacted.

In English waters The Protection of Wrecks Act 1973 applies. Section 1 of the Act allows for the protection of wreck sites that are considered to be of historical, artistic or archaeological importance. This allows the Secretary of State to designate a restricted area around a wreck site, in order to prevent uncontrolled interference. Management of wrecks protected under this section of the Act is the responsibility of Historic England.

In the event that human remains are encountered either during excavation or by chance find the discovery must be reported to the coroner. The function of coroner in Jersey is allocated to the Viscount though in most circumstances the Deputy Viscount actually functions as such. The legal framework relating to human remains includes the Inquests and Post-mortem Examinations (Jersey) Law 1995 and Inquests and Post-mortem Examinations Rules 1995. Other legislation may apply in the event that human remains are removed from Jersey for study elsewhere (for example the customs license required for removal of archaeological material for study off Island).

4 Policy Framework

4.1 Planning Policy – Island Plan 2011

The Island Plan is the primary planning policy document in Jersey, which has a ‘plan-led’ system. The Island Plan sets out a commitment to the concept of sustainable development. For the historic environment, this means a general presumption in favour of the preservation of protected areas, buildings and places, except where a convincing case can be made for alteration or demolition. The Island Plan is clear that the key to successful preservation is to properly assess and understand heritage assets prior to drawing up plans for change.

Once heritage assets are identified, the law sets out a requirement for consent for demolition, in whole or in part, and for any works of alteration, extension or excavation to an asset which would affect its character as a building or site of architectural, archaeological, historic or other interest. It is a criminal offence to carry out such works without consent where it is required. Planning consent is required for all external works, and internal works *affecting the special interest of* the asset. However, internal alterations for grade 4 buildings do not require permission.¹³

The Island Plan strategic policy SP4 states that high priority will be given to the protection of the Island’s natural and historic environment and that this will be a key material consideration in the determination of planning applications.

The Island Plan contains five detailed policies relating directly to the preservation of the historic environment:

- Policy HE1 – Protecting Listed Buildings and Place,
- Policy HE2 – Protection of Historic Windows and doors;
- Policy HE3 – Preservation or enhancement of Conservation Area;
- Policy HE4 - Demolition in Conservation Areas; and
- Policy HE5 - Preservation of archaeological resources.

Other general development policies also reference heritage and are applicable.

This suite of policies sets out the presumption in favour of preservation, stating that proposals which would ‘adversely affect the architectural or historic interest or character of a Listed building or place, and its setting’ will be refused (Policy HE1). Whilst the law does not specifically address the question of setting, the policy is clear that setting must be considered.

In relation to conservation areas, Policy HE3 sets out eight criteria which must be met in order for development to be considered acceptable. Demolition within a conservation area will only be deemed acceptable if at least four of the criteria are satisfied.

¹³ see 3.4 above

Policy HE5 relates to archaeology and sets out a presumption in favour of the physical preservation in situ of archaeological resources and their settings. This policy states that development which would involve significant alteration or cause damage, or which would have a significant impact on archaeological resources and the setting of visible archaeological resources, will only be permitted where the Minister for the Environment is satisfied that the intrinsic importance of the resource is outweighed by other material considerations, *including the need for and community benefit of the development*. It is noted that policies HE2 and HE3, which set out the approach to change in relation to listed buildings and conservation areas do not include any specific reference to public benefit in the same way that Policy HE5 does.

A decision on whether or not a proposed development is consistent with the Island Plan is one of mixed fact and law and lies with the decision-maker, influenced by case law. The issue of setting – and whether development preserves or enhances the setting of a listed building – has been central to numerous court proceedings.¹⁴

These cases have created a legal precedent on the application of policy HE1 and provided clarification that the setting of a listed building changes by reference to what is around it and how its characteristics are to be appreciated in that context. *Therin* confirmed that setting can extend beyond present day curtilage and can extend into wider setting. List descriptions, as with comparator practice, do not fully describe or define the spatial extent of the setting of heritage assets. The spatial extent of setting can, therefore, differ from the curtilage, planning unit and list description and this is a matter for consideration when applying Policy HE1. It is therefore important that development control officers have a well-rounded knowledge of heritage related issues in order to appropriately consider issues of setting when weighing heritage in the planning balance.

Guernsey's Plan

Guernsey has a plan-led system. The Island Plan identifies 26 conservation areas and includes a summary of significance and reason for designation. In terms of protected buildings, there are approximately 1,600 properties currently on the protected buildings list and the Government of Guernsey must also take into account certain special considerations under the planning legislation, in addition to the policies in the Island Development Plan, when considering proposals which could affect them.

The policies in relation to heritage assets are expressed positively, stating 'Proposals to extend or alter a protected building will be supported where the development does not...'.

The Guernsey Plan includes a policy relating specifically to Protected Monuments – Policy GP6.

¹⁴ *Herold v Minister for Planning and Environment and Sea View Investments* [2014] and *Therin v Minister for Planning and Warwick* [2018]

Isle of Man's Planning Policy

The Isle of Man's planning system is plan-led based on positive land use allocations, with General Policy 2 in the Strategic Plan stating that development which is in accordance with the land use zoning and proposals in the appropriate Area Plan and with other policies of this Strategic Plan will normally be permitted. Development outside of areas which are zoned for development will only be permitted in eight exceptional circumstances.

Environment Policy 6 states that the government will seek to identify and designate such 'National Heritage Areas'... in order that buildings, archaeological sites and areas of special ecological, landscape and/or scientific value within them are recognised for their national importance, are a focus for environmental enhancement and are given additional protection from unwarranted development. National Heritage Area status is enshrined through a Policy Guidance Note. National Heritage Areas are a concept unique to the Isle of Man.

The plan includes 'Sites of Special Significance' (SSS) which are areas which have special significance because of their archaeological, botanical, geological, scientific, cultural, zoological or other special interest and which it is desirable to preserve, enhance or manage.

They operate at the highest level of protection with the Law and its Ordinances placing significant constraints on development that might harm the special interest of a SSS. Also, Ordinance has extended the meaning of development within a SSS resulting in very few works being able to be carried out without planning permission. There are 9 SSS sites designated in the Island Development Plan 2016.

The Isle of Man Plan includes a policy on replacement windows within registered (listed) buildings and conservation areas. The policy is clear and exhibits a high level of control, requiring repair of original windows unless impracticable. If impracticable, replacements must be the **same** in all respects, including the method of opening, materials and detailed design.

Poole Local Plan

Poole operates a plan-led system. The Local Plan contains only one policy specifically relating to heritage – policy PP30. This policy is supported by a detailed reasoned justification, but the policy itself is concise and simple.

The Local Plan is supported by a number of heritage related Supplementary Planning Documents and Guides. The Heritage Assets Supplementary Planning Document (adopted April 2013) is a general guide outlining key considerations when undertaking works to the historic environment. An updated list of locally important Heritage Assets is included as an Appendix to this Supplementary Planning Document.

The local assets list includes:

- locally listed buildings and other features
- unscheduled ancient monuments
- known archaeological sites and areas of archaeological significance
- historic landscapes, landscape features
- locally significant parks and gardens
- locally produced artefacts (pottery plaques, statues, and similar)

Inclusion on a local list does not affect planning rights. Any permitted development rights or deemed consents remain unchanged.

4.2 Supplementary Planning Documents

In order to guide development proposals in Jersey, the Island Plan is accompanied by a suite of supplementary planning guidance. These include:

- Advice notes, which offer more detailed information and guidance about the ways in which Island Plan policies are likely to be operated, interpreted and applied in decision making.
- Policy notes, which can be issued by the Minister, following consultation with key stakeholders, in-between reviews of the Island Plan, to supplement and complement the existing planning policy framework.
- Masterplans, development frameworks and planning briefs provide more detailed information and guidance about the development of specific sites and areas of the Island.

4.2.1 Advice Notes

There are four heritage-related Planning Advice Notes which form supplementary planning guidance, in support of the Island Plan. These are:

1. Managing change in historic buildings
2. Protection of historic windows and doors
3. Traditional windows and doors
4. Roadside walls, fosses and banques

These documents provide guidance for property owners, developers, architects and agents, amenity societies and the general public. They will also be used by the Minister for the Environment, the Planning Committee and Infrastructure, Housing and Environment (Regulation) in the application of the planning process to ensure the protection and management of the historic built environment.

The *Managing change in historic buildings* advice note dates from 2008. The document provides detailed guidance on when consent is required and how to design appropriate alterations or additions to historic buildings. It is noted that this document does contain some inaccuracies, where reference to the English planning system has been made and such controls do not exist in Jersey – for example regarding paint colour.

Poole

The Heritage Assets Supplementary Planning Document (SPD) is a detailed document outlining when permission and consent is required, providing guidance relating to the assessment of heritage value, guidelines for appropriate development and development codes in conservation areas. The SPD includes a large number of illustrative photographs and diagrams.

Poole Council is currently preparing character appraisals for each of its 16 conservation areas. Half the areas now have adopted appraisals which have been carried out with extensive public consultation. Some areas have management plans incorporated with suggestions on ways of improving the environment.

The *Protection of Historic Windows and Doors* advice note dates from April 2018. This document supports Island Plan policy HE2 which sets a presumption in favour of retention and repair of historic windows and doors. It outlines each of the elements of fenestration design and appearance which contribute to character. The note then provides guidance on upgrading windows, including how to improve thermal efficiency which may include retrofitting double glazing, in cases where no original glass remains. Detailed principles are then set out for replacement doors and windows. The note includes an annotated diagram of a traditional window, and a flowchart indicating when replacements will be considered appropriate.

The *Traditional windows and doors* advice note is the oldest of the four advice notes; dating back to 1999. The note is descriptive, setting out the types of traditional windows found in Jersey and their historic interest. It does not provide specific guidance regarding alterations and is considered a complementary

background document to the newer *Protection of Historic Windows and Doors* advice note.

Isle of Man

The Residential Design Guide SPD (2019) is a detailed document outlining design guidance for all types of development. In relation to doors and windows in new extensions, the document provides guidance on how to ensure that these elements of the proposal are sympathetic. Specifically, it states that this can be achieved by:

- Reflecting the same ratio between solid wall and window;
- Reflecting the existing proportions (the correct proportions can be established by completing a scale drawing of the original opening, establishing the angle of a diagonal across the window and applying this angle when designing windows of differing sizes);
- positioning windows to match the original symmetry and pattern of the existing building; and
- where existing windows are set back, new windows should also be set back to the same depth as the existing ones.

The SPD also states that where doors or windows that are not original are to be replaced, these should generally match the original style and design. No specific guidance is provided in relation to retrofitting double glazing

4.2.2 Policy Notes

Policy notes build on the provisions of the Planning and Building (Jersey) Law 2002 and the policies in the Island Plan. Policy notes do not replace the law and do not have the same status as the policies in the Island Plan, which remains the first consideration when making decisions on development proposals. They will, however, be a material consideration in the determination of planning applications and can be given substantial weight.

Policy Note 1 relates to archaeology and was adopted in 2008. This document is out-dated and refers to Archaeological Sites, which have since been re-designated as SSIs. Nonetheless, it provides useful guidance on the process of submitting and assessing planning applications for sites with archaeological potential.

It also does not give guidance on a number of subjects which have since become more central to heritage planning in Jersey. Underwater archaeology is mentioned briefly but the treatment of human remains and setting are not discussed. The rationale for determining importance of archaeological remains is covered only in as far as the criteria for listing as an SSI. If a site falls short of the test for designation there is no clear guidance on how it will be treated in the planning process. The need for publication of the results of archaeological work is made clear but what is to happen to the archive is not clarified.

Policy Note 4, Roofscape, prohibits the placing of structures above roof level unless this is essential to the use of the building and cannot be located within the existing envelope. The acceptability of such cases is subject to compliance with criteria relating to visual impact, public health and the operation of the airport. Whilst reference is made to the contribution of roofscape to character, there is no specific mention of heritage value within this document although it only applies to new buildings.

4.2.3 Masterplan and Frameworks

These documents provide more detailed information and guidance about the development of specific sites and areas of the island. These documents vary in format, but generally assess the existing character and set out principles for any forthcoming development. Masterplans and frameworks relating to St Helier contain more explicit references to heritage assets and specific guidance relating to how these should be accommodated in development proposals.

4.3 Cultural Policies/Strategies

The 2020 Government Plan sets out the commitment of the Government to invest 1% of the Government budget in arts, culture and heritage. This will include launching a programme of investment to support Jersey's heritage, arts and culture strategies, focused on much needed maintenance of the Jersey heritage offering, and arts and culture bodies. This investment is in order to increase well-being and enhance Jersey's national identity.

Relevant wider policy guidance includes the Design Guidance for St Helier which aligns heritage issues with urban design standards; Planning Obligation Agreements which allow for works to heritage assets to be paid for using contributions; and the SPG on repairing walls, fosses etc which addresses landscape heritage matters.

5 Management of Change in the Historic Environment

5.1 Identification and Designation Process

5.1.1 Historic Environment Record

The Jersey HER, launched in the summer of 2020, represents a significant step forward in making the heritage of the island better understood by planners, managers and members of the public. The HER is an invaluable database for research into the historic environment of Jersey and is freely accessible both online and through Jersey Archives. Technically the HER supplements the statutory listing maintained on the Government of Jersey website. In practice it has much greater utility through its broader content and more easily accessible mapping function.

The Jersey HER uses the ARCHES platform developed by the Getty Conservation Institute in partnership with World Monuments Funds. Jersey Heritage has been amongst the first organisations to adopt the platform putting it at the forefront of HER development.

The provision of an HER has formed part of the requirements under the Service Level Agreement between Jersey Heritage and the Government of Jersey since 2010.¹⁵

5.1.2 Listed Buildings/Places

Responsibility for listing buildings and places is currently vested, by law, in the Chief Officer responsible for the control of development – the Director General, Infrastructure, Housing and Environment (IHE). There is also a right of appeal to the Minister for the Environment.

Heritage assets are listed as Sites of Special Interest (SSIs)¹⁶ and are referred to as ‘listed buildings, and places’ following a Ministerial Decision in 2009.

In 2010, the then Minister for the Environment introduced a new listing system following a review of the existing heritage protection regime. This island-wide review was managed by Jersey Heritage on behalf of and under the direction of the Government of Jersey through the Service Level Agreement, with contribution from the following third sector organisations: the Société Jersiaise, National Trust for Jersey, Association of Jersey Architects, the Channel Islands Occupation Society and historic building and archaeology specialists.

¹⁵ A Service Level Agreement between the Government of Jersey (GoJ) and Jersey Heritage has been in place since 2005. This is renewed annually.

¹⁶ See Section 2

Currently Jersey Heritage provides the Chief Officer with a recommendation for potential listing, having undertaken a value assessment of the asset in line with criteria adopted and published by the Minister for the Environment.

Listing decisions were undertaken by officers, under delegated powers, within the former Department of the Environment where they had no regulatory function. This arrangement has been negated by government restructuring now leaving decisions about listing within the regulatory function of IHE resulting in a potential conflict of interest. This potential conflict of role is proposed to be resolved by amendment of the Planning and Building Law to remove the powers to list from the Chief Officer of IHE. Executive support for this function continues to be provided by Strategic Policy, Planning and Performance, who also continue to manage the relationship and service level agreement with Jersey Heritage.

Owners of assets are served a notice of intent to list, however there is no wider consultation which considers views from the community across the island during the listing process.

There are four non-statutory grades at which an asset is currently listed in Jersey (grades 1 to 4). Assets listed at grade 1-3 are equally protected regardless of their grade. Grade 4 listed assets however may be altered internally without consent.¹⁷

The Planning and Building (Jersey) Law 2002 states that all listed assets will meet one or more of the following criteria: historical, architectural, archaeological, traditional, scientific, artistic or cultural significance. In addition, there are five areas of interest used to determine whether to list a building or place, which have been adopted by Ministerial Decision. These listing criteria are:

- A. Historic interest
- B. Age
- C. Architectural interest
- D. Archaeological interest
- E. Artistic interest

There are further values defined within each of these categories within Criteria for the listing and grading of heritage assets (adopted April 2011).

The Government of Jersey website provides a statement of significance against each listed building or place, along with a description and an indication as to the asset's special interest. Map data showing the extent of listing is set out on the listing schedule which is available online.

¹⁷ See 3.4 above

Stakeholders noted that access to the official version of the listing through the Government of Jersey website was not always reliable, in particular accessing the schedule in PDF form was not always possible, because these documents are not always published. Inaccessible schedules are an anomaly and are made available when raised or requested.

Isle of Man

Under the Town and Country Planning Act, 1999, the Department of Local Government and the Environment has a duty to maintain "the Protected Buildings Register", a register of buildings of special architectural or historic interest.

The merits of the building are assessed according to historic interest, architectural and/or aesthetic quality, close historical association, landmark qualities and its group value. There is no grading assigned to the designation.

According to Policy and Guidance Notes for the Conservation of the Historic Environment of the Isle of Man, conservation areas are primarily identified and considered by the quality and interest of the area itself rather than the individual buildings located in it. There are currently 21 conservation areas on the Isle of Man.

Poole

Poole's Heritage Asset's SPG contains a list of Local Heritage Assets which are not designated but are a material consideration in planning decisions which may affect those assets

There is no risk register for Jersey, although the resurvey of heritage assets conducted in 2010 identified 108 historic buildings and places which, at that time, were considered to be at either medium or high risk.

5.1.3 Archaeology

The recent resurvey of sites in Jersey embraced all known archaeology at the time the survey was undertaken. Where archaeological sites met the necessary criteria they were designated as SSIs.

Substantial amounts of fieldwork have been done in recent years, highlighted by the sharing of data from the third sector to the HER. However, the underwater archaeology resource appears to be poorly represented in the HER and only sites in the intertidal zone are included in the list of SSIs. As noted on the Government of Jersey website "*There is potential for close to 400 wreck sites around the Island, only a small number of which have been identified and recorded. There is a need to undertake further research that would identify known and potential*

underwater sites of cultural and historic significance including prehistoric sites.”¹⁸

Developing understanding of deposition models, particularly in relation to Palaeolithic horizons, suggests that the schedule of Areas of Archaeological Potential may need revision and consideration given to defining new areas.

5.2 Decision-Making / Development Management Process

5.2.1 Development Control Procedures

Upon application, planning decisions must be taken in relation to planning policy, the primary document of which is the Island Plan approved by the States.

The Chief Officer is the first-tier decision maker, but duties and responsibilities have been delegated to Officers of appropriate levels within the *Chief Officer Decision Making Protocol*; and some applications are determined by the Planning Committee.

The responsibility for the function of determining heritage value (i.e. listing buildings) and of regulating development (i.e. granting permission) lie within the same department.

The application of policy within the Island Plan is an exercise of planning judgment by the relevant decision maker, in most cases this is the Chief Officer or delegate or the Planning Committee but, on appeal, this is the Minister.

If an application is in accordance with the Island Plan, planning permission for the proposed development should be granted.

If a decision is taken, other than by the Planning Committee, to refuse an application or to grant subject to conditions, the applicant is able to request a review of the decision by the Planning Committee. The determination of the Planning Committee shall then be substituted for the initial officer-level decision.

Applications are referred for consideration by the Planning Committee in the following circumstances:

1. Where the grant of permission would be inconsistent with the Island Plan.
2. Where, following the refusal of an application or the imposition of a condition, the decision was taken by the Chief Officer and the applicant requests within 28 days of the date of the original decision that the Committee review the decision.
3. Following a request from the Chairman of the Planning Committee that the Committee should consider the matter.
4. Where the matter is considered by the Chief Officer to be of such a nature as to require the Planning Committee to consider the case.

¹⁸ <https://www.gov.je/planningbuilding/listedbuildingplaces/pages/archaeology.aspx>

5. Where an application for planning permission has attracted four or more representations from individuals, where each individual appears to be from a different address, and the representations are contrary to the recommendation of the Chief Officer.
6. If, after due consideration, the Committee reaches a conclusion which does not agree with the principle of the recommendation made by the Chief Officer, the Committee will furnish the Chief Officer with its planning reasons for arriving at that conclusion. The Committee will require that the relevant documentation to support the Committee's decision be prepared by the Chief Officer and presented back to the Committee at its next meeting for ratification.

If the proposed development is inconsistent with the Island Plan, planning permission may still be granted where there is considered to be sufficient justification to do so. Proposed departures from the Island Plan may be considered by the Planning Committee or may be the subject of a Public Inquiry in accordance with Article 12 of the Law¹⁹ and be determined by the Minister, where they represent a substantial departure, or where they affect a large proportion of the island's population (as determined by the Minister).

