

STATES OF JERSEY



STATES OF JERSEY LAW 2005: DELEGATION OF FUNCTIONS – PLANNING AND ENVIRONMENT – PROVISIONAL LISTING POWERS

**Presented to the States on 24th August 2006
by the Minister for Planning and Environment**

STATES GREFFE

REPORT

On 23rd August 2006, the Minister for Planning and Environment made a decision delegating certain of his functions under Articles 53 and 60 of the Planning and Building (Jersey) Law 2002 to each of the following post-holders: the Chief Officer – Planning and Environment; the Director of Planning and Building Services and the Director of Environment; the Assistant Director of Planning (Policy and Projects); the States Ecologist and the Principal Historic Buildings Advisor.

The terms of the delegation were recorded in a ministerial decision as follows –

PLANNING AND ENVIRONMENT

Extension of Delegated Powers Provisional Listing

Purpose of the Report

The purpose of this report is to enable the Minister for Planning and Environment to consider the extension of delegated powers in respect of those parts of the Planning and Building (Jersey) Law 2002 relating to the use of provisional listing.

Background

The Minister for Planning and Environment has vested certain delegated powers to specific officers of the department, as set out in his decision of 28th June 2006 (MD-PE-2005-0077). These do not, however, relate to the provisional listing powers conferred by the new Planning and Building (Jersey) Law 2002.

Discussion

The protection of specific features of the built and natural environment under the former Island Planning (Jersey) Law 1964, under law, was onerous, requiring the making of specific Orders, as secondary elements of legislation. This related to both tree protection Orders, and Orders for the designation of Sites of Special Interest. Accordingly, there was no legislative provision to respond quickly to situations where built and natural characteristics of the Island of potential value, such as trees, historic buildings or sites of ecological value, were under imminent threat of damage or loss.

The new Planning and Building (Jersey) Law 2002 sought to address this legislative deficiency through the introduction of provisional listing powers in respect of exactly these features. These are conferred by the following Articles –

- 53: Provisional Listing of Sites of Special Interest;
- 60: Provisional Listing of Trees.

In both instances, the Minister is empowered to place a building, place or tree upon a List, and thus confer upon it certain protection, where he/she considers it ‘necessary or expedient to restrain an actual or apprehended;’ –

- operation or change which would adversely affect the special interest of a building or place (under Article 53); or
- removal or damage to a tree (under Article 60).

The efficiency and effectiveness of their use will clearly rely upon the speed of their application.

It is important to note that the use of both of these articles effectively provides the trees, buildings or places to which they are applied with a temporary form of protection under law until such time (and no longer than three

months) that the Minister determines whether they ought to permanently retain this protection. This allows time for more detailed consideration of their value to be obtained and allows time for representations to be made and considered.

It is considered that there may be circumstances where the requirement to secure the Minister's authority to exercise these powers has the potential to engender delay and thus risk the loss or damage of a potentially valuable tree, building or place. This would serve to undermine the basis and spirit upon which these legislative provisions were conceived.

Conclusions and recommendation

On the basis of the above, it is considered appropriate that the delegation of powers be extended in respect of these particular articles to enable officers to exercise them where it is expedient and appropriate to do so. As stated above, these powers impose temporary protection under law and the ultimate decision as to whether they should continue to enjoy permanent protection remains with the Minister as he must consider this matter within three months of any decision to 'provisionally list' a tree, building or place.

It is considered appropriate that these delegated powers be extended to the Chief Officer – Planning and Environment; the Director of Planning and Building Services and the Director of Environment; the Assistant Director of Planning (Policy and Projects); the States Ecologist and the Principal Historic Buildings Advisor.

The Minister for Planning and Environment is accordingly recommended to delegate authority to make decisions under Articles 53 and 60 of the Planning and Building (Jersey) Law 2002 to each of the following post-holders; the Chief Officer – Planning and Environment; the Director of Planning and Building Services and the Director of Environment; the Assistant Director of Planning (Policy and Projects); the States Ecologist and the Principal Historic Buildings Advisor.