A decision on whether or not a proposed development is consistent with the Island Plan is one of mixed fact and law; a decision as to whether there is sufficient justification for a departure from the policies contained in the Island Plan is a judgment for the decision taker, but it is a matter of law as to what the Island Plan means and whether the decision is sufficiently reasoned to objectively justify a departure from the Plan.

5.2.2 Development Control in practice

On average, over the last five years, the Development Control Team has determined around 1,400 applications a year. There are currently 12 full-time development control case officers; meaning each officer processed an *average* of 117 planning applications per year, albeit that workloads vary significantly between officers due to the nature of cases allocated.

Pre-application advice is provided for free in Jersey. A drop-in service is usually provided by a Duty Planning Officer, however due to the coronavirus pandemic this is not possible at the present time. The duty planner is, at the time of writing, operating through email and telephone contact only. Previously, when the drop-in service was available, applicants could also alternatively issue a request for advice in writing. When this occurs, a case officer is assigned to the case and will provide written advice, in some cases with a prior site visit.

The resources which support functions relating to the provision of specialist advice into the Development Control process sit within the Historic Environment

¹⁹ Article 19(3) – states that any proposed departure from the Island Plan must be considered by the Planning Applications Committee (now Planning Committee) or may be the subject of a Public Inquiry in accordance with Article 12 of the Law.
<https://www.gov.je/PlanningBuilding/LawsRegs/LawRegulations/Pages/PlanningBuildingLawOrders.aspx>

Team of the Place and Spatial Planning section of the Department for Strategic Policy, Planning and Performance.

Since 2014, the Historic Environment Team has consisted of one post – that of Principal Planner (Historic Environment). Prior to this, there were two officers within the team. The Principal Planner, provides all functions associated with the provision of advice about the management of change affecting the historic environment, which is principally directed to the Development Control Team, but also to buildings owners, applicants and agents at pre-application stage. The post also serves as the source of expert professional advice about the historic environment within the Government more widely.

The post's role is not however limited to providing such advice, and the post holder also undertakes other work including the provision of support and expert advice associated with the development of planning legislation, policy and supplementary planning guidance for the historic environment, in addition to other non-historic environment work (e.g. Executive Officer for the Jersey Architecture Commission).

Specialist advice relating to the management of change affecting heritage is obtained externally from a discretionary budget. This includes:

- the management of change affecting archaeological assets. There is no in-house archaeological advice within government and this advice is retained from a UK-based consultancy (Oxford Archaeology). This is renewed on an annual basis and is occasionally reviewed, through competitive expressions of interest; and
- the monitoring of on-site archaeological evaluation that is commissioned through the development control process. This is provided by Jersey Heritage's Curator of Archaeology on a charge-out basis (outwith the SLA with Jersey Heritage).

On average, over the last five years, the Development Control Team has determined around 1,400 applications a year. Of these circa 7,000 applications, around 2,300 required consultation with the Historic Environment Team – around 32% of all applications. Of those which required consultation during this time period, 207 were applications which had the RW prefix for replacement windows and/or doors – almost 10%. Other applications also encompass these changes, amongst other works.

Data shows that, of those applications requiring a consultation with the Historic Environment Team, an average of 86.34% were approved (note: of those refused, some are refused on matters unrelated to the historic environment, however data is not available to quantify this). Applications benefitting from a favourable response rate of the Historic Environment Team was slightly lower with 81% attracting no objection, suggesting some planning applications are being approved against the advice of the Historic Environment Team. The data analysed includes cases where the requirement for further information is identified and subsequently provided in an acceptable manner by the applicant. Only 19% of responses raised an insurmountable 'objection' from the Historic Environment Team.

There have been eight cases of demolition of listed buildings since 2015. The case of La Collette flats saw the part-demolition of a grade 4 designated list entry comprising five low-rise blocks in 2018. This case went to appeal on planning grounds in 2016 but was dismissed. The remaining seven cases of demolition were approved at application stage.

Applications may be determined by the Planning Committee in the circumstances outlined in the previous section of this report. When such cases relate to listed buildings, the Principal Planner (Historic Environment Team) is able, at the invitation of the Chair or the case officer, to attend the committee meeting in person to present their views. The officer does not have a statutory right to attend and does not attend in person for every case involving a heritage asset. In terms of public involvement at this stage, members of the public and applicants do not have a statutory right to speak at the meeting, but they may be invited to speak by the Chair, provided that good order is maintained at the meeting. The Planning Committee normally restrict individual comments to five minutes. Data shows that approximately 20-30 of the applications determined by Planning Committee per year are approved despite an objection from the Historic Environment Team.

5.2.3 Right of Appeal

In addition to the first stage review of the Planning Committee, there is a right of appeal against certain decisions, as set out within Article 108 of the Planning and Building (Jersey) Law 2002. These include a right of appeal against a grant or refusal of planning permission, and decisions regarding placing or removing places or buildings from the List. Article 108 of the law sets out the definitions of those eligible to submit each type of appeal; most notably in the case of appeals against the grant of permission this includes the applicant and any third party – defined as anyone resident on, or with an interest in, land any part of which lies within 50m of the application site. For appeals relating to listing decisions, the owner and (where different) the occupier of the land on which the building is sited has the right to appeal.

The inspector conducting the appeal reports, in writing, to the Minister with a recommendation and the reasons for it. Having considered the report, the Minister shall determine the appeal in line with the inspector's recommendation unless the Minister is satisfied that there are reasons not to do so. The Minister's determination is final, aside from an appeal to the Royal Court on a point of law.

The interpretation of the Island Plan is a matter of law, to be decided by the Royal Court. Upon appeal to the Royal Court, the court may confirm the determination of the inspector, quash the decision or direct re-determination by the Minister. In the latter case, the Minister would then refer the case back to the inspector who will produce a supplementary report and recommendation. The Minister shall then re-determine the appeal.

6 Issues for Discussion

6.1 Legislative Scope

Based on the analysis set out in the preceding sections, this Section considers the potential need to enhance the existing legislative framework for the protection of the island's heritage assets, having regard to its obligations under convention and best practice, with specific regard to:

- the introduction of area-based protection
- management of change affecting LBG4;
- spatial extent of protection;
- the extent of permitted development rights in conservation areas;
- the protection of archaeological finds, including treasure, portable antiquities and human remains; and
- the protection of maritime archaeology.

The implementation of **conservation area** designation would provide design guidance in keeping with the special character of the designated areas and would help stop a gradual erosion of special interest. The existing system of designating places as well as buildings goes some way towards area-based designation, however conservation area designation would provide a holistic approach to local areas of special interest.

The Valetta Convention requires its signatories “*to institute a legal system for the protection of the archaeological heritage, making provision for, amongst other things, the mandatory reporting to the competent authorities by a finder of the chance discovery of elements of the archaeological heritage and making them available for examination.*” The Convention makes no distinction between land-based and underwater-based archaeology.

Area Based Protection

Planning and Building (Jersey) Law 2002 does not contain any provision for the designation of conservation areas, as a form of area-based heritage protection. An emergent change to the law under proposed Amendment No 8 of the Law is in progress. This proposed amendment will seek to introduce the designation of Conservation Areas.

It is recommended that area-based protection, in the form of Conservation Areas, is introduced. The introduction of area-based protection has the potential to address issues such as setting and curtilage within areas designated as a conservation areas, reducing the need to resort to judicial review. This topic is dealt with more fully in Section 7 Issue 7.

Underwater Archaeology

There is no equivalent in Jersey of the Protection of Wrecks Act applicable in English waters or Guernsey's Wreck and Salvage Law. The limited adoption of restricted areas in Guernsey and Alderney would suggest that the theoretical need has not manifested particularly frequently. The perception of the risk to underwater archaeological remains in Jersey waters suggests that adoption of similar legislation is not at present especially urgent.²⁰ However, it is unlikely that risk levels will remain stable and future works could well alter the situation significantly. This topic is dealt with more fully in Section 7 Issue 1.

Management of Change affecting Grade 4 listed buildings

Part 3, Class AA of the Planning and Building (General Development) (Jersey) Order 2011 permits internal alterations or building operations that do not amount to an external change or create new floor space. Class AA does not permit works if the building is or forms part of a LBP – therefore, in practice, internal works to Listed Building Grade 4 require planning permission and SSI consent. The minister has, however, adopted a policy position to allow internal change to Listed Building Grade 4 without the need for express permission. There is, therefore, a contradiction and the legal framework needs revising.

This topic is further discussed in Section 7 Issue 2.

²⁰ Noting however that in 2013 the report on battlefields and maritime archaeology by Orbasli and Chowne recommended 'as a matter of priority' that legislation should be developed to protect underwater cultural heritage.

Spatial extent of protection

In relation to permitted development rights, there is inconsistency in the terminology used within different parts of the Planning and Building (General Development) (Jersey) Order 2011.

The wording differs between Part 1 and Part 3. Part 1 exempts works where ‘the building or its curtilage is or forms part of a LBP or pLBP or is in a CA’. However, Part 3, F.2 (a) for example, states that work is not permitted if “the building is or forms part of a LBP or pLBP”. It does not reference curtilage or conservation areas.

This results in confusion when interpreting and applying the law and can result in inappropriate development occurring where works fall outside of the extent of listing, but within the curtilage of a listed building.

This topic is dealt with more fully in Section 7 Issue 3.

Extent of permitted development rights in conservation areas

Under the Planning and Building (General Development) (Jersey) Order 2011, alterations including extensions and roof additions are permitted within conservation areas without the need for planning permission. There are limited conditions controlling the visual appearance of these alterations. Analysis of comparators has revealed more restrictive conditions within conservation areas.

This topic is dealt with more fully in Section 7 Issue 3.

Treasure and Portable Antiquities

It is debatable as to whether the current arrangements amount to a ‘fit for purpose’ treasure and portable antiquities legislation as required under the Valetta Convention in that the legislation does not specifically address archaeological issues and does not put in place a system of mandatory reporting. This potentially puts the Government of Jersey in breach of its obligations under the Convention. The situation is acknowledged by the

Government of Jersey.²¹ This topic is dealt with more fully in section 7 Issue 4.

6.2 Identification and Designation Process

To assess the adequacy and efficacy of the process for the identification, assessment and designation of heritage assets two aspects were examined:

- whether the roles and responsibilities of stakeholders are appropriate; and
- whether the process should be opened to wider, public involvement.

In respect of the first point it was observed that there was potential for **conflicts of interest** within the department for Infrastructure, Housing and Environment which is responsible both for determining what is listed and the regulation of applications which affect the assets on the list. A separation of functions between different ministerial reporting chains is required: the proposed Amendment No 8 of the law, could remove this potential source of conflict.

The question of wider public involvement in the identification and assessment did not attract much interest from the stakeholders who responded to the questionnaire. One respondent who had participated in the advisory group which assisted in the resurvey of buildings felt that the consultation process was useful. A similar advisory group could be of use when archaeological sites are resurveyed – drawing on as wide a knowledge base as possible will ensure that designations are properly informed. The low rate of additions to the current list of historic buildings is such that a formal process of public consultation is not necessary once the list is up to date.

Designation of Listed Buildings and Places

Currently Jersey Heritage provide the Chief Officer with recommendations for potential designation of buildings and places following a value assessment of the asset in line with the criteria published by the Governments of Jersey. There may be an opportunity for this process to be opened to wider public involvement.

This topic is further discussed in Section 7 Issue 11.

²¹ Legislation to address this is in train: see <https://www.gov.je/government/planningperformance/pages/ministerialdecisions.aspx?showreport=yes&docid=2EF6621A-DCF8-4F49-9369-06DC1014B6EA#report>

A number of other aspects of the identification and designation process were raised during stakeholder engagement.

One stakeholder commented that conservation area designation would enable a greater appreciation from the public of heritage within its context. It was felt that, at present, there is a tendency to view sites in isolation. It was said that some buildings are listed mainly for townscape value and designation of conservation areas would allow for a more flexible approach to alterations in these cases.

The **management of the list of Sites of Special Interest** is working well at present although there are areas which could be the focus of further improvement. The main area for improvement lies in the availability of schedule data (see **Section 7 Issue 9**).

Stakeholder feedback from the metal detecting community identified a perception that whenever a find was reported to the Archaeology Officer the location of the find was then designated as a place of archaeological interest resulting in the subsequent exclusion of detectorists from that location. It is not clear that this perception reflects reality however the effect has nonetheless led to a temporary breakdown in the voluntary reporting of discoveries. A proposal to institute a system similar to the 'management agreement' applied to listed building schedules is under consideration. This is a potential means to allow detectorists to explore and report finds on listed sites.

The **HER** is a highly valuable tool for the management of change in the historic environment of Jersey. Its value as a management tool would be significantly reduced if it becomes a 'snapshot in time' as resources for maintenance and enhancement are employed elsewhere.

Stakeholder responses identified the need for an evidence-based approach to managing heritage. The role of the HER database as a tool is key to this approach requiring it to be as comprehensive and up to date as possible.

Visibility of **Jersey's HER database** could be improved. Currently, the Arches platform, which provides a more detailed description of some listed assets, appears subsequent to the Government of Jersey website when conducting an online search.

The increased knowledge of the archaeology of the island which has resulted from ad hoc interventions over the last decade would benefit from being set within a **research framework**. The framework could then in turn guide interventions through planning control and future research. The approach to such a research framework has been mapped out by Jersey Heritage; the completion of the HER is a key first stage and will underpin the resource assessment element of the framework.

Planning mechanisms are occasionally used to control archaeological research interventions, for example test pitting within SSIs. Stakeholder feedback suggested that, whilst understandable as a response to the need to manage interventions, a licensing system might be more appropriate.

An **international designation** could potentially trigger additional funding for heritage. Working towards a nomination can bring benefits for heritage and it has been previously suggested that fortifications of the islands might have potential to be included in the UK tentative list. It might be observed that similar proposals have been made for Alderney – the benefits of a joint approach across the Channel Islands would be considerable.²² The resources required to prepare a nomination would be considerable and arguably substantially beyond those currently available. In addressing the question of resourcing, the potential for substantial input to the preparation of an international designation should be acknowledged.

One stakeholder, commenting on the perception of how different departments approached heritage, suggested that ‘Planning vs Culture = Negative vs Positive’ suggesting that development control is predicated on preventing things. Cultural management, on the other hand, is more likely to facilitate positive actions.

Exploration of this idea during the development of a Heritage Strategy for Jersey might produce a beneficial outcome. Assigning responsibility for aspects of heritage management to departments and agencies where a positive and inspirational approach thrives might unlock potential benefits to the historic environment.

A review of **compliance with international conventions** has been undertaken by Jersey Heritage but not yet published.²³

6.3 Planning Policy

This section considers how the historic environment is dealt with in the existing planning policy used for decision making, as well as considering the framework and processes that guide how planning policy is formulated, reviewed and brought into force.

The planning policy framework, set out primarily in the Island Plan, is generally formulated, consulted on, and examined in line with good plan-making practices in other jurisdictions such as England, before being debated and approved by the States Assembly. The current Island Plan 2011 was initially adopted in June 2011 and a revised plan was adopted in July 2014.

²² See https://www.academia.edu/3640055/Valuing_the_Heritage_of_the_Channel_Islands published in 2008 but which has continuing relevance.

²³ Consultation Paper - Introducing a Law to Protect Objects and Remains of Archaeological and Historical Significance in Jersey & an Associated Code of Practice draft dated 23/08/2019.

The existing planning policy framework for the historic environment in the adopted Island Plan is made up of a strategic policy SP 4, which affords a high priority to the protection of the Island's natural and historic environment. This is supported by more detailed policies on specific aspects of the historic environment – Listed Buildings and Places, historic windows, conservation areas, archaeological resources.

The Government of Jersey is currently preparing a new emerging Island Plan as part of the Island Plan Review, and it is intended that the revised plan will be adopted in 2022. The Island Plan Review provides an opportunity to consider the effectiveness of the existing policies, take on board the findings of new evidence, and revise and refresh the planning policy regime for the historic environment. This is considered in further detail in Section 7.

Planning policy framework

The planning policy regime set out in the adopted Island Plan and SPGs is generally satisfactory, providing a substantial level of protection to historic assets and the wider historic environment, particularly in comparison to other similar jurisdictions. Notwithstanding this, the Minister's Proposal in the existing Island Plan for bringing forward conservation areas as an area-based designation has not happened, despite general consensus as to its benefits. This should be a priority for the Island Plan Review, supported by appropriate legislative change and enabled by guidance (for example through Conservation Area Appraisal).

Through a number of appeals and Royal Court Judgements, the definition of key terms used in the policies, and how the policies operate, has been clarified. However, the planning history and case law has also highlighted areas where policy wording could be revised and tightened.

At present historic environment management policy is developed in the absence of a well understood strategic context for heritage in all its aspects. This has resulted in a somewhat ad hoc approach with consequent impacts on the adequacy of planning policy, guidance and change management.

Development of a Heritage Strategy could have widespread benefits as a result of defining what 'heritage' is and, how it contributes to wider issues of island identity and countryside character. Clear definition would also allow clarity of roles and responsibilities around conserving, enhancing and making accessible the historic environment and its heritage assets. Questions of resourcing the understanding and management of the historic environment would also benefit from development of a clear strategic vision.

The Heritage Strategy for Guernsey provides an example of how this might be achieved. Initial steps in the direction of a strategy for Jersey have been made in the form of an advice paper drafted for Jersey Heritage which is expected to be finalised in early 2021.

This topic is further developed in Section 7 Issue 5.

Stakeholders expressed a desire for updated documents which set out more clearly what would be permissible for listed buildings. Updated guidance would assist the general public in understanding what was possible and could potentially help with public perception of heritage protection. Guidance on setting would be particularly beneficial. One stakeholder suggested that guidance on acceptable adaptive re-use would be worthwhile – 'there is a lack of aspirational guidance'.

The suite of **Supplementary Planning Guidance** should be updated. Comparator jurisdictions have more up to date guidance, which includes detailed

photographs, diagrams and case studies. This topic is dealt with in greater detail in Section 7 Issues 5,6, 8 and 9.

6.4 Decision-Making/Development Management Process and Resourcing

An **enhanced pre-application service** could have a beneficial impact upon development affecting the historic environment. The Development Control Health Check (2019)²⁴ concluded that the current pre-application offer was ‘not functioning properly’, since insufficient resourcing meant that these inquiries were often not prioritised, and a response not issued in a timely manner. Pre-application engagement is particularly important for listed buildings, given issues relating to setting, the assessment of special interest and the impact of proposals upon significance.

An enhanced pre-application service would require a greater level of resourcing than at present in terms of funding and staffing. Charging for pre-application advice could be used for additional resourcing. Where pre-application enquiries relate to, or require input from, the Historic Buildings Team, the fee should be reflective of this greater level of resourcing. As concluded within the Development Control Health Check (2019), pre-application services will only become marketable if there is a concurrent improvement in response rates and quality. Therefore, initial investment in resourcing would be required, but improvements in the quality of planning applications and reduced output during this stage should ensure it is a viable service. Stakeholder responses suggest that there would be an acceptance of the need to pay for pre-application advice as long as this resulted in a consequential improvement.

Development control officers should be offered additional training regarding the historic environment, in order that they feel confident in appropriately determining minor planning applications relating to some listed buildings without consulting the Historic Environment Team. This would be determined on a case-by-case basis, but some types of applications, or a proportion of these applications – for example replacement windows – could be determined without specific and dedicated consultation with the Principal Planner (Historic Environment Team). This would reduce the caseload of the Historic Environment Team by around 10%. Officers should be provided with sufficient training opportunities to appropriately assess minor applications with implications for the historic environment. The Historic Environment Team could hold a weekly session where development control officers could verbally discuss matters if required. If this was instigated, the process should be complemented by a robust process of monitoring and review in order to ensure that the quality of determination and the outcome is being maintained. Alternatively, the Historic Environment Team should be provided with additional resource in order that it can maintain the current standard of casework and undertake additional duties (as discussed further below).

²⁴ <https://www.gov.je/Government/Pages/StatesReports.aspx?ReportID=5101>

An **on-going programme of training** of development control officers should be considered. The assessment of the planning balance can be a complex and evolving matter and staff must be properly equipped to ensure that all considerations are given the correct weight in the balance. This is particularly pertinent in the case of heritage-related applications where arguments relating to long-term financial viability are put forward. In such cases it is also recommended that an external cost and historic buildings specialist are engaged, at the expense of the applicant, to independently scrutinise the viability information put forward. Making this information publicly viewable would also improve transparency in decision-making and public perception.

In the view of one stakeholder, it was very easy for applicants to claim that retention of historic buildings was not financially viable, and evidence to substantiate this is not adequately scrutinised by an independent body. Public perception of this issue is negative, due to the lack of publicly available financial viability assessments.

The separation of the Planning Policy Team and the Development Control Team was highlighted by stakeholders as a negative aspect of recent reforms. It was felt that more collaborative working was required between these teams to improve processes of policy formulation and application.

Structures for knowledge-sharing between officers should be put in place and afforded appropriate resourcing. In order to ensure consistency in advice given, pre-application responses should continue to go through a final checking process by a senior officer before being issued. It is important that there is consistency in the way that policies are applied by different officers and the weight given to heritage in the decision-making process.

Stakeholders referred to a lack of resilience within the team, should the single Officer be absent or have a conflict of interest related to a scheme.

Data suggests that, when considering the planning balance, it is regularly concluded by officers or the Planning Committee that there are material considerations sufficient to outweigh the harm, or the missing information, identified by the Historic Environment Team. Whilst this is not unexpected in some cases, this should be formally monitored and reporting structures put in place to better understand the reasons for these decisions. It is understood that, at present, this reporting takes place informally. It would be beneficial to formalise this arrangement through the Development Control practice procedures. Similarly, reporting and learning from appeals relating to the historic environment is important and should be resourced, with the task allocated to specific officers and their caseloads reduced accordingly to allow sufficient time to be spent on this important review task.

The Historic Environment Team should consist of more than one officer. In terms of development control processes, there being one officer means that there is a potential business continuity issue when illness arises, in the case of annual leave or other unexpected priorities arising e.g. Covid. Likewise, there are business continuity and succession planning risks inherent in having only one officer.

There is also a single point of failure and a lack of diversity of views. A greater level of resourcing would enable even faster response times for consultation, more informal pre-application engagement and advocacy on site, a wider range of views, and greater consensus. At present, the Historic Environment Team's role is confined largely to a reactive one within the development control process. There are inherent risks to resilience as a result of the way resources are distributed between government and external agencies. Rebalancing (and increasing) resourcing would enable a more proactive stance and the broader remit of the role to be carried out more effectively. For example, this could include developing public awareness of the historic environment as well guiding research and investigation.

This topic is dealt with further in Section 7 Issue 12.

Several stakeholders commented on the lack of a field archaeologist performing a role equivalent to that of a County Archaeologist. This was felt to be 'seriously detrimental'. The current provision of ad hoc advice from an external consultancy is cost effective however the provision of clear direction and guidance from within government would have additional benefits justifying the additional expense. These might include establishment of a clear local knowledge base, resolution of some of the 'tensions' between heritage interest groups noted by some stakeholders and oversight of research projects some of which currently take up resource through the planning system (which could perhaps be better deployed on other tasks). Sharing of resources with other islands could be worth exploring, particularly where an expertise is already established, for example in marine archaeology.

When determining the priority to be given to the establishment of a field archaeologist post a judgement will have to be made against competing calls on an enhanced heritage team. Would it be better to improve resilience, robustness and diversity by increasing the general professional capacity within the HET or would it be better to create capacity where it is now lacking e.g. in marine archaeology and outreach?

7 Recommendations

7.1 Legislation

Issue 1: Protection of underwater heritage. Is there a need for a wreck and salvage act?	
Context in Jersey <ul style="list-style-type: none">• Jersey has a rich maritime heritage with an estimated 400 possible wreck sites. Its waters also contain important submerged prehistoric landscapes and inter-tidal features of all periods. However, maritime heritage is probably the least well understood element of Jersey's historic environment.• The 2001 UNESCO Convention on the Protection of the Underwater Cultural Heritage does not apply in Jersey.• The seabed out to the territorial limit is included within the remit of the Planning and Building (Jersey) Law 2002.• The Shipping (Jersey) Law 2002 requires the finder of a wreck to inform the Receiver of Wreck of the find and its location.• Protection from the effects of trawling and aggregate extraction is provided by the Sea Fisheries (Jersey) Law 1994 and the Sea Breaches (Removal of Sand and Stone) (Jersey) Law 1963.	Possible Solutions <ul style="list-style-type: none">• Do nothing – the threat to underwater heritage is largely from natural erosional processes and future development pressures can be controlled under existing legislation.• One possible solution would be to designate wrecks in Jersey waters as Listed Places (SSI). This could provide an acceptable level of protection. Interpretation of restricted activities would have to include regulation of, for example, sport diving in line with practice applied to land based SSIs.• Adopt the Principles of the 2001 UNESCO Convention as laid out in the Annex to the Convention (http://www.unesco.org/new/en/culture/themes/underwater-cultural-heritage/2001-convention/official-text/) expressed in the form of policy within the Island Plan without enacting new legislation. However, in the absence of legislation it is debateable whether it would be possible to enforce Rules 1 and 6 of the Principles.• Enact new legislation embodying the Principles of the 2001 Convention.

<p>Pros and Cons / SWOT</p> <ul style="list-style-type: none"> • The present legislation provides adequate protection for underwater heritage assets in the face of existing threats from underwater development. • The protection is not framed in terms of heritage interest and there is no provision to restrict access to assets in order to preserve heritage interest. • Whilst the current legislation provides protection from new types of development, such as offshore wind farms, the emergence of a significant threat from sport/souvenir diving would be less easily controlled by the present legislation. 	<p>Recommendations</p> <ul style="list-style-type: none"> • Jersey would benefit from an Underwater Heritage Law. The law would be most effectively be framed in terms of the principles of the 2001 UNESCO Convention and would benefit from nearly two decades of experience in applying the Convention. • The law should frame protection clearly in terms of heritage interest and would offer the opportunity to move away from a focus on the commercial elements of wreck and salvage law. • The priority afforded to enacting such a law should be determined as part of the development of an overarching Heritage Strategy. • Pending an introduction of an Underwater Heritage Law, protection could be afforded by designating wreck sites as Listed Places with archaeological interest.
<p>Comparators</p> <ul style="list-style-type: none"> • Guernsey - The Wreck and Salvage (Vessels and Aircraft) (Bailiwick of Guernsey) Law, 1986 provides a definition of historic wreck and makes provision for restricted areas around important wrecks. To date three historic wreck sites have been the subject of restricted area orders. • England - Section 1 of The Protection of Wrecks Act 1973 allows for the protection of wreck sites that are considered to be of historical, artistic or archaeological importance. This allows the Secretary of State to designate a restricted area around a wreck site, in order to prevent uncontrolled interference. 	<p>Conclusion</p> <ul style="list-style-type: none"> • Jersey has an opportunity to develop best practice in underwater heritage conservation in the absence of substantial active threats. The island has a rich maritime heritage which deserves protection and celebration. • In order to be fully effective underwater heritage protection laws would have to be supported by suitably resourced designation, monitoring and enforcement arrangements including an information base that enabled a proper understanding of the assets which require protection.

Issue 2: Management of Change affecting Grade 4 listed buildings	
<p>Context in Jersey</p> <ul style="list-style-type: none"> The Planning and Building (General Development) (Jersey) Order 2011 (GDO) stipulates eight classes of development for which planning permission is not required, subject to the conditions set out in the Order. Part 3, Class AA of the GDO permits internal alterations or building operations that do not amount to an external change or create new floor space. 	<p>Possible Solutions</p> <ul style="list-style-type: none"> Explore the regularisation of the policy position, where change to the interior of Listed Building Grade 4 is not regulated because it does not affect the special interest of the site, through amendment of the secondary legislation (or primary, as appropriate) by liaison with the Legislative Drafter's Office.
<p>Pros and Cons / SWOT</p> <ul style="list-style-type: none"> In relation to heritage, the restriction of permitted development regarding listed buildings and places ensures that most changes to these buildings are subject to the detailed application process and scrutiny, helping to preserve their significance. At present there are inconsistencies: Class AA does not permit works if the building is or forms part of a Listed Building or Place – therefore, in practice, internal works to Listed Building Grade 4 require planning permission and SSI consent. The Minister for the Environment has, however, adopted a policy position to allow internal change to Listed Building Grade 4 without the need for express permission. There is, therefore, currently a contradiction and the legal framework needs revising. 	<p>Recommendations</p> <ul style="list-style-type: none"> Amend the legal framework to provide an exemption to the requirement for permission for works to the interior of an Listed Building Grade 4 which would not affect the special interest of the building – thereby removing the requirement for permission for internal works to Grade 4 listed buildings, as these have no interior features of special interest. It is recommended that this be accompanied by a statement published on the website, to clarify the most up to date position on this issue.
<p>Comparators</p> <ul style="list-style-type: none"> In the UK and the Isle of Man, internal works do not constitute development – except in the case of listed buildings. This contrasts to Jersey whereby internal works do constitute development – but are permitted under Class AA – except in the case of listed buildings. In Guernsey, where the protection as defined on the listing schedule extends to the “exterior” only, changes to the interior of the building do not require permission or consent. 	<p>Conclusion</p> <ul style="list-style-type: none"> Given the Ministerial Decision in relation to internal works to Grade 4 listed buildings, a change to the legal framework is recommended.

Issue 3: Spatial extent of protection	
<p>Context in Jersey</p> <ul style="list-style-type: none"> • The Planning and Building (General Development) (Jersey) Order 2011 (GDO) stipulates eight classes of development for which planning permission is not required, subject to the conditions set out in the Order. • Part 1 of the GDO relates to ‘work carried out to, and within the curtilage of, a dwelling-house’, and Part 3 relates to ‘repairs, maintenance and minor works to land and buildings’. • The provisions of Part 1, Classes A, E and F are applicable within conservation areas and, subject to the criteria and conditions being met, extensions, loft conversions and flues could therefore be erected without express planning permission being granted. 	<p>Possible Solutions</p> <ul style="list-style-type: none"> • Amend GDO to refer consistently to ‘<i>the building or its curtilage</i> is or forms part of a Listed Building or Place or a potential Listed Building or Place or is in a Conservation Area’, thereby extending control and ensuring consistency of regulation. • However, the inclusion in the schedule of the plan showing the extent of listing creates certainty for owners and developers over which part of their land ownership has legal status as a listed building. To extend control through the GDO over buildings outside of the extent of listing negates the certainty associated with the schedule. • Introduce an additional condition to Part 3, Class F requiring replacement doors and windows to be similar in appearance to that which they are replacing – like in the UK. The addition of an extra condition within the GDO would avoid the issue above – ensuring that the certainty regarding the historic interest and the integrity of the schedule remains – whilst providing clear parameters to ensure alterations within the setting of listed buildings is appropriate. However, this approach would have limited impact, as other permitted development rights would remain unaltered.
<p>Pros and Cons / SWOT</p> <ul style="list-style-type: none"> • In relation to heritage, the restriction of permitted development regarding listed buildings and places ensures that most changes to these buildings are subject to the detailed application process and scrutiny, helping to preserve their significance. However, there is concern that, where the extent of heritage interest is less extensive than the curtilage of the property, unregulated change, made under the auspices of permitted development, may occur within the curtilage which causes harm to the setting of a listed building. • Part 1 of the GDO relates to ‘work carried out to, and within the curtilage of, a dwelling-house’, and 	<p>Recommendations</p> <ul style="list-style-type: none"> • Amend GDO to refer consistently to ‘<i>the building or its curtilage</i> is or forms part of a Listed Building or Place or a potential Listed Building or Place or is in a Conservation Area’, thereby extending control and ensuring consistency of regulation. • Introduce additional categories of exceptions for works that fall within the above category; for example exempting changes which are reversible, ephemeral or temporary. • Introduce additional conditions to better regulate change. For example, it is recommended that a further condition be introduced to Part 3, Class F

<p>Part 3 relates to ‘repairs, maintenance and minor works to land and buildings’.</p> <ul style="list-style-type: none"> • In relation to heritage, the wording differs between Part 1 and Part 3. Part 1 exempts works where ‘<i>the building or its curtilage</i> is or forms part of a Listed Building or Place or a potential Listed Building or Place or is in a Conservation Area . However Part 3, F.2 (a) for example, states that work is not permitted if “<i>the building is or forms part of a</i> Listed Building or Place or a potential Listed Building or Place”. It does not reference <i>curtilage</i> or Conservation Areas. • Therefore, if the works are to a building or place which is specifically listed, permission will be required. However, where the works fall under Part 3 and are outside the extent of listing as shown on the Listing Schedule, then the works could be permitted development as the key question is whether the works are within the extent of the listing or not. An example of this is an ancillary building, which falls within the curtilage and planning unit of a listed building, but outside the extent of listing, could replace their window under permitted development in a harmful manner. • There is also potential for confusion and lack of clarity in the application of permitted development rights for owners and interpretation for development control staff regarding the requirement for planning permission, relative to the extent of listing (as set out in the listing schedule) and the curtilage of the property. • Class A (extensions) and Class F (conversion of roofspace) of the GDO do not include any conditions restricting the use of materials in general, or within conservation areas specifically, to those that match the existing building. Therefore this could result in the use of inappropriate materials, harming the character of the conservation area. 	<p>requiring replacement doors and windows to be similar in appearance to that which they are replacing. This would assist with the conservation of heritage assets.</p> <ul style="list-style-type: none"> • It is recommended that detailed guidance on the application of the revised permitted development rights and their application be provided in a practice note – such as the Permitted development rights for householders Technical Guidance in the UK²⁵.
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<p>Comparators</p> <ul style="list-style-type: none"> • In the UK, certain classes of permitted development are not applicable ‘within the curtilage of a listed building’. This is similar to the wording in Part 1 of Jersey’s GDO. • Currently a majority of schedules of listing in the UK and the Isle of Man do not define the extent of listing and instead use points-based data. As a result, there is not the same conflict between the ‘extent of listing’ and the curtilage as is evident in Jersey. In Guernsey, the plan accompanied the list description outlines the building, and any surrounding ancillary buildings or features where these are part of the listing. • With regard to the extent of permitted development rights, this is comparable between Jersey and the comparator jurisdictions. • However, in the UK, there are more restrictive conditions on the siting of extensions (not permitted to the side) and the materiality (must be similar in appearance to the existing building). • The Isle of Man’s permitted development order also has more restrictive conditions relating to the materiality of extensions – requiring that, in conservation areas, ‘the external finish of any walling must match that on the major part of the dwellinghouse.’. 	<p>Conclusion</p> <ul style="list-style-type: none"> • The powers within the GDO can lead to inappropriate developments within the setting of listed buildings. To prevent this, it is recommended that the conditions within Part 3 of the GDO are broadened to control other aspects of design and appearance. This should be accompanied by comprehensive guidance on interpretation – for example the UK’s technical guidance on permitted development ²⁶. • The classes of permitted development that are applicable in conservation areas should be amended to include additional conditions requiring the use of matching materials for extensions and roof additions.
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Issue 4: Portable Antiquities/Treasure

Context in Jersey	Possible Solutions
<ul style="list-style-type: none"> Jersey has a notable concentration of hoard find sites the most recent example of which was made at Grouville in 2012. Also referred to as the Le Catillon II hoard the find comprised nearly 70,000 coins, 11 gold torcs and other gold and silver jewellery. Practice in Jersey remains based on customary law and convention. In February 2020 a decision was made (MD-E-2020-0010) to draft a Heritage and Antiquities Law for Jersey as it was felt that <i>“the island lacks a robust, statutory set of protections for antiquities, including with respect to their movement, treatment discovery and custody.”</i> 	<ul style="list-style-type: none"> A Heritage and Antiquities Law which provides clarity on heritage matters and ensures that the island is able to comply with recognised best practice and any relevant international conventions that extend to Jersey would be highly beneficial. In view of the <i>de facto</i> application of elements of the UK Treasure Act in determining the case of the Le Catillon II hoard wholesale adoption of the UK Act is clearly an option. Elements of the Isle of Man Treasure Act (https://legislation.gov.im/cms/images/LEGISLATION/PRINCIPAL/2017/2017-0002/TreasureAct2017_1.pdf) benefited from two decades of experience with the UK Act which might suggest that using the Manx model for Jersey legislation would have some value.

<p>Pros and Cons / SWOT</p> <ul style="list-style-type: none"> • The current customary law and convention provides little guidance on the handling of large finds which include precious metal objects and none where base metal finds are concerned. • Movement away from a definition which revolves around precious metal content and instead focuses on heritage interest would make more sense when managing the discovery and subsequent movement of portable antiquities. • The Portable Antiquities Scheme in the UK encourages the voluntary reporting of finds of all types regardless of their status as Treasure. Since its inception it has resulted in a greatly increased understanding of the historic environment in England and Wales. Voluntary reporting of metal detected finds in Jersey has been in <i>de facto</i> operation in recent years with 	<p>Recommendations</p> <ul style="list-style-type: none"> • Consult with stakeholders to develop a workable Heritage and Antiquities Law which protects the interests of all parties as far as possible. • Consider how a Heritage and Antiquities Law might focus on heritage interest rather than precious metal content. • Consider whether it might be beneficial to introduce a licensing system and whether such a system might extend to metal detecting and archaeological investigation.
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<p>similar beneficial effects.</p> <ul style="list-style-type: none">● Consultation with interested parties in regard to the drafting and operation of legislation will be highly advisable. If either the legislation or the manner of its operation is perceived to be unfair it is likely that voluntary co-operation will be withheld and the value of any changes largely nullified.	
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<p>Comparators</p> <ul style="list-style-type: none"> • Customary law and convention apply in Guernsey as in Jersey. A licensing system for metal detecting is in place. • In England the 1996 Treasure Act defines treasure including base metal objects found in association with precious metal objects and coins. • The Isle of Man enacted a Treasure Act in 2017 which defines treasure similarly to the UK and extends the definition of Treasure to “any object which, when found, in the opinion of the Trust (Manx National Heritage), is so closely connected with Manx history and national life that its loss would be a misfortune; of outstanding aesthetic importance; or of outstanding significance for the study of any branch of Manx art, learning or history.” The Act also details the notification requirements when treasure is found and the 	<p>Conclusion</p> <ul style="list-style-type: none"> • Jersey has an opportunity to develop best practice in the area of portable antiquities. Given the amount of interest from both local and visiting detectorists there would be a clear advantage to bringing legislation up to date.
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<p>circumstances in which a reward will be paid to the finder and others with an interest in the treasure.</p>	
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7.2 Policy

Issue 5: Policy HE1 Listed Buildings and Places (including GD1(2), SP4)	
<p>Context in Jersey</p> <ul style="list-style-type: none"> The overarching basis for preserving heritage is found in the purpose of the Law - ‘(1) to conserve, protect and improve Jersey’s ... character and its physical and natural environments’. Section (2) (a) – purpose of Island Plan is the ‘sustainable development of the land in a manner to serve the interests of the community’ and (b) ‘to protect sites, buildings, structures ... of special importance or value’ In the Island Plan 2011, the protection of the environment, including historic environment, is one of the five key principles for the Plan, along with quality of design, economic growth and sustainable development etc. Island Plan 2011 Policies HE 1 and HE 2 relate only to the protection of Listed Buildings and Places as SSIs and not a wider understanding of heritage / historic environment. This is underpinned by sections 52 to 56 of The Planning and Building (Jersey) Law 2002. Island Plan policy SP 4 states that ‘a high priority will be given to the protection of the Island’s natural and historic environment’ and that this will be a key material consideration in the determination of planning applications. Island Plan Policy GD 1(2) states that proposals ‘will not be permitted unless the proposed development does not seriously harm the island’s natural and historic environment, and in particular (a) will not have an unreasonable impact on ... archaeological remains or heritage assets, and includes where appropriate measures for enhancement of such features and the landscaping of the site.’ Objective HE 1 of the Plan is to protect, maintain, enhance and promote the historic environment, and safeguard archaeological heritage. Only ‘enhance’ makes it way into the policy, and ‘preserve’ is used instead of ‘protect’. 	<p>Possible Solutions</p> <ul style="list-style-type: none"> Policy needs to clearly follow strategy for heritage and the historic environment – what role will heritage play in the public, private and economic life of the island for future generations? Needs to pick up what a future heritage strategy might say. Link heritage policies back to the strategic policies / objectives of the plan more clearly – to aid in decision making. Objective HE 1 could become the first part of the policy, in order to give teeth to protection of historic environment in wider way (i.e. elements of environment not covered by Listing or Conservation Area such as historic street plan / urban grain / historical association)? However it is noted that many of these elements are covered by SP 1(2) and may be better addressed through general design policies, so as not to dilute the focus of historic environment policies. While wording of the policy is seen to be strong (confirmed by case law), it is often overruled in decision making when material considerations weigh against heritage, meaning listed buildings are often harmed or demolished contrary to policy. Should the weight be better codified in policy to provide clearer framework for when heritage considerations will be outweighed by other material considerations; this could result in fewer heritage assets being lost. Make policy wording more proactive drawing on conclusions of the Planning Officers Society Enterprise report. Make policy provision for the positive reuse of buildings of heritage interest where the special architectural or historic interest will be protected or enhanced potentially reflecting and codifying current practice. Include explanation that there is an extent of listing (generally the curtilage) and explanation of setting (assessed on case by case basis but principles clarified by case law), why these are important and how they will inform decision – link to SPG for

<ul style="list-style-type: none"> • Case Law and appeals have assisted in defining what ‘conservation’ means in Jersey and clarifying the law around the ‘public interest’ requirement for Listed Buildings, and that setting must be taken into account in planning decisions. Setting in Jersey has been clarified to mean: <ul style="list-style-type: none"> • ‘the space or place in which an asset is experienced ... in close proximity or longer views’ (Keppel Tower) • that it is the general area in which it is to be found and its characteristics within that area (Royal Court 16 January 2014), • that the setting of an asset is related / limited to the special interest of the asset, and setting is not an asset itself (Keppel Tower) and • that setting can be considered at various scales including wider landscape setting, engaging HE 1 and GD 1 (Ville a L’Eveque). 	<p>further guidance on how heritage assessment will be undertaken</p> <ul style="list-style-type: none"> • Differentiate the test for impacts on listed buildings and impacts to their setting, to allow for neutral change to a listed building’s setting.
<p>Pros and Cons / SWOT</p> <ul style="list-style-type: none"> • Stakeholders are generally satisfied with the wording of the policies and feel they are appropriate – criticism generally focussed on how they are applied during Development Control process including lack of clarity • Inconsistencies in terminology between law, objectives, different policies and supporting text – ‘seriously harm’ vs ‘unreasonably impact’ (GD1(2)), ‘protect’ (Law, SP4 and preamble to HE 1) vs ‘preserve’ (HE 1), ‘special interest’ (Law and HE 1) vs ‘particular interest’ (HE 1), ‘improve’ (Law) vs ‘enhance’ (HE 1). • HE 1 has some internal inconsistencies – starts with a ‘presumption in favour of preservation’ which is less strong, and then states that ‘proposals which do not preserve or enhance the special or particular interest of listed building and place or their special interest will not be approved’ – which is stronger. Later on the policy implies that loss may be allowed in exceptional cases (by requiring that fabric is recorded if it is to be lost), but this is not made explicit. • Neither policy wording nor supporting text provide assistance to decision makers or applicants in understanding in what circumstances development which may affect listed buildings and 	<p>Recommendations</p> <ul style="list-style-type: none"> • Put heritage central to the wider Island Plan’s focus on achieving sustainable development – that protecting heritage is about future generations and how the historic environment contributes to the island’s identity (and associated focus of the emerging Plan on placemaking). Make the overarching requirement to protect heritage in objective HE 1 part of the policy itself. Heritage objectives need to be balanced with sustainability objectives such as energy efficiency. • Ensure consistency of terminology across plan policies, with regard to case law where this is helpful – (harm, impact, preserve, special interest, enhance etc.) and where language differs, that there is a reason for this. • Remove ‘presumption in favour of the preservation of architectural or historic character’ if this is already covered by strategic or general development policies on character, and for townscape, this will be covered by Conservation Areas. • Amend policy (or supporting text) so that proposals involving the loss or harm to Listed Buildings or Places or their special historic or architectural interest or their setting will be refused except in (very) exceptional cases. In order to

<p>places may be acceptable, how this relates to its special interest, how this might be balanced with other strategic objectives of the plan (sustainability) or specific material considerations such as viability – is it in exceptional cases only? Buildings are being lost despite HE 1; 16 planning approvals since 2016 for partial or total loss of listed building (Article 19 and 20 of law allows decisions to be contrary to the Plan, and that all material considerations must be taken into account).</p> <ul style="list-style-type: none"> • No reference in policy or supporting text to the different non-statutory grades of listing, and whether this is relevant to the weight given to special interest of a site in decision making, or to the extent of its setting. See for instance NPPF in England which links weight to significance. • An appeal inspector on Keppel Tower considered that HE 1 was too restricting in terms of resisting any change to the setting of a listed building or place – considering that even a neutral change cannot be approved under the current wording, effectively prohibiting any new development in setting of any type of listed building unless it ‘enhances’ setting. However, a later decision by an Inspector on the De Montford case (ref. 2019/0970) sets out a different view, with the Inspector concluding that ‘I do not interpret the requirement to “preserve or enhance” precludes any development within the setting of a listed building’ ... ‘any changes ... must preserve the setting of the Listed Building in terms of preserving the way in which that Listed Building and its special interest can be appreciated and understood’. • A review of sites of archaeological interest was undertaken in 2008 on the basis of known archaeological evidence at that time. Other areas of potential archaeological interest, including the island’s mill heritage; and underwater archaeology have been identified since. • The current absence of a Heritage Strategy for Jersey is a weakness. The lack of an overarching approach results in reactive ad hoc responses and a lack of co-ordination between departments and agencies. 	<p>demonstrate that the case is exceptional, the applicant would have to prove ‘overwhelming public interest’ and/or significant viability issues.</p> <ul style="list-style-type: none"> • Consider making policy provision for the positive reuse of buildings of heritage interest where the special architectural or historic interest will be preserved or enhanced. • Reflect appeal inspectors’ reports and court judgements on understanding of setting in Jersey context (this may be better suited to SPG, with reference in supporting text). • Address the issue identified by inspector on Keppel Tower appeal that the policy does not allow for a neutral change to setting of listed building, because preserve means ‘keep unchanged’. Alternative wording could be ‘preserve or enhance’ for the listed building, and ‘avoid harm to’ for setting. • The opportunities afforded by the additional information made available by the HER could be used to expand the range of listed places with archaeological interest. Similarly a review of existing Listed Places with archaeological interest could be undertaken where the extent of interest could be more extensive than formerly understood – for example where they form part of post-medieval burial grounds • The future development of planning policy for the historic environment would benefit from being set within the context of an overarching strategy for heritage in Jersey.
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Comparators

- Isle of Man strategic policy SP 4 which requires that development must protect or enhance the fabric and setting of (heritage assets). Sites within wider strategic aim of ‘preserving, protecting and improving’ the quality of the environment, including reference to ‘our uniquely Manx natural, wildlife, cultural and built heritage’. There are also lots of detailed policies, including general presumption against demolition of Registered Buildings, and in cases of demolition or substantial demolition, will have regard to condition, cost of repair, adequacy of efforts made to retain building in use, and the merits of alternative proposals.
- NPPF in England seeks to ‘sustain and enhance the significance of heritage assets’ and ‘putting them to viable uses consistent with their conservation’. When considering the impact of a proposed development on the significance of an asset, greater weight should be given to the asset’s conservation – and the more important the asset (i.e. Grade), the greater the weight should be. Any harm or loss of the significance of the asset should be clearly and convincingly justified. Substantial (or total) harm or loss should be exceptional, and harm or loss of assets of highest significance (scheduled monuments, grade I and II* listed etc.) should be ‘wholly exceptional’. Where substantial harm or loss is proposed, this should be refused unless it can be demonstrated that its loss is necessary to achieve substantial public benefits that outweigh the harm – including that no viable use of the asset can be found in the medium term, and that funding is not possible. It may be worth noting that in England (as in Wales and Scotland) designation is a government responsibility with protection afforded by policy laid out in the Local Plan once the assets have been scheduled or listed.

Conclusion

- Legal and policy context means that the weight to be given to historic, architectural or other heritage value of listed buildings and places in planning decisions is very much a balancing exercise for the planners, and that where this balance falls is the subject of many appeals and legal reviews. Material considerations include viability but there is no reference to this in the policy or supporting text.
- Policies are currently appropriately strong – particularly the need to preserve and enhance both buildings and setting. However, legal framework allows heritage policy to be overruled by wider benefits or material considerations including viability – this should be better reflected in the policy in order to assist decision makers on the planning balance (linked to level of special interest i.e. grade), so that decisions can be more consistent and transparent.
- Positive reuse of buildings should be supported in policy. There is potentially a role here for an ‘enabling development’ policy.
- Case law confirms that setting should be taken into account, however policy is very restricting, effectively stopping any new development within the setting of a Listed Building – the policy should be reworded to be more flexible towards development in the setting of a building noting other GD and conservation area policies which will pick up townscape / character impacts.

Issue 6: Policy HE2 Protection of Historic Windows and Doors

Context in Jersey

- Changing doors and windows is ‘permitted development’ based on the GDO, however for Listed Buildings and Places, these permitted development rights have been removed. This means that planning permission is required for replacing, changing, removing or moving windows and doors in Listed Buildings.
- Historic windows and doors in non-listed historic buildings are not protected, and these can be changed through permitted development rights without any controls. (Note however recommendation above for permitted development rights to include a condition that requires replacements to be ‘similar in appearance to that which they are replacing’).
- The pre-amble to HE 2 acknowledges the importance of windows and doors as part of the fabric of old buildings and part of the character of buildings and wider areas. It notes that unsympathetic windows and doors have caused damage to many buildings and places.

Possible Solutions

- Policy needs to follow on clearly from the objectives which the Government of Jersey are trying to secure through this policy.
- The revised policy should reflect and align with changes implemented to permitted development rights.
- The policy should provide a clearer indication of the decision-making process, indicating the steps which must be followed and stages that must be demonstrated by an applicant who wishes to secure permission for replacement windows and doors. This is currently set out in the SPG but should be added to the policy or reasoned justification, to be afforded greater weight and provide more clarity to applicants.
- The policy should include a statement on the balance between protecting historic fabric and promoting the sustainability and energy efficiency of building stock giving clear direction for decision making (allowing that compromises may be necessary).

Pros and Cons / SWOT

- Stakeholders generally find the policy to be confusing and not fit for purpose. Confusion linked to the lack of detail in the listing, and whether the windows are ‘special features’ which form part of the listing, or not. Appeals and enforcement action lost / stalled due to lack of clarity in the evidence.
- The policy intent is for a preference for repair of historic windows before replacement is considered. Repairs should be done using materials and details to match the existing, and if replacement windows are required, these should replicate or restore the historic windows or doors. The painting of previously unpainted surfaces is controlled, in GDO, re-painting is not; this means

Recommendations

- Reflect the approach in the ‘decision tree’ in Appendix 2 of the SPG within the wording of policy and within the reasoned justification .
- Ensure that the reasoned justification is explicit with regard to the link between the retention of historic features and sustainability and expresses a presumption in favour of retention, along with support for appropriate energy efficiency enhancement measures.
- Reword policy to allow applicants to demonstrate that the existing window does not contribute to the significance or special interest of the asset, even if it is historic.

<p>re-painting historic windows and doors is not subject to existing controls.</p> <ul style="list-style-type: none"> • Policy wording is imprecise – it does not express a clear criteria based approach to making decision. The test for justifying replacement seems to be where ‘repair is not possible’ (para 2) and also ‘where repair is impracticable’ (para 3). The SPG does however set out the requirement for submission of adequate detail as part of a planning application. • There can be differing interpretations of ‘historic’. It could refer to the original windows of the building in situ, windows that are historic but not original (but are traditional / appropriate to the building), windows that are historic, not original and also not traditional / appropriate to the building, or simply windows that that are traditional / appropriate to the building, whether old or not. Policies from comparators provide more guidance on what is considered ‘historic’ (e.g. Guernsey). • It is not clear if para 3 intends that windows being replaced again can replicate existing windows (even if unsympathetic) or whether they should go further and reinstate windows that are traditional and appropriate to the building – the latter would be preferable from a conservation point of view, and is certainly what is preferred in the SPG. • Lacking reference in policy or supporting text to the balance between protecting historic fabric and sustainability of building stock and energy efficiency – SPG provides helpful information but isn’t instructive for decision making. 	
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<p>Comparators</p> <ul style="list-style-type: none"> Isle of Man - A government planning circular contains policy and approach to the alteration and replacement of windows²⁷. It sets out clearly the policy requirements for alterations or replacement windows in different categories of building – Registered (listed) buildings, buildings in conservation area, buildings which date to before 1921 (and thereby PD Rights have been removed) and which have largely retained their original character. Policy wording is very clear – for registered buildings, replacement ‘MUST BE THE SAME as the originals in all respects, including the method of opening, materials and detailed design. This policy will be strictly applied other than where the particular circumstances are so exceptional as to justify a relaxation’. It would appear that the policy does not apply if the original windows of the building have already been lost. In Guernsey, the replacement of a door or window within an existing aperture in a dwelling-house is permitted development, provided that where the dwelling-house is within a conservation area or is substantially constructed before 1900 the replacement is of the same design, means of opening and made of the same material as the one it replaces. Replacement windows to Protected Buildings require permission in all circumstances, but Guernsey’s plan does not include a specific policy relating to windows or doors – these are covered by general design policies. In the UK, policy wording relating to replacement windows varies across Local Planning Authorities and the context and sensitivity of their historic environment. In Ireland, Section 4 of the Planning and Development Act 2000 sets out what is ‘exempted development’ – i.e. permitted development not requiring planning permission. However, for works carried out on a protected structure (equivalent of listed building), some works which would otherwise be ‘exempted 	<p>Conclusion</p> <ul style="list-style-type: none"> At present, the policy wording is imprecise and therefore open to interpretation which can result in inconsistency in its application. Relative to comparator jurisdictions Jersey’s policy on windows and doors in historic buildings is more restrictive. Specifically, it requires repair to all historic windows in historic buildings regardless of whether the window is an historic replacement which does not contribute to the building’s significance. The policy should be reworded to allow applicants to demonstrate that the existing window does not contribute to the significance or special interest of the asset, even if it is historic. The ‘requirement to repair’ should only apply to those which contribute positively to significance. This would allow for more flexibility but would retain a measure of control. This principle is currently set out within the SPG, but to provide clarity it should be embodied within the policy wording and reasoned justification. The revised policy should be explicit with regard to the link between the retention of historic features and sustainability and should express a clear presumption in favour of retention and for upgrading the energy efficiency of historic doors and windows, where the works do not harm the significance of the asset.
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²⁷ <https://www.gov.im/media/1349247/pc-1-98-the-alteration-and-replacement-of-windows.pdf>

<p>development' do require planning permission if they 'materially affect its character'. Whether works are likely to materially affect the building's character is related to the nature of the structure and what is deemed as being of special interest. Applicants can apply to the Planning Authority under section 57 of the Act for a declaration confirming what types of work can be carried out to the building without requiring planning permission i.e. confirming which works would not materially affect its character. If the declaration confirms what types of works are not required, then these works constitute permitted development and an application is not required. This approach is more flexible than in Jersey where all works to replace windows require permission, whether they materially alter the appearance of the building or not.</p>	
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Issue 7: Policies HE3 and HE4 Conservation Areas

<p>Context in Jersey</p> <ul style="list-style-type: none"> The overarching basis for preserving heritage is found in the purpose of the Law – ‘(1) to conserve, protect and improve Jersey’s ... character and its physical and natural environments’. Section (2) (a) – purpose of Island Plan is the ‘sustainable development of the land in a manner to serve the interests of the community’ and (b) ‘to protect sites, buildings, structures ... of special importance or value’ 	<p>Possible Solutions</p> <ul style="list-style-type: none"> Establish Conservation Areas in law. Policy needs to clearly follow strategy for heritage and the historic environment – what role will heritage play in the public, private and economic life of the island for future generations? Needs to align with the recommendations and direction of the emerging heritage strategy. There must be a clear link between the heritage policies and overarching strategic policies.
<p>Pros and Cons / SWOT</p> <ul style="list-style-type: none"> Stakeholders are satisfied with the wording of the policies and feel they are sufficiently strong. It is however recognised that, since conservation areas do not currently exist, the policies have not been applied and subjected to scrutiny in the same way that other policies have. Similar to the wording of HE1, the wording of HE3 and HE4 is generally neutral - change cannot be approved under the current wording, effectively prohibiting any new development in the setting of any type of listed building unless it ‘enhances’ setting. It is however noted that the wording differs in that development should ‘seek to preserve or enhance’. 	<p>Recommendations</p> <ul style="list-style-type: none"> Heritage must be placed as a central element to the wider Island Plan’s focus on achieving sustainable development – that protecting heritage is about future generations. It is recommended that ‘seek to’ is removed from the policy wording, as this increases certainty. The tightening of the wording would ensure consistency in approach and provide greater clarity for applicants. It is recommended that area-based protection, in the form of Conservation Areas, is introduced through legislative change supported by appropriate policy and guidance (for example through Conservation Area Appraisal).

<p>Comparators</p> <ul style="list-style-type: none"> • Isle of Man strategic policy CA2 which similarly requires development within conservation areas to ‘preserve or enhance’ the character of the area. Under Section 18 subsection (4) of the Isle of Man Planning Act, special attention shall be paid to the desirability of preserving or enhancing the character of a conservation area, in the exercise, with respect to any buildings or other land in the area, of any powers under the act. • Poole has defined 16 conservation areas, the first of which was designated in 1977 and the most recent in 2013. Conservation area appraisal and management plans have been adopted for eight of the 16 conservation areas. Development proposals are managed in a different way in conservation areas because some of the rights of landowners under the General Permitted Development Order (GPDO) have been removed. Development in these areas must be in the interest of preserving or enhancing the character or appearance of the conservation area. Tree work, minor alterations and demolition within a conservation area are all controlled. Article 4 directions in certain conservation areas impose restrictions on specified developments tailored to protect the visual character of those areas . 	<p>Conclusion</p> <ul style="list-style-type: none"> • Conservation areas do not currently exist in Jersey and therefore, the policies have not been applied and subjected to scrutiny in the same way that other policies have. Stakeholders and comparator analysis has found that the policy is generally robust. • Given the length of time since the conservation area proposal was first introduced, there is a need for the Island Plan and supporting strategies to re-emphasise the importance and significance of these areas. • A number of stakeholders expressed a malaise towards the idea of conservation areas – the plan must reinvigorate the debate and emphasise the role of conservation areas to the general public. • The introduction of area-based protection has the potential to address issues such as setting and curtilage within areas designated as a conservation areas, reducing the need to resort to judicial review.
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Issue 8: Policy HE5 Archaeology

<p>Context in Jersey</p> <ul style="list-style-type: none"> • An archaeological evaluation is required to be carried out for works which may affect archaeological resources: this information will be required as an integral part of an application. The form of the evaluation will be dependent upon the nature of the archaeological resource and the development proposal. • There is a presumption in favour of the physical preservation <i>in situ</i> of archaeological resources and their settings. <p>Developments which have a significant impact on archaeological resources and the setting of visible archaeological resources, will only be permitted where it can be shown that the intrinsic importance of the resource is outweighed by other material considerations, including the need for and community benefit of the development.</p>	<p>Possible Solutions</p> <ul style="list-style-type: none"> • Redrafting of the pre-amble to more closely reflect Policy wording where preservation <i>in situ</i> is concerned. • Enhanced SPGs (see Issue 8) would enable greater clarity around issues of significance and setting.
<p>Pros and Cons / SWOT</p> <ul style="list-style-type: none"> • HE 5 states ‘Development which would involve significant alteration or cause damage, or which would have a significant impact on archaeological resources and the setting of visible archaeological resources,’ in the UK this is not restricted to visible archaeological resources (possibly too difficult to define in relation to buried remains?). • ‘Where it is determined that the physical preservation of archaeological resources <i>in situ</i> is not justified’ - this does not match the pre-amble text where the wording specifies ‘not feasible’. • Para 3.43 states ‘The preservation <i>in situ</i> of important archaeological remains is, therefore, nearly always to be preferred.’ This perhaps mirrors policy in the UK at the time the plan was written. A more balanced approach has subsequently generally been applied in the UK and indeed the approach requires a clear definition of what constitutes important archaeological remains. 	<p>Recommendations</p> <ul style="list-style-type: none"> • Amend the preamble to this policy to include a section on the definition and purpose of Areas of Archaeological Potential. • Para 3.43 states ‘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’ - a definition of ‘important’ would help in decision making. • Define, in updated SPG, how the importance of archaeological remains is to be assessed. • In view of the undeveloped nature of guidance on setting it is likely that there will be particular problems in dealing with the setting of buried archaeology (possibly for inclusion in a specific SPG on setting).

<p>Comparators</p> <ul style="list-style-type: none"> • Policy in Guernsey (Policy GP7) is broadly comparable with provisions for investigations prior to development, recording during construction and preservation in situ. Where it is not proposed to preserve remains in situ proposals will be supported if it is demonstrated that the benefits of the development outweigh the importance of preserving the remains in-situ. Setting is not mentioned • The Isle of Man IDP (Environment Policy 41) requires pre-determination evaluation of sites. Where preservation in situ is not deemed to be merited excavation prior to construction is secured by condition or formal agreement. The basis on which preservation in situ is deemed to be merited or otherwise is not explained. • The provisions of national policy the historic environment laid out in NPPF apply alongside relevant policies in the Poole Local Plan. NPPF requires that an applicant should describe the significance of any heritage assets affected, including any contribution made by their setting; the effect of an application on the significance of a non-designated heritage asset should be taken into account in determining the application; there is a requirement to record and advance understanding of the significance of any heritage assets to be lost (wholly or in part) in a manner proportionate to their importance and the impact, and to make this evidence publicly accessible. Particular note is made in the Local Plan of the archaeological potential in the Town Centre Conservation Area. 	<p>Conclusion</p> <ul style="list-style-type: none"> • Existing policy is fit for purpose but implementation and particularly pre-application engagement could be improved by enhanced guidance on how significance is judged. • Clarity around the function of Areas of Archaeological Potential would be beneficial. • Guidance on how setting is defined and effects on it assessed would be beneficial.
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Issue 9: SPG Policy Note 1- Archaeology	
<p>Context in Jersey</p> <ul style="list-style-type: none"> SPG Policy Note 1 Archaeology and Planning dated 2008 comprises a preamble, reference to the 2002 Island Plan followed by sections dealing with: The basis for the listing of an archaeological site as a Site of Special Interest; the registration of Archaeological Sites; Areas of Archaeological Potential; preservation in situ; the requirement for evaluation; the circumstances in which excavation might be required. A schedule is maintained detailing sites of archaeological interest and mapping documents showing various categories of designated sites including finds, monuments and Areas of Archaeological Potential. 	<p>Possible Solutions</p> <ul style="list-style-type: none"> Revision of the Archaeology and Planning SPG Develop additional guidance on setting to address both archaeology and the built environment.
<p>Pros and Cons / SWOT</p> <ul style="list-style-type: none"> Schedule: Sites of Interest. Dated 2008 so now out of date following revision in latest resurvey. The schedule categorises Sites of Special Interest (SSI), potential SSIs, Archaeological Sites and Areas of Archaeological Potential of which only SSI and Areas of Archaeological Potential are mentioned in the website because many of the sites are now formally listed as SSIs (listed places) and the remainder retained as Areas of Archaeological Potential. No rationale is offered for the boundaries of the site offered protection. The suspicion must be that it is modern property boundary rather than defined archaeological interest. In some cases the rationale in the schedule for defining the area of interest is given but in rather vague terms (“There is also the possibility that this stone may be part of a larger ruined megalithic monument.”) This is demonstrative of a precautionary approach where the onus to demonstrate archaeological significance is placed on the developer; and where modification of status can be amended, or removed, in light of evidence that might be produced in association with a development proposal. 	<p>Recommendations</p> <ul style="list-style-type: none"> A section on what is expected of desk based assessments, evaluations and excavations would be helpful – it would also save effort in producing individual briefs. A simple report contents list could be sufficient. Greater clarity in the difference between SSI and AAP would be helpful. Reference to policy should be brought up to date. Links could be provided to the online schedule with an explanation of mapping conventions and an explanation of the rationale of how the limits of the protected areas have been defined. Guidance on approaches and procedures to the treatment of human remains should be added – including identification of potential to encounter remains need to be addressed at the assessment stage. Signposting to the HER should be included and a requirement to consult it when undertaking any assessment work. A requirement to notify the HER of the results of archaeological work should be made explicit in the SPG in order to tie in with requirements laid out in

<ul style="list-style-type: none"> • Possible pre-historic AAP: Place name evidence for mounds which cannot now be seen (and which may not have been of archaeological interest anyway)! Although a rather tenuous rationale the precautionary approach allows modification in light of evidence which may be produced in association with a development proposal. • Underwater archaeology is mentioned briefly, how human remains are to be treated not at all. • Setting is not treated, which in light of its potential importance in determining applications is a substantial gap. The different approach to setting taken in Jersey needs to be articulated in order to allow historic environment practitioners who may more used to the Historic England approach to give effective advice. • The rationale for determining importance of archaeological remains is covered only in as far as the criteria for listing as an SSI. If a site falls short of the test for listing it would be defined as an AAP, which would mean that, in the context of a development proposal, there is justification to seek some form of archaeological evaluation based relative to the nature of the proposal/potential interest of the site. • The need for publication of the results of archaeological work is made clear but what is to happen to the archive is not so clear – presumably with Jersey Heritage. The desirability of keeping the finds and records generated by archaeological investigation together and easily accessible for future study could usefully be emphasised 	<p>the briefs issued by the Historic Environment Team.</p> <ul style="list-style-type: none"> • Clarification of the long-term responsibility for excavation archives should be added to the SPG.
<p>Comparators</p> <ul style="list-style-type: none"> • The supplementary planning guidance to the Guernsey IDP does not address archaeology. A Conservation Advice Note “Principles for Sustaining Guernsey’s Historic Environment” deals with the historic environment more generally. • Isle of Man Planning Policy Statements do not address archaeology. 	<p>Conclusion</p> <ul style="list-style-type: none"> • Jersey is further advanced than its comparators in providing effective planning guidance. Nonetheless, the general appearance is of an SPG in need of updating, as a minimum to reference current policy but also to accommodate current knowledge and approaches and to ensure that the heritage status of archaeological assets is clearly and accurately presented.

<ul style="list-style-type: none">• Poole Supplementary Planning Guidance does not address archaeology. National guidance developed by Historic England covers designated assets (scheduled monuments), setting and human remains.	
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7.3 Process

Issue 10: Interpretation and application of heritage-specific policy	
<p>Context in Jersey</p> <ul style="list-style-type: none"> As outlined above, the content and wording of heritage related policy, combined with the legal context, means that there is a balancing exercise that must be carried out by the Government's planners in determining applications. A range of stakeholders consulted during this process expressed the view that heritage was not treated consistently during the application process. Stakeholders raised particular concerns with regard to the treatment of viability arguments in heritage contexts. Article 19(3) of the Planning and Building (Jersey) Law 2002 states that planning permission may be granted where the proposed development is inconsistent with the Island Plan, if the decision-maker is satisfied that there is sufficient justification for doing so. Therefore, applications which are contrary to Island Plan policy are permissible if other material considerations outweigh the harm resulting from the non-compliance with policy. 	<p>Possible Solutions</p> <ul style="list-style-type: none"> Amend policy wording to provide clearer framework for when heritage considerations will be outweighed by other material considerations – this will assist with consistency in decision-making and provide greater clarity to applicants. Introduce principle of enabling development to incentivise the retention of heritage assets. Require the submission of, and publish viability assessments, when applicants seek to justify proposals on the basis of retention and redevelopment being unviable. Require third party, independent assessment of viability assessments. Specialist training for officers and members regarding viability and knowledge sharing around effective re-use of listed buildings and structures. .
<p>Pros and Cons / SWOT</p> <ul style="list-style-type: none"> POSe noted in their 2019 review that there was a commonly held view expressed by developers and agents that heritage policies were given priority and in effect had a power of veto over the other policies in the plan. POSe reiterated the concerns identified in their earlier 2013 report that 'the development industry representatives felt that the heritage approach was over developed and over detailed and inhibited the development of commercial proposals to meet the State's economic objectives'. The 2019 review also noted that there was a perception amongst stakeholders that the views of the Heritage Officer were given undue weight. POSe recommended that the drafting of Officer reports reflect the fact that heritage is one material 	<p>Recommendations</p> <ul style="list-style-type: none"> It is recommended that policy be amended to provide a clearer framework for decision-making when proposals involve harm to, or demolition of, listed buildings. This will provide certainty to applicants and help with consistency. In addition, a clearer framework would help to improve public perception of the way viability is treated in relation to heritage. Viability assessments which should be required and should be made publicly accessible. The requirement for these should be enshrined through publishing a practice note and, enforcing this requirement through development control processes, it could become a validation requirement. There should be greater transparency

<p>consideration which must be weighed against others, and that balancing the merits of competing policies is set out clearly. It was suggested that this would render the presence of the Historic Environment Team at committee meetings unnecessary and that the decision for this officer to attend be at the discretion of the Director of Planning. Similar concerns were raised by stakeholders as part of the current engagement however it is noted that the attendance of the Historic Environment Team is at the discretion of the chair.</p> <ul style="list-style-type: none"> • Notwithstanding POSe's recommendations, it is noted that data shows that, of applications requiring a consultation with the Historic Environment Team, an average of 86.34% were approved (note: of those refused, some are refused on matters unrelated to the historic environment, however data is not available to quantify this). Of these, 81% attracted no objection from the Historic Environment Team. These statistics do not represent higher than expected levels of refusals for applications relating to historic buildings. • However it is also evident that, despite a presumption in favour of retention of listed buildings within the Island Plan, there have been some high profile cases involving the total demolition and redevelopment of listed buildings. In a number of these cases, the public benefits have been considered of sufficient weight to outweigh the harm resulting from the demolition. Arguments that the redevelopment would be unviable if the buildings were retained have also been accepted, seemingly without detailed scrutiny of scheme viability. 	<p>with regard to the assessment of viability in heritage-related cases.</p> <ul style="list-style-type: none"> • Ensure an on-going programme of training for all officers, with specific focus on heritage and viability.
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<p>Comparators</p> <ul style="list-style-type: none"> • As set out above in relation to Policy HE1, the NPPF in the UK sets out a clear process for decision making where proposals involve harm of demolition of listed buildings – para 193 – 196. This sets out different levels of harm, based on the grading of buildings, and sets a threshold for the level of public benefit which is required in order for consent to be granted for the works. • In the Isle of Man, a detailed Planning Policy Statement (number 1/01) similarly sets out that there may be very exceptional cases where the proposed works would bring substantial benefits for the community; these would have to be weighed against preservation. Even here, it will often be feasible to incorporate registered buildings within new development, and this option should be carefully considered. • In the Isle of Man, it is commonplace to submit evidence of marketing, along with a viability assessment to demonstrate that the retention or re-use of historic buildings is not viable. These are publicly accessible via the website and are scrutinised by the Planning Officer. There does not appear to be a policy requirement for these, however. 	<p>Conclusion</p> <ul style="list-style-type: none"> • The legal and policy context means that the weight to be given to heritage considerations in planning decisions must be weighed against other material considerations. Whilst this balancing act differs on a case by case basis, it is recommended that the policy framework provide a clearer structure for decision-making. This should be accompanied by training for officers and members. • In order to improve public perception on these matters, viability information should also be made publicly available and officer reports clearly set out the assessment that has been undertaken.
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Issue 11: Designation of listed buildings	
<p>Context in Jersey</p> <ul style="list-style-type: none"> • Recommendations for inclusion on the list of SSIs are made by Jersey Heritage to The Government of Jersey via the SLA • Listing decisions used to be undertaken by officers within the former Department of the Environment where they had no regulatory function. This arrangement has been negated by government restructuring leaving decisions about listing within the regulatory function of Infrastructure, Housing and Environment (IHE). This potential conflict of role is proposed to be resolved: amendment of the Planning and Building Law provides a potential means to do this • Assets are given a non-statutory grade to help understand their significance. • Grade 4 listed buildings are only protected externally. • Anyone can nominate a building or place for inclusion on the list of SSIs: proposals for inclusion are referred to JHT for initial assessment, and subsequent detailed review, where warranted, relative to the criteria published by the minister. 	<p>Possible Solutions</p> <ul style="list-style-type: none"> • Greater publicity/ visibility online around the opportunity to suggest buildings or places to be listed to provide clearer systems of public engagement during the designation of building or places • Consultation with the wider public pre-designation would help capture views/ accounts from a wider audience and would increase engagement with wider public.
<p>Pros and Cons / SWOT</p> <ul style="list-style-type: none"> • The HER website data does not provide grade of listed building or place (this may be the first point of reference from public to understand significance of assets). Although this is stated on the formal legal The Government of Jersey register, there is no 'live' link to this from the HER asset page, therefore the relative significance of the asset is not immediately clear from the HER. • Despite the public being able to recommend buildings or places for listing, instructions for the process of doing so are not obviously set out online. 	<p>Recommendations</p> <ul style="list-style-type: none"> • Consider promoting a publicly accessible online system which allows anyone to submit recommendations for listing a building or place, such as Historic England's function to 'Apply for Listing' on their website. • Designation process to include consultation with owners, applicants (if put forward by member of the public), and wider public to capture oral history/ communal values etc.

<p>Comparators</p> <ul style="list-style-type: none"> • Isle of Man: Many buildings identified which have the potential for Registration result from being named in Area Plans. These will, in the future, become the main sources for identifying new buildings which should be put on the list for potential registration. • Once a building has been suggested for entry onto the Protected Buildings Register the proposal is advertised by way of publication on the weekly planning application list and erection of a site notice. Members of the public can elect to be notified of the issue of each publication list. • Once a proposal is initiated consultation includes invitation to Authorities and the Public to comment, either by support or objection, to the proposal. • The process of designation by Historic England includes a consultation process. During this process Historic England issue an initial assessment to the owner, the local planning authority, the HER officer, the applicant and any other identified relevant parties. They are then given the opportunity to comment on the facts set out in the report and invited to respond usually within 21 days from the date of the consultation letter. • Historic England provide the public with the opportunity to Enrich the List, by submitting photos and information/ accounts of the asset. Moreover there is the opportunity for anyone to apply for an asset to be listed directly via the Historic England website. 	<p>Conclusion</p> <ul style="list-style-type: none"> • Greater levels of public engagement with the designation of buildings or places would bring into focus community values, make use of existing local knowledge and help residents to feel included and invested. This could include: <ul style="list-style-type: none"> - a wider consultation process pre-designation; - more visibility on the Government of Jersey website as to how to nominate a building for listing; and - a visible platform to enhance the information provided within the listing accessible to the public.
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Issue 12: Resourcing	
<p>Context in Jersey</p> <ul style="list-style-type: none"> At present, the Historic Environment Team consists of one individual (with the support of the Head of Spatial Planning). Arms-length support is provided by Jersey Heritage. Stakeholders expressed the view that the Team provided a good quality service but was restrained due to a lack of resources. Stakeholders also believed that the lack of an archaeologist within Government, and the outsourcing of this function, meant that sometimes subtleties related to the context in Jersey were not adequately considered. The Curator of Archaeology at Jersey Heritage Trust advises about designation of listed places through the SLA; advice about impact of development on archaeological heritage assets is provided through an SLA with an external consultant. 	<p>Possible Solutions</p> <ul style="list-style-type: none"> Decrease the number of consultation requests issued to the Historic Environment Team and providing specialist training to Planning Officers to deal with small-scale applicants without the need for consultation. For example, with appropriate training and support, along with SPG guidance, Planning Officers could determine applications for replacement windows and doors without drawing on HET resources. Resource additional staff members within the Historic Environment Team; perhaps at junior planner or planner level. Additional Historic Environment Team staff resource might allow archaeology to be brought 'in-house' thus addressing stakeholder concerns in this area. Work towards a more proactive pre-application advice service – with sufficient resourcing for the Historic Environment Team to input constructively.
<p>Pros and Cons / SWOT</p> <ul style="list-style-type: none"> Although it does not fall within the scope of this report, the cost of bringing in external support in matters relating to archaeology should be carefully scrutinised to ensure best value (noting that the renewal of the archaeological support contract is subject to competitive tender which is likely to keep costs down). Many stakeholders expressed a preference for on-island archaeologist capable of providing advice across a range of subjects including development control. There is a potential lack of resilience in service provision. Should the Principal Planner experience an unforeseen period of absence, there is little scope within the service to cope with this. Given the resourcing constraints, the Principal Planner has limited time to proactively pursue wider heritage-related work as consultations for 	<p>Recommendations</p> <ul style="list-style-type: none"> Planning Officers are skilled at balancing competing material considerations. It is recommended that training and support is provided, along with additional resourcing if necessary, to allow small scale applications involving listed buildings to be determined without the need for Historic Environment Team consultation. This will reduce the time spent by the Historic Environment Team on consultation responses, allowing a wider role to be taken by the Historic Environment Team in advocating for heritage. It is recommended that the Historic Environment Team be resourced with at least one more Officer. This will enhance resilience, reduce the risk of interruptions in service provision and, importantly, allow for a diversity of views on heritage matters to be incorporated into the service provision.

<p>planning applications take priority due to their statutory time limits for determination.</p>	
<p>Comparators</p> <ul style="list-style-type: none"> • In England county archaeologists (or Greater London Archaeology Advisory Service in London) provide specialist advice on matters of archaeology. Poole is able to draw on the services of the Historic Environment Team at Dorset Council which has two staff members who cover promotion, liaison, planning advice and management of archaeology. • In addition, the move from ‘development control’ to ‘development management’ and the shifting emphasis in the NPPF towards a more proactive planning system has seen a shift in the role of Conservation Officers within local authorities to a more proactive, less reactionary role. This has often been accompanied by specialist training of Planning Officers to deal with small-scale applications appropriately without consulting, and an enhanced pre-application procedure. • In England research frameworks have tended to be developed on a regional basis with funding from Historic England or its predecessor English Heritage. The teams preparing the frameworks come from a wide range of backgrounds and production managed by academic bodies (East Midlands) or by a group of local planning authority archaeologists (North West England). Application of the resulting research frameworks within the planning system is then the responsibility of archaeology officers within local planning authorities. • Manx National Heritage is the Isle of Man’s statutory heritage organisation combining the role of a National Trust with those of national library, museum and archive. It has responsibility for monuments and is a statutory 	<p>Conclusion</p> <ul style="list-style-type: none"> • It is clear that resourcing levels are presently unsustainable and do not provide the resilience required. • It is recommended that resourcing be enhanced through training and reviving deleted posts, to increase resilience and allow for a more proactive service provision. • Prioritisation of resource requirements should establish where the need is greatest and would ideally be guided by an overarching strategy - for example support for current function in order to provide capacity and resilience might be first priority; expansion of professional resource to cover aspects such as marine archaeology and outreach which are currently un-resourced might be second; and establishing a field archaeologist post, where there is current provision, albeit outsourced, might be third.

<p>consultee for planning applications and offers pre-application advice to developers. It also maintains the HER.</p> <ul style="list-style-type: none">• The Guernsey States Archaeologist deals with rescue excavations, in response to planning applications for development in sensitive areas and is supported by two assistant archaeologists all are based at Guernsey Museum. The team is also responsible for maintaining the Guernsey Sites and Monuments Record.	
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Appendix A

Methodology and Engagement Plan

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A1 Methodology

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Job number

270796-47

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File reference

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Date

4 September 2020

Subject Jersey Historic Environment Protection Review Methodology

1. Introduction

A comparative review of the island's historic environment protection regime in its entirety is required by the Government of Jersey. The objective of the review is to create the most robust and appropriate planning regime for protecting Jersey's heritage in all its aspects.

Whilst the focus is planning, the review will take place in the context of a developing cultural heritage strategy.

This Technical Note lays out the methodology to be employed in the Historic Environment Protection Review. It develops the summary methodology presented in the draft Task Order dated 12/03/2020 in light of restrictions imposed in response to Covid 19. It sets out how Arup propose to undertake assessment, liaise with stakeholders and report the findings.

2. Staged Approach

The review will be conducted in the following stages – Inception, Baseline Preparation, Developing Recommendations, Reporting and (if required) Presentation of Key Conclusions.

Inception

A successful inception phase is essential in setting the parameters for the assessment; ensuring that the requirements of the Government of Jersey are understood in full and enabling a partnership approach from the outset.

An Inception Meeting was held online on 12/06/2020 covering the following topics:

- Scope of the review.

- Heritage bodies in Jersey.
- Engagement with stakeholders.
- Proposed methodology.
- Baseline information request.
- Project communication plan.

Baseline preparation

This phase comprises the following work strands:

- Review of existing historic environment protection regime.** This will take the form of a desk-based study of material provided as links within the Government of Jersey “Project brief: Island Plan Review, Review of historic environment protection regime” and any data identified in the Inception stage baseline information request. In addition up to five examples recent developments will be tracked through planning to understand the strengths and weaknesses of the present regime.
- Assessment of comparators.** In line with previous discussion Guernsey, Isle of Man, York and one other comparable Local Authority will be assessed in terms of current practice. The Institute for Historic Building Conservation (IHBC) will be approached with a view to benchmarking UK best practice. If the chosen comparators prove to be unworkable substitutes may be selected by agreement with the Government of Jersey. The comparator assessment and benchmarking will be conducted through a mixture of desk-based literature review and, if necessary, engagement with relevant local authority and IHBC officers.
- Stakeholder engagement.** Stakeholder engagement will be key to understanding how the existing heritage protection regime is experienced by those working within the planning system in Jersey. The details of stakeholder engagement are dealt with below.

The results of these work strands will be drawn together in the form of an initial baseline report. This report will summarise the current regime, identify best practice, and present stakeholder feedback on the implementation of the current regime. It is not expected that the report will list or map assets except where it is necessary to illustrate a particular point. The report will be circulated to the Government of Jersey for initial comment.

Developing recommendations

At the next stage Arup will develop draft recommendations informed by the results of the baseline review. The recommendations will be shared with the Government of Jersey prior to being tested at a ‘by invitation’ workshop. The workshop will take place online, hosted and facilitated by Arup. The platform to be used for the workshop will be agreed with Government of Jersey. The

findings of the workshop will be captured in a form which allows incorporation into subsequent reporting.

Reporting

The initial baseline report and the products of the online workshop will be incorporated into a final report. The format and contents of the report are expected to include an introduction, baseline findings and recommendations in the following areas:

- Legislation
- Policy & Guidance
- Management of Assets
- Resourcing

An initial draft of the report will be issued to the Government of Jersey for review in week eleven of the proposed programme. Following review the report will be amended and a final agreed version issued.

Presentation of Key Conclusions

This would comprise a follow up public event to present the conclusions of the finalised report to the widest possible stakeholder audience.

The benefit of this stage would be to socialise the results of the review across a wider group than the key stakeholders engaged at the baseline preparation stage. The aim of this stage would be to facilitate informed debate at such time as any proposed legislative and policy changes are brought forward. This stage has not yet been agreed with the Government of Jersey.

3. Stakeholder engagement

In order to be fully effective stakeholder engagement needs to reach out to as wide a cross-section of experience as possible. Stakeholders will therefore be identified from across the spectrum of those with experience of and interest in the heritage of Jersey. This will include government officers, non-governmental organisations, business and professional organisations, special interest groups, landowners and individuals. A proposed stakeholder engagement list will be prepared in conjunction with the Government of Jersey. Key stakeholders will be identified.

Contact will be made with stakeholders through an introductory letter, drafted by Arup and issued by the Government of Jersey. This letter will outline the purpose of the review and invite stakeholders to participate.

Stakeholders will then be requested to participate in an online questionnaire developed by Arup. As a follow on from the questionnaire key stakeholders will be asked to participate in one on one telephone interviews. Questionnaire and interview responses will then be used to assist in the development of an initial baseline report as outlined above.

Key stakeholders will be invited to participate in the online workshop to test and refine initial recommendations developed out of the baseline report. Output from the workshop will be recorded and used to support the preparation of the final report.

A2 Stakeholder List

Name	Association
Alastair Best	Societe Jersiaise
Charles Alluto	Jersey National Trust
Craig Armstrong	Henderson Green
Jane Aubin	
Nick Aubin	
Marie Louise Backhurst	
Keith Beecham	Visit Jersey
Robert Beslievre	Sycamore Properties
Mary M Billot	Parish of St Martin Conservation trust
Marcus Binney	Save Jersey Heritage
Tom Bull	Bull B.Co
Colin Busenel	DB Architects
Jonathan Carter	Jersey Heritage
John Clarke	Societe Jersaise
Michael Cotillard	Summit Developments
Jason Cronin	
Tim Daniels	Government of Jersey
Anthony Farman	MS Planning
Stuart Fell	Societe Jersiaise
Olga Finch	Jersey Heritage
Andy Fleet	Bridgewater Property Group ltd
Christopher Floyd	
I Gallichan	Andium Homes
Antony Gibb	
Paul Harding	BDK architects
Peter Hargreaves	
Mark Harris	Viscount's Department
Roger Hills	Jersey Heritage
Martin Holmes	
Jim Hopley	Disability Jersey
Tracey Ingle	Government of Jersey
Patricia Jackson	
Nicolas Jouault	
Mike Keirle	Deanery of Jersey
Chris Kelleher	Government of Jersey
Meryl Laisney	Visit Jersey
Peter Le Gresley	Government of Jersey
Andrew M Le Quesne	Earth Project Jersey
Rosalind Le Quesne	Societe Jersaise
Henry Lee	Jersey Development
Stephen Lilley	Andium Homes

Mal Livesey	Jersey Electricity
Ian Marett	Morris architects
Reg Mead	
Richard Miles	
Greg Morel	Government of Jersey
James Naish	
Jerry Neil	Jersey National Park
Dr Ralph Nichols	La Société Jersiaise
Kevin Pilley	Government of Jersey
Dr Matt Pope	UCL
M Porter	Andium Homes
Ken Rive	Jersey Metal detecting club
Georgia Robinson	Jersey Heritage
Moz Scott	St Brelade's Bay Association
Mike Stein	msplanning co uk
Colin Tadier	Hartigan
Jill Tompkins	
Ruth Urben	
Mike Waddington	Waddington Architects
Nicolette Le Quesne Westwood	
Myles Winchester	DB Architects
Marc Yates	

Appendix B

Sources Consulted

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B1

B1.1 Websites

Alderney Land Use Plan 2017:

<http://www.alderney.gov.gg/CHttpHandler.ashx?id=112384&p=0>

Charter on the Protection and Management of Underwater Cultural Heritage (1996):

https://www.icomos.org/charters/underwater_e.pdf

Criteria for the listing and grading of heritage assets Adopted April 2011 (MD-PE-2011-0063):

[https://www.gov.je/SiteCollectionDocuments/Planning%20and%20building/ID-criteria%20for%20listing%20and%20grading%20\(April%202011\)%2020150323%20mm.pdf](https://www.gov.je/SiteCollectionDocuments/Planning%20and%20building/ID-criteria%20for%20listing%20and%20grading%20(April%202011)%2020150323%20mm.pdf)

Development Control Health Check, Planning Officers Society:

<https://www.gov.je/Government/Pages/StatesReports.aspx?ReportID=5101>

Government of Jersey Website:

<https://www.gov.je/PlanningBuilding/ListedBuildingPlaces/Pages/index.aspx>

Guernsey Island development Plan 2016:

<https://www.gov.gg/CHttpHandler.ashx?id=104804&p=0>

Heritage Counts (Jersey), 2017:

<https://www.jerseyheritage.org/media/Corporate%20Information/Heritage%20Counts%202017.pdf>

Isle of Man Strategic Plan 2016

https://www.gov.im/media/1350906/the-isle-of-man-strategic-plan-2016-approved-plan-15_03_16.pdf

Jersey Heritage Website:

<https://www.jerseyheritage.org/>

Jersey Heritage HER database:

<https://her.jerseyheritage.org/>

Jersey Integrated Coastal Zone Management Strategy:

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Stéphanie Nicolle QC (ud) *Treasure Trove (1) Lost, Stolen or Strayed*

Dr Aylin Orbasli & Dr Peter Chowne (2013) *Underwater Cultural Heritage & Battlefields in Jersey Scoping study*, report to States of Jersey and Jersey Heritage

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The Wreck and Salvage (Vessels and Aircraft) (Bailiwick of Guernsey) Law, 1986 online at:

<http://www.guernseylegalresources.gg/CHttpHandler.ashx?id=71159&p=0>

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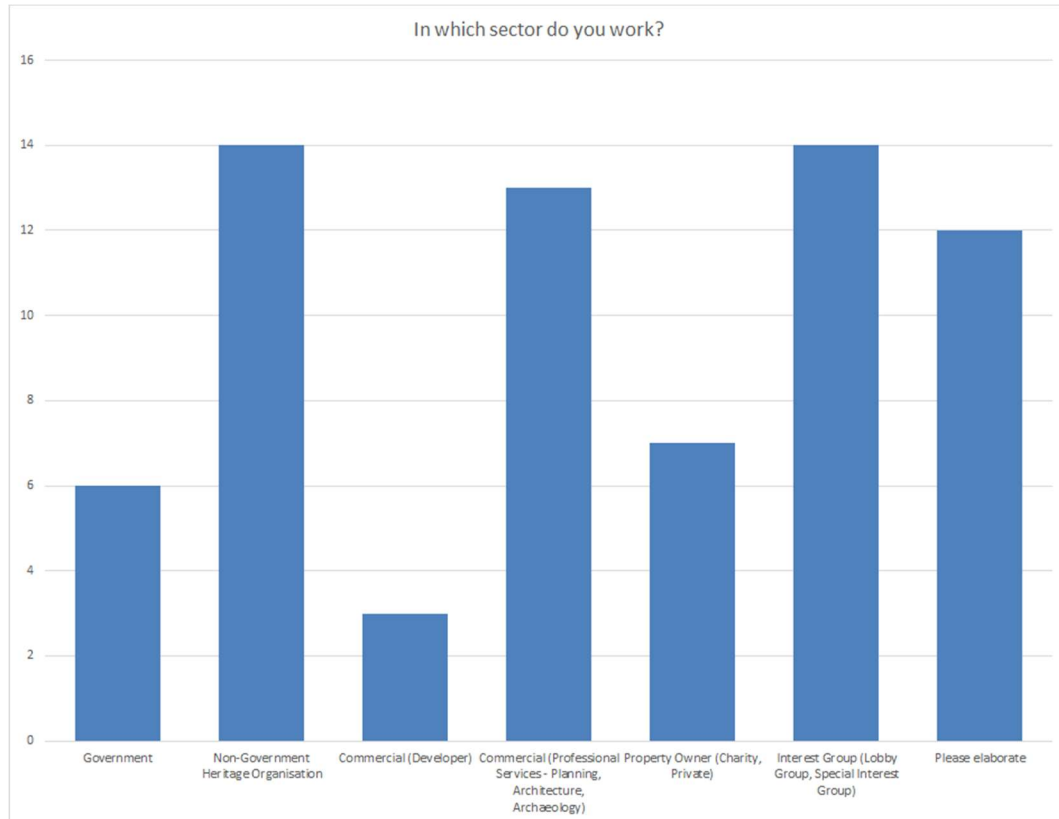
<http://www.irishstatutebook.ie/eli/2000/act/30/enacted/en/html>

Appendix C

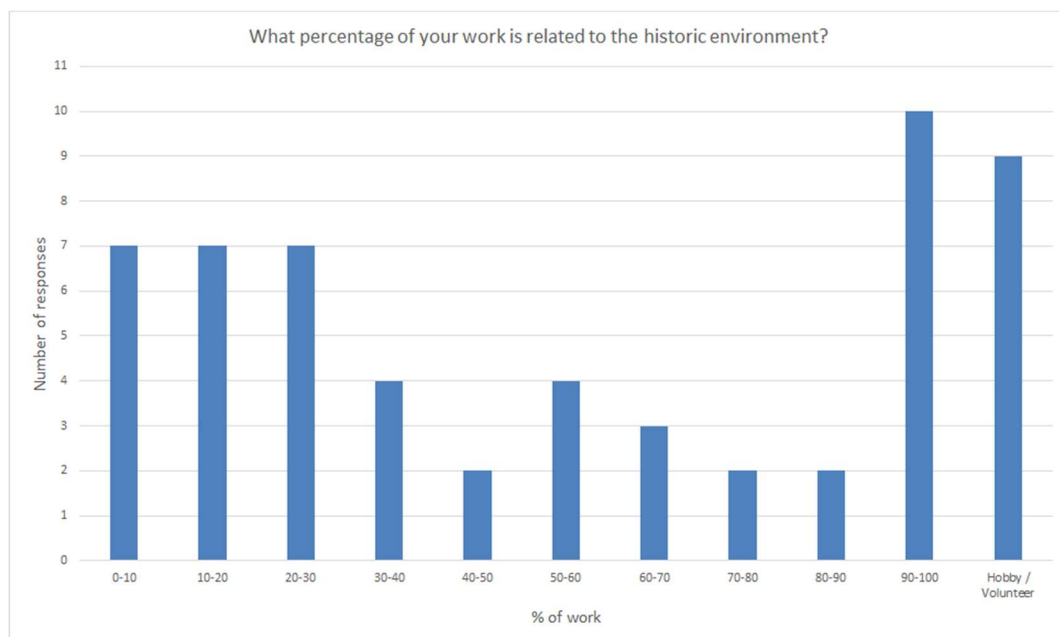
Questionnaire Response Analysis

C1

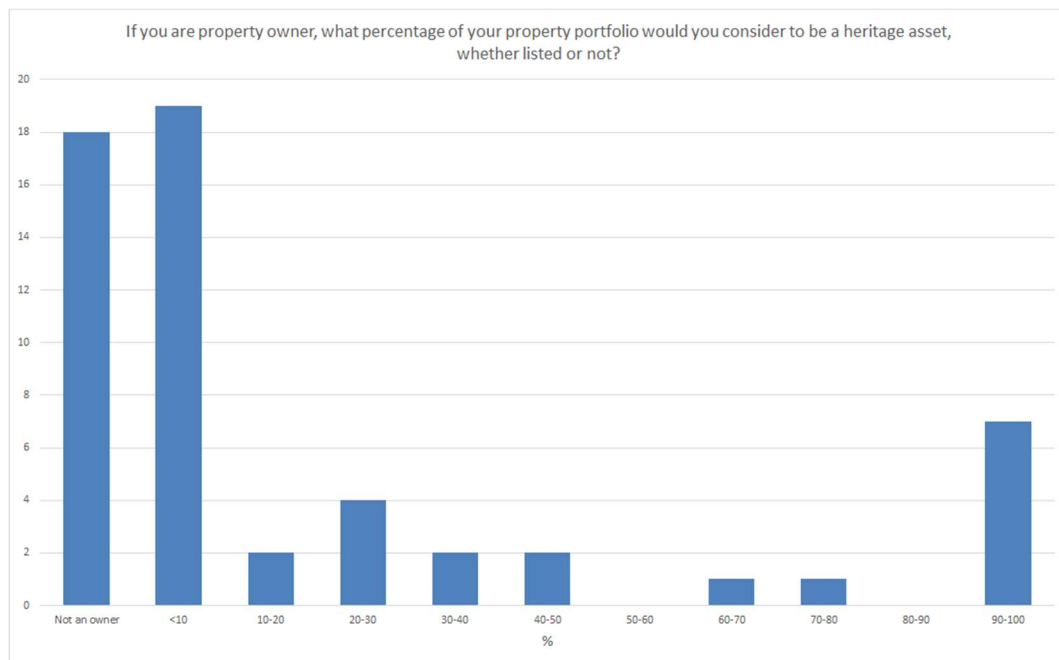
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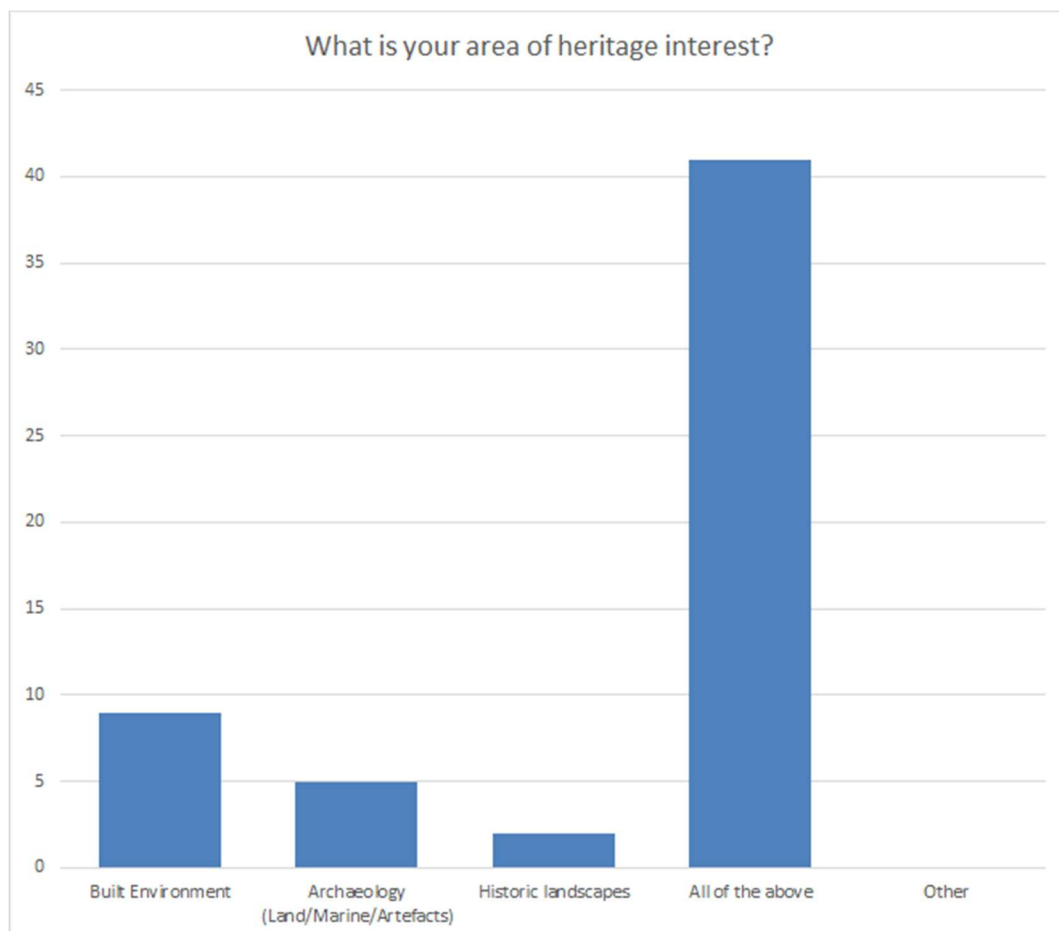
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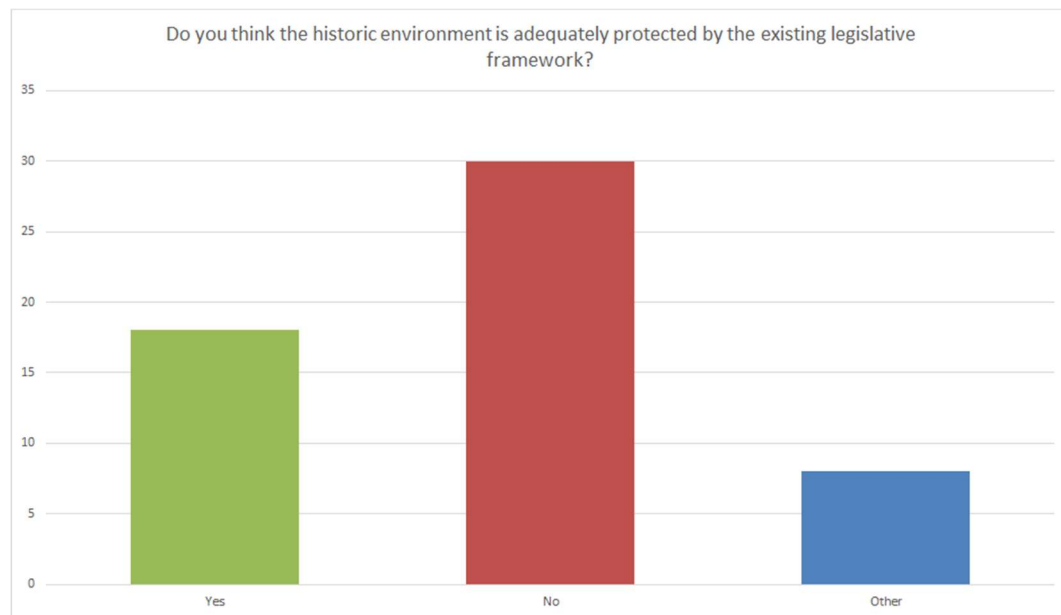
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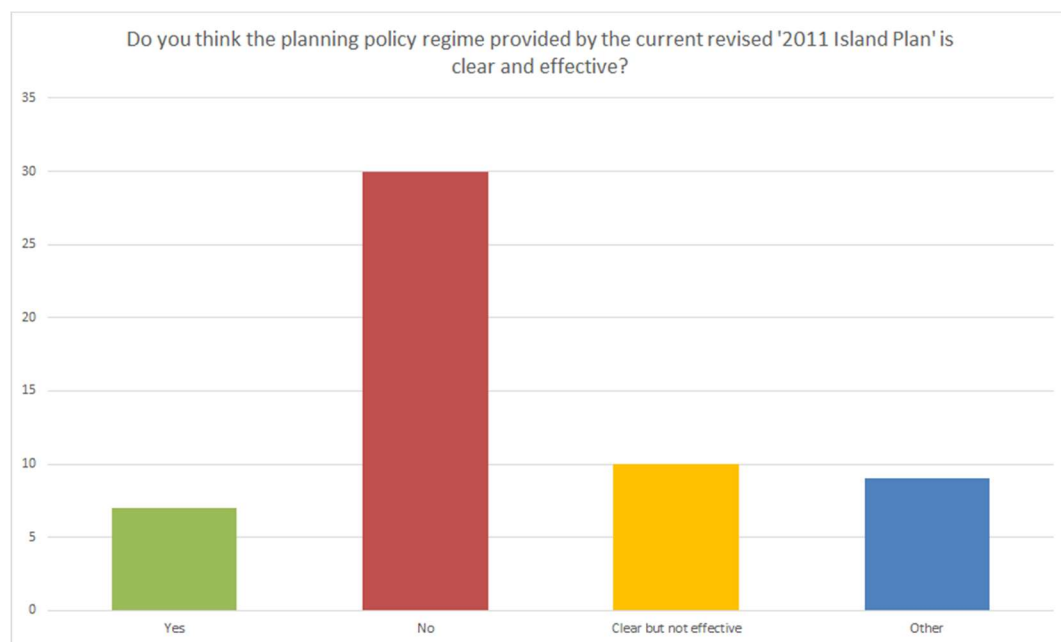
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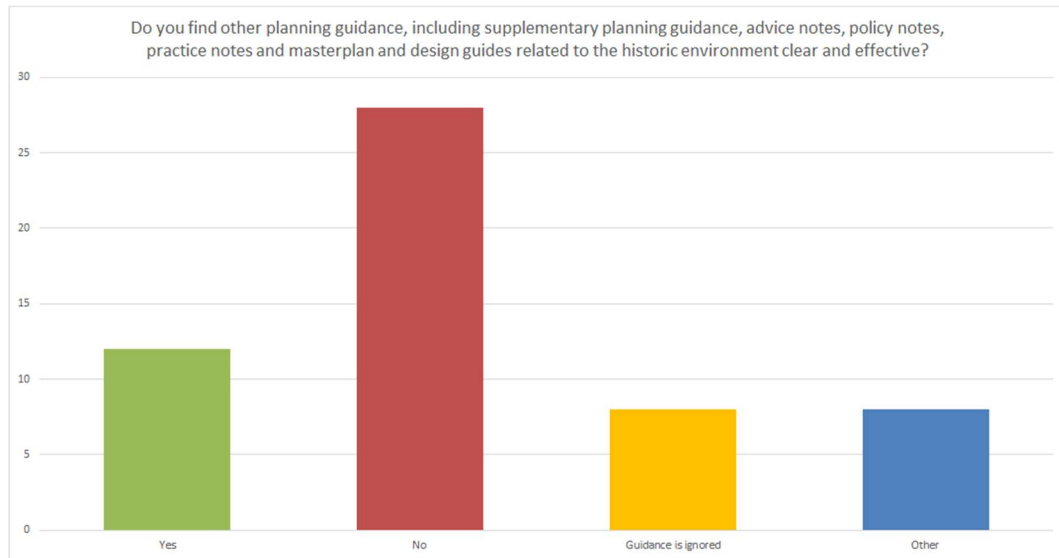
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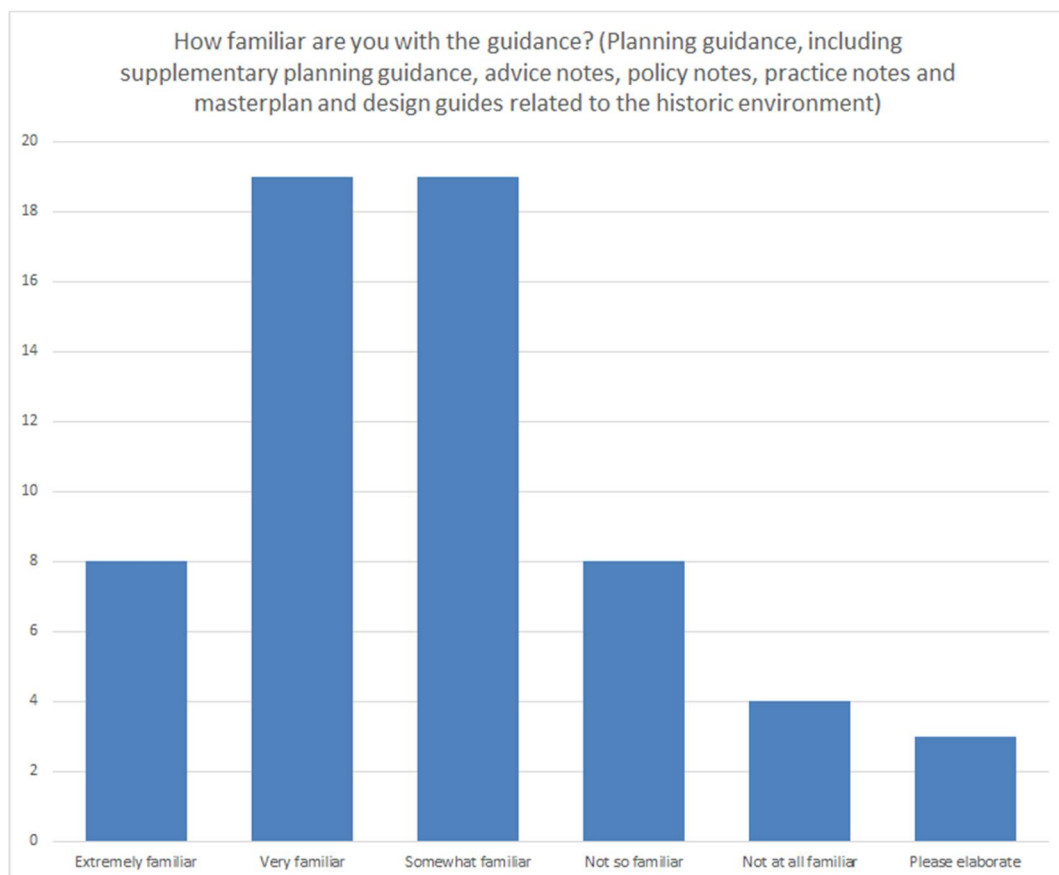
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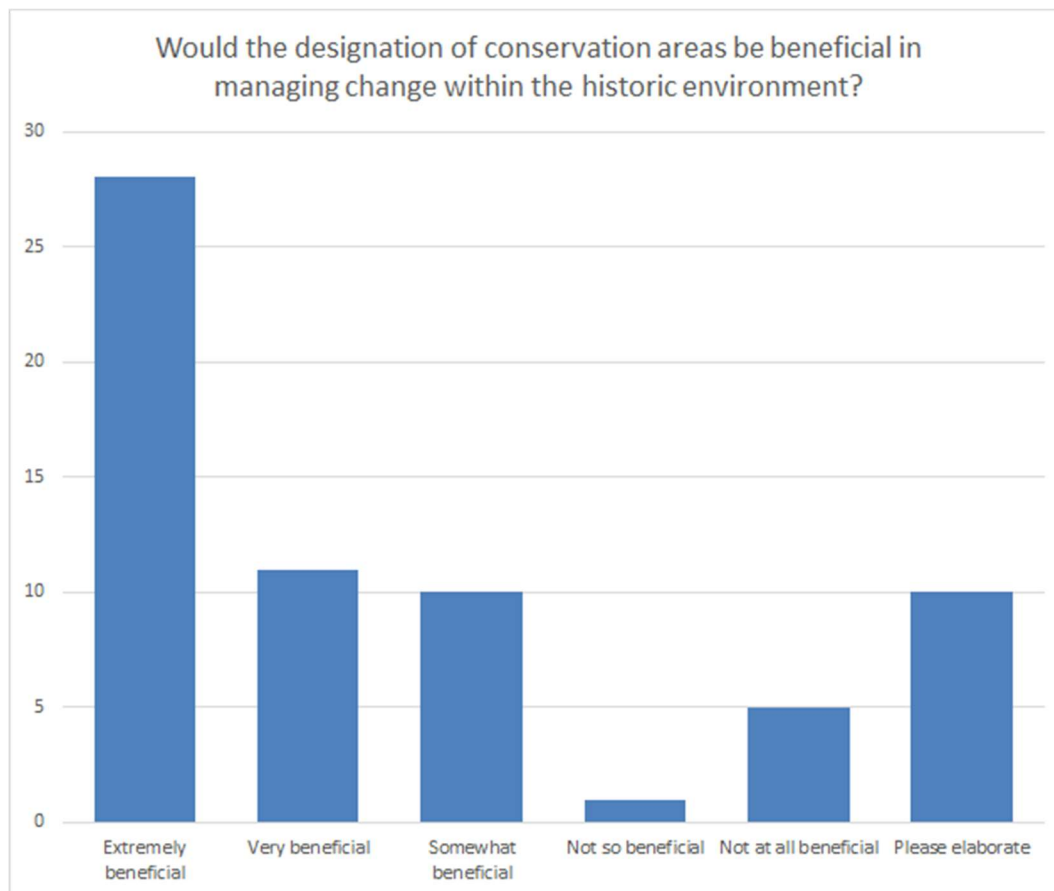
Q.8



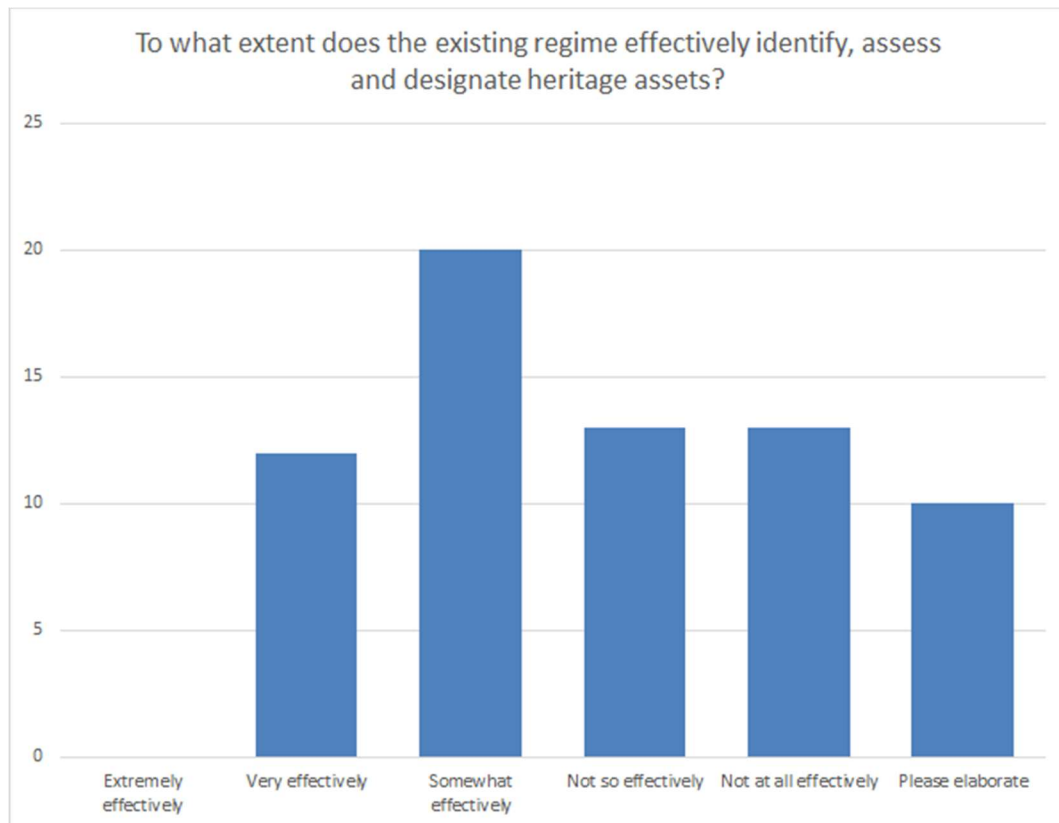
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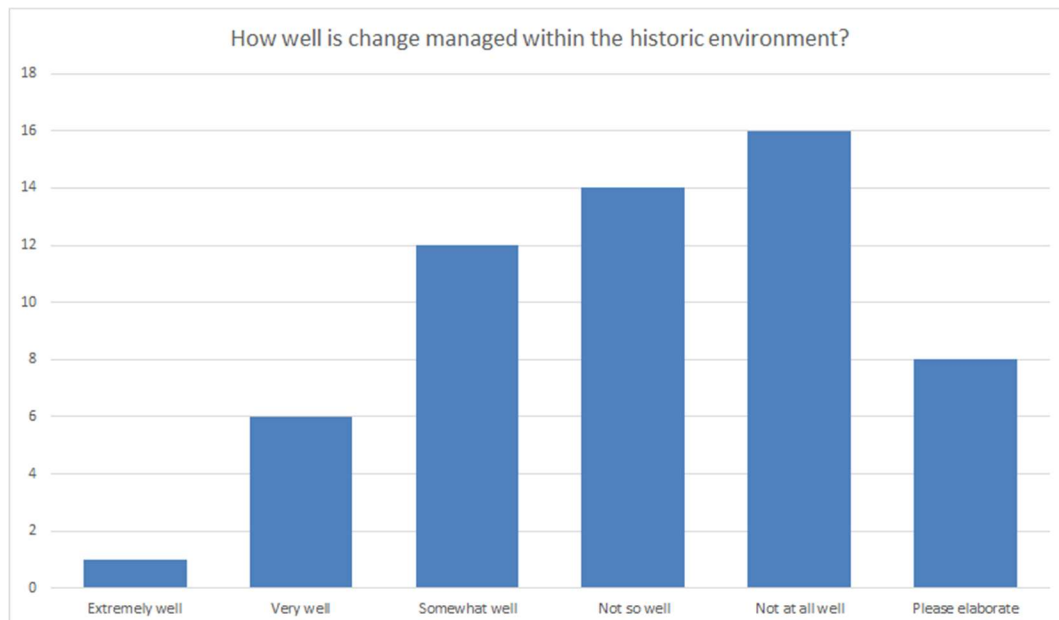
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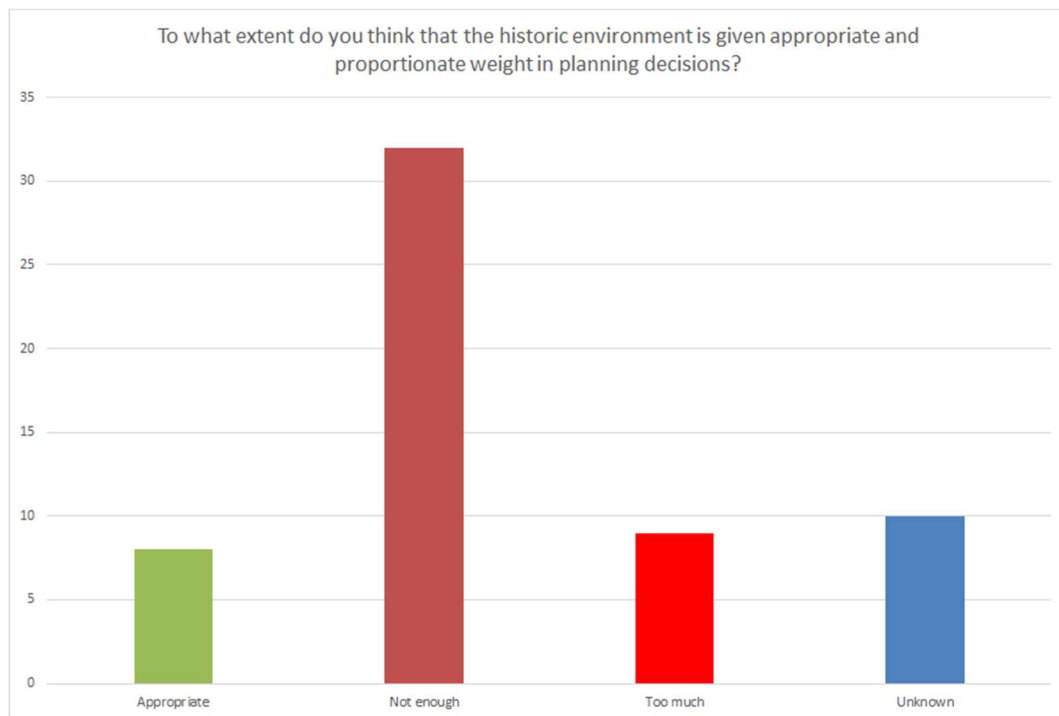
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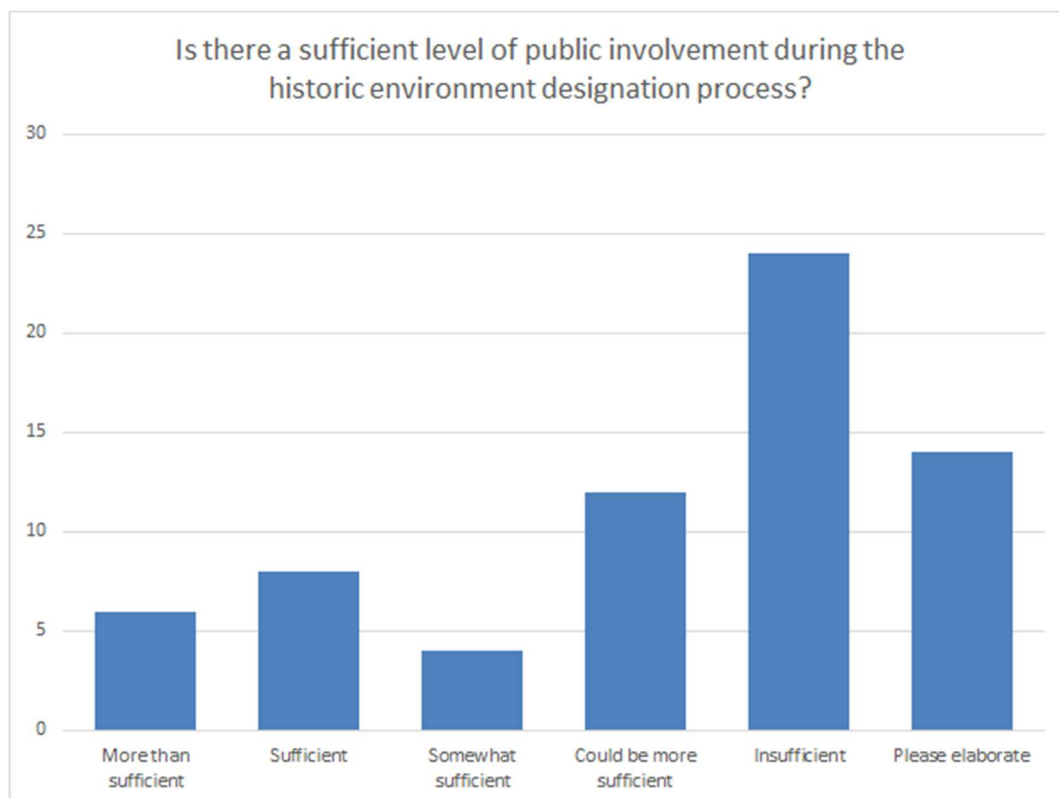
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Q.13



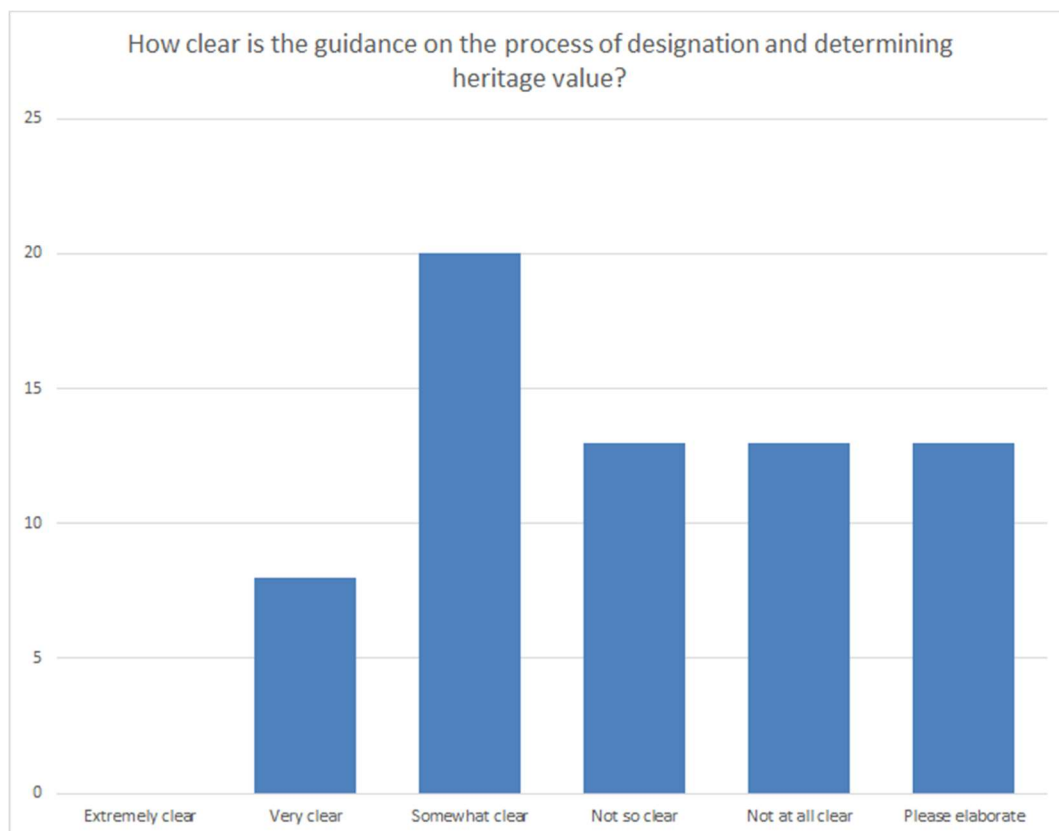
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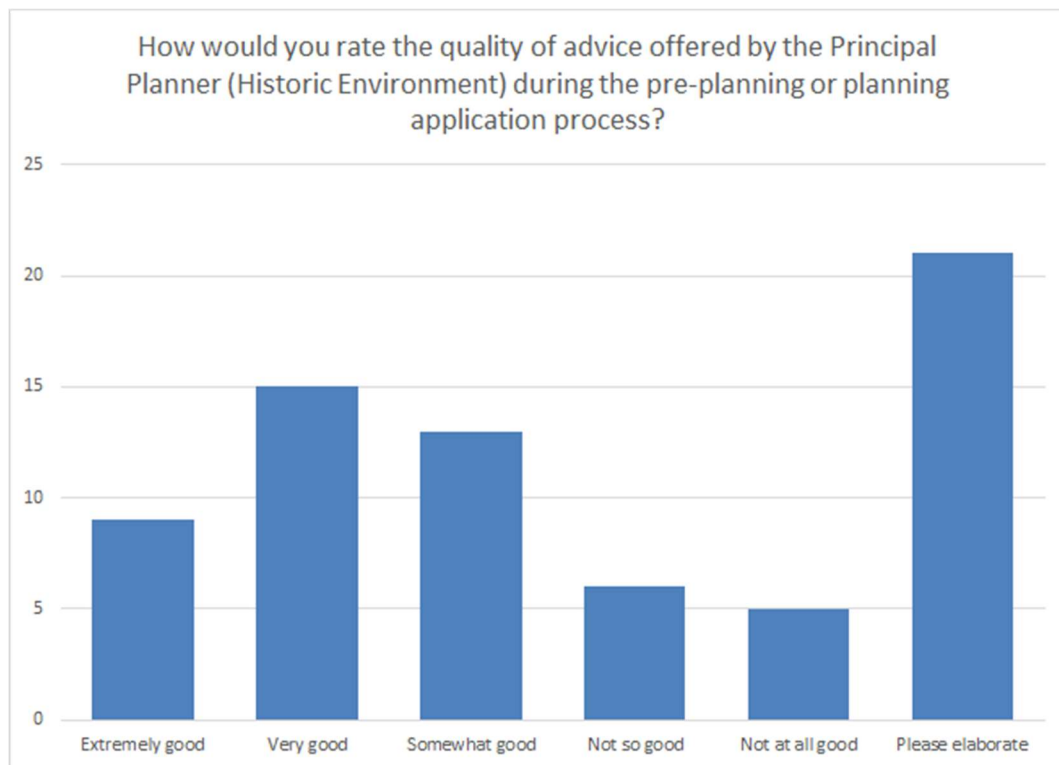
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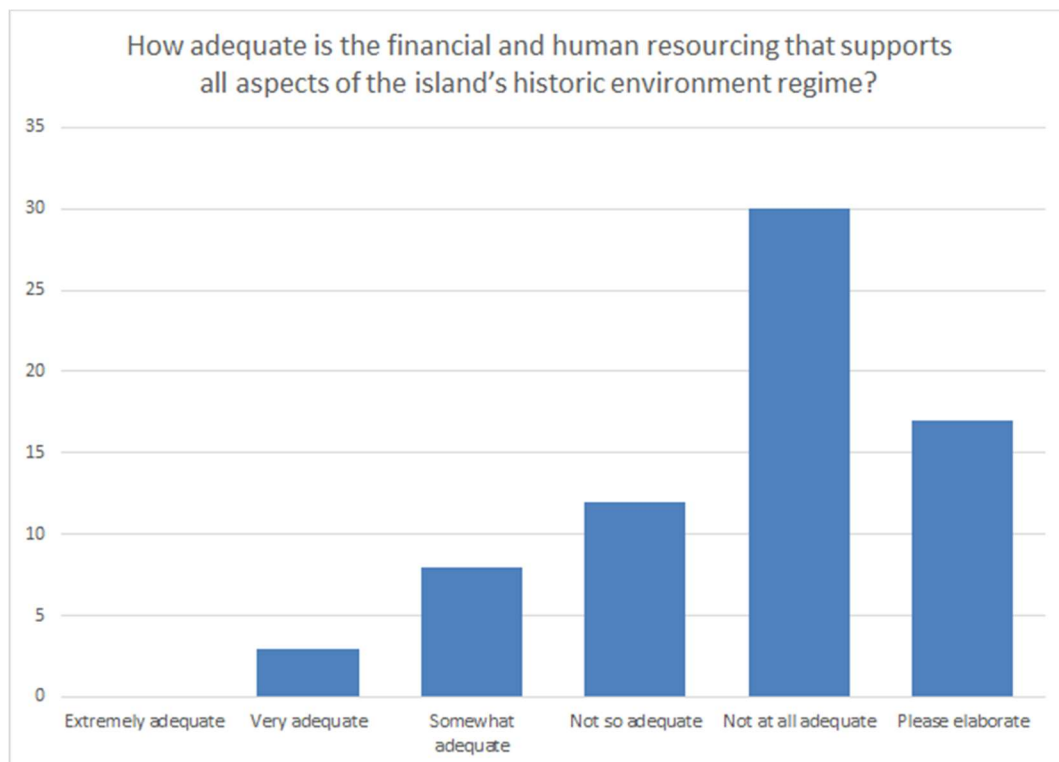
Q.17



Q.18



Q.19



Appendix D

Stakeholder Workshop Output

D1

1) Start

Hello team!

Your facilitator is David ☐

Group 1

David Lakin

Roger Hills

Matt Pope

Rosalind Le Quesne

Richard Miles

Reg Meads

Nicolette Westwood

Is the legislation and policy framework appropriate for archaeology?

Q1: Is a Treasure Act required for Jersey?

Prompt: If YES should it follow the model of the UK or of the Isle of Man?

Who would be responsible for defining whether a find is Treasure? (Treasure C'ttee in UK, 'Trust' in IoM)

Who would be responsible for adjudicating on ownership and remuneration?



Q2: Is a Marine Archaeology Act needed to protect the underwater heritage of Jersey?

Prompt: What is the threat?

Does existing legislation adequately protect remains from the current and future threats?

Are the IoM and Guernsey Wreck and Salvage Acts possible models?



Q3: Is the designation of Areas of Archaeological Potential appropriate as an area based designation to protect archaeology?

Prompt: Are they extensive enough?

Does the designation inhibit investigation in order to more fully understand the remains present?

For the breakout Teams Meeting
for this group, [click here](#).
Conference ID: 164 731 501#

1) Start

Hello team!

Your facilitator is Ophelia ☐

Group 2

Ophelia Blackman

Jonathon Carter

Tim Daniels

Antony Gibb

Chris Kelleher

Jerry Neil

Colin Tadier

For the breakout Teams Meeting
for this group, [click here](#).
Conference ID: 831 004 827#

Is the legislation and policy framework appropriate for area based designations?

An emergent change to Planning and Building (Jersey) Law 2002 under proposed Amendment No 8 of the Law is at drafting stage. This will provide a legal basis for the designation of Conservation Areas.

Key Question A: Does the current policy framework need enhancement?

Prompt: If YES should it follow the model of the UK or of the Isle of Man?



1) Start

Hello team!

Your facilitator is Victoria ☐

Group 3

Victoria Donnelly

Nick Aubin

Antony Farman

Jude Lindsey

Mike Porter

Georgia Robinson

Mike Waddington

Are the Existing SPGs adequate?

Energy Efficiency?

There are four heritage-related Planning Advice Notes which form supplementary planning guidance, in support of the Island Plan.

Question A: Are existing SPGs adequate?*Prompt: What about guidance on setting?**And guidance on energy efficiency (given debate over double glazing)?**More specific guidance on maintenance? Traditional/ vernacular building typologies, methods, materials?***Key Question B: Is an explicit policy on the treatment of human remains required?***Prompt: Is the EH CoE guidance a possible model? Is there an area of concern?*

For the breakout Teams Meeting for this group, [click here](#).
Conference ID: 503 562 816#

1) Start

Hello team!

Your facilitator is Kevin ☐

Group 4

Kevin Barber

Charles Alluto

Louise Ashworth

Stuart Fell

Stephen Lilley

Ken Rive

Myles Winchester

Marc Yates

For the breakout Teams Meeting
for this group, [click here](#).
Conference ID: 885 493 264#

Are stakeholder roles and public involvement in heritage asset assessment and designation appropriate?

Key Question: Appropriateness of stakeholder roles in assessment and designation?

Prompt: Should an advisory group be reconstituted for future assessment and designation exercises? If so, how should it be constituted?

Is there a role for wider public consultation on designation? What form might this take?

Given the low number of designations in the years since the last resurvey (approx. 3 per year) is this question relevant?



1) Start

Hello team!

Your facilitator is David ☐

Group 1

David Lakin

Roger Hills
Matt Pope
Rosalind Le Quesne
Richard Miles
Reg Meads
Nicolette Westwood

Is there a suitable level of information about the HE available to the public and interested parties?

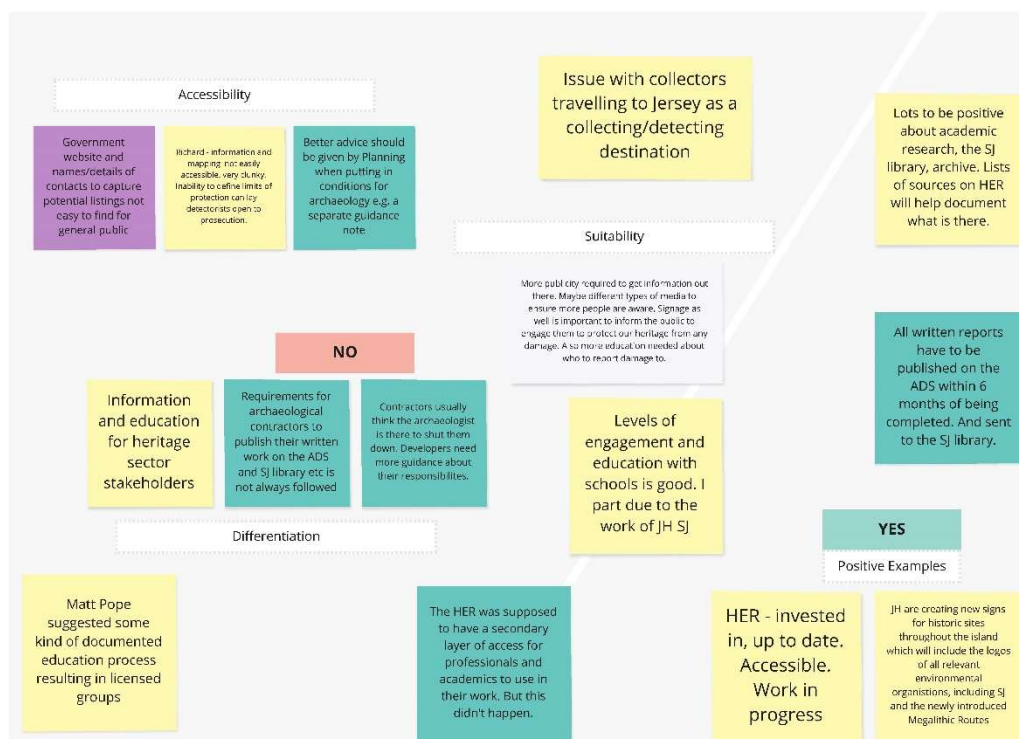
Key Question: Suitability of information?

Prompt: How is information made available? Is it easily accessible?

What is a suitable level of information? Is it suitable for those who need to access information for development control purposes?

Is it suitable to inform and educate the public? Is it suitable for academic research?

Are the roles of the govt website and HER differentiated? Should they be?



For the breakout Teams Meeting
for this group, [click here](#):
Conference ID: 164 731 501#

1) Start

Hello team!

Your facilitator is Ophelia ☐

Group 2

Ophelia Blackman

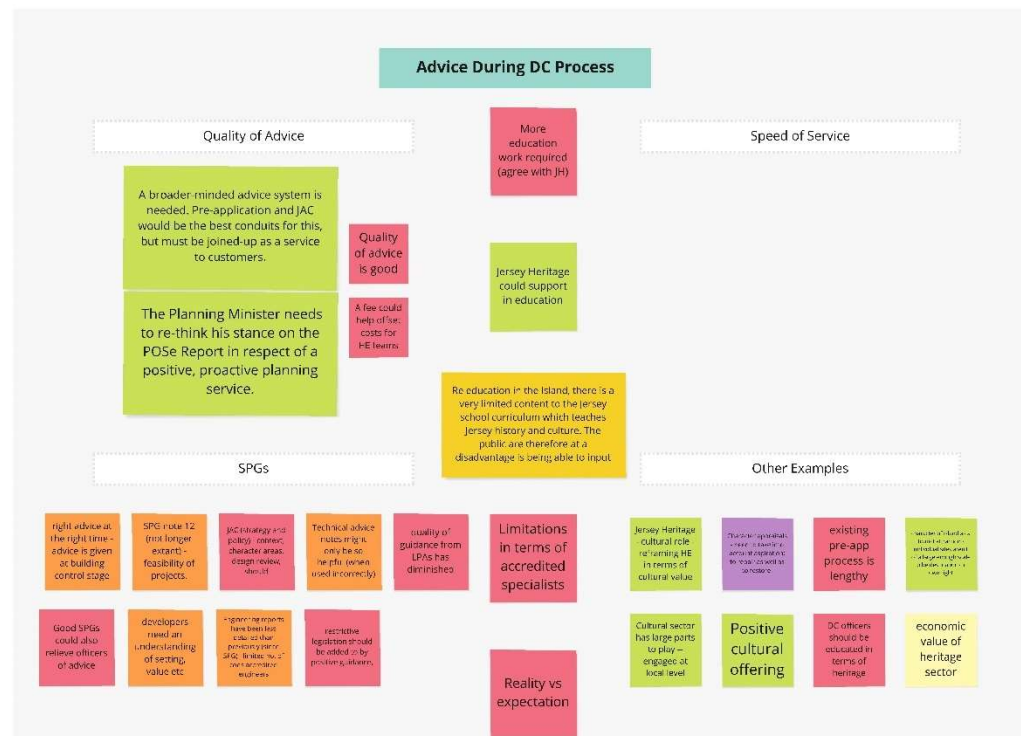
Jonathon Carter
Tim Daniels
Antony Gibb
Chris Kelleher
Jerry Neil
Colin Tadier

For the breakout Teams Meeting
for this group, [click here](#).
Conference ID: 831 004 827#

Specialist advice during DC process: How can the experience be improved?

Key Question: How can the experience be improved?

Prompt: Quality of advice – can it be improved (noting that the questionnaire responses from across all respondents expressed high levels of approval).
Speed of service – Challenges/Opportunity and delays as a result of under-resourcing. Is there a role for paid pre-app service?
Would more SPGs, statements of significance and character appraisals help?



1) Start

Hello team!

Your facilitator is Victoria

Group 3

Victoria Donnelly

Nick Aubin

Antony Farman

Jude Lindsey

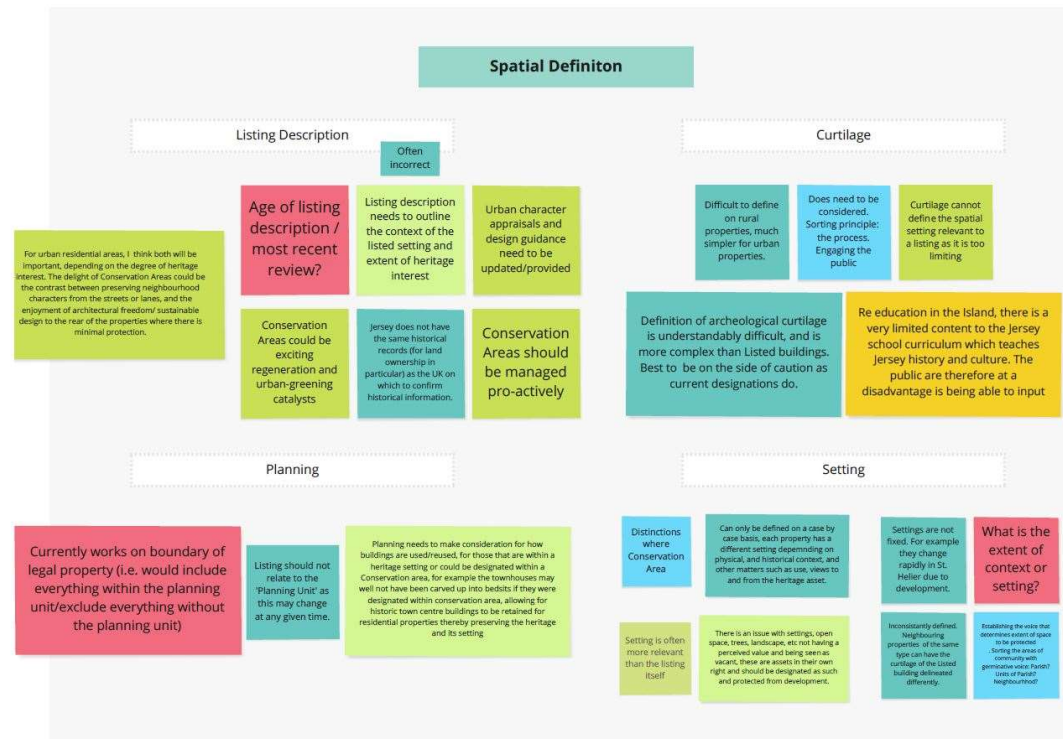
Mike Porter

Georgia Robinson

Mike Waddington

For the breakout Teams Meeting
for this group, [click here:](#)
Conference ID: 503 562 816#

What is the appropriate spatial definition of heritage interest?

Key Question: Spatial Definition*Prompt: Listing description?**Curtilage?**Planning unit?**How does setting fit in?**Is it different for buildings and archaeology?*

How adequate is the resourcing of the Historic Environment function?

Key Question: Resourcing

Questionnaire responses highlighted the lack of a government archaeologist. Is there scope for resource sharing with other bodies? Which bodies might those be? (for example marine archaeology with Guernsey and Isle of Wight Trust)

Resilience and succession planning issues?

What are the advantages/disadvantages of the current system of min

What are the advantages and disadvantages of the current system of minimal government planning and outsourcing of functions to third parties (on island or off island)?

[illegible]

Kevin Barber

Charles Alluto
Louise Ashworth
Stuart Fell
Stephen Lilley
Ken Rive
Myles Winchester
Marc Yates

For the breakout Teams Meeting
for this group, [click here](#):
Conference ID: 885 493 264#

